

IN THE LAND COURT OF LESOTHO

HELD AT MASERU

LC/APN/0021/2024

In the matter between

MARY LETENG LIKHABISO TAU

APPLICANT

AND

MORONGOE SOOTHO

1ST RESPONDENT

MORONGOENYANE SOOTHO

2ND RESPONDENT

‘MIKA SOOTHO

3RD RESPONDENT

PULANE SOOTHO

4TH RESPONDENT

LAND ADMINISTRATION AUTHORITY

5TH RESPONDENT

MASERU CITY COUNCIL

6TH RESPONDENT

Neutral citation: Mary Leteng Likhabiso Tau v Morongoe Sootho and 5 Others LSHC Civ 68 (21st February 2025)

CORAM : **BANYANE J**
HEARD : **04 DECEMBER 2024**
DELIVERED : **21 FEBRUARY 2025**

Summary

Land Court practice- preliminary objection on the ground of lack of jurisdiction- concurrent jurisdiction of the District Land Court and the Land Court- failure to apply for leave to institute a matter in the Land Court-whether such failure fatal-To avoid further delay to the disposal of the dispute between the parties and litigation costs, Court assumes jurisdiction

Legislation and subsidiary Legislation

1. The Land Act, 8 of 2010
2. The High Court Act 5 of 1978
3. Land Court Rules 2012

Cited Cases

1. Jaase v Jaase C of A (CIV) 67/2017

2. Motlomelo Selema v Lirahalibonoe Letsie C of A (CIV)12/2009
3. Nqojane v National University of Lesotho LAC (1985-89) 383
4. Mapiloko v Fragmar (Pty) Ltd C of A (CIV) 42 of 2017
5. Jobo v Lenono C of A(CIV) 28/2010
6. Lephema v Total Lesotho & Others C of A (CIV)36/2014
7. Thamae v Moletsane C of A (CIV)23/2017
8. Leseteli Malefane v Roma Valley Cooperative Society C of A Civ 2016
9. Shale v Shale C of A (CIV)35/2019
10. Mwangi v Masupha LC/APN/170/2014
11. Mokemane v Mokhorro & 4 Others LC/APN/30B/2013
12. Alice Mphutlane v Mosa Seoli LC/APN/18/2010

JUDGMENT

BANYANE J

Introduction

[1] The dispute between the parties pertains to plot 14272 – 523, situated at Sekamaneng, in the Berea District. It is registered in the name Mapulane Sootho, the 1st – 4th respondents' late mother, pursuant to a sale agreement concluded with Mr. Mosala Sesinyi. Despite a Court order declaring the sale null and void and a warrant of ejectment being issued against Mapulane, the 1st – 4th respondents remain in occupation of the plot.

[2] The applicant has approached this Court seeking orders in the following terms:

- a) An order directing the 1st – 4th respondents to surrender the lease for the disputed plot to LAA.
- b) Directing the LAA to cancel the lease.
- c) Directing the Maseru City Council to endorse the applicant over the plot.
- d) Eviction of the 1st – 4th respondents from the plot.

The applicants' case as pleaded

[3] The applicant's case may be summarized as follows. She was married to Aaron Lehloholonolo Sesinyi (deceased), the son of Maaron Sesinyi. Maaron owned rights in the disputed plot. Maaron died in 2005. She was predeceased by the applicant's husband.

[4] After Maaron's demise, the applicant's cousin, Mosala Sesinyi arranged Maaron's burial. This was because the applicant and her children are visually impaired. Mosala thereafter sold the disputed land to the 1st-4th respondent's mother, Mapulane Sootho. The sale was allegedly intended to recover expenses incurred for Maaron's burial. Pursuant to the sale agreement, Mapulane registered the land in her name.

