

LESOTHO / JUDGMENT

Mosa Mosao & Ano. Thabiso Mosao (CIV/APN/0192/2024) [2024] LSHC 20 (26 November 2024) [2024] LSHC 20

COURT

High Court

CASE / FILE NUMBER

CIV/APN/0192/2024

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IN THE HIGH COURT OF LESOTHO HELD AT MASERU In the matter between MOSA MOSAO THATO MOSAO AND THABISO JOSEPH MOSAO MONA ANDREAS RALEPOMA MOSUOE RALEPOMA MAGDALENA RALEPOMA MALIPOLELO RALEPOMA CIV/APN/0192/2024 1ST APPLICANT 2ND APPLICANT 1ST RESPONDENT 2ND RESPONDENT 3RD RESPONDENT 4TH RESPONDENT 5TH RESPONDENT MASERU CITY COUNCIL LAND ADMINISTRATION AUTHORITY MINISTRY OF TRADE AND INDUSTRY THE MASTER OF HIGH COURT THE ATTORNEY GENERAL 6TH RESPONDENT 7TH RESPONDENT 8TH RESPONDENT 9TH RESPONDENT 10TH RESPONDENT Neutral Citation: Mosa Mosao & Another v Thabiso Joseph Mosao and 9 Others [2024] LSHC Civ 20 (26th November 2024) CORAM HEARD DELIVERED : : : BANYANE J 04/11/2024 26/11/2024 Summary Jurisdiction of the High Court – Inheritance to land – Inheritance dispute already pending before the allocating authority - Regulations 43 and 44 of the Land Regulations of 2011 - whether peremptory and bar a party from approaching the Court to determine an inheritance dispute before a decision by the allocating authority- held that that procedure and remedies set out therein must be complied with - Court declines jurisdiction. ANNOTATIONS Legislation

1. Local Government Act 1997
2. Land Act No. 8 of 2010
3. Land Regulations, 2011 Cited Cases
 1. Moteane v Moteane and others LAC (1995 – 1999) 307
 2. Shale v Shale C of A (Civ) 35/2019
 3. Mabohlokoa Letsie – Rabotsoa v PS Ministry of Communications and Technology CIV/ APN/126/2021
 4. Mda and another v DPP LAC (2000-2004) 950

5. C & S Properties v Khaketla & others C of A(CIV) 63/11
6. Tseliso Motebele v Mampho Matekase
7. Liphehlo v Liphehlo LC/APN/2014[2015] LSHC 51

JUDGMENT

BANYANE J

Introduction

- [1] The dispute between the parties centers around distribution of the estate property of the late Thabo Mosao (the deceased). During his lifetime the deceased had amassed vast immovable property, the subject matter of the dispute between the parties. The wrestle over this property is between the deceased's offspring. Backgrounds facts
- [2] The material facts that precipitated this application are largely common cause. They may be summed up as follows. The applicants and 1st respondents are the offspring of the deceased Thabo Mosao by his two ex-wives, Mosa Mosao and Likhabiso Mosao respectively. The applicants were born from their father's union with Mosa Mosao, and the 1st respondent was born of Likhabiso Mosao's union. The deceased died intestate on 23 April 2023. He died a divorcee.
- [3] On 11 August 2023, the Mosao family council consisting of seven (7) members resolved to distribute both immovable and movable property of the estate to the deceased's children. According to the family resolution, the property was distributed as follows to the three children; [3.1] To the 1st respondent; i) ii) iii) iv) v) Plot No. 13283-1508 situated at Sea-point Plot No. 13281-1064 situated at Motimposo Plot No. 13281-385 situated at Moshoeshoe II Plot No.13283-221 situated at Ha Thamae two vehicles and payment of M110.000 from a policy held with metropolitan [3.2] To the 1st applicant Mosa Mosao; three plots situated at Ha Seoli described as i) ii) Plot 13301-2882 Plot 13301-2883 vi) Plot 13301- 1041; and vii) 3 herds of cattle [3.3] To the 2nd applicant Thato Mosao; i) Plot 13293-144 situated at Ha Seoli ii) iii) iv) Plot 12291-617 situated at Ha Thetsane Plot 13293-1866 situated at Qoaling; and 3 herds of cattle
- [4] The family resolution was submitted to the Principal Chief of Thaba-Bosiu for endorsement. He declined. After his refusal, the 1st respondent sued his sisters on 03 October 2023 under CIV/T/570/2013 before this Court. He seeks an order declaring him the customary heir of the deceased. The matter is still pending.
- [5] On 22 November 2023, four (4) members of the Mosao family, all of which were apparently not present in the first meeting, made another decision whose effect was to reverse the first resolution. In terms of the latter decision all the immovable property awarded to the applicants was given to the first respondent as follows:

