



REPUBLIC OF BOTSWANA
IN THE LAND TRIBUNAL HELD AT GABORONE

CASE NO: LTG 192/2015

In the matter between

TINNY T KWAPA

APPELLANT

And

MALETE LAND BOARD

RESPONDENT

CORAM: S. B. Kaisara
G. T. Lecoge
K. Rutherford

APPEARANCES:

1. Tinny T Kwapa (Appellant in person)
2. M. Selelo (Deputy Chairperson of the Respondent)

JUDGMENT

S. B. KAISARA

The Appellant is challenging the Respondent's decision rejecting her application for a residential plot in the Ramotswa area on the basis that she has a residential plot at Ranaka village in the Ngwaketse Tribal Territory.

BACKGROUND

In 2013, the Appellant applied for a residential plot in response to an advertisement for interested persons to apply for allocation of 385 residential plots in Ramotswa. At its meeting of 10th August–7th September 2015, the Respondent resolved on the application as follows;

“the application was disqualified because the appellant has a residential plot at Ranaka.”

The Appellant was aggrieved by this decision and she filed the present appeal by letter dated 15th June 2015.

APPELLANT’S CASE

The Appellant stated that it was irrational for the Respondent to use her ownership of the residential plot at Ranaka to deny her allocation of a plot in Ramotswa. She argued that the Ranaka plot though registered in her names, belongs to her children born outside wedlock. She emotionally narrated how the difficult circumstances surrounding her marriage warrant that she be allocated the plot applied for. She also said she has in the meantime through intervention of social workers secured institutional dwelling for her children outside the matrimonial home.

RESPONDENT’S CASE

The Respondent’s deputy chairperson confirmed that the Appellant applied for a residential plot in response to the 385 advertised plots in

Ramotswa. She said one of the allocation conditions was that applicants who already had plots would not qualify for allocation regardless of the manner of acquisition of such plots. This was intended to ensure equitable distribution of land as per Paragraph 4.0 and 5.1 of the Malete Land Board – Land Allocation and Management Policy no 1 of 2007. She said the only recourse open to the Appellant was for her to apply again to be placed under the waiting list. However, the Appellant was also at liberty to approach the Social Welfare Unit of the District Council for an appropriate recommendation for allocation as a special case.

ISSUE FOR DETERMINATION

The issue is whether the Respondent's decision to reject the Appellant's application on the basis that the Appellant already has a residential plot at Ranaka was valid.

COURT'S FINDINGS & DETERMINATIONS

In terms of ***Section 10 of the Tribal Land Act (CAP 32:02)***, the Land Board as the custodian of tribal land holds the land in trust for all citizens to promote their economic and social development. See the case of ***Kweneng Land Board vs Bosele Syndicate (2001) 1 BLR 2008*** at page **210**. Therefore in dealing with applications for the use of tribal land, the Respondent should be guided by equitable considerations and mindful of the large interests of the society. See also the Land Tribunal case of ***Gloria K Mngqibisa vs Kweneng Land Board – No LT142/2010***.

Therefore this court is called upon to determine the Appellant's eligibility for allocation on the basis of the above applicable policies.

Policy 5.1 of the Respondent states:

“All applicants with residential plots in any tribal territory in Botswana shall not be allocated residential land in the Ba-Malete Tribal Territory. Any person who has acquired land in any part of Botswana for residential purposes shall not be eligible for allocation regardless of whether it was a direct allocation, acquisition through transfer or inheritance.”

The Appellant applied for allocation of a residential plot in the Ramotswa, a peri-urban area where availability of land for development purposes can be highly constrained. The application was rejected on the basis that the Appellant holds a plot at Ranaka. By application of equitable consideration principles stated above, the court determines that the Appellant is disqualified from allocation. Further that it matters not that the Ranaka plot is earmarked for use by the Appellant's children; the paramount consideration is that the plot was registered in her names at the time her application was considered.

During the hearing of the case, the court observed that the Appellant could be facing marital challenges. However, the court agrees with the Respondent that it would be only proper that her situation is

channeled through the Social welfare office for an appropriate recommendation for consideration by the Respondent.

In conclusion, the court determines that the Respondent's decision was justified. In the premise, the Appellant's appeal fails and it is accordingly **dismissed** with no order 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