

IN THE HIGH COURT OF LESOTHO

In the Application of :

PHOKA FOSA	1st Applicant
NOOSA MAHAO	2nd Applicant
THOZAMILE BOTHA	3rd Applicant

v

RAISAO NTSIKE	1st Respondent
LINUS THETSANE	2nd Respondent
THABISO MOLETSANE	3rd Respondent
MOTSARAPANE MOLAPO	4th Respondent
SEEPA NTSANE	5th Respondent
'NYALLENK MOKOALELI	6th Respondent
MOHAPI MALEFANE	7th Respondent
PATRICK MASUIKENI	8th Respondent
PHILLIP MAPETLA	9th Respondent
COBRI MASASIRA	10th Respondent
EVODIA MALEFANE	11th Respondent
ZWELAKHE MDA	12th Respondent
KARABO MAHAU	13th Respondent
M. RANKHELEPE	14th Respondent
N. LETIMELA	15th Respondent
'MOTA SEKONYELA	16th Respondent
KUTOANE KUTOANE	17th Respondent
M. FIEE	18th Respondent
TLOHANG SEKHAMANE	19th Respondent
N. U. L.	20th Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M.P. Mofokeng
on the 6th day of May, 1982.

This is an application, on notice of motion, for an order to hand over to applicants :

- (a) All the books and documents of the Students' Representative Council of the Students' Union of the National University of Lesotho:

/(b)

- (b) the keys to the Students' Centre, including those of the Students' Tuck-shop and the Bar;
- (c) the keys to the section of the Netherlands Hall in which musical instruments and other property of S.R.C. are kept;
- (d) the robe of office of the President of the S.R.C.; and
- (e) all other property and monies controlled by the S.R.C. on behalf of the Students' Union of the National University of Lesotho or in the possession of the S.R.C.

It is common cause that the applicants and two others were elected members of the interim students' Representative Council at a meeting on the 27th April 1982. It is also common cause that that election resulted from the adoption of a motion of no confidence in the then students' Representative Council. After the said elections the students body requested the 19th respondent to be present at the handing over ceremony (in what capacity it is not stated). But shortly before the handing over ceremony the 19th respondent was informed that two of the recently elected members of the students' Representative Council (hereinafter referred to as an Interim SRC.) had tendered their resignations. He then decided to go back to the students body to obtain further mandate. A notice to that effect was posted on the students Union notice Board. Despite the fact that that was only matter on the agenda, some of the respondents maintain that they were elected at such a meeting after a motion of no confidence was passed on a day old interim SRC. (This meeting was held on the 29th April 1982).

/It is

It is obvious that the meeting of the 29th April 1982 was not constitutional. It is not known in what capacity the 19th respondent presided over the said meeting. Further it is not alleged that that meeting had been convened by a proper person. (See Osman v Jhavary & Others, 1939 A.D. 351 at 359). If the 19th respondent was not the proper person then the convening of the meeting of the 29th April 1982 by him was improper and consequently, any decision taken thereat was null and void. Moreover, there is no allegation on the papers before me that the agenda had been amended. The only issue to be discussed was whether the handing over ceremony should take place in the absence of two members of the interim SRC due to their resignations. No other issues were to be discussed or introduced until the agenda had been duly amended. Further, it is also doubtful whether, in fact, the two members of the interim SRC. had resigned since the other members had not been notified. There is no averrement to that effect in the papers before me.

The main thrust of the argument for the respondents was that the election of the applicants was unconstitutional. The respondents conceded that their purported election was unconstitutional. The respondents went even further and conceded that the situation which faced the students body was not provided for in the constitution governing their affairs. The position, therefore, boils down to the simple fact that it was agreed that the election of the applicants would be an emergency measure-temporary in

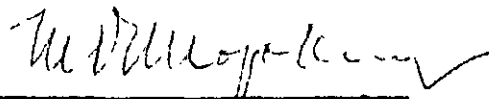
/nature

nature. The applicants are merely an interim body. The students body decided, in their wisdom, to invoke a procedure not provided for in their constitution. The interim SRC. (ie. applicants) were merely a caretaker governing body until a duly elected and constituted students' Represented Council would be elected. The students body would decide when that would take place. The students in this emergency situation took steps to avoid the creation of a vacuum and I do not think anybody can quarrel with that. However, one thing is quite clear and that is that the election of the interim SRC. was not contrary to the constitution whereas that of the respondents was null and void.

In the result the Court came to the conclusion that the order ought to be granted and it was accordingly so ordered.

The handing over of the property mentioned in the order was ordered to take place at 6 pm. yesterday ie. 5th May 1982.

The question of costs will be argued on a date to be arranged with the registrar.



J U D G E.

For the Applicants : Mr. Sello
For the Respondents : Mr. Monaphathi