



REPUBLIC OF BOTSWANA

IN THE LAND TRIBUNAL HELD IN GABORONE

In the matter between

Case No. LT 023/2014

KOOBONYE RADIPODI

APPELLANT

And

KWENENG LAND BOARD

RESPONDENT

Coram: S.B. Kaisara
G. T. Lecoge
G. Tobedza

APPEARANCES:

1. K. Radipodi (Appellant)
2. A. Baikakedi (In-house attorney of the Respondent)

JUDGEMENT

S.B KAISARA

The Appellant is challenging rejection of his application for regularization of an illegally occupied plot at Khudiring, (Block 5) at Mogoditshane on account of the 2009 Presidential Amnesty. The application was rejected on the basis that the Appellant holds another residential plot at Gabane, contrary to

the condition that in order to qualify for the amnesty one should not hold title to any other residential plot within 60km radius of Gaborone. The Appellant's position is that he holds the Gabane plot in trust and on behalf of his cousins.

BACKGROUND

In 2009, the President granted amnesty in respect of illegally occupied land in Mogoditshane area. In order to qualify for the amnesty, applicants had to meet certain conditions set out including the following;

“b) You are the illegal occupant and owner of the developments sitting on the plot in question;

c) You do not own nor hold title to any other residential immovable property in and around Gaborone, and specifically places falling under and within the 60km radius including but not limited to; Ramotswa, Boatile, Mmankgodi, Otse, Kumakwane, Gabane, Thamaga, Molepolole, Tlokweng and Mochudi”.

In terms of the investigations carried out by the Respondent as per the land occupation inventory project (2009) enquiry form dated 9th December 2010, the Appellant was identified as being in illegal occupation of the disputed plot. Consequently,

the Appellant was to be assessed for qualification in terms of the 2009 Presidential amnesty.

At its meeting of 3rd February–14th March 2014, the Respondent resolved on the matter as follows:

“The Board resolved that the applicant should vacate the illegally occupied plot within 30 days from today (04/02/2014) since he has a residential plot at Gabane which is within the 60km radius hence does not qualify for regularization

Aggrieved by the above decision, the Appellant then appealed to the Land Tribunal in terms of a letter received on 4th March 2014. In terms of the sketch plan filed, the disputed plot measures 810m². The plot occupies portions of plots 6490 and 6492 in the upgraded layout plan of the area. The plot has the following developments

- 2x 5 roomed houses(10rooms);
- 1 x3 roomed house;
- 2x Toilets;
- Storeroom;

APPELLANT’S CASE

The Appellant’s case is that he was given the disputed plot by Kenyaditswe Mantho from the latter’s field. He then proceeded to construct structures on the land. He built the 10 roomed

house in 1991 and the 3 roomed house in 1992. Whilst building the storeroom, the 1st Respondent directed him to halt further developments on the plot.

The Appellant also claimed that in 1994, he applied for a residential plot at Mogoditshane. In 2001, while following up on the application, the 1st Respondent informed him that his 1994 application could not be traced and he was required to write a letter stating that he had applied. According to the Appellant, in 2003 the 1st Respondent informed him that they would not deal with the 1994 application but would instead consider his application for the disputed plot. The Sub Land Board then in 2013 called him and informed him that his developments were sitting on two plots in the layout and the matter was then referred to the Main Land Board.

In 2014, the 1st Respondent advised him that he could not be allocated as he had a plot in Gabane. That was after he applied for regularization whilst awaiting feedback on the issue that his developments were occupying two plots. The Appellant conceded that his developments sit across two plots. However his argument is that plots 6487/6488 were regularized notwithstanding the fact that developments therein were sitting on two plots and the allocatee of those plots has other plots in Kumakwane and Gabane.

Concerning the Gabane plot, the Appellant stated that his grandmother registered the plot under his names to hold it on behalf of the other grandchildren as he had capacity to develop the plot. He said he was holding it so that the Land Board would not repossess it for non-development. The Appellant concluded that he invested a lot of funds in developing the plot in issue and prayed that he could be given a portion of the plot.

