CIV/APN/319/90

IN THE HIGH COURT OF LESOTHO

In the matter between:-

ANANIAS MOHAPI SEHLABAKA	First Applicant
MATHIAS LEHLOENYA	Second Applicant
JOHN LEKAU	Third Applicant

vs

REGISTRAR OF CO-OPERATIVES	First Respondent
'MANTSEBO SEKOTA	Second Respondent
'MAMOLEBANG PEO	Third Respondent
JUSTICE KELETSANE	Fourth Respondent

Before the Honourable Chief Justice B.P. Cullinan

For the Applicants : Mrs V. Kotelo
For the Respondents : Mr T. Mohapi, Crown Attorney

JUDGMENT

Cases referred to:

(1) Leribe Poultry Co-operative Society vs Minister of Agriculture & Others C of A (civ) No.13/91, Unreported;

(2) Dadoo Ltd & Others vs Krugersdorp Municipal Council (1920) A.D. 530.

The three applicants held appointment as President, Secretary/Treasurer and Vice-President respectively of the Lesotho Co-operative Credit Union League (the LCCUL" or "the League") during the year 1990. On 6th August the respondent ("The Registrar") summoned a Special General Meeting of the League for the 22nd September, 1990. The applicants did not

attend that meeting. In their absence elections were held and a new Board of Directors was elected, the second, third and fourth respondents being elected as President Secretary/ Treasurer and Vice-President of the League. The applicants then approached this Court *ex parte* seeking a rule *nisi* calling upon the respondents to show cause why the Court should not,

> "(a) Declare the First Respondent's interference with the affairs of the Lesotho Co-operative Credit Union League Limited, and the removal from Office of the Board of Directors of which Applicants are members null and void and contrary to the Laws of Lesotho Governing Co-operatives.
>
> (b) Restrain First Respondent from interfering with the affairs of the Lesotho Co-operative Credit Union League Limited except by due process of law.
>
> (c) Declare the purported election of the Board of Directors of the Lesotho Co-operative Credit Union League Limited on the 22nd September, 1990 to be null and void.
>
> (d) Declare the Board of Directors of which (First) Applicant is the Chairman to be still the lawful Board of the Lesotho Co-operative Credit Union League Limited.

(e) Direct Respondents to pay costs."

At the ex parte hearinga *rule nisi* was granted by Lehohla J., that is, in terms of prayer (b) only. The matter was adjourned a number of times by consent, but was ultimately set down for hearing in November, 1991. The matter was partly argued for the applicants on 1st November, 1991. On the second adjournment thereafter, to 11th November, there was no appearance for either party throughout the day and the Court adjourned the matter *sine die*. It was ultimately rescusitated by the parties in March, 1994.

In his opposing affidavit the Registrar maintains that he summoned the meeting of 22nd September, 1990 in exercise of the powers vested in him by rule 14 (3) of the Co-operative Societies Rules, made under the Co-operative Societies Proclamation (no.47 of 1948). Rule 14 (3) reads as follows:

"(3) The Registrar or any person authorised thereto by him may at any time summon a Special General Meeting in such manner and at such time and place as he may direct. He may also *specify what matters shall be discussed* at any such meeting. Any such meeting shall have all the powers of and be subject to the same rules as a General Meeting called in accordance with the by-laws of the society concerned." (Italics added)

The League is made up of member Credit Unions throughout the country, each Union being represented by two voting delegates "at each membership meeting" of the League. The supreme governing body of the League is the Board of Directors, which elects its own Officers. The Board, consisting of twelve members, is drawn from twelve Chapters, into which the country is demarcated. Only one Director may be drawn from each Chapter. Prior to a General Meeting, each Chapter, represented by two delegates or alternates from each Credit Union, meets and nominates a Director and his alternate for election to the Board at the General Meeting. Nonetheless, the member delegates at the General Meeting retain the right to reject any Chapter's nominees, in which case nominations are recieved from the floor of the meeting. Suffice it for the moment to say, however, that under by - law 14 (b) of the By - Laws of the League, each Chapter's nominees must be "supported by a letter signed by the Chairman and Secretary of the Chapter."

By - Law 11 (c) of the League's By- Laws provides for the calling of a Special (General) Meeting of the League, providing for example that it may be called by a "two-thirds vote of the full Board of Directors". Rule 14 (3) above oversides the by-law providing that the Registrar may "at any time" summon such meeting "*in such manner*.... as he may direct". While the wording of the sub-rule may provide for some degree of latitude in the manner of calling a Special General Meeting, it will nonetheless be seen that any such meeting called by the Registrar is "subject

to the same rules as a General Meeting ...". Furthermore, assuming for the moment that elections of the Board of Directors may be held at a Special General Meeting (by - laws 14 (a), 16 (d) and 16 (f) indicate that they may only be held at General Meeting, but rule 14 (3) confers "all the powers of ... a General Meeting" upon a Special General Meeting summoned by the Registrar) rule 14 (3) in no way empowers the Registrar to depart from the manner of *conducting elections*, as prescribed by the By-Laws. This he himself recognized. His letter summoning the meeting is undated, but it was apparently issued on 6th August, 1990. In the letter he cites the powers vested in him under rule 14 (3) and states that by virtue of those powers,

