

IN THE HIGH COURT OF LESOTHO

In the matter between:

THETSANE ENGLISH MEDIUM SCHOOL	1st Applicant
CHRISTIAN ASSOCIATION OF LESOTHO	2nd Applicant

and

KHAOHANO S. MOKHOTHU	1st Respondent
LUCIA RANKAE	2nd Respondent
CALEB MOKOENA	3rd Respondent
MRS P. HLATSWAYO	4th Respondent
STANDARD BANK PLC	5th Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 5th day of July, 1991

On the 18th March, 1991 the applicants obtained ex parte  
a rule nisi calling upon the respondents to show cause why:-

1. (a) First, Second, Third and Fourth Respondents shall not be directed to vacate the school premises of the Thetsane English Medium School situated at the Apostolic Faith Mission site near the National Teacher's Training College in the Cathedral area of Maseru City.
- (b) First, Second, Third and Fourth Respondents shall not account to Applicant for all the monies collected between December 1990 and March 1991.

- (c) The Bank Account opened with the Standard Bank PLC Maseru (the Fifth Respondent) shall not be frozen.
  - (d) The Fifth, Second, Third and Fourth Respondents shall not be restrained from turning Thetsane English Medium School into a Community School contrary to its Constitution.
  - (e) The First, Second, Third and Fourth Respondents shall not return the property of Thetsane English Medium School to its proprietor the Christian Association of Lesotho (Second Applicant) and the Board of the First Applicant (Thetsane English Medium School).
  - (f) First, Second, Third and Fourth Respondents shall not pay the costs of this application.
2. That prayers 1(a), (b), (c), (d) and (e) operate as an interim interdict pending the finalisation of this application.

The fifth respondent has not filed any opposing a papers and it can be inferred that it will abide by the order of Court. The other respondents are opposing this application but only the first respondent filed an answering affidavit. On the 19th April, 1991 I granted an application that the present application be converted into a trial because I formed the opinion that there was a dispute of fact concerning the ownership of the school and a substantial amount of money in the fifth respondent. Mr. Hlaoli, attorney for the respondents, submitted that the applicant ought to have instituted an action because he must have foreseen that there was going to be a serious dispute of fact. He also submitted that there was no urgency in the matter. I do not agree with him because there is a large amount of money involved. The applicant

was entitled to restrain the respondents from having access to that money. If he instituted an action it is possible that by the time the action is heard the money would have been all withdrawn and used. I exercised my discretion in terms of Rule 8 (14) of the High Court Rules 1980.

In his founding and replying affidavit as well as in his oral evidence Subhuza Sopeng deposed that the Thetsane English Medium School (TEMS) was founded by himself, Rev. Nthabane and one Venkiah. In this exercise they were supported by a number of churches including Methodist Church of Southern Africa, Lesotho Field of Seventh Day Adventists Church, Apostolic Faith Mission, Anglican Diocese of Lesotho and Assembly of God of Lesotho. The Christian Association of Lesotho was registered under No. 89/79 in Register of Societies by the Registrar-General on the 8th November, 1989. Its aim was to foster and to promote educational, social and charitable activities amongst various religious denominations in Lesotho (See page 71 of the record). Mr. Sopeng deposed that TEMS is owned by the Christian Association of Lesotho (CAL) and refers to the Constitution of the TEMS in which clause 4 clearly states that the proprietorship of the school shall be in CAL.

Mr. Sopeng deposes that at the present moment TEMS operates at a site of the Apostolic Faith Mission of Africa (AFM) sub-leased by the CAL. The agreement of the sub-lease appears on page 127 of the record. The sub-lessor is AFM represented by Rev. L.C. Mphosi and Rev. C.M. Seutloali. The sub-lessee is CAL represented by R. Venkiah.

Mr. Sopenge alleges that the building at which TEMS operates was erected by CAL. In this regard he refers to the waybill No. 25908 dated the 24th January, 1990 issued by Fabricated Steel Manufacturing Co. (PTY) LTD and addressed to CAL, P.O. Box 714, Maseru 100. Lesotho. These prefabricated structures were received by the 1st respondent on the 25th January, 1990. A cheque for the amount of R23, 275-00 was issued for payment of the prefabricated structures.

