

THE LAND COURT OF LESOTHO (AN OVERVIEW)

It is a humbling experience for me to have been entrusted by the Chief Justice of the Kingdom of Lesotho with the mammoth task of addressing this distinguished forum. In this same vein, I wish to thank the organizers for the opportunity.

1. Introduction

This presentation gives an overview of how access to justice is enhanced through simplified court procedures in the Land Court of Lesotho, a specialized Court dedicated to the expeditious resolution of Land Disputes. The first part provides a brief background, highlighting events that informed the establishment of this Court, the parameters of the Court's jurisdiction, and the composition of the Court.

2. Brief background

Lesotho is relatively a small-sized country of about 30,355 square kilometers, with a population of about 2.3 million. Due to its small size, Lesotho's land is a scarce resource, exacerbated by the fact that

75% of the land area is mountainous and unsuitable for crop production. Taking into account Lesotho's colonial history, land, its control, ownership, and use are significant and sensitive issues for the Basotho People.

Before 2010, Land disputes were adjudicated by the Land Tribunal established by the Land Act of 1979. This Tribunal was centralized in the Capital City, Maseru, and its jurisdiction was limited to certain disputes. Because of these limitations, land disputes were sporadically instituted in different courts, namely, The High Court, the Magistrates Court, and the Basotho Courts (commonly known as the Local Courts) depending on the nature of the relief sought by the suing party. Consequently, the country experienced delays in the disposal of land disputes.

3. Establishment of specialized courts

In 2010, the Land Act 2010 was promulgated, repealing the Land Act, of 1979. The 2010 Act introduced significant reforms to Lesotho's land tenure system, chief among which was secured titles, to encourage Basotho to develop their land and use it as an economic

asset to reduce poverty. Considering this transformation to the land tenure and the existing impediments to the timely resolution of land disputes (alluded to above), one of the objectives of the Act was to expedite the resolution of these disputes.

To achieve this objective, the Act established specialized Land Courts, namely, the Land Court and the District Land Courts. These Courts have exclusive jurisdiction to hear and determine all claims and disputes concerning title to land, derogation from title, and interests overriding title. District Land Courts are available in all ten districts of Lesotho. The Land Court is a division of the High Court and is in the Capital City.

4. Jurisdiction and composition of the Land Court

The Land Court is composed of two judges assigned by the Chief Justice. The Court is conferred with a) original civil jurisdiction, b) appellate civil jurisdiction, and review Jurisdiction over the decisions of the District Land Courts. It has no criminal jurisdiction.

5. Rules of Practice and Procedure

The Land Court Rules of 2012 govern the practice and procedure in the Land Court. The Rules underscore the accessibility of justice, the affordability of judicial services, expedited hearing of cases, and the informality of legal procedures.

There are innumerable ways through which these Rules foster the accessibility of justice for all people, expedite hearings, and shorten the litigation process, thereby reducing the time lost to both parties involved in the dispute and the legal costs. They are as follows:

- Litigants can appear before the Court in person or through their duly authorized representatives. This can be a party's family member, including spouse, child, brother, sister, and parent or guardian.
- These rules are user-friendly, clear, and easy to read and understand.
- A person without sufficient means to pay prescribed court fees can apply to the Court to sue as a pauper.
- There are limited sets of pleadings filed in this Court.

- Technical procedural steps that often prolong the litigation process and increase costs are disallowed; conversely, the rules promote the hearing of the merits of the dispute. (For example, setting aside certain steps as irregular, is not envisaged by the rules).
- Importantly, the Rules reflect a major shift from the traditional adversarial case management which had left the pace of litigation primarily in the hands of legal practitioners. They transfer the responsibility for case management from litigants and their legal representatives to the Court.
- They substantially increased Judicial involvement in the management, supervision, and control of the cases before the court from the pre-trial stage to completion.

To expound on the practical application of these rules, I highlight the following procedural steps.

5.1 Pleadings

Action proceedings in the Land Court are initiated by filing an originating application. It does not need to be accompanied by an affidavit but must concisely state material facts, circumstances, and

other relevant matters on which the application is based. The respondent reacts by filing an answer within 14 days of service of the originating application.

To avoid the prolonged discovery of documents and to ensure that both parties are fully informed about the case they have to meet, these two sets of pleadings are accompanied by a list of documents on which the parties rely for their claim and defense respectively. Moreover, the parties must attach certified copies of documentary evidence in their possession. Where a party seeks to rely on a document in the possession of another person, the party must indicate this fact.

If a party intends to call witnesses at the hearing, they must attach a list of these witnesses and their particulars. The purpose for which they are to be called must also be stated.

A reply is filed only if the respondent's answer contains new facts that are relevant to the real issues in dispute.

5.2. The judge's involvement in the litigation process

The judge plays an active role from the early stages of the case. He/she is involved in planning and managing the case through a series of procedural steps and scheduling of hearing dates. For instance, amendments of pleadings and requests for additional particulars are made under the Court's supervision because a party intending to take such steps must first obtain permission from the Court. Moreover, applications of this nature may be made orally if the judge permits.

5.3 preliminary hearing

Within one month of the service of the originating application, the Court must hold the first preliminary hearing referred to as the 'first hearing'. This hearing enables the judge to familiarize himself with the case at an early stage, conduct an early examination of the parties and their respective cases, ascertain both the admitted and disputed facts, identify preliminary issues, and detect the potential for settlement.

At this hearing, the Court must give directions about the further conduct of the case. The Court must fix the trial date if there are no preliminary objections. Where preliminary objections are raised in a

special answer on grounds such as lack of jurisdiction, *res judicata*, or other permissible grounds, the Court appoints a date for the hearing of the objection (if necessary, it may allow the production of evidence as may be appropriate for the decision to be made on the objection).

After the preliminary objections have been decided, the Court must proceed to frame and record the real issues in dispute.

6. Trial procedure

Concerning the conduct of trials, the rules cover all the necessary steps in a trial, from commencement to completion. They indicate which party is entitled to begin, how the trial should commence (by making opening statements), the manner and order of producing evidence or calling witnesses, the form of questions allowed at all stages of the trial (for example, when leading questions may be asked) recall of witnesses, the purpose of cross-examination. etc. This step-by-step guide is easy to follow even for unrepresented litigants.

7. Conclusion

To conclude, the transition from lawyer-driven litigation to judicial case management has lubricated the wheels of the civil justice system and leveled the playing field for all litigants, represented and unrepresented alike. While recognizing that no system of rules is perfect, many Basotho have benefited from the simplified procedures in this Court and satisfactorily presented their claims and defence before the Court unassisted.

THANK YOU