

IN THE HIGH COURT OF LESOTHO

In the Application of :

STEPHEN SIMON MOLEFI PHAKISI Applicant

v

LESOTHO EVANGELICAL CHURCH Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 23rd day of March 1983

The applicant Mr. S.S.M. Phakisi is seeking an order directing the respondent to allow him to attend and participate at all meetings of the Seboka or Executive Council thereof and enjoy all the rights and duties attached to being a member of the Seboka.

The respondent Lesotho Evangelical Church(the Church) oppose the application.

The papers are voluminous but the dispute is simple. Phakisi's home is in Mokhotlong and he is an elder of the Church in the parish bearing the same name which falls under the Presbytery of Loti I.

The supreme governing body of the Church is the Seboka and its affairs are governed by a written constitution. It is annexure D of the founding affidavit. Seboka consists of 72 members elected by various organs of the Church. The Presbyteries elect 48 members (s.18) and the number of persons elected to represent each Presbytery at Seboka meetings (once every two years) vary from 4 to 10 and depend on the numerical strength of congregations in the parishes (s.19).

Phakisi says in his founding affidavit that he was

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elected by the Mokhotlong parish to represent the parish at the Presbytery of Loti I and the latter elected him on the 17th January 1981 under s.122(g) of the constitution to represent that Presbytery at a Seboka meeting that was scheduled for the 22nd April 1981. He was excluded from that meeting. Section 122(g) provides :

" Duties and rights of the presbytery are :

(g) To elect representatives to the Seboka among its members."

Phakisi attributed his exclusion at this Seboka meeting to the following reasons :-

- (a) that it was an unconstitutional act in terms of s.122(g), and
- (b) that he was firmly of belief that it was based on animosity of the person who moved his exclusion because of alleged inhospitable reception of a Seboka delegation to the Presbytery of Loti I in January (para 8), and
- (c) that the person who introduced the motion was actuated by ulterior motives on account of Phakisi's "stance" in the case of LEC v Nyabela 1980(2) LLR 466. A letter circulated by a member of Seboka allegedly supporting Phakisi's beliefs is appended as annexure E2 (paras 8 and 10).

What actually happened transpired from the answering affidavit of the Church which was to the effect that the manner in which Phakisi came to sit on Seboka was unconstitutional in terms of s.13(a) as read with s.17(a) and (b).

Section 13(a) provides:

"Each and every parish is represented at the presbytery by four delegates; priest, one evangelist, and two members of the congregation". These latter two must be elders (Phutheho e Kholo).

Section 17 provides:

- "(a) At the meeting of Seboka(Synod) attends an equal number of priests to that of laymen.
- (b) Evangelists are included in the number representing the priesthood".

Phakisi is neither a priest nor an evangelist in the parish of Mokhotlong. Mokhotlong parish elected four elders to represent it at the Presbytery of Loti I Phakisi assuming the mantle of an evangelist and one other elder Ramasike(who was also excluded from the Seboka meeting of the 22nd April 1981) assuming the mantle of the priest.

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Phakisi's (and Ramasike's) election at the Presbytery to represent it at Seboka however was based on his status as elder so that for this election Phakisi reverted to his former true status.

The gist of the replying affidavit is that there is a shortage of priests and evangelists (there was one evangelist at Mokhotlong who refused to stand) in some parishes of the Church (a report to Seboka on the subject was attached to the reply and does indeed refer to the general difficulties of recruitment to the priesthood and to the evangelisthood) and that elders and even student theologians (whose names were mentioned) have been allowed to represent parishes at meetings of Presbyteries and no objection was raised by Seboka to this practice. Phakisi says he must have been singled out for the other reasons mentioned.

After the filing of the reply what was thought to be mainly a constitutional dispute with allegations of personal animosity and malice as side issues has been enlarged into something quite different, viz, whether Phakisi was excluded by a diabolical manoeuvre of an establishment prepared to prostitute the constitution if it suits its purpose and uphold it if it does not. That was not the original issue. This matter cannot be resolved on the papers (or perhaps on any papers) but by action - or a declaration. An attempt has been made to bring Phakisi's complaint within principles that have been enunciated in Nyabela's case, supra, but I think it is clear that the facts there bear no resemblance, or have any bearing, to what had befallen Phakisi. Nyabela's, supra, was a case involving disciplinary proceedings resulting in dismissal of a priest from a vocation or calling. There is no such thing here. The question that can be decided on these papers is whether the provisions of s.13(a) are mandatory or merely directory.

It seems clear to me that if ss 122(g) 13(a) and 17(a) and (b) are read together the election at grass root level, i.e. at parish level, must conform to s.13(a) in order to achieve the balance required by s.17(a) and (b). If not, it would be theoretically possible for three or four of the large Presbyteries to elect only elders (as s.122(g) permits them to do if literally interpreted) and thus stifle the working of

/Seboka

Seboka. The only reasonable interpretation that can be placed on s.13(a) is that the elected representatives of the parish must in fact hold substantive appointments of priest and evangelist respectively. The interpretation of Seboka to s.13(a) is not, at any rate, palpably perverse.

It may be that Phakisi's allegation that because of the shortage of priests and evangelists the election of elders have in the past been allowed is true. The Presbytery may then conceivably rectify the situation by ensuring that in the elections of representatives to Seboka there are enough duly elected priests and evangelists not to upset the balance required by s.17 but if the chairman of Seboka's allegation (though hearsay) had any basis of truth, i.e. that Phakisi had at the Presbytery of Loti I originally put forward his name for election to represent the Presbytery at Seboka on the basis of the status he has assumed, i.e. evangelist, and not on his actual status, i.e. Phutheho e Kholo, then surely there would be no need for s.17 at all.

Phakisi's exclusion can be treated no differently from that of a member of a club or association. A court of law will intervene if necessary but it does so sparingly and then for only clear and flagrant breach of the club or association rules. If there was breach of a well established convention this must form the basis of the application. If s.13(a) of the constitution has been allowed to lapse by its custodians as Phakisi makes plain in his reply, the remedy would lie within the Church itself, certainly in the first instance. Phakisi cannot rely on the lapse, if such was the case, to obtain redress when he has not suffered loss of office, or loss of status as an elder, or loss to his pocket and had not taken the matter up with Seboka as a preliminary issue, or had not made it plain in the founding affidavit that redress was impossible there and made this the graveman of his complaint justifying his bringing up the matter directly to Court.

I would dismiss the application with costs.

CHIEF JUSTICE  
23rd March, 1983

For Applicant : Mr. Moiloa  
For Respondent: Mr. Sello