

## **IN THE LAND COURT OF LESOTHO**

**HELD AT MASERU**

**LC/APN/28/2020**

In the matter between

**THOLANG TSEKA**

**APPLICANT**

And

**TSELISO KHOMARI**

**1<sup>ST</sup> RESPONDENT**

**TEBOHO THEBE**

**2<sup>ND</sup> RESPONDENT**

**'MATEBOHO MPEPUOA KHOABANE**

**3<sup>RD</sup> RESPONDENT**

**THE COMMISSIONER OF LANDS**

**4<sup>TH</sup> RESPONDENT**

**MINISTRY OF LOCAL GOVERNMENT**

**5<sup>TH</sup> RESPONDENT**

**PULA-MALIBOHO AND MABOTE PROJECT**

**6<sup>TH</sup> RESPONDENT**

**LAND ADMINISTRATION AUTHORITY**

**7<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL**

**8<sup>TH</sup> RESPONDENT**

Neutral Citation: Tholang Tseka v Tseliso Khomari & 7 Others  
(LC/APN/28/2020) [2021] LSHC 46

### **JUDGEMENT**

**CORAM: BANYANE J**

**DATE OF HEARING: 25/11/2020**

**DATE OF JUDGEMENT: 28/04/2021**

### **Summary**

*Preliminary objection – Jurisdiction of the Land Court to hear a matter pertaining to cancellation of a Lease without leave being sought and granted pursuant to Rule 9(2) of the Land Court Rules – Concurrent Jurisdiction of the two Courts – assumption of Jurisdiction aimed at ensuring speedy resolution of the dispute between parties - objection dismissed.*

### **Annotations**

#### **Cases cited**

1. Tseliso Mokemane v Tlhako Mokhorro & 4 Others LC/APN/30B/2013
2. Mantsohi Moabi v Mamakara Moabi & Others LC/A/02/2013
3. Lephema v Total Lesotho (Pty) Ltd & Others C of A No.36/2014
4. Puleng Teke v Phutha Lichaba Holdings (Pty) Ltd LC/A/09/2018
5. Mokhali Shale v Mamphele Shale & 3 Others C of A (CIV) No.35/2019
6. Lehlohonolo Masupha v Meisi Nkoe LC/APN/105/2014
7. Mphutlane v Seoli LC/APN/18/2014
8. Mwangi v Masupha LC/APN/170/2014
9. Leseteli Malefane v Roma Valley Cooperatives Society C of A (CIV) 8/2016
10. Malineo Moletsane v Thamae C of A (CIV) 23/2018
11. Nqojane v National University of Lesotho LAC (1990-94) 502
12. Mapiloko v Fragmar (Pty) Ltd C of A (CIV) 42 of 2017
13. Jaase v Jaase C of A (CIV) A/62/2017

**BANYANE J**

## **Introduction**

- [1]** The dispute between the parties pertains to a certain piece of land situated at Sekamaneng, in the Maseru Urban Area. This has been subdivided into plot numbers 14271-649, 14271-648, 14271-647. These are registered in the names of Tseliso Khomari (1<sup>st</sup> respondent), Teboho Thebe (2<sup>nd</sup> respondent) and 3<sup>rd</sup> respondent respectively.
- [2]** The applicant has approached this court seeking cancellation of these leases and re-registration of the land in her names. She claims to have inherited these plots from her mother 'Mamatsoso Tseka through a will.

## **The respondents' answer(s)**

- [3]** The 1<sup>st</sup> and 3<sup>rd</sup> respondents oppose the application on grounds that the disputed land does not form part of the property inherited by the applicant and that they acquired title to the plots through allocation after the area on which they were situated was declared a selected development area (SDA).
- 3.1** In their answer(s) they raised a preliminary objection of Lack of Jurisdiction. They construe the applicant's claim as an adverse claim to title on the disputed land. They contend, for this reason, that it falls for adjudication in the District Land Court, so does the cancellation of Leases claim.
- 3.2** Both parties filed their written submissions on this preliminary issue and same were augmented by oral argument on the date appointed for hearing of this point of law.

