

IN THE LAND COURT OF LESOTHO

HELD AT MASERU

LC/APN/0002/23

In the matter between

MALEBOHANG SEHOLOHOLO

APPLICANT

AND

TOMMY RASETHUNTS'A

1ST RESPONDENT

LIPALESA SEBILO

2ND RESPONDENT

THATO JOYCE MAKHETHA

3RD RESPONDENT

LETHALE ISRAEL LETHALE

4TH RESPONDENT

TANTA JEANETT RASETHUNTS'A

5TH RESPONDENT

AGNES MATEELE MAKHETHA

6TH RESPONDENT

JOHN MAKHETHA MAKHETHA

7TH RESPONDENT

MASERU CITY COUNCIL

8TH RESPONDENT

LAND ADMINISTRATION AUTHORITY

9TH RESPONDENT

REGISTRAR OF DEEDS

10TH RESPONDENT

ATTORNEY GENERAL

11TH RESPONDENT

Neutral Citation: Malebohang Seholoholo v Tommy Rasethunts'a and 10 Others [2024] LSHC Lan 230 (6th September 2024)

CORAM : BANYANE J

HEARD : 05/06/2024

DELIVERED : 06 /09/2024

Summary

Vindicatory action- claim for ejectment and cancellation of leases-claimant's alleged title founded on a Form C-Form C issued under repealed law and by a local chief having no power to allocate land in urban areas-Form c invalid thus no proof of title- applicant also failing to establish any fraud or error in the issuance of the impugned leases- application dismissed.

ANNOTATIONS

Statutes

1. The Land Act 1979
2. The Deeds Registry Act 1967

3. Land Regulations 2011

Cited cases:

Lesotho

1. Monaheng Ratsiu v Standard Lesotho Bank and others CCA/1042/21
2. Ratsiu v Standard Lesotho Bank C of A (Civ) 02/24
3. Thibeli v Khosholo C of A (Civ) 33/20
4. Shale v Limema and others C of A (Civ) 53 of 14
5. Putsoane v Lekatsu LAC (1990-94) 204
6. Ramaphike v Malumane C of A (Civ) 28 of 2016
7. Tlali Phakisi v Motlatsi Tlapane Civ/A/30/2014
8. Majoro V Sebapo Civ/A/7/86
9. Maphokoane v Ramalitse CIV/APN/616/10
10. Mothibeli v judicial Commissioner CIV/APN/170/06,
11. Nyofane v Lelosa CIV/A/18/80
12. Kuleile v Mohloboli & another LC/APN/2014

South Africa

1. Simpson v Pius 1918 AD 657
2. Resisto Dairy v Auto Protection Insurance 1963 (1) SA (AD) 632

3. Kriegler v Minister and another 1949 (4) SA 821

JUDGMENT

BANYANE J

Introduction

[1] The dispute between the parties pertains to title over a certain stretch of land sub-divided into several plots, to which all the respondents hold leases under different lease numbers. It is situated at Qoaling in the District of Maseru. The applicant has approached this Court seeking cancellation of these leases and ejection of the respondents from this land.

The applicant's case

[2] The essence of the applicant's claim as contained in her originating application is that she was married to Mr. Teboho Seholoholo (deceased) in community of property. In 1982, they acquired the disputed land through sale from Mankabi Rasethuntsa and later issued a Certificate of Allocation

(commonly called a Form C). The land measured 100 x 100 x 100 x 100. The plot remained unoccupied until it was expropriated by the Government pursuant to a declaration of the area as Selected Development Area (SDA) for purposes of construction of a road in the area. When her husband sought to register the land in 2013, they discovered that the 1st respondent had surveyed the land.

