



REPUBLIC OF BOTSWANA
IN THE LAND TRIBUNAL HELD AT GABORONE

CASE NO: LTG 245/2015

In the matter between

KENEILWE BOTLHOLE

APPELLANT

And

MALETE LAND BOARD

RESPONDENT

CORAM:

S. B. Kaisara
G. T. Lecoge
N. Malibala

APPEARANCES:

1. Keneilwe Botlhole (Appellant in person)
2. Philda Kereng (Chairperson for Respondent)
3. Motlatsi Selelo (Vice-Chairperson for Respondent)

JUDGMENT

S. B. KAISARA

The Appellant is aggrieved by the Respondent's decision to reject his application for a residential plot following advertisement of 385 residential plots at Ramotswa. The basis of the rejection was that the Appellant failed to provide a descriptive response on the application form as required by the Respondent's selection criteria.

BACKGROUND

In November 2013, the Respondent floated an advertisement of 385 residential plots at Ramotswa, Taung and Mogobane. In response to the advert, 22957 applications were received. The Appellant is one of those applicants who applied to be allocated a residential plot.

At its meeting of the 8th October 2014, the Respondent extensively considered the 22957 applications and resolved to;

- Disqualify 21347 applicants because they did not meet the selection criteria set by the Respondent at the Special meeting of 14th January 2014;
- Shortlist 1600 applicants that met the criteria and were eligible for interview.

The Appellant's application fell within the category disqualified. Following the disqualification, the Appellant appealed to the Land Tribunal as per case No **LT 126/2015**. The matter was on 29th July 2015 remitted to the Respondent for the latter to afford the Appellant a hearing.

At a special sitting of 10th-24th August 2015, the Respondent re-considered the Appellant's application as follows;

“The application was disqualified because the applicant did not provide descriptive answers as he did not fully complete question 15.”

It is on the basis of this decision that the Appellant lodged the present appeal as per his letter dated 11th August 2015.

APPELLANT'S CASE

The Appellant confirmed that he applied for an advertised residential plot at Ramotswa. His application was rejected as he did not provide descriptive answers to Question 15 of the application form on possession of land rights. He argued that he his failure to provide any descriptive answer to the question was due to the fact that he did not possess any such right. The Appellant prayed that the court nullify the Respondent's decision as he did not have any land rights that could deny him allocation.

RESPONDENT'S CASE

The Respondent's chairperson, Ms Kereng confirmed that the Appellant applied for one (1) of the 385 advertised residential plots at Ramotswa. She stated that the public notice advertising available residential plots contained specific requirements to be met. Again applicants were advised to approach the Respondent's Public Relations Unit to assist with filling of application forms. Further that the Respondent had a vetting criteria approved at the sitting of 14th January 2014. In terms of the criteria, an application form had to be fully completed; therefore no question was to be left unanswered. Further descriptive answers were to be provided where a question could not be answered with YES or NO.

According to the representative, the Appellant's application was disqualified at the initial stage of vetting since he did not answer Question 15. The question required applicants to disclose plots that they possess. She said a response to Question 15 was meant to assist the Respondent in identifying and determining people who had plots against those who did not so that deserving applicants were given priority in allocation.

In conclusion, the representative prayed that the Respondent's decision be upheld.

ISSUE FOR DETERMINATION

The court is to determine whether the Respondent's decision to disqualify the Appellant's application on the basis that he did not provide a descriptive answer to Question 15 is valid.

COURT'S FINDINGS & DETERMINATION

The Appellant's application for an advertised residential plot at Ramotswa was rejected on the basis that the application did not meet the assessment and selection criteria set by the Respondent. The application was specifically disqualified as the Appellant did not write a descriptive answer for Question 15 on the application form.

Question 15 in the application form reads as follows:

“List any other land rights you possess anywhere in the country”

In terms of the application form filed, the Appellant did not answer the question. His explanation was that he did not have any land rights he could state. The Respondent's position is that it was important that applicants disclose land rights they possessed so that only deserving applicants could be considered for allocation.

The court notes that a public notice (advert) issued by the Respondent had a requirement which read as follows:

“Applicants who own plots in any part of Botswana shall not be considered regardless of mode of acquisition.”

In terms of ***Regulation 6 (1) of the Tribal Land Regulations*** an applicant for a customary land right shall *inter alia* furnish verbally or in writing the following particulars being on;

“what other land right the applicant possesses in the tribal territory or city or town”.

In the court's view, Question 15 in the application form was to assist with information of land rights held by an applicant in compliance with the Regulation cited above. The court also determines that it was reasonable for the Respondent to develop and implement a selection criteria to assist in choosing eligible applicants following receipt of an overwhelming 22957 applications for the available 385 residential plots. Refer to a case of ***Sekgwa and Maletse Land Board (2015) LTG 266/2015***.

Furthermore, the Land Board holds land in trust for the benefit and advantage of all citizens as depicted on **Section 10 of the Tribal Land Act (Cap 32:02)**. Responding to Question 15 was therefore vital as it placed the Respondent in a good position of ensuring that the Appellant fairly competed with other deserving applicants. As the Appellant failed to answer the question, the Respondent's decision cannot be faulted.

Consequently, the court finds that the Respondent's decision rejecting the Appellant's application was fair and reasonable and therefore should stand.

Accordingly, the appeal fails and it is **dismissed** with no order as to costs.

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

Judgment read in open court at Gaborone this **9th** day of **August 2017**.

S. B. KAISARA
PRESIDENT OF THE LAND TRIBUNAL