



**REPUBLIC OF BOTSWANA
IN THE LAND TRIBUNAL HELD AT MAUN**

Case No: MLT LB 066/17

IN THE MATTER BETWEEN

KOI BOLEBELO

APPELLANT

VS

TAWANA LAND BOARD

RESPONDENT

CORAM: N. C. Matsapola
D. Mpoloka
K. Moseki

APPEARANCES:

1. Koi Bolebelo (Appellant)
2. L. M. Lecha (Respondent's attorney)

JUDGMENT

N. C. MATSAPOLA

1. BACKGROUND

The Appellant Koi Bolebelo claims a residential plot that once belonged to her grandfather since 1975 in Tamma ward Gumare (through Bogosi). The original allocate having passed on in or about 2010.

The Respondent Tawana Land Board rejected the claim on the basis that there is no evidence of a *Letlotla* on the site and that the Tawana **Land Board Allocation Policy of Clause 9.0** states that;

No claim shall be entertained in respect of a *Letlotla* allocated by Kgosi or self and not used over a minimum period of five years.

The other reason was that the plot in question falls within the **Gumare Development Plan** and as a result in terms of the **Botswana Land Policy Clause 58(iv)** before residential plots are allocated, they must be planned and surveyed. These reasons for rejection were communicated to the Appellant in a letter dated 19th December 2016, following a resolution made at the Board's meeting of the 14th November-13th December 2016.

The Appellant, aggrieved by the Respondent's decision filed an appeal with the Land Tribunal.

2. GROUNDS OF APPEAL

i. That there was evidence that the plot was once occupied, it has livestock manure (motshotelo) where it used to be kraals, broken clay pots, holes where supporting poles for a hut and firewood ashes.

- ii.** That during the time of absence from the plot the Appellant was sick and therefore the rights of ownership subsist.
- iii.** That the Gumare Layout Plan found the Appellant's rights in existence and therefore the right subsist.

3. APPELLANT'S PRAYER

That the Gumare Layout Plan be disregarded and she be formally allocated the plot.

4. GROUNDS OF OPPOSITION

- i.** The Appellant has not adduced convincing evidence of any developments of a *Letlotla* being in existence at the alleged plot.
- ii.** The Appellant has not produced any evidence to the effect that he was ever allocated the plot in question, that she failed to produce a certificate.
- iii.** The Respondent's Allocation Policy at Clause 9 thereof provides that no claim shall be entertained in respect of a *Letlotla* allocated by a Kgosi or self-allocated and not used over a minimum of 5 years.
- iv.** The Respondent further contends that had the Appellant had a claim to the said piece of land she would have long stated such claim and not wait from 1997 to 2016. And furthermore, who used the said plot, allocated by who?

v. The Respondent contends that the said plot falls within the **Gumare Development Plan** where plots are pre-planned by way of layouts and thereafter advertised to the general public.

5. RESPONDENT'S PRAYER

That the Appellant's case be dismissed with costs.

6. ISSUES FOR CONSIDERATION

Whether the Respondent duly rejected the Appellant's claim for a *Letlotla*?

7. FINDINGS

The Appellant gave sworn testimony. There were a lot of inconsistencies in it,

We now proceed to analyse the said inconsistencies in the evidence adduced; we will first reproduce the relevant parts for consideration.

APPELLANT'S SWORN TESTIMONY IN EXAMINATION IN CHIEF

Respondent's legal representative:

When did your parents leave the plot?

Appellant's response:

They left in 2010.

Respondent's legal representative:

Do you remember what you told the Land Board when you had a meeting in Gumare?

Appellant's response:

I do not know the years due to my sickness

Respondent legal representative:

You told them the plot was last used in 1997.

Appellant's response:

No. They wrote what they wrote. I told them I could not remember the years due to my sickness.

Respondent's legal representative:

I put it to you that at the meeting held between 22nd August 2016 - 30th August 2016 you indicated that the plot was used in 1997.

Appellant's response:

I do know what the Land Board wrote. They spoke in English and I could not understand much of what they said.

Respondent's legal representative:

You have indicated that the Land Board could not visualise anything in the plot because it was destroyed by the animals.

Appellant's response:

Lethaka le jelwe ke mothwa,maotwana a tserwe ke batho .

Respondent's legal representative:

Are you changing what you told the Land Board?

Appellant's response:

No. They wrote what they wrote. They spoke in English. I have long said I do not understand English.