> "I call all members of Credit Unions to *come and elect Board of Directors on the 22nd September from 10:00 am in the morning at Co-operative Development Centre Maseru.*
>
> *This is done in accordance with your by-laws* which appoint two representatives each society, and that each Chapter appoint/elect representative/representation according to your bye - laws.
>
> We are expecting that within 15 days of this invitation Chapters should meet to elect representatives according to your by - laws (LCCUL)" (Italics added)

No doubt the Registrar in the last paragraph above, bearing in mind the date of his letter, had in mind by -law 14 (a) of the League's By- Laws, which provided that the meetings of Chapters to make nominations for elections at an Annual General Meeting must be held at least 15 days prior to the latter meeting. That being the case, such Chapter meetings should have taken place in the present case not later than 7th September, 1990.

The Registrar in an opposing affidavit has annexed thereto copies of ten letters addressed to the "Chairman LCCUL" or the "President LCCUL" or perhaps the Chairman of the particular Chapter itself. The letters were produced in answer to an allegation by the applicants that the election was held without proof that the nominees had in fact been nominated by ther respective Chapters, as required by by- law 14 (b). That by -law reads:

> "b. Nominations: The Chairman for the LCCUL shall call for the name of persons nominated by each chapter, which must be supported by a letter signed by the Chairman and Secretary of the chapter, indicating the name, time, place and date the meeting was held and the vote count"

In a replying affidavit the first applicant maintains that the letters annexed by the Registrar are forgeries. He avers in particular that no meeting of the Chapter in Mohale's Hoek, where he resides, was ever held and that there are no members in

Mohale's Hoek by the name of Mohale or Moletsane, by whom the particular letter from Mohale's Hoek Chapter is signed. I have to say that there are many similarities in the handwriting before the Court. Again, some individual letters seem to have been written by two persons. For example, the dates on the Maseru Chapter letter and that from the Mohale's Hoek Chapter, seem to me to have been written by the one person : the word "Loetse" (September) is almost identical in both letters, and the figures bear strong similarity. But then the remainder of the Mohale's Hoek Chapter letter is in a different handwriting. Again, though two signatures are required on each letter, in nearly all cases the signatures on individual letters are in the same handwriting. Again, all the letters with one exception, are in remarkably similar terms and are written in manuscript on plain, unlined typing paper: not one of them is typed, and again not one of them bears any form of a rubber stamp of the particular Chapter. The only letter which bears the signs of authenticity is that from Teyateyaneng Chapter, which is a long letter on lined paper, which reads in the form of minutes and which unfortunately is not signed at all.

Suffice it to say that there are strong indications of forgery, but I would be slow to make a finding in the matter, in the absence of viva voce evidence. I see no need to make a finding. Not one of the Chapter meetings was held on or before 7th September. The dates of the meetings range from the 8th to the 19th September. Only two letters were signed by the Chairman

and Secretary as such. For the most part the letters merely give two surnames, recording e.g. "Ourselves : Mohale and Moletsane", or "Ourselves : Sekonyela and Letima". Again, such endorsements, clearly written in the same handwriting, in most letters, cannot constitute individual signatures as such.

More importantly, the individual vote count is not stated in any of the letters. A vote count is not stated at all in the letters from Maseru, Qacha's Nek, Teyateyaneng and Quthing Chapters. In the other letters, only one vote count is stated, instead of relating the vote count in respect of the nominee Director and then the count in respect of his alternate. It hardly says much for the authenticity of the letters that, in those which do reveal a vote count (six of them), the vote for the Chapter's nominee and again his alternate was identical. The letter from Mohale's Hoek Chapter states : "Present were 15 members, they (the nominee and alternate) were elected by 10 votes". The Butha-Buthe letter simply states, "....we elected as follows ....14 to 11 ..." The Mokhotlong letter stales, "members who elected were 9 out of 11". To add to all this, three letters indicate an unfavourable vote. The Mazenod letter indicates that those elected "were elected by nine voters to twenty - two." In the case of Leribe, those elected "were elected by seventeedn votes to twenty (20)" and in the case of Thaba-Tseka Chapter, "They were elected by 11 to 13".

Assumming therefore that all of the Chapter letters are genuine, I have to say that the discrepancies in observing the requirements of by -law 14 (b) are such that it cannot be said that those elected to the Board of Directors at the Special General Meeting were ever properly nominated by or were representative of their respective Chapters. On those grounds alone the election was null and void.

There are, in any event, two other reasons why I have reached the same conclusion. It will be seen that rule (14) (3) enabled the Registrar to summon a Special General Meeting and to "specify what matters *shall be discussed* at any such meeting". That phraseology was considered by the Court of Appeal in the case of Leribe Poultry Co-Operative Society vs Minister of Agriculture & Others (1). There the Court was considering the provisions of section 10 of the Co-operatives (Protection) Act, no 10 of 1966, 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* (italics added)

(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 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 casting vote.