[3] According to the applicant, the respondents unlawfully occupy this land and the impugned leases were either fraudulently or wrongfully issued in their favour because she is the owner of this land. In particular the 1st respondent acquired the lease through certain misrepresentations made to the Maseru City Council (MCC) and Land Administration Authority (LAA), namely: a) that he is Mamoikabi's heir, b) that Mamoikabi's Form C had been lost. She further avers that the 1st respondent had been unlawfully compensated in an amount of M360 000.00 by the MCC for expropriation of this land yet the land belongs to her.

Relief sought

[4] Based on these averments, she sought the following reliefs;

- a) Cancellation of Lease No. 13303-607, 608, 609, 610 registered in favour of 1st respondent and his wife, the 09th respondent.
- b) Cancellation of Lease 13303-600 registered in favour of the 2nd respondent Lipalesa Sebilo.
- c) Cancellation of lease No 13303-2282 registered in favour of Thato Makhetha, 3rd respondent.
- d) Cancellation of lease No.13303-1444 registered in the name of Lethale Lethale (4th respondent).
- e) Cancellation of lease No. 13303-2283 registered in favour of Mateele Makhetha and John Makhetha (6th and 07th respondents).
- f) Ejectment of 1st to 07th respondents from the land.

[5] It must be noted at this very juncture that the applicant later withdrew the application midtrial against 2nd, 3rd, 4th, 5th, 6th, and 07th respondents after a loco inspection held on 21/03/2024.

Evidence adduced at trial

[6] The applicant, a 65 years old woman testified that she married Teboho Seholoholo in 1977. According to her evidence, her husband bought rights to the extent of 100 by 100 meters from Mamoikabi Rasethunts'a in 1982 and thereafter obtained a Form C. Crucially she was not present

when the alleged agreement was concluded. She handed in a Form C issued by the Chief Seqobela Letlatsa as proof of her allegations. She further testified that her husband applied for a lease in 2013 but passed on before its issuance. On 18 September 2016, she was nominated as her husband's heir. She also applied for a lease but could not succeed.

[7] She further testified when the 1st respondent surfaced, he claimed to have no knowledge of the sale of this land. When the dispute arose between them, she sought intervention from various authorities including the police. These interventions revealed that the 1st respondent holds leases over several plots (within the disputed area of land). The intervention therefore bore no fruits.

[8] Under cross-examination, it was suggested to her that the Form C was invalid because in 1982, the local Chief had no power to allocate land and issue title documents.

[9] The applicant's son Jakote Seholoholo aged 48 also testified. According to his evidence, his father used to visit the disputed land. In 2005, there was a road construction in the area. Because his father's land was closer to the construction company's site, this company sought permission to park their

trucks on the disputed land. The land remained vacant after construction of the road in 2008. It was only in the year 2020 when he discovered an ongoing development on this plot and established that the occupiers had leases over the land.

[10] Cross-examination revealed that the witness was not privy to the details of the alleged sale concluded between his parents and the late Mamoikabi as he was not personally involved in the alleged transaction.

Respondents' Case

[11] The first respondent testified that he is Mamoikabi Rasethunts'a s grandson. He is fathered by Mr. Motlatsi Rasethunts'a. He testified that from the year 2000 to 2013 he was working in South Africa as a taxi driver and only returned home in 2013. He narrated the history of the ownership of the disputed land as follows.

[12] His grandmother Mamoikabi held a Form C over the disputed land. She died in 2004. At the time of her passing, there was an outstanding dispute between her and the Maseru City Council (MCC)

relating to expropriation of this land by the government. His father took over the matter in 2017 by filing a case in the High Court to reclaim the land because Mamoikabi was never compensated for the expropriation. This was after his nomination as Mamoikabi's heir.

[13] The matter was amicably settled by the parties. A deed of settlement was prepared in this regard. MCC ultimately resolved to restore the land to his father. He handed in the minutes of the MCC in this regard. When the land was restored to his family, it had already been allocated to several persons and leases issued in their favour. Some occupiers willingly surrendered their leases to MCC while some resisted. His father regrettably died in September 2019.