## **Submissions**

- [4] Advocate Maleke contended on behalf of the respondents that matters relating to cancellation of leases are justiciable in the District Land Court. He relied on **Tseliso Mokemane v Tlhako Mokhorro & 4 Others LC/APN/30B/2013, Mantsohi Moabi v Mamakara Moabi & Others LC/A/02/2013** in this regard.
- 4.1 He submitted that the applicant seeks to assert her alleged title to this land and this claim constitutes an adverse claim of title to land falling under Rule 8 of the District Land Court Rules. He submitted further, on account of the fact this matter is not an appeal from the District Land Court, that it does not belong in this Court but should commence before the District Land Court.
- [5] He cited plethora of authorities defining the jurisdictional scope of these courts. These are **Lephema v Total Lesotho (Pty) Ltd & Others C of A No.36/2014, Puleng Teke v Phutha Lichaba Holdings (Pty) Ltd LC/A/09/2013, Mokhali Shale v Mamphole Shale & 3 Others C of A (CIV) No.35/2019.**
- [6] Advocate Shao on behalf of the applicant counter argued that under Rule 8 of the District Land Court Rules, there is no provision for cancellation of a lease nor declaration of rights; that for this reason, the matter falls for adjudication in the Land Court, pursuant to Rule 9(2) of the Land Court Rules 2012. He went further to say that if the intention of the legislature was to confer jurisdiction over all land matters to the District Land Courts, then Rule 9 of the Land Court Rules would confine the Land Court's Jurisdiction to appeals only and the District Land Court Rules would include cancellation of a lease and declaration of rights under Rule 8.
- [7] He contended further that a host of cancellation of lease applications have been filed and determined in this Court through assumption of

jurisdiction. He cited the cases of **Lehlohonolo Masupha v Meisi Nkoe (LC/APN/105/14)**, **Mwangi v Masupha LC/APN/170/2014** and others to submit that this Court can assume jurisdiction and hear this matter under Rule 9, because the District Land Court and Land Court have concurrent jurisdiction to hear land disputes.

- [8] Adv Shao in the same breath also submitted that Rule 9(2) is *ultra vires* to section 73 in so far as it purports to confer or supplement the jurisdiction of the Land Court. He cited **Mphutlane v Seoli LC/APN/18/2014** in support of this proposition. Citing **Mwangi v Masupha (supra)**.

### Issues

- [9] From the parties' arguments arise the following issues;
- a) Does the District Land Court have jurisdiction to hear and determine this matter?
  - b) Should this matter be heard before this Court or should it commence before the District Land Court.

### Analysis

- [10] The jurisdictional issue of the two Courts has been considered in numerous decisions of this Court and the Court of Appeal. These include; **Lephema v Total Lesotho (supra)**, **Mokemane v Mokhorro & 4 Others LC/APN/30B/2013**, **Moletsane v Thamae C of A (CIV) 23/2018**, **Leseteli Malefane v Roma Valley Cooperative Society C of A (CIV)8/2016**, **Seoli v Mphutlane (supra)**.

- [11] From this body of caselaw, the following important aspects are addressed; namely;

a) Concurrence of jurisdiction; b) Interpretation of both Rule 8 of the District Land court Rules and Rule 9 of the Land Court Rules. I endeavour to expound on these two below;

**[12]** A proper reading of the provisions of the Land Act 2010 reveals that section 73 is the general provision defining the nature of disputes justiciable in the Land Courts. In terms of this provision, all disputes, actions and proceedings relating to land must be heard and determined by the Courts established under this provision. **Lephema** interpreted this provision with reference to the purpose of the Act garnered from its provisions. It held that the Land Act is primarily concerned with allocation, title to land, derogation from title and rights overriding title.

**[13]** Apart from this general provision, there are other provisions in the Land Act which specifically confer jurisdiction on either of the two Courts over certain disputes. These include sections 10(5), 18(3), 20 (2), 22,28, 36(3) and (4), 52, 59 and 72. As correctly observed in a number of cases (including **Mphutlane v Seoli**), Rule 8 mimics these specific provisions of the Act.