In the final analysis, on the question of when the plot was last used we arrived at a decision to disbelieve the Appellant. The Appellant came across as an above average literate witness who could answer all the questions asked in English, before the court interpreter could interpret in Setswana. However, each time the Respondent's legal representative sought to pin her to the answers given to the Board as recorded in the minutes she would somersault and state that she does not understand the concept of counting the years or remember what she had said nor appreciate the English language. This was a witness who tried by hook or by crook to depart from the Land Board minutes. We therefore find her credibility wanting and believe that she had told Gumare Sub Land Board that the plot was last used in 1997 as per the Board minutes of the 22nd August 2016 at page 6 and at page 102 of the Tawana Land Board minutes of the 14th November - 13th December 2016. Thus, from the date of abandonment 1997 to the date of the claim in 2015, eighteen (18) years had lapsed. When questioned on whether she knew that in 1976 (the period she claims her grandfather was allocated by Bogosi) the Land Board was already in existence and issuing certificates for the allocations made, the Appellant stated that her grandfather was not able to register his plot due to ill health. She further explained that the grandfather was issued with a certificate of allocation by the Kgosi. Later on, the Appellant changed her story again as demonstrated below:

Respondent's legal representative:

Where is the certificate?

Appellant:

I do not know where my grandfather kept it.

Respondent's legal representative:

Did your grandfather get proof of allocation from the Kgosi?

Appellant's response:

He went to see the Kgosi but they did not confirm the allocation. He was too slow.

Respondent's legal representative:

Where is the proof of allocation that your grandfather got from Kgosi?

Appellant's response:

It got lost with the trunk that it was kept in.

Respondent's legal representative:

But how do you reconcile the two statements, the proof of allocation having been given by the Kgosi and being lost in a trunk and there being no proof at all?

The Appellant was caught by surprise and could not respond to this question.

We therefore find that no certificate of allocation was ever issued to the Appellant's grandfather by the Bogosi or the Land Board.

While it would seem that this is a proper claim to be considered under either **Clause 9.0** or **Clause 5.0** of the **Tawana Land Board**

Allocation Policy, the following evidence excludes it from the purview of those provisions.

Respondent's legal representative:

Where exactly in Gumare did you father stay?

Appellant's response:

Where my grandfather stayed it was a cattlepost, with a yard there. We were in the outskirts of Gumare.

Respondent's legal representative:

Do you know how the moraka concept works, is it a temporary or permanent place?

Appellant's response:

I do not understand, we did not treat it as a temporary home, because we did not have any other home.

Respondent's legal representative:

Are homesteads at the cattlepost allocated by the Land Board?

Appellant's response

It was not a cattlepost. It was a kraal and a homestead. I now want it to make it permanent. It was our home, outside the periphery of the village.

The value and the impact of this piece of the evidence will be analysed below after analysing evidence given by AW2 Xhiywa Bolebelo on the same item; the description of the homestead. She gave unsworn testimony.

AW2 XHIYWA'S EVIDENCE

“Re ne re nna mo setsheng se, re tsena sekolo ko Gumare. Jaanong re hudugetse ko legaeng ka gore re ne re le ko nte ga motse. Mantu a rona a ne agilwe ka lethaka. A wele jaanong. Mapako a utswilwe ke batho”.

We understood this statement to mean;

We lived in that plot and went to school to Gumare. We have now relocated to the village because we were in the outskirts of the village. Our houses have fallen because they were erected with river reed. The supporting poles for the hut were stolen.

This piece of evidence ties well with and collaborates the earlier version of the Appellant's evidence that:

- i.** The plot in question was in the outskirts or periphery of the the Gumare village
- ii.** That the plot in question comprised of kraals and a homestead
- iii.** That now the village of Gumare has grown in extent to comprise of this plot.
- iv.** It was a temporary homestead that was later abandoned.

We therefore find that the plot being claimed was once a moraka or cattlepost located in the periphery of Gumare village. The Appellant is therefore claiming a Letlotla la moraka (cattle post ruins). We as a result hold that the Land Board has no business allocating cattleposts. To this date cattle post are self allocated and if a village expands to cover the area/plot used as a cattlepost the Land Board has no consideration to make. Therefore this claim was improper before the Land Board. We therefore dismiss this claim for

inappropriateness. Besides the Appellant stated that she was allocated a residential plot in or about 2015 which she has not been able to develop, to allocate her another plot would just unduly burden her and deny another citizen the opportunity to be timeously allocated a plot.

In the final analysis we therefore decide and Order as follows;

8. ORDER

- 1.** That this appeal is dismissed for want of merit. The Respondent's decision is confirmed but the rationale for that decision is varied as follows;

The Land Board has no power to allocate a cattlepost plot which the village extension covers.

- 2.** There shall be no order for costs.

Parties aggrieved by the decision have the right to appeal to the High Court within eight (8) weeks of the delivery of this judgment.

Delivered in an open Court this **28th** day of **March 2018**, at **Maun**.

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N. C. MATSAPOLA
PRESIDENT OF LAND TRIBUNAL