

IN THE LAND COURT OF LESOTHO

HELD AT MASERU

LC/A/0003/2023

CIV/DLC/QACHA/05/2021

In the matter between

TEBELLO ZACHARIA KHOROMENG

APPELLANT

AND

LESOTHO NATIONAL DEVELOPMENT CORPORATION

1ST RESPONDENT

LAND ADMINISTRATION AUTHORITY

2ND RESPONDENT

Neutral Citation: Tebello Zachariah Khoromeng v Lesotho National Development Corporation [2024] LSHC Lan 225 (13 September 2024)

CORAM : **BANYANE J**
HEARD : **23/04/2024**
DELIVERED : **13/09/2024**

Summary

Appeal-conferment of title to land versus setting aside land for public purposes under the land Act 1979- allocation of land set aside for public purposes to a person other than the state without evidence that the land was no longer to be used for public purposes-validity of the allocation-whether such person a lawful allottee or *bona fide possessor*.

Statutes:

1. Deeds Registry Act 1967
2. Land Act No.8 2010

3. Land Act 17 of 1979
4. Lesotho National Development Corporation Act No.20 of 1967
5. Land Regulations 2011
6. The Town and Country Planning Act No. 11 of 1980

Cited Cases

1. Minister Van Water wese v Mostert en Andere 1964 (2) SA 656 (A)
2. Pretoria City Council v Modimola 1966 (3) SA 250 (A)
3. Fourie v Minister Van Lande en 'n Ander 1970 (4) SA 165 (0)
4. Brooklyn House Furnishers (pty) Ltd v Knoetze and sons 1970, 1970 (3) SA 264 (AD)
5. EE Rekhunan (pty) Ltd v Weider Gym Athlome (pty) Ltd t/a Weider Health & Fitness Centre 1997 (1) SA 646 (C)
6. Goudine Chrome v MCC Contracts 1993 (1) SA 77 (AD)
7. Weilbach En 'N Ander v Grobler 1982 (2) SA 15

JUDGMENT

BANYANE J

Introduction

[1] This appeal arises out of proceedings commenced by the respondent (hereinafter LNDC) in Qacha's Nek District Land Court for ejectment of the appellant from plot No 41581 – 222 situated within the Qacha's Nek Urban area. The Magistrate ruled in favour of the respondent hence this appeal.

Facts and Evidence

[2] The facts giving rise to this appeal may be summarised as follows. LNDC as applicant sued the appellant concerning a commercial plot identified as plot No. 41581 – 222. In its originating application, LNDC describes itself as the “owner” of rights to this plot. It sought an order declaring it as the lawful owner of rights to this plot and ejectment of the appellant.

[3] The appellant resisted the claim against him. The essence of his case as captured in his answer in the court below and this Court is that LNDC has no title to this land, and conversely, the land was allocated to him by proper authority.

Alternatively, LNDC's title lapsed due to its failure to register it per the provisions of the **Deeds Registry Act 1967**¹. In the further alternative, he pleaded that he is a bona fide possessor.

[4] Each party adduced some witnesses in support of their respective claims. For the ensuing discussion, it is necessary to summarise the evidence led in the court below.

Evidence led in the Court *a quo*

[5] The first witness was the Land Surveyor Ms. Lebohang Mohlalisi who worked for the Land Administration Authority (LAA) since 2012. He presented files in his possession relating to the plot in question.

[6] He testified that in 1998, certain surveys were carried out for five plots; for purposes of development. Some of these plots were intended to be used as a recycling center while the commercial plot in dispute (4158 – 222) was surveyed for LNDC.

¹ Deeds Registry Act 1967

[7] The second witness was Mr. Hlalele Mokenela who has worked for LNDC as a leasing officer since 2013. Because of the LNDC's mandate, the government allocated various strategic lands(including the disputed plot) in all districts of Lesotho through the Department of Land Survey and Physical Planning(LSPP), so the witness testified.

[8] Mr. Tsepo Putsoa testified as PW3. He works for LNDC as a Property Manager. His evidence is substantially the same as the leasing officer.

The Defence case

[9] The first witness for the defence was Mr. Hlaoli Motlomelo, the Chairman of the Qacha's Nek Urban Committee. He testified that in 2022, the Qacha's nek Urban Council allocated this land to the appellant. Before the allocation, they made some inquiries. These revealed that the site was surveyed for LNDC for development but no allocation was made after the survey. The Council then invited the LNDC to a meeting to establish whether it had title to the land. The LNDC failed to submit any title documents, be it a Form C or a lease despite being given sufficient time to do so. Having failed to establish its title to the land, the Council proceeded to allocate the land to the appellant.