[14] After the death of his father, he was nominated as his heir since his mother predeceased his father in 2012. His nomination was presented to MCC and finally endorsed in compliance with Regulations 43 and 44 of the Land Regulations 2011 because no one raised an objection to the transfer of rights to him.

[15] The MCC thereafter informed him that the occupiers of the land would be transferred to another area. The refusal by some occupiers to surrender their leases prompted a court case for their ejectment from the land. He obtained an order for their ejectment.

[16] He further testified that he does not know the applicant's husband Mr. Lebohang Seholoholo nor heard of him.

[17] It was suggested in Cross-examination that the late Mr. Seholoholo sought to apply for a lease in 2013 but could not as the land had been surveyed by him. In response, the 1st respondent's version was that in 2013, the possession of the land was still with the MCC due to the expropriation, so the survey of this land was done by the MCC.

[18] Confronted with the applicant's Form C, he stated that the Form C is not specific about the area on which the plot described therein is situated. According to him, his grandmother had two fields at Qoaling (Semphethenyane and Thoteng). He also complained that the Form C does not show the year

and month of the alleged allocation. Moreover Chief Seqobela Letlatsa who issued the Form C was the area Chief and not headman of the area on which the land is situated.

The parties' arguments

[19] Relying on section 10 of the Land Act 2010, Miss Mokhatholane for the applicant submitted that title to the land in question was held jointly by the applicant and her late husband. This is because the applicant's evidence about the sale was not controverted by the 1st respondent. According to her, the Form C serves as proof of the applicant's title to the land because it was lawfully issued.

[20] Because the land belongs to the applicant, the 1st respondent could not inherit land that belonged not to his father. According to her, the late Mamoikabi ceased to have rights over the plot in 1982 when she disposed of them in favour of the applicant's husband. She relied on **Monaheng Ratsiu v Standard**

Lesotho Bank and others¹ which was confirmed on appeal in **Ratsiu v Standard Lesotho Bank**² for her submissions.

Respondents' argument

[21] Advocate Naha for the 1st respondent argued that since the applicant's title derives from a sale agreement, she bore the onus to prove existence of that sale, but she failed to adduce evidence of witnesses who were allegedly present when the sale agreement was concluded. Relying on **Simpson v Pius**³, he submitted that an adverse inference may be drawn against a party who fails to call an available witness to support their allegations.

[22] He further argued that the Form C relied on by the applicant is not only invalid but also materially lacking for it does not show the date of allocation.

¹ CCA/1042/21

² C of A (Civ) 02/24

³ 1918 AD 657 at 667

[23] Counsel further urged the Court to consider the fact that the applicant withdrew her claims against most of the respondents upon realization that she was claiming an area larger in extent than Mamoikabi's, the person from whom she allegedly acquired the land. This is indicative of the fact that she does not even know the exact location of the land she allegedly bought.

[24] He cited the case of **Thibeli v Khosholo**⁴ to submit that a Form C is prima facie proof of allocation but it is not conclusive proof of lawful allocation. The applicant's Form C bears the Chief's stamp of 04 February 1982, a date after promulgation of the Land Act 1979, which came into effect on 16 June 1980.

[25] Relying on sections 12 (2), 17 and 18 of the Land Act 1979, he submitted that the Act prescribes the forms to be issued upon allocation of land. These are either a Form C1 or C2 depending on whether the land is situated in a rural or urban area. The applicant's Form is neither a Form C1 nor C2 but a Form C. It is thus not in conformity with section 17.

⁴ C of A (Civ) 33/20

[26] Another dimension of his argument is that if the applicant held any right over this land, this right expired due to her failure to comply with section 15 of the Deeds Registry Act 1967. He cited **Shale v Limema and others**⁵ in support.

Issue for determination

[27] The crisp issue arising for determination is whether the impugned leases were wrongfully or fraudulently issued for the 1st respondent.

