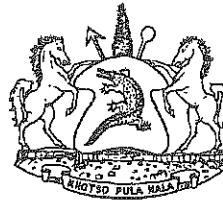


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Land Court Rules, 2012

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Land Court Rules, 2012

* In exercise of the powers conferred upon me by section 76 of the Land Act of 2010¹, and in consultation of the Minister of Local Government and Chieftainship Affairs, I,

MAHAPELA LEBOHANG LEHOHLA

Chief Justice, make the following rules:

PART 1 – PRELIMINARY**Citation and commencement**

1. These rules may be cited as the Lesotho Land Court Rules 2012 and shall come into operation on the date of publication in the Gazette.

Application of rules

2. These rules shall apply to the administration of, and proceedings in, the Land Court.

Interpretation

3. (1) In these rules, unless the context otherwise indicates -

“Advocate” means a person admitted and enrolled as such in terms of section 6 of the Legal Practitioners’ Act of 1983;

“appeal” means an appeal filed under these rules;

“application” includes an originating application, according to the context;

“Attorney” means a person admitted and enrolled as such in terms of section 7 of the Legal Practitioners’ Act of 1983;

“Court” means the Land Court established by the Land Act, which shall function as a division of the High Court;

"Deputy Registrar" means the Deputy Registrar of the Land Court and shall include any assistant Registrar or clerk assigned by the Deputy Registrar or the presiding judge to carry out all or part of the duties of a registrar;

11 "Judge" means a judge of the Land Court;

"legal representative" means an attorney or an advocate;

"party" means a litigant in any proceedings under these rules;

"applicant" means the party originating an application in the court of first instance;

"respondent" means a person against whom a claim is made or an appeal is brought, as the case may be;

"the Act" means the Land Act 2010.

- * (2) No provision or rule contained in these rules shall be interpreted or applied in such manner as to contradict the provisions of the Act.
- * (3) When applying these rules full regard shall be had to informality of legal procedures, accessibility of justice, and affordability of judicial services.
- * (4) Non-compliance with these rules shall not cause the invalidation of any proceedings unless the court otherwise directs for good cause.

PART II - SITTINGS, COMPOSITION AND ADMINISTRATION OF COURTS

Court sittings

- 4. (1) There shall be the Land Court sitting in Maseru as a division of the High Court. The court may also sit, at the discretion of the presiding judge of the court, in the principal town of any district.
- * (2) The court shall be open to the public on every court day of the year from 9.00 am until 4.00 pm except Saturdays, Sundays, public holidays and any other day on which the office may be closed upon the direction of the

Chief Justice.

(3) In respect of hearing specific cases that merit immediate attention, the court may be open to the public on any day other than a court day or at any time other than 9.00 am to 4.00 pm at the discretion of the presiding judge.

(4) Any sitting and any hearing in any application or proceeding may be postponed or adjourned to a fixed day.

Composition of Land Court

5. The Land Court shall be composed of one or more judges who shall be assigned by the Chief Justice.

Administration of Land Court

6. (1) The court shall have a Deputy Registrar who shall be appointed by the Chief Justice and work under the direction of the presiding judge of the court.

(2) The Deputy Registrar may be assisted by one or more assistant registrars and clerks.

Duties and responsibilities of the Deputy Registrar

7. Under the direction of the presiding judge the Deputy Registrar shall perform tasks provided for in these rules and take actions as appears to him to be necessary for the efficient and economical management of the court.

PART III – JURISDICTION AND INSTITUTIONAL ARRANGEMENTS OF LAND COURT, AND CONSOLIDATION OF SUITS

General rules

8. (1) Subject to the laws governing the jurisdiction of the Central and Local Courts, the District Land Court, the Land Court, and the Court of Appeal of Lesotho, disputes or claims concerning land shall be instituted in the court having jurisdiction to determine land disputes.

(2) The courts established by the Act may not have criminal jurisdiction in any matter under the Act.

(3) A Subordinate Court established under the Subordinate Courts Order 1988 shall have and exercise jurisdiction in all proceedings of a criminal nature provided under the Act.

Subject-matter jurisdiction

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.

Consolidation of applications

10. (1) Where 2 or more applications or appeals are pending between the same parties in the same court, in which the same or similar questions of law or fact are involved the court may, upon the application of either party to the case, or of its own motion, order for the consolidation of the applications or appeals on such terms as it thinks appropriate.

(2) Where 2 or more applications are pending between the same parties in different courts, in which the same or similar questions of law or fact are involved, or where two or more applications pending between the same parties in different courts are so closely connected that they cannot be properly tried separately, either party may, at any time before evidence is taken in any of such courts, apply for an order that such suits be consolidated.

* (3) An application under subrule (2) shall be made to the court and the court shall, upon granting the same, direct the subordinate court the manner by which the case shall be tried.

PART IV – PLEADINGS AND FRAME OF SUIT

Filing originating application

- * 11. Any proceeding for the determination of any land related matter by the court shall be started by filing an originating application as set out in form 1 of the schedule with the Deputy Registrar.

Content of originating application

- * 12. An originating application shall be made in writing and in conformity with Form 1 contained in the Schedule to these rules and shall:
- (a) provide in full the name and address of the applicant;
 - (b) identify any person against whom relief is sought and provide his name and address;
 - (c) concisely state the material facts, circumstances or other relevant matters on which the application is based;
 - (d) specify the relief or remedy sought; and
 - (e) be signed and dated by the applicant or his legal representative.

Annexes to originating application

13. (1) The applicant shall attach to his application:
- * (a) a list of the witnesses to be called at the hearing, with their full names and addresses and the purpose for which they are to be called, and of the documents on which he relies, specifying in whose possession the documents are;

- * (b) a certified copy of any documentary evidence in his possession upon which he relies his claim;
- (c) where he has no witnesses or documents to produce, a statement to that effect.

* (2) All documents filed in court shall be duly translated into English.