[10] The appellant testified that he is a businessman based in Qacha's Nek. He testified that he was born and bred in Qacha's Nek. The disputed land lay vacant for about two decades. He took a keen interest in this land so he embarked on a fact-finding mission about ownership of this plot because it had been rumored to belong to LNDC. He visited the LSPP offices where he met the Chief Physical Planner Ms. Masetori Makhetha. The latter gave him copies of certain correspondence between the LNDC and the government showing that LNDC was invited by the government to develop this land but declined to do so.

[11] He also visited LNDC offices in 2018 or 2019 to confirm the ownership allegations. He met the former CEO Mr. Mohato Seleke, and one officer. Their conversation revealed that LNDC has no title document to this land. Upon this discovery, he immediately approached Qacha's Nek Urban Council to apply for allocation of the site. He submitted his written application around the end of 2019 or the beginning of 2020. After constant reminders, the Council allocated the land to him. He was favoured with a written document embodying the Council's decision. He thereafter applied for permission to develop the land to construct buildings thereon. On 13 March 2021, the Planning Committee granted him permission. After obtaining the permission, he began construction on the site.

[12] Masetori Makhetha testified as DW3. She testified that she worked for the LSPP as a physical planner from the nineties. From 2001 to 2019, she held the position of Chief Physical Planner. She told the Court that around 1996 and 1997, the

government deemed it prudent to develop the district of Qacha's nek by establishing shops and other businesses. The Chief Physical Planner identified the land in the Qacha's Nek town for this purpose. The land was surveyed by government surveyors and divided into about five sites earmarked for various purposes, namely 2 industrial sites, a bus stop and market, a Commercial site (disputed site), and one for waste recycling.

[13] The Commercial site was to be developed by LNDC. Relevant Stakeholders, including the LNDC, were invited to make representations or proposals on how best to implement the intended projects. The Local Government undertook to build a bus stop but LNDC promised to consider the proposal and later revert. On 12 May 1996, she wrote to LNDC reminding it about their promise to revert. On 12 May 1996, LNDC responded, indicating that it had no funds to carry out the proposed development.

[14] After LNDC declined the proposal 'they' (presumably LSPP) informed Qacha's Nek Urban Council to inform the business community to express their interest in developing this land. Under cross-examination, the witness denied giving letters to the appellant.

[15] According to this witness, the Council was entitled to grant title to the applicant without inviting members of the public to apply for allocation because there is a distinction between allocation and grant of title. The advertisement required by sections 26 and 27 of the Land Act applies only where land is to be allocated. However, for grants of title, no advertisements are made and no competition is required. Any person interested in developing and having sufficient means to carry out the desired development identifies a site and then approaches the Urban Council to apply for the grant.

Judgment a quo

[16] After hearing evidence, the Court ruled in favour of LNDC. In her judgment, the learned Magistrate identified the issues as follows:

- a) whether the applicant is a lawful owner of plot 4581 – 222
- b) whether the respondent is currently in possession and occupation of plot 4581 – 222 and whether he should be evicted from same.

16.1 Relying on Regulations 6 (3) and (5) of the Land Regulations, sections 26 and 27 of the **Land Act 2010**² she reasoned that:

² Land Act 2010

“Both parties have no registrable title to the plot in question as applicant merely relies on survey in its name while 1st respondent relies on letters from those who have authority to allocate land. Respondent’s allocation did not comply with provisions of section 26 (1) and (2) as it had not been advertised to members of the public to give rise to any adverse claim to it per section 27 of the Land Act 2010 as well as Land Regulations in section 6.

By allocating land to respondent that way, Qacha’s Nek Urban Council did no justice as it together with the respondent were quite aware that there was another party with prior possessory title to that land who might have made an adverse claim regarding that plot.”

16.2 The learned Magistrate reasoned that possession of land is in itself a good title against persons who cannot show a prior and therefore a better right to the land. In addition, possessory title is not based on a documentary title but on the exclusive occupation of the land. She then concluded that:

“Coming to the issue of possession, applicant got possession of the land in question before the respondent who even admitted to have known the plot in question as belonging to applicant a long time ago while growing up. Respondent got to possess the land in 2020 thus makes his possession not in exclusion of applicant. He cannot now come to claim compensation while he constructed a building on a plot that he has no possessory title to the exclusion of others.

In the light of the above coupled with law, applicant’s claim succeeds with costs.”