- a) Plot 13293-1866 situated at Qoaling, (earlier given to Thato)
 - b) Plot 13301- 1041 situated at HaSeoli, (earlier given to Mosa)
 - c) Plot 13301-2882 and Plot 13301-2883 both situated at Ha Seoli (earlier given to Mosa)
 - d) Plot 13293-144 situated at Ha Seoli (earlier given to Thato)
 - e) Plot 12291-617 situated at Ha Thetsane (earlier given to Thato) [6] Pursuant to regulation 43(1) of the Land Regulations 2011, which delineates the procedure for transmission of land rights and interests based on heirship, the 1st respondent's nomination as heir was submitted to the allocating authority at the Maseru City Council (MCC) although it is not immediately clear from the papers when it was so submitted. [7] Following the submission, the requisite publication was made pursuant to Regulation 44 in Lesotho times newspaper issue dated 20-26 June 2024. The publication was in relation to plots 13283-1508 Sea point, 13301-1041 Ha Seoli, 13301-2882 Ha Seoli, plot 1868-385 Moshoeshoe II.
- [8] On 21st June 2024, the applicants lodged an objection to the transmission of rights over these plots to the 1st respondent on grounds that there is a pending inheritance case before this Court and that the 1st respondent obtained the second family nomination secretly without their knowledge. [9] In July 2024, a second publication in Lesotho Times Newspapers issue of July 17th to 24th 2024 was made for two more plots, Plots 13293 – 144 and 13301 – 2883 both situated at Ha Seoli. Applicants' complaint and Relief sought
- [10] Aggrieved by the second family resolution and the second newspaper publication, the applicants approached this Court on urgent basis in April 2024 to challenge the propriety of both. The first prong of their complaint is that the second family resolution is unlawful because; a) it was made by distant relatives who have no authority to undo the earlier decision by Mosao family council; b) the nomination was made during the pendency of the CIV/T/547/2023; c) they were not afforded hearing before the decision was made. The second prong of their complaint is that the second newspaper publication was made before determination of their objection to the first publication. They seek reliefs couched as follows:
1. That a Rule Nisi issue returnable on the date and time to be determined by this honourable Court calling upon the Respondents to show cause (if any) why: a) b) The Rules as to notice and form shall not be dispensed with on account of urgency; The 1st Respondent shall not be restrained and interdicted from holding himself as the heir to the estate of the late Thabo Augustinus Mosao in any manner whatsoever pending the finalization hereof. c) The 6th Respondent and Officers subordinate to him shall not be restrained and interdicted from proceeding and dealing in any manner whatsoever with 1st Respondent's heirship as advertised on Lesotho Times newspaper dated the June 20th to 26th 2024 pending the finalization hereof; d) The 1st Respondent shall not be restrained and interdicted from disposing and/or selling the following plots 13283 – 1508, 13301-1041, 13301 – 2882, 13293 – 1866, 13281 – 385, 13293 – 144, 13301 – 2883 and/or 13283 – 221 and 12291 – 671 and any

unregistered plots Thabo Augustinus Mosao in any manner whatsoever pending the finalization hereof; e) The 6th Respondent's decision to publish and advertise the 1st Respondent's heirship in respect of Plots 13293 – 144 and 13301 – 2883 as reflected on Lesotho Times newspaper dated the July 17th to 24th 2024 notwithstanding an objection by the applicants shall not be reviewed, corrected and set aside; f) The 2nd to the 5th respondents' decision to nominate the 1st respondent as the heir to the estate of the late Thabo Augustinus Mosao shall not be reviewed, corrected and set aside; g) The 8th Respondent shall not be ordered and directed to expunge the names of the 1st Respondent from the records and system as the owner of Mosao Construction and restore the status quo ante; h) Declaring the letter authored by the 2nd to 5th Respondents in terms of which the 1st Respondent was nominated as the heir to the estate of the late Thabo Augustinus Mosao as null and void ab initio; Leave of Court to condone any non-compliance with the Rules of Court. The 1st to 6th Respondents shall not be ordered to pay costs on Attorney and Client Scale one paying the other to be absolved; i) j) k) The applicants shall not be granted further and/or alternative relief; 2. Prayers 1 (a), (b), (c), and (d) be and are hereby to operate with immediate effect as an Interim Court Order. The Jurisdictional issue

