

CIV\APN\165\91IN THE HIGH COURT OF LESOTHO

In the matter between:

LESOTHO POULTRY CO-OPERATIVE SOCIETY

Applicant

and

THE MINISTER OF AGRICULTURE
THE REGISTRAR OF CO-OPERATIVES
THE ATTORNEY-GENERAL1st Respondent
2nd Respondent
3rd RespondentJ U D G M E N TDelivered by the Honourable Mr. Justice J.L. Kheola
on the 28th day of June, 1991

The order has already been granted declaring that the special general meeting of the Lesotho Poultry Co-operative Society Ltd., convened by the first and/or second respondents for the 29th June, 1991 is unlawful and the respondents are interdicted from proceeding therewith or calling a similar meeting. Costs were awarded to the applicant.

The facts of the case are that by a letter dated the 12th April, 1991 the second respondent wrote to the applicant and the constituent members of the society, a federal body, advising them that the first respondent had directed the Registrar of Co-operatives to convene a special general meeting of the applicant to

be held on the 29th June, 1991 in Maseru for the purpose of electing a new Executive Committee for the applicant. The Registrar of Co-operatives stated that the first respondent was acting in terms of the powers conferred upon him by section 10 of the Co-operatives (Protection) Act No 10 of 1966 (The Act).

In his founding affidavit Makhaola Nkai Leretholi who is the chairman of the applicant avers that the powers conferred on the first respondent by section 10 are restricted to the bona fide purpose of ensuring that a society performs a function that it has omitted to perform in terms of the law. The section is intended to enable such meeting to hold discussions not to conduct elections.

In his opposing affidavit Ernest Pakiso Moeketsi who is the Registrar of Co-operatives avers that section 10 of the Act states that the first respondent can direct as to what has to be discussed in a special general meeting.

It is convenient at this stage to look at the provisions of section 10 of the Act which read as follows:

"(1) The Minister may at any time, notwithstanding any rule or by-law prescribing the period of notice for a general meeting of a registered society, order the Registrar to convene and preside over a special general meeting in such manner and at such

time and place as the Minister may direct, and the Minister may specify what matters shall be discussed at such a meeting. (My underlining)

- (2) A meeting convened under subsection (1) shall have all the powers of a general meeting convened in accordance with the by-laws of the registered society concerned.
- (3) In the case of a special general meeting referred to in subsection (1), the Registrar -
 - (a) shall be entitled to direct the meeting to proceed, notwithstanding the absence of a quorum as prescribed in the by-laws of the registered society concerned; and
 - (b) shall not be entitled to vote except on an equality of votes in which case he shall have a casting vote.
- (4) The Registrar may delegate to any person any or all of the powers conferred on him by this section."

It seems to me that the first respondent is empowered by section 10 of the Act to convene a special general meeting and he is given a discretion to specify what matters shall be discussed at such a meeting. In other words the meeting is intended for the holding of a discussion by the people who have been invited. The word "discuss" involves some debate or to examine by argument

whatever matter has been specified by the first respondent. He is not empowered to direct what is going to happen at such a meeting as he has done by ordering that elections of the Executive Committee shall take place at such a meeting. I think what he ought to have said was that at such special general meeting a discussion shall be held concerning the holding of an election of the new Executive Committee. He cannot dictate to the members as to what shall be done at such a meeting but can and is empowered to dictate as to what shall be discussed. Specifying that an election of members of the Executive Committee shall be done at such a meeting does not mean any discussion at all. I am of the opinion that the first respondent acted contrary to the powers conferred upon him by section 10 of the Act. His action is null and void.

I did state that if the first respondent intended to get rid of the Executive Committee of the applicant he could have resorted to section 11 (1) and (2) of the Act which provide that -

"(1) If the Minister is of the opinion that the committee of a registered society is not performing its duties properly, he may after giving an opportunity to the committee to state its objections to the Registrar, and after considering those objections, (a) take no action, or (b) dissolve the committee by order in writing and appoint a suitable person or persons to

manage the affairs of the society for a specified period not exceeding two years:

Provided that the period specified in such order may, at the discretion of the Minister, be extended from time to time: but so that the order shall not remain in force for more than four years in the aggregate.

- (2) If such an order is made in terms of subsection (1) the Minister shall by the same or subsequent order appoint one or more fit and proper persons to manage and administer the affairs of the society and may from time to time remove or replace any person or persons so appointed."

Regarding subsection 2 of section 10 of the Act it is unfortunate that the parties did not find it necessary to provide the Court with a copy of the by-laws of the applicant. It was necessary to do so in order to enable the Court to know what the powers of a general meeting are.

In the result the application was granted as prayed with costs.

J. L. KHEOLA

JUDGE

12th September, 1991.

For Applicant - Mr. Sello

For Respondents - Mr. Putsoane.