(3) A sufficient number of copies of the application and annex shall be filed for the purposes of serving notice on all respondents named therein.

(4) Notwithstanding the provisions of subrule (2), under exceptional circumstances where the court deems it necessary, any document upon which the applicant relies for his suit may, with the permission of the court, be deposited in the registry where it shall be open to inspection by the respondent, instead of being copied and served on the respondent.

(5) Notwithstanding the provisions of subrule (1), under exceptional circumstances, with leave of court or by consent of parties, a list of witnesses may be amended and further documents may be filed.

Registration of originating applications

14. (1) In accordance with the provisions of these rules regarding applications, every suit shall be instituted by filing an application in the registry of the court.

(2) Upon receipt of an originating application, the Deputy Registrar shall assign a number thereto according to the order the application is admitted, and enter its particulars in the register.

* **Power of the Deputy Registrar to reject originating application**

15. (1) An application shall be rejected by the Deputy Registrar where it is not in accordance with the form provided by rule 12 or it is not accompanied by the annexes provided for by rule 13.

(2) The rejection of application by the Deputy Registrar shall not prevent the applicant from bringing a new or amended application on the same claim.

Admission of application by the Deputy Registrar

16. Where there are no reasons for rejecting the application under rule 15, the Deputy Registrar shall make the entry required by rule 14 and submit the application to the court.

Court fees

17. (1) Without prejudice to the provisions of these rules dealing with *in forma pauperis*, no originating application shall be admitted without the payment of the prescribed court fee.

(2) The prescribed court fees shall also be paid upon the filing of an answer that contains counter-claim.

Frame of application

* 18. (1) An originating application shall be framed in accordance with the provisions of rule 12.

(2) An application shall include the whole of the claim which the applicant is entitled to make with respect to the cause of action.

* (3) An applicant who negligently omits to include in his application, or intentionally relinquishes, any portion of his claim shall not afterwards file application with respect to the portion so omitted or relinquished.

(4) A person entitled to more than one relief with respect to the same cause of action may file application for all or any of such reliefs, but if he omits to apply for all such reliefs, he shall not afterwards file application for any relief so omitted, except with the leave of the court.

Service of originating application

- * 19. (1) Where there are no reasons for rejecting an application by the Deputy Registrar, the court shall cause the application and annexes to be served on the respondent together with notice requiring him to submit his answer to the court before the date of the first hearing to be fixed in the notice and informing him that the case will be proceeded with notwithstanding that he does not appear or that he appears without his answer submitted in terms of subrule (2).

* (2) The respondent shall submit his reply in accordance with the relevant provisions of these rules within 14 days of receipt of the notice and the originating application. *answer*

Schedule of proceedings

20. (1) The Deputy Registrar, in consultation with the presiding judge, shall determine the date for the first appearance of the parties.

* (2) Under no conditions shall a date for the first court appearance be fixed more than one month after the notice and originating application are delivered to the respondent.

- (3) The presiding judge shall determine all subsequent court dates.

Judgment by consent

21. (1) The respondent may consent to judgment with respect to the whole or any part or parts of an originating application and the court shall enter judgment accordingly.

(2) Any consent to judgment shall be made in writing and signed and dated by the respondent. *What about the applicant?*

Judgment by default

22. (1) Without prejudice to the provisions on service of notice and non-appearance on court date, where the respondent fails to appear, without good cause, at the first date of appearance or thereafter as the court may direct, the court may enter judgment for the applicant.

(2) Notwithstanding subrule (1), the court may make such other order as it considers appropriate.

Interim relief

23. (1) The Court may grant interim relief to one party until such time as the other party or parties may be heard.

(2) Notwithstanding subrule (1), the Court shall give a short notice of not less than two days to the other party in matters where the court thinks that the circumstance does not warrant interim relief *ex parte*.

Application for interim relief

24. (1) An application for interim relief shall be made in writing and concisely state the reason why the interim relief is sought as a matter of urgency.

(2) Applications for interim relief on matters arising before filing originating applications shall be included in the originating application for final relief.

(3) Applications for interim relief on matters arising after the filing of originating applications or appeal shall be made in writing and submitted to the registry of the Court.

* (4) The Court shall hear applications for interim relief immediately.

Interlocutory Relief

25. The Court may grant interlocutory relief pending its final decision.

Application for interlocutory relief

26. (1) An application for interlocutory relief shall be made in writing and shall concisely state the reason why the interlocutory relief is sought as a matter of urgency.

(2) Applications for interlocutory relief, on matters arising before

filing originating applications, shall be included in the originating application for final relief.

(3) Applications for interlocutory relief, on matters arising after the filing of originating applications or appeal, shall be made in writing and submitted to the registry of the Court.

* (4) The Court shall hear applications for interlocutory relief on more than 7 days' notice, or as the Chief Justice may direct.

Interdicts

* 27. Where the Court grants an interdict, it may grant an interim interdict *ex parte* or an interlocutory interdict, in Chambers, or a final interdict in open court.

Contents of an answer

28. (1) Every answer shall be in accordance with Form 2 of the schedule and shall contain:

- (a) the name and place of the court in which the answer is submitted;
- (b) the number of the claim;
- * (c) the facts, if any, showing that the claim is inadmissible on grounds of want of capacity or jurisdiction or prescription;
- (d) a concise statement of the material facts on which the respondent bases his answer;
- (e) ^{or} specific denial of any fact stated in the originating application which is not admitted;
- (f) precise details of a counter-application, if any, in which case the provisions in respect of filing an originating

application regarding court fees and proof shall apply by analogy.

(2) The provisions of rule 13 dealing with annexes to originating application shall apply by analogy in appropriate cases.

Evasive denial

* 29. (1) A respondent may not deny any allegation of fact made in the application evasively but shall provide an answer to the point of substance directly.

(2) Any allegation of fact made in the application, if not denied specifically or by sufficient implication, or stated to be not admitted in the answer, shall be taken to be admitted except as against a person under legal incapacity.