Analysis

[28] It is common cause that Mamoikabi Rasethunts'a, the 1st respondent's grandmother had a Form C issued on 10 December 1979 for arable land situated at Thoteng, Qoaling. *Ex facie* the Form C, it is

⁵ C of A (Civ) 53 of 14

recorded that it is an old field measuring 620 (N), 500 (W), 561 (S) 620 (E) feet, and it is recorded that it is a re-issue of a lost Form C. Notably Mamokabi's title over the plot is not disputed.

[29] The Form C was apparently issued after she “formally” applied for allocation of this land by filing a Form A on 18 December 1979. I say “formally” because it appears on this Form A that the Land had already been allocated to her husband who died a while back.

[30] According to a death certificate handed in evidence, Mamoikabi died on 06 June 2004 aged 90 years. On 22 February 2017, the 1st respondent's father Motlatsi Rasethunts'a was nominated as the heir to his parent's estate.

[31] The undisputed evidence adduced by the 1st respondent concerning the history of title to this land revealed that the land was expropriated by the government and later restored to his father after a successful legal challenge against the expropriation. At the time of the restitution, the land had already been surveyed and re-allocated to several persons under different lease numbers, namely, 13303-601, 13303-602, 604, 607, 608, 609, 610, 611 and plot 1330-2004.

[32] The evidence also revealed after the demise of the 1st respondent's father on 07 September 2019, the 1st respondent was appointed by Rasethunts'a family council as heir on 23 September 2019. Having received no objections to the nomination, the Urban Land Committee endorsed his nomination on 09 December 2019 and resolved that title documents be issued in his name. The plots reflected in the minutes of the Maseru City Council dated 02 December 2019 show that the 1st respondent inherited plots No. 13303–599, 13303-601, 13303-602, 604,607,608,609,610,611 and plot 1330–2004.

[33] The evidence further showed that on 11 November 2021, the 1st respondent and his wife applied for leases. The application was supported by a Form C in the name of Mamoikabi Rasethunts'a dated 10 December 1979, family letters showing 1st respondent's nomination and confirmation of the 1st respondent's inheritance by the Land Committee. On 04 January 2022 the leases were issued for several plots (identified above). The question is whether the 1st respondent ought not to have inherited the land.

The Law on ejectment

[34] Where an applicant claims the ejectment of another person from the land, the onus rests on them to establish the right to occupy the disputed site.⁶ In **Tlali Phakisi v Motlatsi Tlapane**⁷, the Court further held that in vindicatory proceedings, ownership can be proved by a Form C or a lease.

[35] The applicant's claim of title is based on an agreement of sale allegedly concluded with Mamoikabi and a Form C issued in terms of section 15 (1) (a) of the Land Act 1973.

[36] It is well established that a party who relies on a contract must plead and prove the terms of the contract.⁸ The applicant adduced no evidence of the alleged sale but solely relies on the Form C as proof of her title to the land whose validity I now consider.

[37] The law is well established that possession of a Form C is not conclusive proof that the allocation was effected in accordance with the law or conclusive proof of title to land, but amounts only to *prima*

⁶ Ramaphike v Malumane C of A (Civ) 28/2016

⁷ Tlali Phakisi v Motlatsi Tlapane Civ/A/30/2014

⁸Resisto Dairy v Auto Protection Insurance 1963 (1) SA (AD) 632 at 645, Krieglerv Minister and another 1949 (4) SA 821 @ 827.

facie evidence that the land has been allocated to the person named therein.⁹ Where there is a dispute, and the Form C is challenged, it cannot be conclusive proof but if it has not been rebutted at the conclusion of the case, it may be conclusive proof.¹⁰

[38] In the instant matter, the applicant's Form C shows that her husband, Teboho Seholoholo *was allocated rights on Mamoikabi Rasethunts'a's field in the extent of 100' x 100' x 100' x 100'*. This Form C bears the stamp dated 04 February 1982 but does not indicate when the alleged allocation was made. The spaces to be filled for this purpose are left blank.

