



elected as a member of the National Assembly:

- (b) Declaring that Government Notice No. 102 of 1985 setting out the names of members allegedly elected to the National assembly and the constituencies represented by each of them is void and of no force and effect.
- (c) Declaring that John Teboho Kolane who is described as the Speaker of the National Assembly is in fact not the Speaker of any National Assembly properly constituted according to the laws of Lesotho.
- (d) Declaring that the contents of a document entitled "Supplement No. 1 to Gazette No. 55 of 11 October, 1985" and described as Act No. 1 of 1985 (the Parliament Amendment Act 1985), is not an Act of Parliament properly constituted according to the laws of Lesotho and consequently the matters contained in such document are not matters to which this Honourable Court ought to have regard.
- (e) Costs of suit against such of the respondents as may oppose this application.
- (f) For such further or alternative relief as the above Honourable court may deem fit."

The Respondents intimated their intention to oppose this petition and the answering affidavit was duly filed. The Replying affidavit was also filed.

In the interest of clarity it is perhaps necessary to mention that on 13th September, 1985 and following the 1985 General Elections in Lesotho the Petitioner herein instituted an urgent application against the first eight Respondents in which application he moved the High Court for, inter alia, an order couched in the following terms:

"(b) Permitting the applicant to present to this Honourable court within such extended time as to the court may seem just an election petition wherein the applicant will claim that the election to the National Assembly on the 14th August, 1985 of the first, second, third and fourth respondents was invalid and that each such respondent be deemed to have vacated his seat in the National Assembly."

The ground upon which the applicant proposed to base the contemplated election petition was that the four (4) constituencies viz. Maseru North, Maseru Central, Maseru South and Maseru East, in respect of which the first, second, third and fourth respondents were, respectively, elected members of the National Assembly did not in law, exist. The respondents could not, therefore, have been lawfully elected representatives of non-existent constituencies.

Notwithstanding opposition by the eight (8) respondents the application was, on 6th November, 1985 granted by Levy, A.J. on condition that the

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election petition would be instituted not later than 15th December, 1985. Consequently the present election petition, dated 11th December, 1985 was moved as aforesaid.

In as far as it is relevant the facts disclosed by the papers before me are that by Legal Notice No. 132 of 1984 the Interim National Assembly was dissolved with effect from 1st January, 1985, obviously in preparation for the General election in Lesotho. Indeed, the Chief electoral officer and the constituency Delimitation Commission were appointed by Government Notice No. 126 of 1984 and Legal Notice No. 1 of 1985, respectively .

In terms of the order made by the 1969 constituency Delimitation Commission the country had been divided into sixty (60) constituencies. That Order was published in the gazette under Legal Notice No. 33 of 1969. The petitioner was entitled to vote in the constituency styled Maseru No. 31. In terms of the order made under Legal Notice No. 64 of 1985, which was published in gazette No. 31 of 12th July, 1985, constituency No. 31 was split into four (4) constituencies viz. Maseru North, Maseru Central, Maseru South and Maseru East, by the 1985 Constituency Delimitation Commission. The Commission also altered the boundaries of all the remaining constituencies .

5/ On 17th and .....

On 17th and 18th September, 1985, General Elections were held in Lesotho. As a result the first, second, third and fourth respondents were, respectively, declared duly elected members of the National Assembly in respect of the Maseru North, Maseru Central, Maseru South and Maseru East constituencies. The 7th respondent and the respondents described as 55 others, being the 9th to 63rd respondents, were similarly declared elected members for the remaining 55 constituencies delimited in terms of the 1985 delimitation order.

In his election petition papers the Petitioner relied on the provisions of subsection (4) of section 17 of Parliament Act No. 5 of 1983 which came into operation on 1st August, 1984 in terms of the provisions of Legal Notice No. 87 of 1984. The subsection reads :

"4(4) Every order made by the Commission under this section shall be published in the gazette and shall come into effect upon the next dissolution of Parliament after it is made"

The content of the Petitioner, which content, however, disputed by the Respondents, was that if it became effective upon the next dissolution of Parliament after it was made it stood to reason that as of 1st January, 1985 the order made by the 1969 Delimitation was still effective and operative and was required to be utilised for the purpose of

6/ determining

determining the constituency boundaries for the next election planned for 1985. That being so, the order made by the 1985 constituency Delimitation Commission under Legal Notice No. 64 of 1985 published in gazette No.31 of 12th July, 1985 was invalid. The elections held in constituencies invalidly determined by the 1985 Delimitation was invalid. The sixty (60) persons purported to have been elected in respect of the 1985 Delimitation were likewise not validly elected members of the National Assembly and, indeed, the person they elected as the Speaker of the National Assembly (8th Respondent) did not in fact and in law occupy such a position. The petitioner submitted, therefore, that since the dissolution of Parliament on 1st January, 1985, no validly elected National Assembly had come into existence in Lesotho, nor had any Speaker of the National Assembly been validly elected.