(3) Notwithstanding subrule (2), the court may in its discretion * require any fact so admitted to be proved otherwise than by such admission.

Amendment of pleadings

30. (1) The court may at any time before judgment, of its own motion, * or upon written or oral application by any party, make an order to allow either party to alter or amend his pleading in such manner as to costs and time as may be just and all such amendments shall be made as may be necessary for the determination of the real issues in dispute.

(2) Where a party who has secured leave to alter or amend his pleading fails within the time fixed by the court, he shall be disallowed to alter or amend thereafter, unless the court extends the time. *

(3) The court may at any time before judgment, in the exercise of its discretion, make an order to strike out any matter in any pleading which is unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the case.

° (4) Where pleadings are altered or amended as to give the effect of bringing the application within the jurisdiction of another court, the court shall transfer the file to such appropriate court for trial.

Additional particulars*Time limit*

31. (1) The court may, of its own motion, or application by any party to the proceedings upon written notice to any opposing party, require the latter party to the proceedings to provide the former party further particulars of the grounds on which he bases his claim or answer and any facts and contentions relevant thereto.

* (2) Where the respondent makes a counter-claim in his application, the court shall require the applicant to submit his reply on the counter-claim.

(3) Where the respondent's answer contains new facts that are relevant to the real issues in dispute, the court may require the applicant to submit his written reply to such facts.

Joinder of applicants

32. All persons in whom any right to relief in respect of or arising from the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, may be joined in one action as applicants where, if such persons brought separate actions any common question of law or fact would arise.

Joinder of respondents

33. (1) All persons against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, may be joined as respondents where, if separate claims were brought against such persons, any common question of law or fact would arise.

* (2) Where the applicant applies for the recovery of immovable property, any occupants, regardless of their title, shall be made parties to the application.

Joinder of claims

34. (1) Unless otherwise provided, an applicant may combine in the same claim more than one cause of action against the same respondent, or the same respondents jointly.

(2) Any applicants having causes of action in which they are jointly interested against the same respondent or the same respondents jointly, may combine such causes of action in the same claim.

Third party procedure

35. (1) The court may, upon application by a person having interest therein, and if it finds it necessary in the interests of justice and for the proper hearing of any proceedings, allow such a person to intervene as a party there-to at any time before judgment.

(2) In so far as notification, pleadings, production of evidence, and * other matters related to court proceedings are concerned the provisions of these rules with respect to applicants and respondents shall apply with essential adaptations.

PART V – NOTIFICATION OF APPLICATION

Issue of notice

36. (1) Unless the court otherwise orders, when a claim has been duly * instituted, the court shall issue notice to the respondent to appear to answer the claim on a day to be specified therein. *How is that to be done and at whose expense?*

(2) Every notice shall be issued in a form prescribed by Form 3 * annexed to these rules and signed by the Deputy Registrar.

General rule on mode of service

37. (1) The notice may be served on the respondent by a serving officer or messenger, who is authorized by the court.

(2) Unless otherwise provided, when there are more than one respondent, notice shall be served on each respondent.

(3) Without prejudice to the following rules under this part, in as much as possible, notice shall be served on the respondent in person.

*This part
created
unnecessary
burden on CTS*

Service on body corporate

38. In applications made against a body corporate, the notice may be served on the secretary, or on any director or other principal officer of the body corporate; or by sending the notice by post addressed to the body corporate at its registered office or, if there is no registered office, at the place where the body corporate carries on its activities.

Service on business partners

39. (1) Where persons are sued as partners in the name of their firm, the notice shall be served either upon any one or more of the partners; or at the principal place at which the partnership business is carried on within Lesotho upon any person having, at the time of service, the control or management of the partnership business.

(2) In the case of partnership which has been dissolved to the knowledge of the applicant before the institution of the legal action, the notice shall be served upon every former partner whom it is sought to make liable.

(3) Where notice is issued to a firm and is served in the manner provided by this rule, every person upon whom it is served shall be informed by notice in writing given at the time of such service.

Service on religious institutions and associations

40. Where an application is filed against a religious institution or a non-profit association, the notice shall be served by delivering a copy of the process to the chairperson or secretary or other managing body of the institution or association in the manners set out in these rules.

Service on the Government

41. A copy of process required by court to be served on the Government of Lesotho or any Government Ministry or agency shall be served by delivering a copy of the process to the Attorney-General or shall be served on the head office of the agency.

Service on respondent's member of family

42. Where in any application the respondent cannot be found and has no agent empowered to accept service on his behalf, service may be made on any member of the respondent's family or person found to be in charge of the premises, which is of the apparent age of 16 years or above and is found in the premises.

Signing acknowledgement

43. (1) Where the serving officer or messenger delivers or tenders a copy of the notice to the respondent personally, or to an agent or other person on his behalf, he shall require the person to whom the copy was delivered or tendered to sign an acknowledgement of service on the original notice.

(2) In the event where the respondent refuses to sign an acknowledgement, the serving officer or the messenger shall so report in his return of service.

Respondent who cannot be found

44. Where the serving officer, after using all due and reasonable diligence, cannot find the respondent, and there is no agent empowered to accept service, nor any other person on whom service can be made, the serving officer shall return the notice to the court from which it was issued, together with a report as to the facts which prevented him from serving the notice and the provisions of rule 45 shall apply.

Substituted service

45. Where the court is satisfied that there is good reason to believe that the respondent is deliberately avoiding service or that for any reason the notice cannot be served in person, it shall order the notice to be served by affixing a copy thereof in some conspicuous place in the courthouse, and also upon some conspicuous part of the building, if any, in which the respondent is known to have last resided or carried on business or personally worked for gain, or by registered postal mail, or in such other manner including publications in newspaper, as it deems appropriate.

within which period?