Grounds of appeal

[17] The appellant appeals the decision on grounds that the Court *a quo* erred by:

- 1) Finding that the 1st respondent was in possession of the disputed plot where there was no evidence presented by the 1st respondent supporting same;
- 2) Holding that the appellant did not have title to the disputed plot when there was ample evidence placed before court confirming that the disputed plot was allocated to the appellant;
- 3) Deciding that the 1st respondent's application was successful despite the 1st respondent's failure to present evidence proving that the disputed plot was ever allocated to it and/or that it has rights thereto.
- 4) Holding that the appellant does not hold a lien over the disputed plot even though there was abundant evidence proving that the appellant had been allocated the disputed plot by the appropriate authority and subsequently developed the plot, having sought and been granted permission to develop it, thus he was a bona fide possessor.
- 5) By upholding the 1st respondent's application although it failed to prove its title/ownership to the plot.
- 6) In finding that the appellant's allocation did not comply with the Provisions of the **Land Act 2010** when the 1st respondent did not seek to challenge the appellant's allocation in its prayers. The Court *a quo* made such a decision without giving the Land Allocating Authority a hearing.

Submissions on appeal

[18] Both parties filed comprehensive written submissions, citing the applicable land legislation and decided cases pertaining to the procedure for conferment of title to land in Lesotho, onus of proof in ejectment claims, setting aside land for public purposes etc. The essence of the submissions may be summed as follows.

Appellant's submissions

- a) Survey of the land alone, without allocation of the land or title documents, conveyed no title nor ownership rights to LNDC. Reliance was placed on the definition of title in the Land Act, 1979 and definition of owner in the Deeds Registry Act 1967.
- b) If the land was set aside for public purposes in favour of a statutory corporation, the procedure set out in sections 44 read with 54 and 61 of the Land Act 1979 was not followed because the land was neither declared a selected development area (SDA), nor a gazette issued in that regard and a lease issued for LNDC.
- c) Consequently, LNDC failed to establish one of the main requirements of a vindicatory action, namely, ownership.

- d) Conversely, undisputed evidence showed that the land was allocated to the appellant by a proper authority. Consequently, the appellant is not in unlawful occupation of the land.
- e) The appellant developed the disputed land based on his allocation and a valid planning permit issued by the relevant authority. He effected the developments with a belief that he is the owner of the property. He is, for this reason a bona fide possessor entitled to a lien until compensated for these improvements. He could not therefore be validly ejected from this land.

LNDC's submissions

- a) Evidence adduced established that the land was allocated to LNDC by way of grant of title. This established its title to this land.
- b) The land was set aside for public purposes, and it was not necessary to make publications through a gazette because there no one, but the state had existing rights or interests over this land.
- c) The allocation made by Council to the appellant is not only violative of the prescribed procedure for allocation of land in urban areas, but also invalid because it was made before revocation of LNDC's rights.

d) The appellant acted mala fide, by firstly approaching Council in the way he did when he discovered that LNDC holds no title document over the plot. He is therefore no bona fide possessor nor entitled to a lien over this property.

Issues for determination

[19] These grounds of appeal raise a triad of issues for determination. The first is whether the LNDC is the owner of the disputed land, and conversely whether it was wrongfully or unlawfully allocated to the appellant. Depending on the answer to the first two issues, whether the appellant is a *bona fide possessor* entitled to retain possession of this land until compensated for improvements effected thereon.

Is the LNDC the owner of the land?

[20] The thrust of the appellant's complaint under grounds 1, 3 and 5 is that the land was never allocated to LNDC; neither does it hold a title document to this land. In addition, the land was never declared as a selected development area and thus was properly allocated to the appellant.

[21] The soundness of this contention must be tested against the relevant provisions of the **Land Act 1979 and 2010** governing the conferment of title to land, and setting aside land for development purposes.

[22] The starting point is Section 3 of the **Land Act 1979**³. It reads:

“3 (1) Land in Lesotho is vested absolutely and irrevocably in the Basotho Nation and is held by the state, as representative of the Nation.

(2) It’s a Corollary to the principle stated in subsection (1) no person, other than the state, shall hold any title to land except as provided for under Customary Law or under this Act.”

[23] Section 7 provides that;

“4 The power to allocate land, to grant titles to land, to grant or allocate servitudes to revoke or derogate from a grant to terminate a lease, or a servitude is vested in the king, and shall be exercised as provided for under this Act.”

