



REPUBLIC OF BOTSWANA

IN THE LAND TRIBUNAL
HELD IN FRANCISTOWN

CASE NO: FLT LB 026/17

IN THE MATTER BETWEEN

ONTIBILE B. BAAKILE

APPELLANT

AND

TATI LAND BOARD

RESPONDENT

CORAM: B. Mokakangwe
G. Tobedza
J. Gabanamotse

APPEARANCES: O. B. Baakile (Appellant in person)
G. B. Habana (Respondent's Chairperson)
S. O. Pitinyane (Respondent's Senior Land
Adjudication Officer)

JUDGMENT

B. MOKAKANGWE

INTRODUCTION

1. The Appellant is challenging Respondent's decision of rejecting his application for a residential plot in Tatisiding village, on the basis that he already has a residential plot, registered under his names in Tumasera, Malete ward contrary to Botswana Land Policy of 2015.

BACKGROUND

2. The Appellant submitted an application for a residential plot in Tatisiding village to the Respondent on the 25th February 2000 and he was allocated a waiting list number 4395. The Appellant was invited by the Respondent for allocation interview on the 29th May 2017. At the interview the Appellant informed the Respondent that he had another residential plot at Tumasera, Malete ward.
3. The Respondent at its sitting of the 29th May 2017 considered the application and resolved to disapprove the application on the following grounds;

“...You have residential plot at Tumasera, Malete ward.

Botswana Land Policy states that (I) one is deemed to be allocated a plot if they have a lawfully acquired plot registered in their names (II) once a

person has a residential plot registered in their names, they will not be eligible for allocation of another residential plot...”

4. This decision of the Respondent was communicated to the Appellant by letter dated the 29th May 2017. The decision left the Appellant aggrieved hence this appeal.

APPELLANT’S CASE

5. Mr Ontibile Baakile’s assertion is that the Respondent erred both in law and in fact by refusing to allocate him a residential plot at Tatisiding on grounds that he has a residential plot at Tumasera, Malete Ward. The Appellant avers that he is entitled to be allocated a plot of his own because the one the Respondent referred to was been acquired through inheritance from his mother. He submitted that the application for inheritance was done in 2003 while still waiting for the response of his 2000 application from the Respondent therefore he should not be disadvantaged by the 2015 Botswana Land Policy. He argues that the Government Policy relied upon is not supposed to be construed to the effect that inherited plots constitute having been allocated in terms and according to clause 58 of the Policy. The Appellant further submitted that the Government Policy provides for each citizen to have a plot in tribal area and state land. His prayer is that Tatisiding being part of the Greater Francistown should be

regarded as state land and he should be allocated residential plot on that basis.

RESPONDENT'S CASE

6. Mr Habana the Chairperson for the Respondent in challenging the appeal submitted that the Appellant could not be allocated another residential plot at Tati Siding since he already owns a residential plot at Tumasera, Maletle Ward. The Respondent avers that as a custodian of Tribal Land in Tati Tribal area and being a public institution the Respondent accounts to the public by consistent application of prevailing policies and in this instance the Botswana Land Policy Clause 58 **(ii)** and **(iii)** was used. He stated that the Respondent in its execution of its functions ensures equitable land distribution. The Respondent referred the Court to a similar decided case of **KEHAKGAMETSE KUWANGU VS TATI LAND BOARD CASE NO. FLT LA 0012/16** and prayed for the appeal dismissal.

AREA IN DISPUTE

7. The Appellant wants to be allocated a residential plot at Tatisiding despite the fact that he owns another one in Tumasera. Appellant is of the view that Botswana Land Policy of 2015 is not applicable to his Case as the Policy came into effect after his application submission and therefore the said policy should not apply in retrospect. Furthermore, that he first made an application for residential plot at Tatisiding in

2000 while ownership of the inherited plot was vested in him in 2003 therefore, should not be used as hindrance for his allocation of a plot at Tatisiding. The Respondent, on the other hand, argued that it is entitled to apply policies that are in force at the time of the consideration of the application, and not at the time of the submission of the application. Respondent states that once allocated a residential plot you are not eligible to be allocated another residential plot as the current policy stipulates.

