

IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

C of A (CIV) NO. 23/2017

LC/APPEAL/1/2014

CIV/DLC/MSU/30/2014

In the matter between:

**RAMPATI MOLETSANE
'MAMOSA MOLETSANE**

**1ST APPELLANT
2ND APPELLANT**

And

MALINEO THAMAE

1ST RESPONDENT

LAND ADMINISTRATION AUTHORITY

2ND RESPONDENT

MASTER OF THE HIGH COURT

3RD RESPONDENT

CORAM : DR. K. E. MOSITO P.
S.N.PEETE JA
M. CHINHENGO AJA

HEARD : 28 November 2018

DELIVERED : 07 December 2018

SUMMARY

Appeal - Land Court Practice – An appeal against judgment of the

Land Court that the District Land Court has no jurisdiction to entertain a declaratory order.

JUDGMENT

DR. K. E. MOSITO P

THE FACTUAL BACKGROUND

This is an appeal against the decision of the Land Court exercising its appellate jurisdiction. A brief background to the dispute as gleaned from the judgment of this Court in **Malineo Moletsane v 'Mamosa Moletsane and Others C of A (CIV) No. 10 of 2004** is that, a dispute was decided in the present second appellant's favour over the dispute involving the estate of the late Thekiso Moletsane on 20 October 2004.

When she later applied for leases from the LAA in respect of plot numbers **2-1-475B** and **2-1-480A**, the first Respondent laid an objection with the 2nd Respondent. The 2nd Respondent decided not to issue leases until the objection would have been resolved. The appellant approached the District Land Court for a declaratory order that she is entitled, as the rightful holder of title to, inter alia, Plot 2-1- 493B occupied by the 1st respondent and that 2nd respondent issue her with leases thereto and to the other plots,. The District Land Court referred the matter to the 2nd respondent for resolution.

In a nutshell, the effect of the order of District Land Court referring the matter to the LAA is that parties reverted to where they were initially before they approached the court as no decision on the objection had been made nor had the matter argued on the merits.

Also, the order referring the matter back to the LAA has no foundational basis because there was never any relief prayed for in this regard by any of the parties to this application.

In any case, in terms of the Land Administration Authority Act. No. 9 of 2010, the Land Administration Authority is a body corporate responsible for land administration, land registration, cadaster, mapping and surveying and matter incidental thereto. It is not a court of law. It will never be in a position to make any decision on this application.

The first respondent noted an appeal to the Land Court against the decision of the District Land Court. Parties joined issue on the issue that, the District Land Court had been asked, to make a determination on the issue whether or not the District Land Court had jurisdiction to deal with a relief or prayer whereby one of the parties has applied to be granted a declaratory order in relation to the ownership of rights to title over a plot.

The Land Court held that the District Land Court had no jurisdiction to deal with this matter where, a declaratory prayer or relief has been sought by the applicant (now respondents). Hence this appeal.

THE ISSUE

Thus, the issue before this Court is whether the Land Court was correct in holding as it did, that, that the District Land Court had no jurisdiction to deal with a matter wherein, a declaratory prayer or relief has been sought. Related to this is whether the District Land Court had jurisdiction to entertain the issue.

THE LAW

In terms of Rule 8 of the **District Land Court Rules 2012**, a declaratory prayer or order has been left out as one of the matters upon which the District Land Courts have jurisdiction; hence the wording of Rule 9 (2) of the Land Court Rules (supra) In terms of Rule 9 of the Land Court Rules, the Land Court shall have inherent jurisdiction over all matters that do not fall under the exclusive jurisdiction of the District Land Courts.

EVALUATION OF THE APPEAL

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 parent Act.

Bearing the above in mind, one asks in those circumstances on what basis the jurisdictional objection could possibly have been taken? Whatever explanation is given invariably leads one back to the decision of the Constitutional Court in of South Africa in **Gcaba v Minister for Safety and Security and Others**¹ and **Chirwa v**

¹ in *Gcaba v Minister for Safety and Security and Others* 2010 (1) SA 238 (CC).

Transnet Ltd and Others.² As pointed out in ***Makhanya v University of Zululand***,³ a statute that confers power on a special court might often say expressly that it is to be exercised 'concurrently' so as to remove ambiguity.⁴ Whether a court has jurisdiction (in the sense that is now relevant) to consider a particular claim, depends upon the nature of the rights that the party seeks to enforce. Whether the claim is good or bad in law is immaterial to the jurisdictional enquiry.

But if a claim, as formulated by the party, is enforceable in a particular court, the applicant is entitled to bring it before that court. Thus, if a claim involves a dispute, the first is whether, as in *casu*, the party was an allottee or not. From that arises the second feature, whether the party may assert a land right or interest. The third is that the party may assert a right or interest that arises outside the terms of the Land Act. I do not say whether, the party necessarily has the right that is asserted. I say only that he or she asserts that right or interest. That right or interest in each case may be either the right at common law to exact performance of a contract or a constitutional right, etc.

If there are two courts before 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 two sets of Court Rules cannot be interpreted so as to exclude the jurisdiction of either of the two courts which has been specifically conferred by the parent Act.

EVALUATION OF THE APPEAL

² 2008 (4) SA 367 (CC)

³ *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA)

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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. But where a person has two separate claims, each for enforcement of a different right, the position is altogether different, because then both claims will be capable of being pursued, simultaneously or sequentially, either both in one court, or each in one of those courts. The case before us is one in which the challenge is not dependent upon the existence of a jurisdictional fact, but instead upon the nature of the relief. Because the nature of the claim will be apparent from the originating application, a jurisdictional challenge will conventionally be raised by way of a special answer to the originating application.

I do not agree with the decision of the learned judge a quo that the District Land Court had no jurisdiction to deal with a matter wherein, a declaratory prayer or relief had been sought. Related to this view is the view that, the District Land Court had jurisdiction to entertain the issue.

COURT ORDER

[15] It is obvious from the above discussions that

- (a) The appeal succeeds with costs.
 - (b) The judgment of the court a quo is set aside.
 - (c) Costs to be costs in the cause.
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**DR K E MOSITO
PRESIDENT OF THE COURT OF APPEAL**

I agree:

**S.N.PEETE
JUSTICE OF APPEAL**

I agree:

**M. CHINHENGO
ACTING JUSTICE OF APPEAL**

For the Applicant : Advocates L.M.Lephatsa

For Respondents : Advocate L.A.Molati

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