[24] It is common cause that the LNDC did not apply for allocation of this land but the land was set aside for development and LNDC was requested to effect the development. Presumably the survey of these 5 plots(one of which is the contentious area) was made under **The Town and Country Planning Act of 1980**.⁴ It is also undisputed that at the material time, LNDC indicated that it had no financial muscle to develop this land.

[25] To my mind, where land was set aside for development, sections 54 and 62 under Part VI of the **Land Act 1979** are relevant to decide the appellant’s contention. They read as follows;

³ Land Act 1979

⁴ 11 of 1980

54 (1) whenever it is necessary in the public interest to set aside for public purposes land held under a lease, the Minister, after consultation with the Principal Chief having jurisdiction and upon obtaining the King's assent, shall declare the land to be so required.

(2) Notice of a declaration by the Minister under subsection (1) (in this part referred to as a declaration notice) shall be given by the Minister in the gazette and shall contain the following particulars

- a) the name of the lessee or lessees, in whose name the lease of the required land is registered:
 - b) a description of the land and its location specifying (by reference to a plan or otherwise) its boundaries and extent:
 - c) the general nature of the purpose for which the land is required
 - d) the date on which the land shall be surrendered by the person in occupation
 - e) an assessment of the amount of compensation offered and the method used for assessing such amount,
- and shall invite any person having any claim in the land to submit his claim to the Minister.

.....

[26] Section 62 reads as follows:

62. All land, other than land to which title is held by a person other than the state, used and occupied by the state on the commencement of this Act shall be deemed to have been set aside for public purposes under this Act, and an endorsement to that effect shall be made by the Registrar on any deed relating to such land which may have been registered in the name of the government, or of a Ministry, department or agency of the government, or of any person acting for and on behalf of the government.

[27] My understanding of these provisions is that although they both govern the procedure for setting land aside for purposes of development, they apply in different situations. Section 54 applies to land held by any person other than the state whereas section 62 applies to land held by the state. Section 54 applies in expropriation of land held by any person other than the state. Expropriation being a process by which an owner is deprived of all or some of his rights in his property, which rights become vested in the state or some other public personel authorized to acquire those rights.⁵

[28] Because the disputed land was not allocated to anyone and therefore not expropriated by the government when it was set aside for development in the late nineties, no declaration required by section 54 was necessary.

[29] The next question is whether the LNDC acquired any right to this land under section 62. The phrase ‘Public purposes’ in relation to land is defined in section 2 of the **Land Act 1979** to include *its use by the government, a local authority or a statutory cooperation for the purpose* set out in this Act.

⁵ MD Southwood: the Compulsory Acquisition of Rights (Juta 2000), Beckenstrater v Sand River Irrigation board, Minister v Waterwese v Mostert en Andere 1964 (2) SA 656 (A) 666 – 7, Pretoria City Council v Modimola 1966 (3) SA 250 (A), Fourie v Minister Van Laude en ‘n Ander 1970 (4) SA 165 (O) 169

[30] The LNDC is a statutory body corporate established by the **LNDC Act 1967**. Its continued existence is recognized by the LNDC Act 1990. The purpose of the Corporation is to initiate, promote, and facilitate the development of manufacturing and processing industries, mining and commerce in a manner calculated to raise the level of income and employment in Lesotho.

[31] Based on this understanding, the disputed land falls within the purview of section 62 as land set aside for development purposes and LNDC is authorized to develop it. Although no title deed of lease was issued in its name, if the land remained set aside for public purposes, the LNDC was entitled to vindicate it and vice versa. Below, I deal with the issue of whether the land was available for grant of title and whether it was properly allocated to the appellant.

Was the appellant's allocation lawful?

[32] According to undisputed evidence by the chairperson of the Qacha's nek urban Land committee, this land was allocated to the appellant sometime in 2022 although no a title document was issued. Under grounds 2 and 6 of the appeal, the appellant

asserts that his allocation was above board and thus valid. The question is whether the Council properly allocated the land to the appellant.

[33] This must be answered by reference to the provisions of the Land Act 2010 governing the conferment of title to land.

Section 26 of the **Land Act 2010** outlines the procedure for land allocation as follows:

26 (1) where land is available for grant of title, the Minister shall, by notice in the gazette, publicize the fact.

(2) The notice referred to in subsection (1) shall –

a) state that the land is available for lease;

b) contain a sufficient description of the land to enable its identification;

c) give particulars of the permitted land use, the ground rent or fee payable, where appropriate, and of the amount to be paid for the improvements, if any, made to the land; and

d) invite members of the public to lodge applications with the allocating authority by a specified date.