PART VI – APPEARANCE OF PARTIES

Audience in court

- * 46. The following persons are entitled to an audience in the court:
- (a) a litigant in person or his duly authorised representatives;
 - (b) a party's family member including spouse, child, brother, sister, and parent or guardian;
 - (c) an executor, trustee, or curator;
 - (d) an attorney; or
 - (e) an advocate, only when duly instructed by an attorney.

Appearance of one of multiple applicants or respondents

47. (1) Any one of 2 or more applicants or respondents may be authorized by any other of them to appear or act for such other in any proceeding.
- * (2) The authorization shall be in writing and signed by the party giving it and shall be filed in the case.

Appearance of business partners

- * 48. (1) Where an application is filed against business partners in the name of their firm, at the first hearing, they shall appear individually in their own names.
- (2) All subsequent proceedings shall continue in the name of the firm.

Power to require appearance of certain persons

49. The court may, at any stage of the suit, require the personal appearance of any official, director, or other principal officer of a Government Ministry or body corporate who may be able to answer material questions pertaining to the application.

Parties to appear at hearing

* 50. (1) On the fixed hearing day, the parties shall be in attendance in the court in person or through their agents or legal representatives and the application then shall be heard.

* (2) Where neither party appears when the claim is called for hearing the court shall make an order that the application be struck out or in cases of appeal, that the appeal be dismissed.

Non-appearance of respondent

51. Where the applicant appears and the respondent does not appear on the date fixed for hearing:

- (a) if it is proved that the notice was duly served, the application shall be heard in the absence of the respondent;
- (b) if it's not proved that the notice was duly served, the court shall direct a second notice to be served on the respondent;
- (c) if it is proved that the notice was served on the respondent but not in sufficient time to enable him to appear on the day fixed therein, the court may adjourn the hearing to a definite date;
- (d) if it is proved that the notice was not served on the respondent or any one of several respondents through the serving officer or the messenger's negligence or default, the court may adjourn the hearing to a definite date.

Effect of striking out

52. (1) Where an application is struck out under rule 50(2), the applicant may apply in writing for reinstatement of the application.

(2) Where the applicant satisfies the court that there was good cause for his non-appearance, the court may make an order to appoint a day for proceeding with the application.

Subsequent appearance

53. Where the court has adjourned the hearing of the application *ex-parte*, and the respondent appears at or before the hearing and shows good cause for his previous non-appearance, he may, upon such terms as to costs or otherwise as the court may direct, be heard in answer to the application as if he was heard on the day fixed for his appearance.

Applicant failing to appear

54. (1) Where the respondent appears and the applicant does not appear when the application is called on for hearing, the court shall make an order that the application be dismissed.

(2) Notwithstanding subrule (1), where the respondent admits the claim or part thereof, in which case the court shall make an order against the respondent upon such admission.

(3) Where part only of the claim has been admitted, the court shall dismiss the application as it relates to the remainder portion of the claim.

Effect of dismissal

* 55. (1) Where the application is wholly or in part dismissed under rule 55, or an appeal is dismissed under these rules, the applicant shall be barred from bringing a new application in respect of the same claim.

(2) Nothing in subrule (1) shall preclude the applicant from applying for an order to set the dismissal aside within one month of such dismissal, and if he satisfies the court that there was good cause for his non-appearance, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks just, and shall fix a day for proceeding with the application.

(3) No order shall be made under subrule (2), unless notice of the application has been served on the respondent.

Several parties failing to appear

* 56. (1) Where one or more of multiple applicants fail to appear, the court may, at the request of the applicant or applicants appearing, permit the application to proceed in the same manner as if all the applicants had appeared, or in respect of the absent parties make such order as it thinks just.

(2) Where one or more of several respondents duly served fail to appear, the proceeding shall continue by default in respect of those respondents who failed to appear.

Setting aside of an order *ex-parte*

* 57. (1) Any respondent against whom a judgment is entered or order made in his absence or in default may, within one month of the day when he became aware of such judgment or order, apply to the court that passed the judgment or made the order to set it aside. *How? Does one follow part 1 of R.R. When is right to respond and have?*

(2) If the respondent satisfies the court that the notice was not duly served, or that he was disabled by a good cause from appearing when the suit was called on for hearing or from filing his answer, the court shall, after notice of the application has been served on the opposite party, make an order setting aside the judgment or order as against him upon such terms as to costs, payment into court or otherwise as it thinks just, and shall appoint a day for proceeding with the application or re-hearing the appeal, as the case may be.

(3) Where the judgment or order is such that it cannot be set aside as against such respondent only, it may be set aside as against all or any of the other respondents also. *Even those not parties to the application for setting aside? Should all other temps be joined?*

PART VII – SETTLEMENT AND WITHDRAWAL

* Settlement

58. (1) The parties may, through compromise, conciliation, mediation, or other alternative dispute resolution mechanism make an agreement pertaining to all or some of the matters in issue to terminate a dispute in respect to which an application has been instituted.

What about the revision of a default judgment is this provided for? i.e. in ordinary cases not in ex parte applications.

(2) A settlement agreement may be made at any time by the parties at the hearing or out of court, of their own motion or upon the court attempting to reconcile them.

(3) The court may, upon the application of the parties, give directions as to the lines on which a settlement agreement may be made.

Contents of settlement agreement

59. A settlement agreement shall contain:

- (a) the name and place of the court in which the application is pending;
- (b) the title of the action and the number of the application;
- (c) the name, description, place of residence and address for service of the parties; and
- (d) the matters to which the agreement relates.

Recording of settlement agreement

60. (1) Where a settlement agreement is made at a court hearing, it shall be recorded and signed by the parties and the court shall thereupon enter it in the case file on being satisfied that its terms are not contrary to the law or public morality.

(2) After entering the compromise agreement in the case file, the court may, on the application of the parties, make an order or give judgment in terms of such agreement.

(3) Where a compromise agreement is made out of court, the court shall be informed thereof and the applicant may apply to the court for affirmation of the agreement.

Withdrawal

* 61. (1) An applicant may with leave, at any time after the institution of an application, withdraw his application wholly or partly.