- [11] On the date scheduled for case planning conference held in terms of Rule 43 of the High Court Civil Litigation Rules 2024, I raised the question of whether the applicants' claim is ripe for hearing before compliance with or exhaustion of the procedure and remedies set out in Regulations 43 and 44 of the Land Regulations 2011. This being a point of law, I directed counsel to file written submissions to address the issue. After hearing arguments on this point, I declined jurisdiction and dismissed the claim for lack of jurisdiction. These are my reasons.
- [12] Before summarizing their arguments, it is appropriate to set out the procedure governing land inheritance prescribed in the Land Act 2010 and the Regulations made thereunder. Allocation and transferability of land
- [13] Under sections 14 and 24 of the Land Act 2010, the power to allocate land and revoke allocations vests in the Local authorities having jurisdiction in the area where the land is situated. These are Community Councils at the community level, District Councils at the District level, and Municipal Councils at the Town level established under the Local Government Act 1997.1
- [14] Section 35 and Section 15 of the Land Act 2010 govern inheritance to Land. Section 35 applies where the deceased held land under a lease while section 15 applies where the land was held under allocation.2 Both sections permit the lessee3 and allottee4 respectively to designate an heir to the leased or allocated land during their lifetime.
- [15] Section 35(1)(a)(iii) provides for testate succession while section 35(2) provides for intestate succession as follows: 35(2) In the event of the lessee dying intestate-

- (a) where the lessee qualifies, the disposition of his interests in the land shall be governed by the written law relating to succession; or 1 Section 2 of the Local Government Act 1997 defines Local authority to mean Community, Rural, Urban, or Municipal Council 2 Allocation means rights held without a lease. 3 holder of a lease 4 Allottee is defined in section 2 of the Act to mean a person other than holder of a lease to whom allocation of land is made.
- (b) where the lessee does not qualify under paragraph (a), section 15(4), (5), and (6) shall apply as if he were an allottee and the Commissioner shall request the Registrar of Deeds to endorse any Registered lease or other Registered Document of title accordingly.
- [16] Section 15(3) reads as follows: 15 (3) Notwithstanding subsection (2), where an allottee of land dies, the interest of that allottee- (a) shall in the cases of spouses married in community of property and where there is no surviving spouse pass to the person designated by the deceased.
- (b) where paragraph (a) does not apply the interests of the deceased allottee shall pass to a person nominated as the heir of the deceased allottee by the surviving members of the deceased's allottee's family.
- [17] Regulations 43 and 44 of the Land Regulations 2011, sets out the procedure for the processing of heirship nominations as follows: "43.
- (1) Whenever an allottee dies intestate, the nearest relative or connection of the deceased or in default of any such relative, the person who at or immediately after the death has the control of the land formerly held by the deceased, shall within 6 months thereafter notify the allocating authority of the death. (2) The notice referred to in sub-regulation (1) shall show: (a) the date of the death of the deceased, place of origin, and the last place of residence of the deceased (b) the relationship of the informant to the deceased; (c) the name and sex of the heir of the deceased; (d) The names and particulars of the heir and whether the heir was nominated by the allottee or family members of the deceased allottee; (e) whether the allocated land is to be occupied by the spouse of the deceased and minor children of the deceased; and (f) relevant particulars to identify the locality of the allocated land. 44. (1) Upon receipt of the notice referred to in regulation 43(1) the Chairman of the allocating authority having jurisdiction shall publish the notice in such manner as he may consider reasonably adequate and most effective by posting the notice of the allocated land affected for the purpose of bringing it to the attention of all persons who may have claims or objections to claims and shall record the manner of such publication in records of the allocating authority.
- (2) Upon receipt of the notice referred to in Regulation 43(2), the Commissioner shall refer the matters to the chairperson of the relevant Allocating Authority who shall proceed as provided in sub regulation (1).
- (3) The notice referred to in sub regulation (1) shall in addition to the information required under regulation 43(4) contain the following: (a) name the place and fix the period at and within which claims and objections to claims may be lodged and such period shall not be