THE ISSUE

8. The issue is whether the Respondent's decision of rejecting the Appellant's application on the basis of the provision of the Botswana Land Policy is valid.

COURT'S ANALYSIS OF THE EVIDENCE

9. It is common cause that the Appellant has a residential plot registered under his names at Tumasera and was denied another plot at Tati Siding by the Respondent. The Appellant's application for another plot was considered within the framework of Botswana Land Policy of 2015. The Respondent put to use the Botswana Land Policy paragraph 58 **(ii)** and **(iii)** in determining the Appellant's application. The said Paragraph 58 of the Policy is reproduced hereunder:

“58. Residential Land; Shelter or housing is a basic need, and residential land is a pre-requisite to provision of shelter. As such the Government is committed to ensuring that each family is housed and further encourages home ownership. As land is a finite resource that may not be always available, measures will be put in place emphasizing access to housing without necessarily owning a plot to ensure equity and address this basic need, the following will apply;

- i Every Motswana will be eligible for allocation of residential plot at an area of their choice within the country;**
- ii One is deemed to be allocated a plot if they have a lawfully acquired plot registered in their names.**
- iii Once a person has a residential plot registered in their names, they will not be eligible for allocation of another residential plot.**
- iv Additional plots may be acquired through the private market, inheritance or other legitimate channels recognized in law and policy...”**

- 10.** It is not in dispute that Appellant acquired the Tumasera residential plot through inheritance from his mother. The lawfully acquired plot in Tumasera is registered under the Appellant's names and according to Policy this renders the Appellant no longer eligible for direct allocation by the Respondent. At this stage, Appellant is at liberty to acquire additional plot/s through the private market, inheritance and other recognized channels
- 11.** The Appellant stated that he applied for a residential plot at Tati Siding in 2000 and applied to register the inheritance plot in 2003, as such the inheritance plot should not be taken as an allocation. Paragraph 58 (ii) is clear in that one is deemed to be allocated a plot if the plot is registered in their name. Due to the fact that the Tumasera plot is registered in the Appellant's names he remains disqualified for the one in Tatisiding.
- 12.** The Botswana Land Policy emphasizes housing or shelter as a basic need, where home ownership is encouraged. Also the Policy views justice and equity in access to land as a need. Having admitted the propriety of the principle behind the Policy, the Appellant does not want the policies to be applied retrospectively. The Respondent on the other hand argued that they are obliged to use the available policies at the time of

consideration of application as disregarding them would be illegal. The Tribunal notes that the Respondent like any other public institutions accounts to the public by consistent application of available policies.

13. The Respondent cited the case **KEHAKGAMETSE KUWANGU v TATI LAND BOARD CASE NO. FLT LA. 0012/16** in their defense. This case is relevant to this matter at hand as the Appellant was challenging the decision of the Respondent to reject her application for allocation of additional plot at Tatisiding and the Tribunal upheld the Respondent's decision.
14. This Tribunal in the past has decided on numerous occasions on similar cases, confirmed the rationale for equitable land distribution as echoed by the Botswana Land Policy. The other decided case confirming the principle of equitable land distribution in residential allocations is **NTSILE KEOGOTSITSE V KWENENG LAND BOARD CASE NO; LT 057/2012**, which provided that in dealing with applications for the use of tribal land, Land Board should be guided by equitable considerations and bear the large interests of the society in mind. In the case, the court found that a Land Board could not be faulted for rejecting an application on the basis that the applicant owns another plot.
15. From the analysis of documentary and oral evidence submitted by the two parties, this Tribunal concludes that the

Respondent has properly and adequately determined the Appellant's application. Therefore, the Appellant's appeal is without merit and is liable to fail.

DETERMINATION

16. For all the foregoing reasons;

- (i) The appeal is **DISMISSED**.
- (ii) The resolution of Respondent is upheld and confirmed.
- (iii) No order as to cost is made.

The parties are informed of their right to appeal to the High Court within eight (8) weeks of delivery of this judgment if any feels aggrieved.

Delivered in Francistown this **27th day of September 2017.**

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B. MOKAKANGWE
PRESIDENT OF THE LAND TRIBUNAL