How about withdrawal by or of counsel is it provided for in the

(2) An applicant may withdraw his claim against one or more respondents without withdrawing against other respondent or respondents.

(3) Where an applicant discontinues a legal action without leave, *
he shall be liable for such costs as the court may award.

Dismissal by court *

62. Where at any stage of a legal proceeding it is proved to the satisfaction of the court that the cause of action no longer exists, the court, shall, on such terms as to costs as it thinks fit, dismiss the application and record a reasoned order to that effect.

PART VIII – PRE-TRIAL CONFERENCE AND TRIAL

Pre-trial conference

// 63. (1) The court shall confer in chambers with the parties before any trial takes place to try to settle the matter, simplify the issues, shorten the hearing, or lead to a voluntary exchange of information which might promote an expeditious settlement of the dispute.

(2) At the pre-trial conference, without prejudice to the rights of the parties, the court may give directions as to the following matters:

- (a) any alternative dispute resolution mechanism by which the dispute may be settled; C.A.M
- (b) any agreement as to the nature and extent of the unresolved issues;
- (c) such facts as are admitted by any party; and
- (d) any matter which the court deems desirable to assist in expediting the proceedings.

Examination of parties at the first hearing

64. (1) At the first hearing the court shall read the pleadings and ascertain from each party or his legal representative whether he admits or denies such allegations of fact as are made in the application or answer and as are not expressly or by necessary implication admitted or denied by the party against who they are made.

(2) The court may orally examine either party in relation to any material fact of the legal action.

(3) Where the legal representative of any party who appears by a legal representative is unable to answer any material question relating to the application which the court considers that the party whom he represents has to answer and is likely to be able to answer if examined in person, the court may adjourn the hearing to a future day and direct that such party shall appear in person on that day.

(4) After examining the parties the court shall give directions as to the further conduct of the proceeding.

(5) The substance of the examination held under this rule and any admission or denial made in the course thereof shall be recorded by the court.

Judgment on admissions

65. (1) Where any party has given notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of the other party, or has made admissions of fact during the examination at the first hearing, the opposite party may apply to the court for such judgment or order as he may be entitled to upon such admissions.

(2) The court may, without waiting for the determination of any other question between the parties, thereupon make such order or give such judgment as it thinks appropriate.

Preliminary objection

66. (1) Before proceeding with the trial, the court shall decide such objections as may be made by the parties by way of a special answer.

pled over

(2) Any party may make an objection on the following grounds:

- (a) that the court has no jurisdiction;
- ✗ (b) that there is a final and binding decision by a competent court over the same claim;
- (c) that the suit is pending in another court;
- ✓ (d) that the other party is not qualified for acting in the proceedings;
- ✓ (e) that the suit is barred by prescription; or
- (f) that the claim has been previously been made the subject of a compromise or other agreement.

(3) Where more than one objection is made under this rule, they shall all be taken together and any objection not made at the first court appearance shall be considered to have been waived, unless the ground of objection is such as to prevent a valid judgment from being entered.

Decision on objection

✗ 67. (1) The court shall decide any objection made under rule 66 after hearing the opposite party and ordering the production of such evidence as may be appropriate for the decision to be made.

(2) Where the court is satisfied that the objection is well founded, it shall, in the case of an objection under rule 66(2)(a) and (f) dismiss the application and, in all other cases, strike out the application or make such other order as it thinks fit.

(3) The striking out of the application shall not of its own force preclude the institution of a new application with respect to the same cause of action and the court shall, in appropriate cases, inform the applicant that he may sue in the court having jurisdiction or in the court in which the previously instituted application is pending.

// (4) Where an application is dismissed on the ground of want of jurisdiction, the prescribed portion of the court fee paid on the filing of the application shall not be refunded.

(5) Any decision passed under this rule shall be recorded together with the reasons for such decision.

Failure to produce evidence

* 68. Where additional evidence which should have been produced in accordance with the provisions of these rules is not so produced due to the default of either party, the court may at once enter judgment or may for good cause to be recorded adjourn the hearing to a definite date.

Framing of issues

69. (1) After preliminary objections, if any, have been decided the court shall ensure upon what point of law or fact the parties are in controversy, and thereupon proceed to frame and record the real issues in dispute.

* (2) Where the pleadings have been submitted and after any preliminary objections have been decided, it appears that the parties are not at issue on any question of fact or law the court may at once pronounce judgment.

PART IX – HEARING OF APPLICATION AND EXAMINATION OF WITNESSES

Opening of trial

70. On the day fixed for the trial of the application, the applicant shall be entitled to begin unless the respondent admits the facts alleged by the applicant and contends that either in point of law or on some additional facts alleged by the respondent, the applicant is not entitled to any part of the relief which he seeks, in which case the respondent shall be entitled to start.

Statement and production of evidence

71. (1) The party entitled to begin shall state his case by relating it to the documentary evidence or list of witnesses that he may have attached to his application.

(2) The other party shall then argue his case and verbally state his evidence and may address the court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

(4) The court shall subpoena the witnesses whose appearance is required by either party to appear at a fixed date.

Manner of producing evidence

72. (1) The party entitled to begin shall call his witnesses who, after taking an oath or affirmation, shall be examined by such party, cross-examined by the other party may be re-examined by the party beginning.

* (2) If a party wishes to produce evidence on his own behalf, he shall do so before calling his witnesses and he shall then for all practical purposes be deemed to be a witness.

(3) Witnesses shall give evidence orally in open court, unless the court otherwise directs for good cause to be recorded.

(4) The court may, at any time, put to a witness any question which appears necessary for the proper determination of the application.

Form of questions

73. (1) Questions put in examination shall only relate to facts relevant * to the issues to be decided and only to such facts of which the witness has direct or indirect knowledge.

* (2) No leading question shall be put to a witness without the permission of the court.