[5] The applicant challenged the sale in CIV/APN/48/2018 and sought an order;

a) declaring her as the sole heir and beneficiary to the estate of Maaron Sesinyi; b) declaring the sale agreement between Mosala Sesinyi and Mapulane Sootho null and void; c) declaring Mapulane as a mala fide occupier; d) ejectment of Mapulane Sootho; e) directing that Maaron's descendants be given peaceful occupation and enjoyment of the premises and other reliefs. The application was granted by Monaphathi J on 28 August 2019 and a warrant of ejectment was subsequently issued against Mapulane.

[6] After delivery of the judgment against Mapulane, she passed on. Her children, the 1st – 4th respondents, refused to vacate the plot and surrender the lease to the Land Administration Authority for cancellation, hence this application.

[7] The Applicant further avers that Mapulane registered the lease while CIV/APN/48/2018 was still pending.

The preliminary objection

[8] The respondents oppose the application. They raise lack of jurisdiction by way of a special answer on the ground that the matter falls within the jurisdiction of the District Land Court. Consequently, it could only be filed in this Court pursuant to Rule 9 of the District Land Court Rules which provides as follows:

“9. (1) The Court shall exercise specific jurisdiction over the following matters:

(a) appeals against any decision of the Government in regard to expropriation affecting the land rights of the appellant; and

(b) Appellate matters against any decision of the District Land Courts.

(2) Pursuant to section 5 of the High Court Act of 1978 and the Constitution of Lesotho, the Land Court shall have inherent jurisdiction over all matters that do not fall under the exclusive jurisdiction of the District Land Courts.”

[9] The sole issue for determination is whether the applicant’s claim stands to be dismissed for failure to apply for leave to institute the matter before this Court.

Exclusivity and concurrence of the jurisdiction of the two Courts

[10] Section 73 of the **Land Act 2010(as amended by Land Amendment Act 2012)** establishes the Land Court and District Land Courts with jurisdiction to hear and determine all disputes, actions and proceedings concerning

land. Being creatures of statute, the Land Court(s) can only exercise powers conferred by the constitutive Act. The parameters of the jurisdiction of the two Courts contemplated by section 73 of the Land Act have been stated and restated by this Court and the Court of Appeal in numerous cases.¹

[11] It is to be noted that section 73 is the general provision specifying the purpose for which these Courts have been established. This is not the only provision to which we refer when considering the scope of Jurisdiction of these Courts. Under various sections, the Act specifies the Court for a particular claim. These are *sections 18 (3), 20 (2), 22, 36(3) and (4), 72, 28, 52, 59 and section 10 (5) and (c); and (c).*²

[12] Regarding other matters for which the forum is not specified in the Act, guidance should be sought from the body of case law available. These cases discuss the jurisdictional competence of these courts over various matters, including cancellation of a lease, granting of declaratory orders, claims of title based on inheritance etc.³

¹ see *Lephema v Total Lesotho & Others C of A (CIV)36/2014*, *Mwangi v Masupha LC/APN/170/2014*, *Mokemane v Mokhorro & 4 Others LC/APN/30B/2013*, *Shale v Shale C of A (CIV)35/2019*, to mention but a few.

² *Alice Mphutlane v Mosa Seoli LC/APN/18/2010*.

³ See *Mokemane v Mokhorro (supra)*, *Shale v Shale (supra)*, *Thamae v Moletsane C of A (CIV)23/2017*, *Leseteli Malefane v Roma Valley (supra)*, and others.

[13] In **Malineo Moletsane v Thamae**⁴ The Court of Appeal said:

“Section 73 of the Land Act 2010 provides that the Land Court and District Land Court are established with jurisdiction, subject to the provisions of Part XII of the Act” to hear and determine disputes, actions, and proceedings concerning Land. In 2012, this section was amended by the Land (Amendment) Act 2012 by inserting the word “all” between “determine” and “disputes”. Thus, as matters now stand, both Courts have jurisdiction to hear and determine all disputes, actions, and proceedings concerning land. Their jurisdiction is concurrent when it comes to hearing and determining all disputes, actions, and proceedings concerning land. The subordinate legislation has to be interpreted consistently with the present Act.