[39] Assuming that the allocation was made on the date reflected on the date stamp, there are worrisome aspects of this document that have a bearing on its validity. First, it appears to be issued

⁹ Thibeli v Khosholo, Majoro V Sebapo see also Maphokoane v Ramalitse CIV/APN/616/10, Mothibeli v Judicial Commissioner CIV/APN/170/06, Nyofane v Lelosa CIV/A/18/80, Maphokoane v Ramalitse CIV/APN/616/10,

¹⁰ Mothibeli v Judicial Commissioner (supra at para 5)

under a repealed law, the Land Act 1973. This Act was repealed on 16 June 1980 when the Land Act 1979 came into operation.¹¹

[40] Second, it was issued by the chief of the area, Chief Seqobela Letlatsa. A local chief had no authority to allocate Land in urban areas at the material time. This is because Qoaling area was declared an urban area by legal Notice No. 14 of 1980 dated 22nd August 1980.

[41] Part III of the Land Act 1979 governs allocation of land in Urban areas. Section 24 of the Land Act 1979, embodied under this part, provides that the power to grant title within an urban area shall be exercised by the Urban Land Committee consisting of:

(a) the Principal Chief having jurisdiction, as chairman;

(b) the Commissioner or his authorised representative;

(c) the District Administrator, or where a Town Clerk has been appointed, the Town Clerk for the relevant urban area, who shall be the secretary of the Committee;

¹¹ see Government Notice No71 of 1980 published in the Government Gazette of 23 rd. May 1980

(d) three other persons appointed by the Minister.

[42] It follows that a grant of title in Urban areas after 16 June 1980 to be valid, it must have been granted by the Urban Land Committee.

[43] Similarly the alleged sale agreement, even if it existed, could not constitute a valid grant of title to land as held in **Putsoane v Lekatsu**.¹² This decision was endorsed by Sakoane J (as he then was) in **Kuleile v Mohloboli and another**¹³ where it was held that an allocation by the local chief and issuance of a Form C were a nullity because it is the statutory function of the Urban Land Committee to allocate land in Urban areas. The Court further held that absent a written contract and a valid Form C, the 1st respondent failed to discharge the onus of proving her title to the land.¹⁴

[44] In the instant matter, the applicant's evidence is scanty on the alleged allocation. She failed to give details of how and by whom the Land was allocated or explain whether the procedure laid down

¹² Putsoane v Lekatsu LAC (1990-94)204

¹³ LC/APN/2014

¹⁴ See Ramaphike v Malumane (Supra)

under the Land Act, 1979 was observed. She also failed to bring any independent evidence from anyone who knows the history of the site and its alleged allocation to her husband. This is fatal because she was not personally engaged in the alleged allocation process. Absent evidence to the contrary, it is concludable that since Chief Seqobela is admittedly a local chief and not a principal chief, the purported allocation was not made according to law.

[45] In the circumstances, I cannot accept the Form C as conclusive evidence of lawful allocation. For these reasons, the applicant failed to prove a valid grant of title over the disputed piece of land.

[46] Additionally, the applicant failed to adduce evidence establishing any fraud in the issuance of the impugned leases. On the contrary, the evidence revealed that the 1st respondent's father successfully challenged the expropriation of his parents' land without compensation. By a consent order, the land reverted to him as his parents' heir. The 1st respondent in turn adhered to all legal steps prescribed in the Land Regulations 2011 for transmission of land rights based on inheritance.

Disposal

[47] All things considered I conclude that there is no discernable misrepresentation to the Land allocating Authorities. The issuance of the leases is above board and therefore unimpeachable. Consequently, the applicant cannot succeed to obtain the reliefs sought.

Order

[48] As a result, the applicant's claim is dismissed with costs.

P. BANYANE
JUDGE

For Applicant : Ms. Mokhatholane

For Respondent : Adv. Naha