[34] This provision must be read with part III of the **Land Regulations 2011**⁶. Regulation 6 under this part reads as follows:

6 (1) An allocating authority may allocate land subject to an approved development plan for different uses outlined in therein.

(2) An allocating authority in respect of land in the rural area shall be the land allocating authorities or the local Council.

(3) where land is available for allocation in urban area, the allocating authority shall not exercise its power to allocate land unless it shall have made a publication within its area of jurisdiction of the availability of such land and the publication shall:

⁶ Land Regulations 2011

- a) State the permitted use of land;
- b) Contain sufficient description of the land to enable its location and identification;
- c) state any fees payable; and
- d) invite members of the public to lodge applications for allocation to the allocating authority by a specified date

(5) An application for allocation of land in a rural and urban area shall be made to a secretary of a land allocating authority in a prescribed form and shall be accompanied by a declaration of all rights and interests in land which the applicant holds at the time of the application.

6

(7) Land allocations shall be on a competitive and transparent basis

(a) A Land Allocating authority shall, in exercising its decision to allocate land have regard to the following:

- a)
- b)
- c)

d) An approved development plan applicable to the land which is the subject of a decision.”

[35] It seems to me that the prime objective of this procedure is to allocate land on a transparent and competitive basis. Land title is conferred by a process through which the land available for grant of title is first advertised before any applications are received. To my mind, the procedure is mandatory and must be observed by the relevant authority.

[36] The appellant’s contention that the land was available for grant is based on the 1998 correspondence between the LSPP and LNDC and the Evidence of the former Chief Physical Planner, Mrs. Makhetha (DW 3). The correspondence reveals that

on 12 May 1998, Mrs. Makhetha on behalf of the Chief Physical Planner wrote to the Managing Director, LNDC. The letter reads:

Dear Madam

RE: Bus terminal and Commercial Centre in Qacha's Nek

Phase I of the above project has commenced and the bus stop is now partially completed. It is expected that it will soon be fully operational.

Block survey is being carried out for Phases II and III of the project, it was proposed that phase II which comprises the Commercial Complex will be executed by LNDC.

We are writing to you to renew our request for your assistance to ensure completion of Phase II.

Thank you

Yours faithfully

M. Makhetha

For CPP

[37] On 19 May 1998 the Chief Executive of LNDC Mr. A.M Maseela responded as follows:

“Bus terminal and Commercial Centre in Qacha’s Nek

We thank you for your letter of May 12, 1998, under Ref LG/LS 61/10 and hereby comment as follows:

We note your proposal that Phase II relating to a Commercial Complex is supposed to be executed by LNDC. May we advise that at this moment the Corporation does not have finances to execute this proposal and we would like to suggest that Government puts up the development and the corporation would assist to have it tenanted and managed.

Sincerely yours

A.M Maseela

Chief Real Estate Executive

[38] In my opinion, this correspondence is short of establishing the pre-condition or *sine qua non* for allocation of land, namely, that the land must be available for grant of title. The evidence neither suggests the land was available for grant of title nor that the procedure set out in the highlighted provisions was followed.

[39] Besides Mrs. Makhetha’s *ipse dixit*, no documentary evidence was adduced to support the allegations that there was certain communication to Qacha’s Nek Urban Council to the effect that the land was no longer set aside for public purposes but available for allocation to members of the public.

[40] Even assuming that this land was available for grant of title to members of the public, section 26 read with Regulation 6 of the **Land Regulations 2011** clearly and sequentially spells out the procedure to be followed before any allocation is made. Contrary to what Mrs. Makhetha suggested, it seems to me that the procedure is mandatory and the evidence of the chairman did not suggest that this procedure was followed. The appellant's allocation is therefore unlawful.⁷

Is the appellant a bona fide possessor or occupier?

[41] Based on the conclusion above, the final issue is whether the appellant is a bona fide possessor or occupier.

[42] Under the 4th ground of appeal, the appellant asserts that he is a bona fide possessor holding a lien over the disputed plot. The assertion is founded on the purported allocation and issuance of a planning permit, which according to him permitted him to develop the plot the disputed plot.

⁷ see for example Ramaphike v Malumane C of A (Civ) 28/2016

[43] It is common cause between the parties that the appellant has erected structures on this plot. The learned Magistrate did not address the appellant's defence of being a bona fide possessor but proceeded to issue an order of ejectment against him. The question is whether the ejectment order was justified on the evidence adduced.