If there are two Courts in which the right or interest might be brought, that should not evoke surprise because that is the nature of concurrent jurisdiction. In my opinion, therefore, the provisions of either of the two sets of rules cannot be interpreted to exclude the jurisdiction of either of the two Courts, which has been specifically confirmed by the parent Act.

⁴ supra

In the result, a party who has a claim that is capable of being considered by either of the two Courts, must necessarily choose in which Court to pursue the claim and once having made that election, will not be able to bring the same claim before the other Court in its original jurisdiction”.⁵

[14] Section 6 of the High Court Act, 1978 referred to in rule 9, had been interpreted in numerous decisions of the High Court. The Court of Appeal in **Jaase v Jaase**,⁶ stated at paragraph 23 that the general unlimited jurisdiction of the High Court conferred by section 2 of the High Court Act, 5 of 1978 is qualified by section 6 with the result that a civil case within the jurisdiction of a Subordinate Court may be instituted in or removed into the High Court by a Judge acting on his motion, or with his leave upon application to him by a party on notice to the other party. In other words, where concurrent jurisdiction exists, the Subordinate Court has priority jurisdiction unless the judge acting on his own motion or upon an application for leave to remove or institute the matter in the High Court made under **section 6 of the High Court Act, 1978.**⁷

⁵ See also *Mwangi v Masupha (supra)*.

⁶ *Jaase v Jaase* C of A (CIV) 67/2017

⁷ *Nqojane v National University of Lesotho, Mapiloko v Fragmar (Pty) Ltd* C of A (CIV) 42 of 2017.

[15] Although the applicant did not apply for leave to institute this matter in this Court, the question is whether such failure is fatal to her case. I think not. Judges are required to exercise their powers in a manner that will resolve disputes between the parties as expeditiously as circumstances permit; and where it is legitimately within his or her powers to do so, the judge may assume jurisdiction where no prejudice is likely to arise from the assumption. The position was stated by the Court of Appeal as follows in **Jobo v Lenono**⁸ :

[5] ... It is important to note that the jurisdiction of the High Court is not ousted in regard to claims for ejectment. Such jurisdiction may be acquired where the necessary leave is given in terms of section 6 (b) of the Act, acting of his own motion, expressly or impliedly permits the institution in our removal into the High Court of a claim for ejectment (of **Motlomelo Selema v Lirahalibonoe Letsie** C of A No.12/2009 at para 14)⁹

[6] The proper administration of justice requires that the High Court exercises its powers in a manner which will resolve disputes between the parties as expeditiously as circumstances permit. Where it is legitimately within its power to do so, a trial Judge should act in a way which will prevent unnecessary delay in the resolution of such disputes.

⁸ Jobo v Lenono

⁹ Motlomelo Selema v Lirahalibonoe Letsie C of A No.12/2009 at para 14)

[9] Given the ancillary nature of the claim for ejectment (and it was indeed ancillary) and the need to avoid unnecessary delay and costs of litigation, the trial Judge in the proper and responsible exercise of her powers under section 6 (a) of the Act have assumed jurisdiction under that section in respect of the claim for ejectment. Where a Judge may legitimately assume jurisdiction, and can do so without prejudice to the parties, he or she should not hesitate to do so in the interests of the administration of justice.”

[16] Reverting to the facts of the present matter, the applicant is visually impaired and has been engaged in a legal battle from the year 2018 to recover possession of the disputed land. She is armed with a judgment in her favour declaring the sale of the disputed land null and void. In addition, she is in possession of a warrant of ejectment against the 1st and 4th respondents’ mother. If I decline jurisdiction to hear the matter and redirect it to the District Land Court, this will inevitably result in a further unnecessary delay to the resolution of the dispute between the parties and further litigation costs.

[17] All things considered, I conclude that the circumstances of this case justify assumption of jurisdiction because no prejudice against the respondents has been shown to likely to arise from the assumption.

Order

[18] For reasons set out in this judgment, the preliminary objection is dismissed with no order of costs.

P. BANYANE
JUDGE

For Applicant : Advocate Malabulabu

For Respondent : Advocate Selepe