TEMS was founded in July, 1989 and has been recommended for approval or registration by the Ministry of Education at its 19th meeting held on the 8th June, 1990. The minutes of that meeting are on page 121 of the record. Item 2.1.5 reads as follows:

"Thetsane English Medium

"The site has already been identified by the Interior and Town Planning Authorities. The Highlands Authorities and Ministry of Education have to make negotiations for funds and donors to start buildings so that when the Project takes off the school is ready to start.

Action: recommended."

During December, 1990 there was a shortage of funds due to failure of parents to pay over M8 000-00 in school fees. There had also been a theft of M5 800-00 which the police are still investigating. The respondents and some five people who claimed to represent the parents came to him (Mr. Sopenge) and assured him that they had

collected and deposited money in Lesotho Bank which is TEMS bank account. He was asked to sign the cheques so that the teachers could be paid. Mr. Sopenng deposes that by this act of coming to him without going through the Headmaster, he was not aware that respondents had in fact taken over the control of the school contrary to the school constitution. When he tried to resolve the misunderstanding between the respondents and the headmaster, respondents refused to attend the meetings he had convened. The CAL had directed that in the interim the Headmaster Mr. Venkiah should not attend to school business until the problems of the school had been solved.

In January, 1991 Mr. Sopenng discovered that money was no longer being deposited in the bank account of the school at Lesotho Bank. As a result of this he realised that a lot of cash was being kept and used to pay teachers. The matter was reported to CAL and after deliberations it was decided that a letter be written to the School Management Committee. It reads as follows:

P.O. Box 714,  
MASERU 100  
LESOTHO

11th February, 1991.

To The School Management Committee,  
Attn: Mr. K.S. Mokhothu,  
Thetsane English Medium School (TEMS)  
MASERU

/6.....

Dear Sir/Madam,

The Board of Directors of the Christian Association of Lesotho (CAL) whole heartedly accepted to intervene when some parents and Committee members solicited assistance from its President, S. Sopeng, in December, 1990, to solve certain management problems of the TEMS.

After the initial steps were taken to defuse the situation, the CAL convened a meeting with Committee members and Parents' representatives before the school opening date, to attempt to solve all other outstanding school problems. After our first successful meeting, follow-up meetings were scheduled and unanimously agreed upon on 21.01.91, 31.01.91 and 07.02.91 where CAL officers explained thoroughly its position in relation to the school and produced legal documents.

The CAL feels very much concerned about the continued state of insecurity in the use of money by the Committee on cash basis, and in certain procedures of management currently being practised in the school.

The CAL has furthermore undertaken steps to secure another site for TEMS as the one we had negotiated with the AFM will not be available after 1991. The CAL has also undergone administrative expenses to safeguard and protect the interests of the School.

In view of the above, we are advising the TEMS Management Committee

- 1) to ensure that all school funds are deposited in the TEMS Bank account and make all expenses by cheque. We do not approve of teachers' salaries and other expenditures being paid in cash.
- 2) to forward to the CAL a) the 1990 Audit report, and b) submit quarterly financial statements for 1991.
- 3) to forward to the CAL all the minutes of the Management Committee and Parents Meetings.
- 4) to honour the December 1990 salary of Mr. and Mrs R. Venkiah, as well as the January and February rent of the house they live in.
- 5) to honour the 5% of fees contribution to the CAL to be paid quarterly, for administrative purposes on behalf of the TEMS, as mentioned in our two previous meetings. Therefore the first contribution is due immediately and others in 1st April, 1st July and 1st October.

We hope to rely on your cooperation and a swift response to the above requirements. We also want to commend the Committee for the good work done so far.

Yours faithfully,

Rev. S.E. Nthabane (Secretary).