The Law on Liens

[44] A lien (right of retention) is defined as the right to retain physical control of another's property, whether movable or immovable, as a means of securing payment of a claim relating to the expenditure of money or something of monetary value by the possessor (termed retentor or lien holder).⁸ The lien enables the retentor to retain possession of the property until the expenditure on that property has been compensated.⁹

[45] Liens are classified into two main categories, namely a) real liens and b) debtor and creditor liens. The difference between debtor and creditor liens and real liens lies is that the former are personal rights whilst the latter are real rights.¹⁰ Real

⁸ Goutine, Scott Article 31

⁹ Goudine Chrome v MCC contracts 1993 (1) SA 77 (AD) 85 A- D, Scott: Article p 31). (Brooklyn House Furnishers (pty) Ltd v Knoetze and sons 1970 (3) SA 264 (AD), 27 EE Rekhunan (pty) Ltd v Weider Gym Athlome (pty) Ltd t/a Weider Health & Fitness Centre 1997 (1) SA 646 (c) 652 (c)

¹⁰ Brooklyn House Furnishers at p 271 C – D).

liens protect persons who have spent money or labour on another person's property without any applicable prior contractual relationship between the parties.¹¹

Bona fide occupiers

[46] A bona fide possessor is defined as someone who occupies land under the belief that he owner of the property.¹² In **Weilbach En 'N Ander v Grobler**¹³ the court, after a survey of the authorities in connection with the claim of compensation for useful improvements, set out the following instances where such a claim is available, or could possibly be recognized:

- (1) Anyone who *bona fide* believes that he acts regularly if he effects useful improvements.
- (2) The *bona fide possessor* because he believes that he is owner, has the *bona fide* conviction that he is entitled to effect the affixture. Also, the person who believes that he will become owner and that he is entitled to effect the improvement has the same *bona fides*, eg, if he believes that he will inherit the land or if he has purchased the property.
- (3) As a third group, the bona fide occupiers who not only *bona fide* believe that they have the right of occupation but whose belief is indeed correct (the "lawful occupiers") can be mentioned.

¹¹ Scott p 33

¹² Steyn v Lebona CIV/T/143/82

¹³ 1982(2) SA 15

- (4) In a fourth category are those who rightly maintain a *bona fide* occupation but without an obligation on the part of the opposite party, namely a *precario habens*. It appears as if such an occupier is also entitled to compensation except if he realizes that he ought not to effect the improvement.
- (5) A *mala fide* occupier can also have a claim for compensation for useful improvements (except perhaps if he came into occupation in an unlawful manner). The *mala fide possessor* could still have a belief in the regularity of the effecting of the improvement, if eg, he is busy and intends acquiring ownership by prescription, but the person who takes possession surreptitiously will realize that he ought not to effect the improvement.
- (6) Even for cases where there is no possession of the property in the normal course of affairs or occupation in the normal course of affairs but conceivably only entry on to the property or access thereto.
- (7) The *bona fide* occupier who, differently to the “lawful occupier” is wrong in his conviction that he has a right of occupation.

[47] Reverting to the facts of the instant matter, it is undisputed that the appellant was granted a planning permission on 22 March 2021.¹⁴ There is a note at the bottom of this Permits reading as follows;

“the grant of this planning permission consents or approval does not authorize the applicant to commence building operations unless a building permit has been obtained.”

¹⁴ p 37 of the record

[48] Although the appellant developed the land against this clear prohibition, and based on an invalid allocation, it seems to me that the appellant, at the time he constructed the buildings on this land, believed that he was entitled to do so. He had a *bona fide* conviction in the regularity of the process of allocation and his entitlement to effect the improvements. I find that he is a bona fide possessor who has a claim for compensation in connection with the useful developments thereon.

[49] The fact that he developed the land before the issuance of title documents and against the prohibition in the permit, does not detract from his right to be compensated for improvements because he believed that the relevant government department's approval of all his applications, for allocation and building, was legal. I further find he has a right of retention over the plot.

Order

[50] For reasons set out in the judgement, the following is made;

- a) The appeal partially succeeds.
- b) The ejectment order is set aside and replaced with the following:
 - i) The appellant/respondent is declared a bona fide possessor, and has a right of retention and right to claim compensation for useful improvements effected on this land.

- ii) The claim for compensation must be filed before a competent court within 2 months of this judgment.
- c) Each party to bear their costs of appeal.

P. BANYANE
JUDGE

For Appellant : Advocate Lesaoana

For Respondent : Mr. Q Letsika