less than 6 weeks; (b) set the time and date thereafter when the hearing and examination of the evidence relevant to the disposition of the allocation will commence at the said place or any other place so specified. (4) An interested person may be given a reasonable opportunity to be heard, call and adduce evidence before the allocating authority and such person may be heard either personally or through his agent deputed in writing for that purpose. (5) The Chairperson of the allocating authority shall within seven days of its determination publish the decision and cause the register of allocations to be endorsed accordingly, and in the case of land held under a lease, the allocating authority shall forward its determination to the commissioner for issuance of a lease in accordance with the determination and subsequent forwarding to the Registrar. The parties' submissions

- [18] Having set out the relevant provisions, I proceed to summarize the parties' arguments on the jurisdictional point. [18.1] Advocate Setlojoane for applicants contended that although the family nomination is submitted to the allocating authority for purposes of re-allocation of the land, where an objection has been noted against the nomination, the powers of the allocating authority are limited. In his opinion the authority cannot determine the question of who between the disputing parties is the rightful heir. In addition, the allocating authority has no power to revoke the nomination made by the family council or pronounce on the legality or otherwise of a such decision nor declare a nomination as null and void. [18.2] Relying on *Moteane v Moteane and Others* LAC5, and *Shale v Shale*6, he further contended that where the family fails to reach an agreement regarding an heirship dispute, that dispute must be referred to an appropriate Court because only the Court is vested with power to declare heirship nominations invalid or to review family council's decisions. 5 *Moteane v Moteane and Others* LAC (1995 – 1999) 307 6 C of A (Civ) 35/2019 [18.3] He further contended that the family council is an administrative body whose decisions are reviewable by the Court. Accordingly, the filing of the objection with the allocating authority does not bar this Court from hearing and determining the matter. The Court therefore has jurisdiction over the matter.
- [19] Advocate Mariti for respondents argued that the present is essentially a review of untermiated administrative proceedings. Relying of several decisions including *Mabohlokoa Letsie-Rabotsoa v PS Ministry of Communications and Technology*7, *Mda and another v DPP*8, he submitted that it is only in exceptional circumstances of grave injustice that a court may interfere with legal processes/proceedings before tribunals or administrative bodies. Discussion
- [20] The purpose of the Land Act as explained in *C & S Properties v Khaketla & others*9 is to; " ... control, no doubt with anxious official care, the conferment of title to land" 7 CIV/APN/126/2021 8 LAC (2000-2004) 950 9 C of A(CIV) 63/11

- [21] Inheritance, as a mode of property transfer, entails the distribution and transmission of an individual's accumulated assets to his/ her heirs. As stated earlier, Inheritance to land is statutorily regulated. Regulations 43 and 44 of the Land Regulations prescribes procedural steps to be followed before transmission of interests and rights in land through inheritance.
- [22] After giving due weight to the submissions advanced by Counsel and after studying the relevant provisions of the Land Act, read with the Land Regulations, I am of the opinion that the Regulations disclose a clear intention by the parliament that disputes pertaining to land inheritance must be investigated and determined by the allocating authority before they are brought before the Courts.
- [23] The starting point of the process is reporting the death of an allottee or lessee to the relevant allocating authority as the proper authority vested with land-allocation powers. This is for the purpose of transmission of the deceased allottee or lessee's rights or, in other words re-allocation of the land to the heir.
- [24] The notice of death must contain information regarding the following matters; whether the deceased allottee or lessee is survived by a spouse, if not, who the heir is and whether he or she was designated by the deceased allottee/lessee or nominated by surviving members of the deceased's family.
- [25] It is also clear, in my view, that the submission of the nomination does not automatically entitle the nominee to transfer of rights. The passing of rights is preceded by an investigation and determination of any claims or objections by interested persons.
- [26] The investigation is commenced by publication of the death notice. The notice serves two purposes; namely
- (a) to publicize the death of the allottee and nominated heir; (b) to invite interested persons to lodge claims or objections to the proposed transmission of rights within the time specified therein. Where an objection or claim is lodged, the authority is obliged to inquire into and examine it by giving an opportunity to the objectors or claimants to adduce evidence supporting their claims or objections. After hearing the objectors or claimants, the authority must decide the matter and publish its decision within seven days.
- [27] The Land Court in *Tseliso Motebele v Mampho Matekase*¹⁰ Sakoane AJ (as he then was) interpreted regulations 43 and 44 to mean that the allocating authority is vested with the power to resolve disputes of land inheritance. The applicant in that case did not notify the relevant allocating authority about the death of the deceased allottee although he was confirmed as heir by the surviving members of the deceased's family. The Court held that ¹⁰ supra the provisions of regulation 43(a), (c), and (d) are mandatory and that the disputes about claims over land must be heard and resolved by the allocating authority in terms of regulation 44.