**[14]** It must be observed that in all these provisions; the nature of reliefs that may be claimed by litigants are not specified. What the provisions do is to specify forum for certain disputes.

**[15]** This factor (non-specificity of reliefs) brought about a myriad of jurisdictional challenges on whether, for example, these Courts possess competence to hear and determine title claims based on inheritance; whether the District Land Court may issue a declaratory order and cancel a lease e.t.c.

**[16]** To these issues, both this Court and the Court of Appeal ably interpreted the Land Act and inculcated the purpose for the

establishment of these Courts and how their jurisdiction may be exercised.

**[17]** As correctly pointed out by the respondents' counsel, the Land Court in **Mokemane v Mokhorro** (*supra*) held that the District Land Court has jurisdiction to issue an order for Cancellation of a Lease.

**17.1** Also in **Leseteli Malefane v Roma Valley** (*supra*), the Court of Appeal interpreted Rule 8 in so far as Cancellation of Leases is concerned. It held that Rule 8(b) of the District Land Court mirrors the provisions of Section 18(3) of the Act. Importantly, it stated that the provision does not deal with a dispute between competing allottees but envisages a dispute between the issuing authority and the allottee, regarding the issue of the lease. The Court concluded (at para 20) that the provisions of Rule 8 do not exclude the jurisdiction of the Land Court to hear and determine conflicting claims of allotment and title to the same piece of land.

**[18]** In **Malineo Moletsane v Thamae** (*supra*) the Court of Appeal categorially stated that the District Land Court has jurisdiction to issue a declaratory order, thus illuminating another aspect of the Jurisdiction of these Courts. I turn now to apply these authorities to the present matter.

## **Application of the Law to the facts of the matter**

- [19] The applicant's claim is undoubtedly about Title to Land. The bone of contention is whether it should be heard and determined in the lower court or this Court.
- [20] On the strength of the cited authorities, it is clear in my view, that these two courts have concurrent jurisdiction over the matter. What this means is that both are competent to order cancellation of a lease and a declarator.
- [21] I conclude therefore that the matter does not fall under the exclusive jurisdiction of the District Land Court as Adv Maleke seems to suggest nor fall under the exclusive jurisdiction of the Land Court as Advocate Shao seems to suggest. The only question that remains is whether this matter should commence before the District Land Court.
- [22] It is trite that where concurrent jurisdiction exists, the subordinate Court has precedence unless special application is made and granted to remove the proceedings from the Subordinate Court to the High Court pursuant to **section 6** of the **High Court Act of 1978. Nqojane v National University of Lesotho C of A (CIV) No.21/92, Mapiloko v Fragmar (Pty) Ltd C of A (CIV) 42 of 2017.**
- [23] Section 6(b) of the High Court Act 1978, to which Rule 9(2) refers is clear that jurisdiction over a matter which falls within the jurisdiction of a Subordinate Court (the District Land Court) may be acquired where leave is given under this section or assumed where the judge acting of his own motion, expressly or impliedly permits the removal of the matter from a Subordinate Court or its institution in the High Court (in our case, the Land Court). **Jaase v Jaase C of A (CIV) A/62/17.**



**[24]** In *Jaase*, the Court of Appeal stated, at paragraph 6 of the judgement that, the administration of justice requires the High Court to excise its powers in a manner which will resolve disputes between the parties as expeditiously as circumstances permit; that where it is legitimately within his or her power to do so, a Judge should act in a way which will prevent unnecessary delay in the resolution of disputes. It held that the Judge may assume Jurisdiction where no prejudice would be caused by the assumption.

**[25]** In the present matter, no prejudice is shown to exist. In order to achieve speedy resolution of the dispute between the parties, this Court assumes jurisdiction to hear the matter.

**Order**

**[26]** The preliminary objection of lack of jurisdiction is therefore dismissed, but there will be no order of costs.

-----  
**P. BANYANE  
JUDGE**

For Applicant: Advocate Shao

For Respondent: Advocate Maleke