

IN THE HIGH COURT OF LESOTHO

In the application of:

MATTHEWS MOFOKENG

APPLICANT

and

BERNICE MOLAPO, N.O.

1ST RESPONDENT

PALAMA MOSHOESHOE

2ND RESPONDENT

JUSTICE SEKHONYANA NTLHABO

3RD RESPONDENT

LESOTHO LABOUR CONGRESS (IN

LIQUIDATION)

4TH RESPONDENT

SETHO MOLAPO

5TH RESPONDENT

MOLETSANE JONATHAN

6TH RESPONDENT

HOFNIE LEBONE

7TH RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Justice G.N. Mofolo,  
Acting Judge on the 13th day June, 1995.

This application came by way of an ex-parte application wherein the applicant sought:

1. Dispensing with ordinary Rules pertaining to the modes of periods of service.

2. A Rule Nisi returnable on a date and time to be determined by this court calling upon respondents to show cause (if any) why:

(a) The sixth and seventh respondents shall not be restrained and/or interdicted from continuing to execute duties of and/or continuing to hold

Assistant Secretary-General of the 4th respondent.

- (b) The first and second respondents shall not be directed not to hold meetings of the trustees of the 4th respondent without informing applicant and/or giving applicant notices of such meetings.
- (c) The purported appointment of the third respondent as liquidator of the fourth respondent shall not be declared null and void and of no force or effect.
- (d) The first and second respondents shall not be directed to organise and hold a trustee meeting in consultation with the applicant herein.
- (e) The fifth and seventh respondents shall not be interdicted from continuing to receive any payments and/or monies and using the same for whatever purpose pending finalisation of this application.
- (f) The respondents shall not be directed to file their opposing affidavits (if any) within seven (7) days of service upon them of this application and Court Order.

- (g) The respondents shall not be ordered to pay costs hereof only in the event of opposition hereto.
- (h) The first and second respondents shall not be directed to hold a meeting soonest to decide upon the appointment of a Liquidator.

On 27 July, 1994 the Chief Justice granted a Rule Nisi and after several extensions the application was placed before me on 26th May, 1995 and hence this judgment.

According to the record of proceedings, it appears that the 4th respondent, a Federation called the Lesotho Labour Congress (LLC) was registered as a Trade Union under Sec. 9 of the Trade Unions and Trade Disputes Law No.11 of 1964 whose Secretary, until its Liquidation, was the 6th respondent.

On 10th May, 1994 the Registrar of Trade Unions, one Mr. Fanana wrote to the 6th respondent acknowledging, amongst other things, a letter of 29th April, 1994 which:

- (a) Forwarded a list of names of persons purporting to be "The Lesotho Labour Congress":
- (b) forwarded five (5) 'Form Cs' wherein nine (9) trade unions had given notice of their resolution to form a federation to be called 'Lesotho Labour Congress' and

(c) included the constitution of the 'Lesotho Labour Congress.'

In the letter Mr. Fanana drew attention to the 6th respondent of the provisions of the Labour Code, 1992 and that since the federation called Lesotho Labour Congress had not availed itself of the provisions of the Act the Lesotho Labour Congress was deemed dissolved and accordingly the office of the Registrar would not deal with Lesotho Labour Congress until the Registrar was informed of steps taken in winding up the affairs of the federation.

It is not clear whether it was before or after the letter quoted above that the provisions of 4th respondent's constitution, namely: Article 9(b) followed. From the papers it is clear that after the dissolution the applicant, 1st respondent and second respondents became trustees, as applicant said, in terms of Article 7 of 4th respondent's Constitution.

Applicant has brought this application primarily because, according to his affidavit, trustees of the 4th respondent have never notified 'me' of a meeting whereat we as trustees could sit down and then deliberate on how we could administer the winding up of the fourth respondent.' I doubt this statement. The applicant wrote an evenly minuted letter on 26 May, 1994 to the 6th respondent requesting a meeting with all trustees including former national office-bearers of the 'former federation.' He was right to say that trustees should have taken charge of the

affairs of the federation and to suggest a meeting for handing over to the trustees and consequent appointment of a liquidator. The last paragraph of applicant's letter reads:

'trusting that you will co-operate and assist with a view of having this meeting on Sunday at former L.L.C. offices at 12.00 noon.'

I am baffled by applicant's assertion and that of his counsel's submission that trustees of the 4th respondent have never notified the applicant when the applicant himself in uncontroverted terms called a meeting including the day, time and venue of the meeting. It is not for the applicant to tell me that 'I never called a meeting for any specific Sunday date' or that he did not specify a date for in the event it was his own fault for those who attended the meeting understood for what day it was called and if the applicant did not understand his own letter it is his affair and in my opinion cannot be allowed to benefit by his own error.

In Chetty v. Tamil Protective Association, 1951(3) S.A. 34(N.P.D.) where a meeting had been called but 2 committee members though they attended the meeting when their protest that the meeting had been called at short notice was rejected, they left the meeting. Held: it was failure to give notice to any one member that may invalidate the meeting. According to respondents' affidavits, applicant attended the meeting but left.

