

IN THE HIGH COURT OF LESOTHO

In the Application of :

LESOTHO FEDERATION OF TRADE UNIONS

Applicant

v

1. RAYMOND MOTHEPU	1st Respondent
2. PHILLIP PAMA	2nd Respondent
3. SIMON MOLETSANE JONATHAN	3rd Respondent
4. ROSE MALERATO MOTSETA	4th Respondent
5. LESOTHO COUNCIL OF WORKERS	5th Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 3rd day of November  
1983

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It is common cause that prior to, at any rate the 23rd January 1983, there existed in Lesotho two federations of Trade Unions, viz., the Lesotho Federation of Trade Union (LFTU) and the Lesotho Council of Workers (LCW). Each federation has its own constitution by which terms it is of course bound. A federation is defined in s.2 of the Trade Unions and Trade Disputes Law 1964 (Vol X Laws of Lesotho p 283) as "any combination or association of two or more trade unions which has a separate legal existence from the trade unions of which it is comprised".

The papers before me make it clear that since the year 1977 if not before (see Annexure B of the Founding affidavit and Annexures SMJ 1 2 and 3 of the answering affidavit) the leadership of the two federations were anxious to close ranks and several meetings of both federations had taken place with the object of creating one federation to which all the various

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trade unions comprising each would belong. The desire to unite culminated in a meeting on the 23rd January 1983 at Mafeteng (Annexure A to the founding affidavit) in which the leadership of the two federations declared that "we symbolically bury the Lesotho Council of Workers and the Lesotho Federation of Trade Unions and upon it erect the foundation of the Lesotho Federation of Free Trade Unions". It should be noted that the unified name of the proposed new entity was the same as one (LFTU) of the two federations with the addition of the word "Free". The paragraph is drafted in the present tense and a new "foundation" was yet to be erected.

The Trade Union and Trade Disputes Law 1964, *supra*, gives rights to, and imposes obligations upon, trade unions, which include inter alia, the right of two or more to form a federation (s.30) and the obligation to register with (and be recognised by) the Registrar of Trade Unions (s.7 et seq). No legal obligation to register apparently falls upon a federation but it is incumbent upon the individual trade unions in the event of two or more of them forming (or I suppose joining) a federation to comply with the provisions of the law. A federation cannot by law be formed unless each trade union meets, a ballot is taken in accordance with Regulation 12 of the Trade Union Regulations and a specified majority is obtained in each. (s.30(3)). When this event occurs the trade unions concerned must notify the Registrar of this fact giving him the name and the purpose of the federation (s.31(4)) on Form "O". A federation of trade unions is only then said to be in existence but not otherwise. It must be assumed for the purpose of this Judgment, and indeed it was not suggested otherwise, that the individual trade unions that formed the LFTU and LCW have complied with the provisions of the law prior to the dispute subject matter of these proceedings and that the Registrar is aware of their existence.

The applicant, LCTU, sought and was granted a Rule Nisi calling upon the respondents (LCW and four of its officers) to show cause why all should not be directed, inter alia, to stop

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holding themselves as the Lesotho Federation of Free Trade Unions and stop representing themselves as such. A plethora of documents (Annexures A B C D E F G in the founding affidavit and Annexures J K L in the replying affidavit) were annexed. The first four respondents (and by implication the fifth respondent) also appending many documents, contend that a "merger" was completed on the 23rd January 1983 by the Mafeteng declaration previously referred to (Annexure A) and that the applicant, and indeed the fifth respondent, have now "ceased to exist" and that (if I understand Mr. Sello correctly) even if they did not cease to exist the applicant is not entitled to the relief claimed because it has no locus standi and no copyright to the new name.

The affidavits and other papers show that the leadership of the two federations were not entirely sure if the proposed "merger" under one name will succeed in practice but were willing to try an experiment. On 14 November 1982 the "Action Committee" recommended 6 months for the preparation of a constitution and 12 months trial period (Annexure B) and the declaration of Mafeteng followed. Each federation however was to keep its own premises, its own post office box number, its own finances, and its own office bearers and staff. Executive decisions however were to be taken jointly. With this end in mind the name of the proposed single federation was circulated to various organisations and institutions, locally and internationally, as if everything was in fact accomplished. A constitution (Annexure E) was drafted with a number of matters left in abeyance. It was to be submitted for approval at a "delegates conference" to be held presumably within the 12 months trial period that is, by 23rd January 1984.

The final breach occurred at the end of August 1983 when the President and Secretary of LFTU wrote to LCW to say that they could no longer cooperate but left it to its individual trade unions to decide whether or not to leave LFTU and join LCW. That was well before the trial period agreed upon ended. The attitude of the LCW leadership was that the new federation was "already in existence"

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subject only to the approval of the "delegates" of the draft constitution in conference. There is nothing to support this stand. A conference was called for the 25th September (Annexure F) under the name of the new federation signed by the secretary of LCW on behalf of its leadership and an officer of LFTU (the only one who defected) was sent to trade unions to send delegates to a meeting point from whence they were to be taken to another venue. It was not disclosed where that venue was or which trade union was invited, which attended, and by whom.

It is my opinion that the Lesotho Council of Free Trade Unions does not exist either on the facts or in law : on the facts because the declaration of 23rd January 1983 (Annexure A) was no more than a statement of intent. The events that followed constituted a concerted attempt to work out a scheme that did not materialise: in law because a federation called the Lesotho Federation of Free Trade Unions can come about by statute only when two or more Trade Unions resolve to form a federation bearing that name after complying with Regulation 12 and notifying the Registrar which, if it happened, would be a different federation from the two federations LFTU and LCW. There is no evidence that this happened. If it did happen it is open to the federation with a similar name (undissolved or its constituent trade unions withdraw and fall below two) to object and to contest the choice of name by resort to the law. The statute law does not provide for the steps to be taken when two federations, as existing legal entities distinct from their constituent trade unions, wish to "merge". If, as Mr. Sello submits, these two federations are voluntary associations at common law, and can merge themselves under another name, the committee or executive body of each must abide by its constitution. What is certain is that the constitutions of neither federations provide for this possibility. It is not within the express or implied powers of their executive bodies which means that in the final analysis the leadership of the federations be they regarded as a creatures of statute or common law voluntary associations had first to go to their own constituent Trade Unions or members as the case may be for authority. This was not done certainly as far as the applicant

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is concerned. The individual trade union of each federation or the members of the associations hold the trump cards - not the federation's or association's leadership.

The Rule must be confirmed as prayed in terms of prayer 1(a)(b) and (d). I do not find it necessary to issue an order in terms of (c). No doubt as a news item it may be reported but there is the sanction of punishment for contempt of court if the respondents do not abide by the order.

M- S. COTRAN  
CHIEF JUSTICE  
3rd November 1983

For Applicant : Mr. Gwentshe

For Respondents: Mr. Sello