On Monday 18th February, 1991 he discovered that the respondents had opened another bank account with the 5th respondent in the name of Thetsane English Medium Community School. Following the opening of this unauthorised account CAL decided to dismiss the 1st respondent. He refused to vacate the school premises and refused to hand over the school property to the appointee of CAL. He says that he knows the TEMS constitution which appears on page 14 of the record. Mr. R. Venkiah is the founder of the TEMS. He (Mr. Sopeng) is the coordinator and Chairman of the Board of Directors. He denies that the 1st respondent first heard of him when cheques were to be signed. He says that on the 6th November, 1989 he introduced the 1st respondent as one of the signatories of the TEMS cheques. The letter of introduction in Annexure "J1" on page 119 of the record. It is followed by a Lesotho Bank Form LB56C which appears on pages 120-21. ON the 9th December, 1990 the 1st respondent, 2nd respondent and one Miss Moruthoane came to him and alleged that there were problems in the school because Mr. Venkiah was refusing to sign cheques. He signed those cheques. Early in January, 1991 the Management Committee informed him that they had dismissed Mr. Venkiah because he wanted to dismantle the prefabricated building of the school. Mr Venkiah made the threat because a group of parents wanted to change the school into a community school.

He informed that group of parents that the school was owned by CAL. The parents claimed that the school was owned by a community of parents. Mr. Sopeng admitted that when the school was opened CAL was not yet registered.

In his affidavit Rajendrah Venkiah deposes that he was the Headmaster of TEMS. He was the person behind the formation of CAL and the TEMS. When the management problems of the school arose CAL requested him to keep away from the school so that it could sort out those problems. At that time no one was aware that the respondents intended to seize the school and alleging it was a community school. The school was never a community school. He deposes that the constitution annexed to 1st respondent's answering affidavit as Annexure 11 on page 35 of the record which states in clause 3 that the proprietor of the school is Thetsane English Medium School (Community), is not the constitution on which the school was founded. He does not know the author of that constitution and how it got to the Ministry of Education. The correct constitution is Annexure A to Sopeng's affidavit on page 14 of the record which states that the proprietor is CAL. He first discovered in a meeting held in December 1990 that the 1st respondent intended to turn the school into a community school. He was made Headmaster by CAL and not by a group of parents. Application for permission to open the school was made even before CAL was registered. He avers that he got the support of all churches in writing for an inter-denominational school to be founded by the CAL. Respondents took advantage of his problems in running the school to seize it under the guise that it was a community school.



The 1st respondent deposed that the 1st applicant is a community school. Its proprietor is The Thetsane English Medium School (Community). Its constitution is Annexure "KM2" on page 55 of the record which is dated the 30th January, 1990. The sub-lease between AFM and CAL was fraudulently arranged by Venkiah. That sub-lease has now been terminated by the landlord. The school is now run on the same premises by parents as a community school. He admits that parents went to Sopeng <sup>pe</sup> not that he must intervene but to sign their cheques to pay teachers and to remove his signature from the school's bank account as they were never aware that Venkiah had made him an alternative signatory. Sopeng never signed any cheques before and was only discovered during the crisis of Venkiah's resignation. The alternative bank account was opened because Sopeng refused to sign the cheque nor to remove his signature from their account which for the first time they discovered that Venkiah had opened in the name of CAL and made Sopeng a signatory without their authority. The respondents have nothing to do with CAL and have never been appointed by or been responsible to it. CAL has never attended any of the parents' meetings nor has it ever demanded any reports from them as the management committee appointed by parents.

1st respondent deposed that the prefabricated structures were ordered by Venkiah who pointed out that the sellers were not prepared to deal with an unregistered organisation and an accommodation arrangement was made that the order should be made in the name of CAL. See Annexure "N" on page 132 of the record. That document

shows that the order was made by Pastor Wentzel of the AFM. He knew Sopeng as an honorary patron. The coopted him to that position because as Mayor of Maseru he would help them get a site for their school. He, however, noticed when he signed the bank papers that Sopeng signed as Chairman, Board of Directors. He thought everything was in order when Sopeng signed as chairman. 1st respondent deposes that he never approved when Mr. Venkiah ordered the prefabricated structures in the name of CAL as well as when the sub-lease was made between CAL and AFM. He associated with the decisions because Mr. Venkiah said that these things had to be done in the name of a registered organisation. He was not aware that by doing all these things Venkiah was turning the school into the property of CAL.