RESPONDENT'S CASE

Mr Baikakedi on behalf of the Respondent stated that the Respondent dealt with this matter at the meeting of 4th February 2014. The Appellant had applied of regularization in 2010 for an illegally occupied plot under the 2009 Presidential Amnesty. Counsel stated further that one of the conditions is that one may not hold another plot in and around Gaborone in terms of clause (c) of the regularization form. The Respondent observed that the Appellant had a plot in Gabane which he claimed to be holding for a certain Manyapelo Chepete.

Answering a question as to what happened to the Appellant's earlier enquiry for regularization, Mr Baikakedi said the issue was not discussed. He explained that all those who had structures in 1992 could be regularized under Kgabo report. He opined that the Appellant applied in 2010 as he did not qualify under the 1992 dispensation. If the Appellant had

structures, he would have applied for regularization under Kgabo report. He reasoned further that the present issue was about the 2010 application and if the Appellant wants to apply under the Kgabo report he could still do so.

In conclusion, Mr Baikakedi submitted that the Appellant should not be allowed regularisation as he is already housed. He prayed that the Appellant be directed to remove the structures from the disputed plot or the Respondent be allowed to remove them. Concerning the issue of regularization of plots 6487 and 6488, Mr Baikakedi undertook that the Respondent would investigate the matter.

ISSUE FOR DETERMINATION

The issue for determination is whether the Appellant's plot qualifies for regularization in terms of the 2009 Presidential amnesty granted to illegal land occupiers in Mogoditshane given that the Appellant owns a residential plot in Gabane.

COURT'S DETERMINATION

It is trite that the Appellant self-allocated the disputed plot as he was not allocated by the Land Board. The Appellant has therefore contravened the provisions of **Section 16 of the Tribal Land Act** which provides that you require a grant from the Land Board to occupy tribal land. In 2009 an amnesty was granted to illegal land occupiers; the court will therefore

consider whether the Appellant qualifies for regularization in terms of the 2009 amnesty. Clause (c) of the amnesty conditions provides that in order to qualify for amnesty one should not hold a residential plot within 60km radius of Gaborone including the listed villages.

In the present case, the Appellant revealed in the enquiry form that he has a plot at Gabane. The Appellant claims that he was given the plot by his grandmother to hold it on behalf of the other grandchildren. The court finds that the extent that the plot is registered under his names he cannot validly claim to be holding it in trust. It remains his plot. Therefore, the Respondent was right to reject his application on the basis that he is disqualified in terms of clause (c) of the amnesty.

The Appellant claims that he earlier applied for regularization under the Kgabo Report where the requirement was that one should have had developments as at 1992. This claim however does not come out clearly. According to the Respondent, the Appellant can still apply under the Kgabo Report and his application would be considered accordingly. That however would not affect the present matter as it involves the application of the 2009 amnesty.

Concerning the issue of plots 6487 and 6488 allegedly having been regularized despite developments sitting on two plots and

the holders having plots elsewhere; this will not assist the Appellant's case. The court notes that the Appellant was not even privy to the circumstances leading to the approval. We however trust that the Respondent as per its undertaking will investigate the matter and act appropriately.

In conclusion, the court observes that the Respondent had directed that the Appellant should vacate the disputed plot within 30 days. The court deems the timeframe to be too short considering the circumstances of this case such as the magnitude of the Appellant's developments.

In the premise, the court orders as follows:

1. The appeal is **DISMISSED**;
2. The Appellant is ordered to vacate the disputed plot and demolish all structures therein within **6 (six)** months of this order;
3. In the event the Appellant fails to demolish the structures as per clause 2 above, the Respondent is granted leave to demolish the structures and recover the expenses of doing so from the Appellant;
4. 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 open Court this **20th** day of **August 2015** at
Gaborone.

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S.B KAISARA
President of Land Tribunal