(4) The Registrar may delegate to any person any or all of the powers conferred on him by this section."

In the Leribe (1) case the Minister had instructed the Registrar,

"to convene a special general meeting of the Leribe Poultry Co-operative Society Ltd. to *elect in Executive Committee of the society* under your chairmanship"

Ackermann J.A. (Browde and Kotze' JJ. A. concurring) held at pp 10/11 that there was no warrant for giving the words in section 10 (1), "the Minister may specify what matters shall be discussed at such a meeting", "anything but their plain grammatical meaning." The learned Judge of Appeal went on to hold at pp 11/12,

> "No permissible construction of section 10 of the Act can authorise the Minister to compel a society to elect a new committee It follows that the actions of the first respondent in the presnt case in instructing second respondent (the Registrar) to convene a special general meeting of the appellant in order to elect an executive committee and the actions of the second respondent in calling a meeting of appellant for such purpose were not authorised by section 10 or any other section of the Act. They were accordingly ultra vires the provisions of the Act and void and of no legal effect."

Ackermann J.A. quoted with approval the dicta of Innes C.J. in the case of Dadoo Ltd & Others vs Krugersdorp Manucipal Council (2) at p552, to the effect that statutory provisions which interfere with elementary rights must be strictly construed. Those dicta are equally applicable to the wordingof rule 14 (3) in the case, namely the words, "He (the Registrar) may also specify what matters shall be discussed at any such meeting." Whatever meaning those words might have had before the

advent of the 1966 Act, when it might be said that the provisions of the 1948 Proclamation and of the Rules were not otherwise sufficiently wide to provide the necessary protection against abuse or neglect of executive powers, which interpretation I need not explore, the point is, that since the advent of the Act and in particular the proteciton afforded by section 11 thereof, as expounded by Ackermann J.A. at pp 7/10, there is no warrant for giving the relevant words in rule 14 (3) anything but their plain grammatical meaning. Accordingly, I hold that there was no power in the Registrar under rule 14 (3) to summon a Special General Meeting for the purpose of electing a Board of Directors.

Thirdly the question arises as the whether the Registrar, or indeed "any person authorised thereto by him." has, since the advent of the Act, any power at all, under tule 14 (3), to summon a Special General Meeting. It will be seen that the provisions of sub-sections (1) and (2) of section 10 are presumably based on those of rule 14 (3). Section 10 however takes matters a good deal further, in that it provides that the Registrar will preside over the meeting, which may proceed in the absence of a quorum, and that the Registrar shall have a casting vote. More importantly, however, the Registrar's powers under section 10 are those conferred upon him by the Minister. It seems to me to make nonsense of the legislation to suggest that the Registrar, who under the Act may only summons a Special General Meeting under the order of the Minister, to discuss matters specified by the Minister, may under the subsidiary legislation himself summon

such a meeting and "specify what matters shall be discussed," without any reference to the Minister. In brief, if the main legislation enables the Minister to confer powers upon the Registrar, I cannot see how the Registrar can under the subsidiary legislation himself assume some of the such powers. In my judgment section 10 was intended to replace rule 14 (3), the provisions of which are now inconsistent with those of section 10 and are of no effect. Accordingly I hold that there is no power in the Registrar to summon a Special General Meeting other than upon the order of the Minister under section 10.

I can see no need now for the rule nisi granted, even if limited, and it must now be discharged. As to granting the declarations sought, while the particular election was clearly null and void, those elected have fulfilled their functions and indeed there have been subsequent Boards of Directors elected. Mrs Kotelo agrees that, due to effluxion of time, the applicants cannot be reistated, but nonetheless seeks costs. I do not see incidentally that there is any evidence that the second, third and fourth respondents acted other than bona fide and I do not see that they should bear costs. Again, the first respondent was acting in his official capacity as a public officer, and I do not appreciate therefore why the Attorney-General was not joined as a nominal respondent. In as much as the Registrar has been represented by the Crown Attorney, I presume that the Attorney - General will assume any liability for costs.

Mr Mohapi urges upon me the necessity for the Registrar to have acted in this case, pointing to the volume of complaints against the applicants and the fact that some thirty member unions had called for a Special General Meeting. The validity of any such complaints have not been proved : it would require a full trial with *viva voce* evidence to do so. The point is, that if action was required, there were, as Ackermann J.A. pointed out in the Leribe (1) case, ample provisions under the Act to cover any necessity. As early as 13th September, 1990 the three applicants wrote to the Registrar pointing out that the proposed meeting was unlawful and in particular referring him to the provisions of section 10 (1) and (2) of the Act. In a reply on 18th September the Registrar observed that "we are not concerned with (the Act) as yet", the significance of which observation escapes me. The Act had been in force for four years at that stage. Its provisions should have been referred to legal opinion. Under the circumstances I cannot see why the applicants should bear the burden, or any part of the burden of inadvertence or indifference. In all the circumstances I order that the first respondent bear the three applicants' costs.

Dated This 28th Day of July, 1995.

B.P. CULLINAN

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CHIEF JUSTICE