This being an application, I have no reason not to believe respondents especially in the light of the fact that applicant is now trying to rationalise notice of a meeting called by him.

In Jockey Club of S.A. and others v. Feldman, 1942 A.D. 340 at p.359 Tindall J.A. (as he then was) is reported to have said:

'I am not prepared to accept, as a rule acceptable to all cases of irregularity in the proceedings of private tribunals, the proposition that an irregularity which is calculated to prejudice a party entitles him to have the proceedings set aside. No doubt such irregularity prima facie gives him such right, but it is clear that in the particular case the irregularity caused such party no prejudice.'

I don't see how a letter calling a meeting written by the applicant can prejudice him. Note also that in Chetty's case supra Tindall J.A. went on to say that the real issue had been debated at a properly called meeting and the applicant having lost out there was no point in re-holding another Annual General Meeting. I see no need in holding another meeting, either. On reflection, Mr. Hlaoli for the respondents was probably right in saying that holding another meeting would be of academic interest for the applicant had lost the day.

If this progress of events had been the end in this application, it can be seen that this application had no merit whatsoever for applicant in his letter also invited 'the former national office bearers of the former Federation.' Having invited them, rightly so in my view as Mr. Hlaoli contended that no proper handing over could be conducted without their cooperation, I find it strange for the applicant to say that they are holding themselves out as office-bearers of a defunct organisation. I disagree - it is the function of trustees to ensure that there are no irregularities and the applicant should have attended a meeting he called to checkmate any irregularities.

As I have said, a letter written by 3rd respondent as Liquidator has caused me some concern as has the applicant's founding affidavit where he refers to the sixth and eighth respondents holding themselves out as aforesaid; as there is no 8th respondent in this application, I am wondering if the applicant is not the type who sees enemies in every bush. Concerning the 3rd respondent, he says in his letter of 1st July, 1994 that having been duly appointed as Liquidator in accordance with article (10) (c) and in this he finds support in applicant's letter of 26 May, 1994 already referred to where it is said 'so that we are enabled pursuant to article 10(c) to appoint liquidators.' I am flabbergasted and disconcerted for Article 9(b)(i) of the Constitution of the defunct Lesotho Labour Congress reads:-

'The trustees shall immediately take charge of the affairs of the federation and appoint a liquidator.'

Article 10 has nothing whatsoever to do with the appointment of a liquidator. It is clear to me therefore that in appointing the liquidator the trustees did not follow own rules or rather disregarded them (Jockey Club of S.A. and Org v. Feldman above). I cannot come to the rescue of a party that disregards its own rules or does not follow them. In my view when the trustees set down to appoint 3rd respondent they could well have been looking at rules other than those of the 4th respondent.

Although I have said it was by applicant's invitation that some executive members of former Lesotho Labour Congress probably attended a meeting called by the applicant, this is not to say that I can overlook a letter written by the 6th respondent to one Tsakatsi.

It will be recalled that the Registrar of Trade Unions by his letter of 10th May, 1994 considered 4th respondent as dissolved for failure to take advantage of provisions of the Labour Code Order, 1992.

The Registrar as I have said wrote to the 6th respondent that by operation of the law 4th respondent 'was automatically deemed dissolved in law' and in this he was right. And yet 6th respondent wrote a letter of 31st May, 1994 purporting to dismiss

one Hape Tsakatsi. When 6th respondent did so, as I have said elsewhere, he was disregarding rules of the 4th respondent to the effect that on dissolution:

'The trustees shall immediately take charge of the affairs of the federation and appoint a liquidator.' (vide Article 9 (b) (i) of 4th respondents Constitution).

I come to the conclusion that:-

- (a) Sixth and seventh respondents or anybody desist from holding themselves out as either Secretary or Assistant Secretary or official in whatever capacity of the 4th respondent and the said sixth and seventh respondents or anybody is restrained and interdicted from continuing to execute normal duties of the 4th respondent except where such duties are in facilitation of aims and objects of 4th respondent's trustees or liquidator.
- (b) First, second respondents and the applicant herein to hold trustees meetings together and to give each other notice of such meetings.
- (c) The appointment of third respondent as liquidator is set aside and declared invalid.

- (d) The fifth and seventh respondents are interdicted from continuing to receive any payments and/or monies and using the same and to account to the trustees or liquidator of any moneys received after the liquidation of 4th respondent herein.
- (e) First, second respondent and the applicant to hold a meeting sooner to decide upon the appointment of a liquidator.
- (f) 6th respondent's letter of 31st May, 1994 is set aside and declared invalid.

On costs, as costs are punitive, in view of the fact that but for 3rd respondent's error the judgment might have gone the other way, I do not feel that it would be just to penalise any party to these proceedings and my finding is that there will be no order as to costs.

G.N. MOFOLO

Acting Judge

6th June, 1995

For Applicant: Mr. Mosito

For Respondent: Mr. Hlaoli