The evidence of the 2nd respondent confirms what the 1st respondent has already said. The school was formed by a number of parents who organised themselves for its formation without the assistance of CAL. The school management committee appointed by parents is the supreme governing body. The management <sup>committee</sup> of which she is a member has practically nothing to do with CAL. The first time she saw Sopeng was in November, 1990 when a cheque was lost. She found that Sopeng had been one of the signatories to their school account. He was asked to remove his name from their account but he never did so.

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The evidence of Mr. Moima is that the application pending before the District Advisory Committee on Education is that of Thetsane Community. The constitution which he knew was that appearing on page 55 of the record which was received by his office on the 9th February, 1990. It is dated the 30th January, 1990. When it was suggested to him that there was an earlier constitution filed in his office accompanied by a formal application to open TEMS, he said he was not aware of it because his file was torn and a number of papers were missing. He was given a chance to go back to his office and make a proper search. On the following day he brought another constitution appearing on page 14 of the record. The date on the date-stamp is not clear at all but the number 24 is clear. The application letter is dated the 24th May, 1989. It is clear that the application and the constitution were received on the same day.

The first question to be decided by the Court is whether Mr. Sopeng was authorized by both applicants to institute these proceedings. On page 11 of the record there is a document termed "Extracts of the minutes of the Christian Association of Lesotho on 20th February, 1991 at Morija. Present at that meeting were R. Venkiah, S. Sopeng and Rev. S.E. Nhtabane. Mr. Soepng was authorized to make this application. It seems to me that that authority is good.

The second document is also an extract of the minutes of the extra-ordinary meeting of the Thetsane English Medium School Board of Directors held at Maseru on the 27th February, 1991. The meeting

was attended by eleven people representing various churches and CAL. Mr. Sopeng was authorized to institute this application. Again it seems to me that the document of page 12 of the record is a proper authority unless the contrary is proved.

According to the first application for the opening of TEMS signed by one Mahlomelang Lebona the letterheads are Thetsane English Medium School written in capital letters. Under the heading "Applying Organisation" is written Reverend Daniel Senkhane, Chairman, Christian Council of Lesotho, P.O. Box 4190, Maseru. Under the heading "Executive Organisation" is Mrs. 'Mahlomelang Lebona, Secretary, Thetsane English Medium School, Project Association, P.O. Box 714, Maseru. Under "Project Coordinator" is Mr. Sobhuza Sopeng, His Worship The Mayor of Maseru, Maseru 100.

I have shown in detail the letterhead because it is clear that the applicant was the Christian Council of Lesotho represented by Rev. Senkhane. Sopeng was the project coordinator. The name of CAL does not appear anywhere in the original application.

On the 15th May, 1990 five representative of the following churches wrote a letter to the Secretary of the District Advisory Committee of Education supporting the original application: Methodist Church of Southern Africa, The Apostolic Faith Mission, Lesotho Field of Seventh Day Adventists, The Diocese of Lesotho and Assembly of God of Lesotho. The letter reads as follows:

P.O. Box 714,  
MASERU

May, 15, 1989,

To The Secretary,  
District Advisory Committee on Education,  
Ministry of Education,  
P.O. Box 47,  
MASERU

Dear Sir,

We, the undersigned representatives of Churches in Lesotho, referring to a letter of application dated 12th April, 1989 concerning the above mentioned school project

1. having long been informed of its planning
2. having given our wholehearted support for its implementation
3. having understood it as a church school with an interdenominational and ecumenical character

we do hereby

1. humbly request the District Advisory Committee on Education, and subsequently the Central Advisory Board, to grant the above mentioned school project to fall under the status INTERDENOMINATIONAL instead of any particular denomination
2. recognise and approve the registration to that effect by the Registrar General of The Christain Association of Lesotho (under process, Reg. N. to follow) to which will be bestowed all duties and responsibilities of the proprietorship and management.