(3) Questions put in cross-examination shall aim to show to the court what is erroneous, doubtful or untrue in the answers given in examination.

* (4) Leading questions may be put in cross-examination.

(5) No question shall be put in re-examination except for the purpose of clarifying matters which have been raised in cross examination.

Examination by court

74. (1) Any party to an application or a witness may be required by the court to give evidence or produce any document in his possession or power.

* (2) Where the court deems it necessary at any time to examine any person other than a party to the application and not called as a witness by a party to the application, it may of its own motion summon such person as a witness to give evidence or to produce any document in his possession on a day to be fixed and may examine him as a witness or require him to produce such evidence.

Power to examine witness immediately

* 75. (1) Where at any time after the institution of an application the court is satisfied that the evidence of a witness should be taken immediately, it may on the application of any party or of the witness, take the evidence of such witness in the manner provided above and such evidence may then be read at any hearing of the application.

(2) Where such evidence is not taken forthwith and in the presence of the parties such notice as the court thinks sufficient of the day fixed for the examination, shall be given to the parties.

Court may recall and examine witness

76. The court may at any stage of the legal proceedings recall any witness who has been examined and may put to him such questions as thinks fit.

Refusal of party to give evidence

77. Where any party to an application present in court refuses, without lawful excuse, when required by the court, to give evidence or to produce any document then and there in his possession or power, the court may pronounce judgment against him or make such order in relation to the application as may be just.

Rules as to witness to apply to parties summoned

78. Where any party to an application is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him as far as they are applicable.

Recording of evidence

79. (1) The evidence of each witness shall start with his name, age, occupation and address and an indication that he has been sworn or affirmed.

(2) The evidence of each witness shall be recorded by the presiding judge or, if he is for some reason unable to record, by a registrar or clerk under his personal direction.

(3) The evidence shall be divided into examination, cross-examination and re-examination.

(4) The evidence shall ordinarily be taken down in the form of narrative, but the presiding judge may in his discretion take down or cause to be taken down any particular question and answer.

(5) When completed the record shall be signed by the court.

Recording of objections

* 80. Where any question put to a witness is objected to by a party or his representative, and the court allows the same question to be put, the question, the answer, the objection and the name of the person making it shall be recorded together with the decision of the court thereon.

Power of court to inspect

* 81. The court may, at any stage of the application, inspect any property concerning which any question arises and shall in such a case draw up a recording of its proceedings which shall form part of the whole record of the application.

Judgment

- * 82. After the evidence has been produced and examined and all arguments by the parties are submitted, the court shall give its judgment together with reasons for its judgment.

Final and binding judgment

- * 83. (1) The court may not try any application or claim in which the matter that is substantially in controversy has been directly and substantially in controversy in a former application between the same parties, or between parties under whom they or any of them claim, litigating under the same title, and has been heard and finally decided by a competent court.

(2) Any matter which could and should have been made a ground of defense or claim in the former application shall be deemed to have been directly and substantially in issue in such application.

PART X – APPEAL AND REVIEW**Review**

84. (1) Any person whose interests are directly affected by a final judgment entered in an application may apply to the court that pronounced the judgment, on one or more of the grounds stated in rule 85, to order that the application shall be reviewed, in whole or in part, upon such terms or conditions as to costs, or otherwise, as the court considers just.

(2) The application shall be dated and signed by the party or his representative and filed at the registry of the court.

Grounds for review

85. An application for review may be made by any interested person on one of the following grounds:

- (a) where the judgment sought to be annulled or varied was made based upon or substantially influenced by fraudulent or fabricated documents or subornation of perjury or other inappropriate and misleading conduct on the part of either party in the

course of the proceedings; or

- (b) the party moving is prepared to adduce relevant and essential evidence which was unknown to, and could not reasonably have been discovered by him before the judgment was pronounced.

Application time for reviewing

- * 86. An application for review may be made within 30 days from the date that the applicant became aware of the judgment.

Disposing application for reviewing

- 87. (1) The court may dispose of the application for reviewing after hearing the parties.

(2) Where the court, having regard to any of the grounds provided by rule 85, is satisfied that if the judgment complained of is made to stand, a substantial wrong, or miscarriage of justice, which cannot by any other process be so conveniently remedied or set right, is likely to be thereby occasioned, it may grant a reviewing of the application, in whole or in part, in such manner and on such terms and conditions as it shall deem appropriate.

Decision on reviewing application

- 88. The court may affirm, vary or reverse any judgment subjected for review either in whole or in part upon such terms and conditions as it thinks just.

*** Principle of appeal**

- 89. (1) The applicant or the respondent may, on payment of the prescribed court fee and the conditions provided in these rules, appeal against any final judgment of the court.

(2) No appeal shall lie from orders made on any decision or order of any court on interlocutory matters, such as a decision or order on adjournments, objections, the admissibility or inadmissibility of evidence or permission to bring legal action as a pauper, but any such decision or order may be

raised as a ground of appeal when an appeal is lodged against final decision.

(3) The appellant or his legal representative shall be responsible for the preparation of court records and shall be liable to an adverse order of costs.

(4) A certificate certifying the correctness of the record, duly signed by the appellant or his legal representative, shall be filed with the record and served on all other parties to the appeal.

* Courts with appellate jurisdiction

90. (1) An appeal may be lodged against the judgment of:

- (a) a District Land Court in its original jurisdiction, to the Land Court;
- (b) the Land Court, to the Court of Appeal.

(2) Where an appeal is lodged against the judgment of the Land Court, the rules of the Court of Appeal shall apply.

Form and time of appeal

91. (1) Every appeal shall be lodged by filing a notice of appeal in the register of the court which gave the judgment that is appealed against upon payment of the prescribed court fee. *RL 100*

How much is it? Refer H. Ct. Rls.

(2) The notice of appeal shall be in the ⁷⁷form provided by rule 91⁹² and signed by the appellant or his legal representative.

(3) The notice of appeal shall be filed together with the court records within 45 days of the judgment appealed against being delivered.