- [28] Although Advocate Setlojoane sought to distinguish the present matter from *Motebele v Matekase* based on the fact that the applicant in that case sought an order declaring him as the owner of land before complying with Regulations 43, I am of the view that the slight factual difference in *Motebele v Matekase* does not alter the position of the law on land inheritance; namely inheritance claims and disputes must undergo the regulations 43 and 44 procedure.
- [29] Similarly, in *Liphehlo v Liphehlo*¹¹ the Land Court, interpreting the predecessors of regulations 43 and 44, held that submission of the nomination to the relevant allocating authority is peremptory for purposes of examining evidence on the disposition of the allocation, and considering claims or objections to claims by any other interested persons before accepting the nomination and endorsing the Register of allocations. 11 LC/APN/2014[2015] LSHC 51
- [30] With this understanding in mind, I revert to the facts of the present matter. The applicants under prayer (e) seek an order reviewing and setting aside the allocating authority's decision to publish and advertise the 1st Respondent's heirship in respect of Plots 13293 – 144 and 13301 – 2883 on Lesotho Times newspaper dated the July 17th to 24th 2024 notwithstanding their objection. Under prayer (f) and (h), they seek orders reviewing and setting aside the 2nd to the 5th respondents' decision to nominate the 1st respondent as the heir to the estate of the late Thabo Augustinus Mosao; and an order declaring second nomination as null and void.
- [31] It will be observed from the pleaded facts that the second publication (the impugned July publication) is a separate publication concerning different plots, namely plots 13293-144 and 13301-2883; (which under the first family decision were given to the applicants) whereas the 21 June 2024 publication covers plots other than these two. No objection was filed before the allocating authority regarding the second publication.
- [32] Bearing these in mind, the sole question that must be answered in order to determine the jurisdictional issue is whether the applicants are entitled to bypass the Regulation 44 procedure and approach the Court instead? I think not.
- [33] The word 'shall' in regulation 44 confers, in my view, a legislative power and statutory obligation on the allocating authority to publicize the nomination of an heir in order to bring it to the attention of any interested persons before transmission of rights and interests in the land described in the notice.
- [34] Having received the applicants' objection to the first publication, the allocating authority must determine such objection. To do so, they must afford the objectors(applicants) an opportunity to adduce evidence in support of their objection.

- [35] Although the second publication covers two other plots not covered in the first publication, it appears to me that the impugned publication also stems from the second family resolution. Because the applicants' complaint is triggered by the second family meeting, I am of the view that their complaint will be sufficiently addressed in the hearing of the objection already lodged with the allocating authority.
- [36] Until the allocating authority has considered the objection and made a decision thereon as provided in regulation 44, the matter is not ripe for hearing before this Court because there are no jurisdictional facts permitting the Court to hear the matter. Disposal
- [37] For these reasons, I conclude that the having lodged their objection with the relevant authority, the applicants cannot abandon the rule 44 machinery mid-stream and approach the Court for determination of their dispute. Before determination of the dispute, the High Court is prevented from exercising jurisdiction over the dispute. The intention of the legislature is for those procedures to be followed first. Entertaining the matter in the circumstances would amount to by-passing or ignoring those procedures. order
- [38] For the above reasons, this Court declines jurisdiction to hear the matter and accordingly dismisses the application for lack of jurisdiction.

P. BANYANE JUDGE For Applicant : Advocate Setlojoane For Respondent : Advocate Mariti 23

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