



REPUBLIC OF BOTSWANA

**IN THE LAND TRIBUNAL**  
**HELD IN FRANCISTOWN**

In the matter

**Case No. FLT LB 013/17**

Between

**BAALAKANI MALOMO**

**APPELLANT**

And

**NGWATO LAND BOARD**  
**TOLELANI BAGWISANYI**

**1<sup>ST</sup> RESPONDENT**  
**2<sup>ND</sup> RESPONDENT**

Coram: B. Mokakangwe  
G. Tobedza  
J. Gabanamotse

**APPEARANCES:** B. C. Malomo (Appellant's Representative/Father)  
O. Malomo (Appellant's Uncle)  
G. Kuswane (1<sup>st</sup> Respondent's Attorney)  
T. B. Bagwisanyi (2<sup>nd</sup> Respondent in person)

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## **JUDGMENT**

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**B. MOKAKANGWE**

1. The Appellant is challenging the 1<sup>st</sup> Respondent's decision of nullifying his ploughing field's certificate in Maitengwe/Dagwi area. The 1<sup>st</sup> Respondent's ground for the decision is that there was double allocation and that on the basis of the principle of first come first served the field belongs to the 2<sup>nd</sup> Respondent.

## **BACKGROUND**

2. The Appellant, applied for a ploughing field from the Tutume Sub Land Board and was allocated the field on the 27<sup>th</sup> July 2015. The 2<sup>nd</sup> Respondent previously applied for the same field which was allocated to him on 26<sup>th</sup> July 2012.
3. In July 2016, upon realising that there was a double allocation, the Tutume Sub Land Board invited the two parties to a hearing. The Sub Land Board resolved to cancel the Appellant's certificate on the basis of first come first served principle. The Appellant appealed the decision of the Sub Land Board to the 1<sup>st</sup> Respondent where at its meeting of the 21<sup>st</sup> November to 16<sup>th</sup> December 2016, the 1<sup>st</sup> Respondent resolved to dismiss the appeal on the grounds that:
  - **“Apply the principle of first come first serve. It is resolved that Tolelani Babuzani should retain the ploughing field as he was allocated on 26/07/2012 while Baalakni Malomo was allocated on the 27.07.15. Tolelani Babuzani submitted his application on**

**30.07.12 and Baalakani Malomo submitted on the 29.09.14.**

- **The Board resolved to nullify the certificate of Baalakani Malomo.”**

4. The decision was communicated to the Appellant through a letter dated 20<sup>th</sup> December 2016. Aggrieved by the decision, the Appellant registered this appeal on the 22<sup>nd</sup> March 2017.

#### **APPELLANT’S CASE**

5. The Appellant informed court that the decision of the 1<sup>st</sup> Respondent is unreasonable in that the ploughing field in question is in Dagwi village and as a resident of Dagwi who has been assisted to identify the field by a Dagwi land overseer, he must keep the field. Furthermore he stated that the issue is not about who applied first but rather that since the field in question is in Dagwi it should be allocated to a Dagwi resident. He also pointed out that the 1<sup>st</sup> Respondent’s decision is procedurally unfair as no consultation was done with the Dagwi land overseer or Chief prior to granting of the plot to the 2<sup>nd</sup> Respondent. He noted that the conduct of the Land Board and the conclusion it reached is engulfed with errors as dates and applicants’ names have been erroneously depicted. He concluded by beseeching the court not to allow him to be

punished for the mistakes of the 1<sup>st</sup> Respondent and order that he keeps the field.

### **RESPONDENTS CASE.**

6. The 1<sup>st</sup> Respondent's Attorney stated that its decision of cancelling the Appellant's certificate and allowing 2<sup>nd</sup> Respondent to retain the ploughing field is fair and reasonable. She stated that although a mistake was committed by the Land Board, the 2<sup>nd</sup> Respondent had applied and allocated first before the Appellant. The decision was based on the principle of first come first served and since the 2<sup>nd</sup> Respondent had applied and was allocated first he has to keep the field. Although the Land Board did not offer the Appellant an alternative plot, it is not averse to the idea in an effort to resolve the dispute amicably.
7. The 2<sup>nd</sup> Respondent informed court that he knows the field in question to be in Maitengwe and as such he must keep it since he originates from Maitengwe. He also brought to the attention of the court that in all the hearings on the matter, the Appellant never appeared but was always represented by his father. He stated that he shares the view of the Land Board that since he was allocated before the Appellant he must keep the field. He concluded by requesting court to protect the rights he has over the land in the spirit of fairness.

## **ISSUE FOR DETERMINATION**

- 8.** The Land Tribunal is to determine whether the decision taken by the 1<sup>st</sup> Respondent to cancel the Appellant's certificate based on the first come first served principle is valid.

## **COURT'S FINDINGS AND DETERMINATIONS**

- 9.** The matter is similar in many respects to the decided case of **Tapson Modongo v Ngwato Land Board Case No. LTP LB 015/17** except for the fact that in the matter at hand the Appellant is from Dagwi and the 2<sup>nd</sup> Respondent is from Maitengwe while it is vice-versa in the cited case. The court notes further that since Maitengwe and Dagwi are both within areas of Jurisdiction of both the 1<sup>st</sup> Respondent and Tutume Sub Land Board it matters not whether an applicant is from any one of the 2 villages. The eligibility criteria for ploughing field allocation includes citizenship and applicant's age, the number of plots in possession of the applicant and does not factor in the village of origin of the applicant.
- 10.** It is noted that the Land Board in its discharge of duties continues to commit avoidable errors such as double allocations. With the advancement in the Geomatics profession and associated technology together with the resources at the disposal of the Land Board, it is unacceptable for 2 people to be allocated the same plot in this day and era. The technology, if appropriately utilised does not permit allocation of the same

plot to two (2) or more people. Another contributing factor for the mistake the Land Tribunal notes, is the length of time the 2<sup>nd</sup> Respondent took in commencing developments in the plot. Had the 2<sup>nd</sup> Respondent embarked on significant development on the ploughing field immediately after allocation, the double allocation mistake would most likely not have occurred.

11. The principle of first come first served is a service policy whereby requests of customers or clients are attended to in the order that they arrived. In this instance the applications for parcels of land are attended to in the order in which they were received by the 1<sup>st</sup> Respondent. It is a universally accepted practice and the 1<sup>st</sup> Respondent cannot be faulted for its adoption. In the matter at hand the court finds that 2<sup>nd</sup> Respondent had applied before Appellant for the same plot, hence he is deemed to be the rightful allocatee.
12. It is against this background that although the 1<sup>st</sup> Respondent may have committed a mistake, the relief sought by the Appellant will not be in the best interest of justice. The court is persuaded to agree with the option of allocating the Appellant an alternative ploughing field plot as the most amicable solution under the circumstances. Accordingly the appeal fails. As a result the Court orders as follows:
  - (i) The appeal is **DISMISSED**.

- (ii) The Resolution of the 1<sup>st</sup> Respondent on the matter is upheld.
- (iii) The 1<sup>st</sup> Respondent is directed to allocate the Appellant an alternative ploughing field **within 3 months**.
- (iv) There is 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.

Delivered in Francistown this **30<sup>th</sup>** day of **August 2017**.

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**B. MOKAKANGWE**  
**PRESIDENT OF THE LAND TRIBUNAL**