We hope our request will be favourably considered."

The letter of application was apparently not annexed to the record but handed in from the bar. I have annexed it to the record as page 139 together with its annextures. The minutes of the 18th meeting of the Maseru District Advisory Committee on Education held on the 2nd June, 1990 reveal that the applicant

was the Christian Council of Lesotho (CCL) and that the proposed school shall be Thetsane when the project takes off. The site had not been identified. Constitution of the CCL on schools was needed. The matter was deferred. The DED was to inspect the site and give report to DAC.

The next meeting of the District Advisory Committee on Education was held on the 8th June, 1990. It was reported that the site had already been identified by the Interior and Town Planning Authorities. That the Highlands Authorities and Ministry of Education had to make negotiations for funds and donors to start buildings so that when the Project takes off the school is ready to start.

There is no doubt that according to the papers before me the application made by CCL never referred to the school as a community school. On page 116 of the record Fika-Le-Mohala was the only school referred to as the community school. The applicant was the community. TEMS appears on page 117. It is not referred to as a community school but as CCL school. The applicant is CCL. It is significant that the respondents have not shown the Court any application they made to the DAC. for the opening or registration of a community school named Thetsane English Medium School. The minutes of the meetings of the DAC. do not show any application made by the community for the opening of a school named Thetsane English Medium School. At the first meeting Rev. S.E. Nthabane was present representing CAL. One may ask why CCL was not represented at the meeting when its own application was considered by the DAC. The answer is not hard to find. In their

letter of the 15th May, 1989 the churches stated that when CAL is registered all duties and responsibilities of proprietorship and management shall be bestowed on CAL. It is common cause that CAL was formally registered under No. 89/79 on the 8th November, 1989 by the Registrar General. It is argued that there were some irregularities in the registration of CAL and that the registration was null and void. The respondents led no evidence on this point. It seems to me that on the face of it the registration seems to be in order.

At the meeting of the DAC held on the 8th June, 1991 the 1st and 4th respondents as well as Mr. Venkiah were present. The minutes of the previous meeting were read and accepted as a correct record. The 1st and 4th respondents never raised any objection that the proprietor of the school was not CCL but the Thetsane community. They could not raise such an objection because they were well aware of the fact that the proprietor of the TEMS was not the community. The respondents' allegation that Mr. Venkiah was a dishonest man who connived with CAL to steal their school cannot be true. Let us assume for the moment that because they did not attend the DAC meeting of the 2nd June, 1990 they were under the impression that Mr. Venkiah made the application in their favour and that he stated in the application that their school was a community school, but at the meeting of the 8th June, 1990 they became aware that TEMS was not a community school but they raised no objection. Subsequently they called no meeting of the parents to inform them of what they had heard at the meeting of the DAC. Their lack of reaction seems to confirm that the respondents knew all along that the school was not a community school.

It is also significant that the application to open the TEMS was made not by Mr. Venkiah, who is accused dishonesty by the respondents, but by one Mrs. Lebona. I am not convinced that Mr. Venkiah was dishonest. It seems to me that it is the respondents who are dishonest. The constitutions on page 55 is dated the 30th January, 1990 and has no letter of application accompanying it. The CAL/CCL application was received by Ministry of Education on the 24th May, 1989 and the letter of application was apparently received on the same day. Mr. Moima as secretary of the DAC is making grievous mistake by saying the proposed TEMS under consideration by the DAC according to the constitution filed with the Ministry of Education is a community school. The constitution he is referring to is the one received by his office on 9th February, 1990. He was unable to explain why he has ignored the constitution received by his office on the 24th May, 1989 which was even accompanied by a letter of application. It seems to me that he must be interdicted from doing something that is obviously unfair and unjust. He gave his evidence in a manner which clearly indicated bias against the applicants. As I have already indicated above it seems to me that the parents are the ones who are trying to capture the school that does not obviously belong to them. The constitution which they recently filed with the Ministry of Education should never have been accepted because it is being used as a means of ~~stealing~~ the school belonging to CAL.