Contents of notice of appeal

92. (1) The notice of appeal shall contain:

- (a) the name and place of the court in which the appeal is filed;

- (b) the name and addresses of the appellant;
- * (c) the name of the court which passed the judgment appealed against, the date of such judgment and the number of the application in which it was given; *what about names of respondents as well as his address?*
- (d) the grounds of appeal; and
- (e) the nature of the relief sought.

(2) A certified copy of the full record of the proceedings in which the judgment appealed from was given.

(3) The notice of appeal shall be made in such number of copies as shall allow one copy to be served for each of the respondents and the court.

Registration of appeal

- * 93. The court shall keep a book called the Register of Appeals wherein the particulars of all appeals shall be entered and numbered in order of reception.

New facts and arguments

94. The appellant may not raise any fact which was not in evidence in the court which gave the judgment appealed from. *

Service of notice of appeal

95. (1) Where there are no reasons for rejecting a notice of appeal by the court, the court shall cause the notice of appeal and annexes to be served on the respondent.

(2) At least 28 days before the date set for hearing an appeal (the hearing date), the appellant shall file his heads of argument and serve same on all respondents to the appeal. *

(3) The respondent shall file his heads of argument with the appellate court not later than fourteen days before the hearing date. *

Amendment

96. (1) The appellate court may allow amendment of the notice of appeal upon such terms of costs or otherwise as thinks just.

(2) Where the notice of appeal is not drawn up in the manner provided by rule 91(1), the court shall return it to the appellant for the purpose of being amended forthwith.

Schedule of proceedings on appeal

97. The appellate court shall determine the date for the first hearing and all subsequent court dates.

Power of Appellate Court

98. The Appellate Court shall have the power to confirm, vary, or reverse the judgement appealed from after considering the written submissions of all parties.

Cross-appeal

99. The provisions of these rules in respect of appeal shall be applicable to cross-appeals.

PART XI – COURT FEES AND COSTS*** Court fees**

100. Without prejudice to the provisions of these rules in respect of *in forma pauperis*, the fees specified in the High Court Rules 1980 shall be paid by the party at whose instance they are incurred, and may afterwards be recovered as cost of cause, if the court so orders.

*** Revenue stamps**

101. (1) The fees shall be paid in the court by means of adhesive revenue stamps issued by the Government and stamped on the pleading of the party concerned.

(2) The Deputy Registrar shall ensure that each and every document is properly stamped on the face thereof.

(3) The Deputy Registrar shall forthwith cancel such revenue stamps by means of impressing with indelible ink partly on or across each and every such stamp and partly upon the document to which it is affixed, the Registry stamp with the true date of such impression and by writing his initials across or within the impression in such manner as to render the revenue stamp unusable again.

(4) Notwithstanding subrule (1)(a), the Deputy Registrar may, on being satisfied that either due to the non-availability of the requisite revenue stamps at the time or by reason of any other good cause shown to his satisfaction undue delay or inconvenience may be incurred, accept cash for the fees payable, recording such reason upon the document in question.

Applications may be instituted *in forma pauperis*

102. (1) Any application may be instituted by a pauper on the conditions laid down in these rules.

(2) A person who does not have sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed to be a pauper within the meaning of subrule (1) and may apply for leave to sue as a pauper.

Contents of application

103. (1) An application under rule 102 shall be supported by an affidavit.

(2) The applicant or his agent shall file the application together with the originating application.

Examination of applicant

104. (1) On the filing of the application made in proper form, the court may, if it thinks fit, examine the applicant or his agent as to the merits of the claim and the property of the applicant.

(2) Where the application is filed by an agent, the court may, if it thinks fit, summon the applicant to appear or issue a commission for his examination.

(3) Where the application is not made in proper form, the court may require the applicant to amend it then and there or within such time as it shall think fit.

Rejection of application

105. The application shall be rejected where it appears from the application or the examination held that:

- (a) the applicant is not a pauper;
- (b) there is no cause of action;
- (c) the applicant has, within 3 months before the filing of the application disposed of any property in order to be able to apply for leave to bring a legal action as a pauper; or
- (d) the applicant has entered into any agreement with respect to the subject-matter of the proposed application under which any other person has obtained an interest in such subject-matter.

Evidence of pauperism

106. (1) Where the court sees no reason for rejecting the application under rule 105, it shall fix a day for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

(2) The day fixed under subrule (1) shall be notified not less than 10 days in advance to the opposite party.

Procedure at hearing

107. (1) On the day fixed under rule 106, the court shall examine such witnesses as may be produced by either party and may examine the applicant or his agent, and shall record the substance of their evidence.

(2) The court shall then grant or reject the application to sue as a pauper.

Procedure when application granted

108. Where the application is granted, the applicant shall be given a certificate to this effect and upon the application, being numbered and registered, the application shall proceed in all other respects as an application instituted in the ordinary manner, except that the applicant shall not be liable to pay the whole or part of the court fee or other fees or charges in proceedings connected with the application, as the court may direct.

Validity of certificate

109. A certificate issued under rule 108 shall only be valid until the proceedings in relation to which it was issued are completed or until it is discharged.

Reversing decision to grant application

110. (1) The court may, of its own motion, or on the application of the respondent of which notice has been given to the applicant, order the applicant to be not a pauper and the certificate issued under rule 108 to be discharged where it appears that his means are such that he should not have been permitted or ought not to continue to sue as a pauper.

(2) Where the order to grant the application to apply as a pauper is reversed for the reasons mentioned in subrule (1), the court shall order him, or any person added as co-applicant to the application, to pay such fees as would have been payable if the applicant had not been permitted to sue as a pauper.

Costs

111. Unless otherwise expressly provided, the costs of applications shall be borne by the unsuccessful party to the application and shall be in the discretion of the court to decide by whom and to what extent such costs are to be paid and to give all necessary orders to this effect.