It is perhaps convenient to mention at this juncture that it is common cause that the original application had to be brought to this court because time for instituting an election petition had lapsed and the validity of only the first four respondents was challenged. Leave of the High Court had, therefore, to be sought and obtained to file election petition out of time in respect of the first four respondents, the validity of whose election was challenged. No such leave was sought or obtained to file out of time the

7/ election .....

election petition in respect of the other respondents whose election as members of the National Assembly was not challenged in the original application.

If the other respondents were to be joined in this petition, it could perhaps be done under the provisions of Rule 8(5) of the High Court Rules 1980. The provisions of rule 8(5) of the High Court Rules have, however, not been invoked and rightly so, in my opinion, because this is not an Ex Parte application to the extent that it relates to the validity of the election of the respondents other than the first four, the election petition must in my opinion, fail for the simple reason that it is prescribed and no leave of the High Court has been sought or obtained to file it out of time.

It is to be observed that Legal Notice No. 31 of 1985 published in Government Gazette Extraordinary No. 12 dated 5th March, 1985 provides, in part:

- "1. There shall be a general registration of electors in the sixty constituencies as delimited by the constituency Delimitation commission in 1969.
2. (1) The delimitation made by the constituency commission in 1969 shall be used solely for purposes of registration of electors for the forth coming general elections in 1985
- (2) The constituency Delimitation of 1969

8/ shall .....

shall under no circumstances be construed as a delimitation for purposes of general elections and it is without prejudice to a consequent order by the constituency Delimitation Commission in exercise of the powers vested in it by section 17 of the Parliament Act 1983."

There can be no doubt, therefore, that in terms of the provisions of the above cited Legal Notice No. 31 of 1985 the constituencies determined by the constituency Delimitation Commission 1969 were to be used solely for registration of electors for the 1985 election. It was clearly enacted that the constituency Delimitation of 1969 would under no circumstances be construed as a delimitation for purposes of general election and it was without prejudice to a consequent order by the constituency Delimitation Commission (1985) in exercise of the powers vested in it by section 17 of the Parliament Act 1983. Following the enactment of Legal Notice No. 31 of 1985, on 5th March, 1985, it seems to me, the 1969 constituency Delimitation could not have invalidated the order made on 12 July, 1985 by the constituency Delimitation commission 1985,

It is to be observed further that Act No. 1 of 1985 which in fact operated retrospectively with effect from 1st July, 1985 amended subsection (4) of Section 17 of Parliament Act, 1983. The subsection (as amended) reads:

"(4) Every Order made by the commission

9/ under this .....



under this section shall be published in the gazette and shall come into force on the date of its publication.

It is to be remembered that one of the orders sought by the petitioner is that the above cited subsection is not a valid Act of Parliament and must, therefore, be ignored. The reason behind this contention seems to be that the 1985 Parliament which enacted the amendment had not been lawfully constituted. As it will be shown in a moment I am unable to find, on the papers before me any justification for holding that the 1985 Parliament was not lawfully constituted. The amendment of subsection (4) of section 17 of Parliament Act, 1983 cannot, therefore, be invalidated on that reason alone.

Assuming the correctness that the order made by the constituency Delimitation Commission 1985 was published in the gazette on 12th July, 1985, it must be accepted that its validity was governed by the provisions of the amended subsection (4) of Section 17 of Parliament Act, 1983 which had come into operation on 1st July, 1985. That being so, I am unable to agree with the Petitioner's contention that reliance should be made to the old provisions of subsection (4) of section 17 of Parliament Act 1983 to determine the validity of the 1985 Order.

I hold the view, therefore, that the Delimitation Order made under Legal Notice No. 64 of 1985 dated 12th July, 1985 was valid. The first, second, third and fourth respondents who were elected in constituencies that were validly determined by the Order were validly elected members of the National Assembly. The 8th respondent who was elected as the Speaker of the National Assembly by such members occupied the position in fact and in law.

That is, however, not the end of the story. By the enactment of ss.14 and 15 of the Lesotho (No.2) Order 1986 dated 4th March, 1986 the general elections of 1985 were declared invalid and Parliament dissolved. It is not disputed that the Petitioner has, therefore, been

granted, by process of law, the relief that he is seeking from the court. The only issue that remains for the determination of the court is the question of costs.

That the elections of the respondents, as members of the National Assembly, have been invalidated by process of the law has, in my view, no bearing on the fact that the Petitioner has failed to establish a valid case against the respondents and were it not for the enactment of ss. 14 and 15 of the Lesotho (No.2) Order 1986 his election petition would have been dismissed thus entitling the respondents to costs thereof.

In the circumstances I consider it only fair that the respondents should be awarded costs of this petition and it is accordingly ordered.

B.K. MOLAI  
JUDGE

22nd August, 1988.

For Applicant : Mr. Unterhalter  
For Respondent : Mr. Muguluma.