I observed the 1st respondent as he gave evidence before me and the impression I had of him was that he is a brilliant and



highly intelligent person. He knew very well that Sopeng was co-opted by them for the sole purpose of getting a site for their school because he was the Mayor of Maseru. He was not a member of the school's management committee. However, on the 6th November, 1989 Mr. Sopeng introduced him as a new signatory into their school accounts. He described himself as the Chairman, Board of Directors. (See page 119 of the record). Even of the bank form (page 120) Sopeng appears as chairman and as one of the authorised signatories. The 1st respondent expects this Court to accept that he took everything to be in order. I do not accept this explanation because the 1st respondent and 2nd respondent said their school had no management board nor a board of directors. Their supreme governing body was the management committee of which Sopeng was not a member. I am of the view that the respondents knew very well what position Soepng held at the school.

The sublease of the premises where the school is operating is between AFM and CAL. The respondents know this lease agreement but they saw nothing wrong with this arrangement because Venkiah explained to them that because the school had not yet been registered it could not enter into that agreement. This explanation is most unconvincing. The truth of the matter is that the respondents and the parents knew that the school is the property of CAL.

Another good example of how the respondents, especially the 1st respondent, is Annexure "N" on page 139 in which he (1st respondent) signed the waybill showing that the prefabricated structures are the property of CAL. He is obviously not telling the truth that an unregistered <sup>body</sup> cannot order goods in its own name. If Venkiah

told him that he ought to have realized that the goods mentioned in the waybill would become the property of CAL. The respondents and the parents knew that the school belong to the CAL.

It was submitted that CAL was not at all involved in the running of the school because it was not the proprietor. Its members never attended all the parents' meetings which were convened by the parents on the 2nd November, 1990 and on the 9th December, 1990 (see pages 93 and 78 where the minutes of those meetings appear). I do not attach much importance to those meetings because they were held at the time the parents started rejecting CAL as the owner of the school.

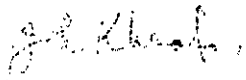
It was submitted on behalf of the respondents that CAL has failed to show when TEMS actually got bestowed on them since they got registered. I do not think a formal act of bestowal was necessary because in their letter of the 15th May, 1989 the churches agreed that when CAL has been registered all duties and responsibilities of the proprietorship and management will be bestowed on CAL. After registration CAL assumed its duties as the proprietor of the school. CCL has never complained that CAL has captured its school. It is incorrect that applicants failed to show who the proprietor of TEMS before CAL was registered. It is very clear from the papers that CCL was the proprietor.

It was submitted that the applicants failed to prove and establish the connection between the application made by CCL and the school run by Management Committee which they dismissed. I am of the opinion that such a connection has been well proved and

established. At the meeting of the DAC of the 8th June, 1990 the 1st and 4th respondents were present and associated themselves with the events of the previous meeting. Venkiah and one Mahase were present at that meeting in which resolutions were taken REGARDING TEMS. These people were there to continue the application launched by CCL.

It was further submitted on behalf of the respondents that Sopeng says that school buildings were made by CAL but has no receipts and no quotation yet Rev. Nthabane, secretary of CAL and permanent member says there was agreement that Venkiah would advance money and get repaid by parents who were not told of this heavy burden. I agree that Sopeng failed to produce any receipts but there is a waybill proving that CAL had paid for the goods. It is common practice in this country that parents who take their children to any school pay school fees. Part of such fees is set aside for new buildings or maintenance of existing buildings. CAL was entitled to use part of the school fees to buy the steel structures referred to earlier in this judgment. If CAL asked Venkiah to advance them with some money towards the buildings of the school, I see nothing wrong with CAL deducting part of the school fees and repaying Venkiah's loan. However, there was no reliable evidence before me that Venkiah did in fact lend TEMS that large sum of money.

In the result the rule is confirmed with costs.

  
J.L. KHEOLA  
JUDGE

5th July, 1991.

For Applicants - Mr Maqutu  
For Respondents - Mr. Hlaoli.