Bill of costs

which
Schedule
is to
be used
in preparing
the bill
of costs

112. (1) Where the court has ordered the unsuccessful party to pay the costs, the successful party shall prepare and submit to the Deputy Registrar or Clerk of Court, as the case may be, an itemized bill of costs showing the expenses he has incurred in the application as allowed in terms of the decision of the court.

(2) The bill shall be filed in the register of the court that passed judgment and a copy thereof shall be served on the party liable for costs.

Taxation of bill

113. The costs allowed in terms of a decision of the court shall be calculated and taxed by the Deputy Registrar or the Clerk of Court, as the case may be.

Appeal

114. A party may, notwithstanding that he does not appeal from a judgment, appeal from any decision on costs made in such judgment and the decision of the Appellate Court shall be final.

PART XII - EXECUTION

Enforcement of judgment

* 115. (1) Where the court has given judgment against a party and the party fails to comply with the judgment within the time specified in the judgment, the judge may, on the application of a party, summon such party to appear before the judge to answer why the party failed to comply with the judgment. The application shall be in Form 5 of the schedule.

(2) If such party fails to satisfy the judge that the failure to comply with the judgment was due to no fault on his part, the judge may order the party's detention in prison until the judgment is enforced or for a period of 6 months, whichever be the shorter period.

* (3) Where an appeal has been preferred against the judgment of the court, the judge shall not order for stay of execution, unless, execution will likely result in irreversible damage in the event that the judgment is reversed by the appellate court.

**MAHAPELA LEBOHANG LEHOHLA
CHIEF JUSTICE**

NOTE

1. Act No. 8 of 2010

SCHEDULE

FORM 1

THE KINGDOM OF LESOTHO
THE LAND COURT

ORIGINATING APPLICATION

Rules 11, 12, 13

Case No.

Date

Applicant(s)

Versus

Respondent(s)

To: The Deputy Registrar,
Land Court
(Address)

And to: The above-named Respondent(s)

1. Applicant/Applicants'

(1) Name and description (e.g: individual, firm, body corporate, Government
etc.):.....
.....

(2) Residential address

.....
.....
.....
.....

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.....
.....
.....

(3) Respondent/Respondents':

(a) Name and description:

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.....
.....
.....

(b) Residential and/or Postal address:

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.....
.....

(4) The grounds on which relief is sought, giving a clear and concise statement of material facts, in sub-paragraphs, each containing, as nearly as possible, a distinct averment:

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(5) Nature of relief sought, or reference or question for determination of Court:

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.....
.....
.....
.....

Signature:

Applicant

Capacity

Place

Date

.....
.....
.....
.....

FORM 2

THE KINGDOM OF LESOTHO
THE LAND COURT

ANSWER

Rules 18, 28

Case No. 20....

Applicant(s)

Versus

Respondent(s)

To: The Deputy Registrar,
Land Court
(Address)

And to: The above-named Applicant(s)

1. Respondent/Respondents'

(6) Name and description (e.g: individual, firm, body corporate, Government
etc.):.....
.....

(7) Residential address

.....
.....
.....
.....
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.....

2. The respondent(s) above named herein answer(s) the originating application of the applicant(s) above named as follows (set out in numbered paragraphs the answer to the application):

.....
.....
.....
.....
.....
.....

Signature of:

Respondent	Capacity	Place	Date
.....
.....

FORM 3

KINGDOM OF LESOTHO
LAND COURT

NOTICE FOR APPEARANCE OF RESPONDENT

36
Rule 37

To.....
(Name, description, Residence address)

Whereas has instituted an application against you for
..... you are hereby summoned to appear in this court in person or
through representative duly instructed and able to answer all material questions
pertaining to the application on the Day of 20....

or before
* On that day you must be prepared to produce:

^
(1) Your answer

(2) A list of the witnesses you intend to call, stating their address and the reason you want to call them.

(3) The documents on which your answer relies on, if in your possession, and a list of documents on which your answer relies, if in the possession of others.

Take notice that in default of your non-appearance on the aforementioned day, or your failure to produce your answer or any evidence, the application will be heard and determined notwithstanding your default.

Given under my hand and the seal of the court, thisday of
..... 20.....

Deputy Registrar
Land Court

FORM 4

KINGDOM OF LESOTHO
LAND COURT

SUBPOENA

Rule ????

Case No.

In the matter between:
and

Applicant

Respondent

To the Sheriff or his deputy;
Inform:

- (1)
- (2)
- (3)
- (4)

(Names, and place of business or residence of each witness to
be stated)

that each of them is hereby required to appear in person before this court at Maseru on the day of 20, at A.M./P.M. and thereafter remain in attendance until excused by the Court, in order to testify, or to give evidence, or produce books, documents or papers on behalf of the abovenamed applicant/respondent in regard to all matters within his knowledge relating to an action now pending in the said Court. (Where documents are required to be produced, add:)

and to bring with you and then to produce to the court the several books, papers or documents specified in the list hereunder.

Dated at this day of

Deputy Registrar of the Court

FORM 5

THE KINGDOM OF LESOTHO
APPLICATION FOR THE ENFORCEMENT OF JUDGMENT OF THE
LAND COURT

Rule 115

Case No:

To: The Deputy Registrar
Land Court
Maseru

Dear Sir/Madam:

Re: VS.
.....

Whereas the Land Court sitting in on
the day of 20..... passed a judgment in favor of the
above mentioned applicant(s), which is dated and
annexed herewith.

Whereas the respondent was on the day of
..... 20..... served with a true copy of the said judgment.

Whereas (30) days have lapsed since the respondent was so
served and despite demand the respondent refuses or omits to comply with the
said judgment.

Now therefore the aforesaid applicant(s) hereby apply that the Judge of the
Land Court invokes the provisions of rule 111 of Land Court Rules to enforce
compliance with the said judgment.

The said respondent(s) may be found at
.....
.....

Yours Sincerely,

.....
Applicant (Judgment Creditor)

60