

IN THE HIGH COURT OF LESOTHO

CIV/APN/208/98

In the matter between:

TSIE BENJAMIN PEKECHE

APPLICANT

and

**MOTSOANE T. THABANE
INDEPENDENT ELECTORAL COMMISSION
LESOTHO CONGRESS FOR DEMOCRACY
ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

RULING

**Delivered by the Honourable Chief Justice Mr. Justice
J.L. KHEOLA on the 20th day of May, 1998**

This is an application for an order in the following terms:

1. Dispensing with the rules of court pertaining to moves and periods of service.
2. A rule nisi be and is hereby issued returnable on a date and time to be determined by this Honourable Court calling upon the respondents to show cause, if any, why:
 - (a) The purported nomination of 1st respondent on the 20th April, 1998, general elections within the Abia constituency No. 36 shall not be declared illegal null and void and of no force and effect

(b) Second respondent should not be directed to remove the name of 1st Respondent from the list of duly nominated candidates for the oncoming general elections.

© Respondent shall not be directed to file the opposing papers if any on or before the 18th of May, 1998.

(d) Respondent shall not be directed to pay costs hereof in the event of opposition.

(e) Applicant shall not be given such further and/or alternative relief.

3. Prayers 1 and 2 © operate with immediate effect as an interim Court Order. This application was granted and there is a rule nisi was issued and made returnable on the 18th of this month, today is the extended return day of that rule.

At the beginning of this hearing Mr Matsau raised certain points of law in limine and it is upon those points of law raised that this matter will be decided. I do not think there will be need to go into the merits. What I intend to do is to read in the constitution the definition of what is commission. That is defined in section 66 of the constitution of Lesotho and it is as follows:

The definition reads as follows:

“There shall be an Independent Electoral Commission (in this Constitution referred to as the “Electoral Commission”) which shall consist of the following members, being persons of high moral character and proven integrity, appointed by the King acting in accordance with the advice of the Council of State.

- (a) The chairman being a person who holds, has held or qualifies to hold high Judicial office; and
- (b) Two other members, each of whom possesses any of the qualifications referred to in paragraph (a) or who possesses considerable experience and a demonstrated competence in administration or in the conduct of public affairs”

That is how the commission is defined in the constitution.

Now section (7) of the National Assembly Election Order 1992 reads as follows:

- “1. Any complaint submitted in writing alleging any irregularity in any aspect of electoral process at any stage shall, if not satisfactorily resolved at a lower level of authority, be Examined and decided by the Commission; and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and any effects it may have cause.
2. An appeal shall lie to the High Court against the decision of the Commission confirming or rejecting the existence of an irregularity.
3. The appeal shall be made by way of an application, supported by affidavits of evidence, which shall clearly specify the declaration that the High Court is being requested to make.
4. On hearing an application under sub. section (2), the High Court may make such order as it thinks fit and its decision shall be final.
5. The High Court shall proceed to hear and determine an appeal under this section as expeditiously as possible and maybe may for that purpose, suspend any other matter pending

before it”.

This is exactly what I have done. I have suspended other matters to come and hear this application because one of the counsel here Mr Makhetha was complaining about the process what is going on. He was saying that ballot papers, wheelbarrows and everything are being carried or conveyed to the election centres, whatever they call them. The ballot papers as well were going there. So he was complaining that this matter is extremely urgent, in fact we are dealing probably with something that is already “a dead horse” that is what he said. I do not know whether this is a dead horse. It is still alive; I am going to kill it myself. The law as stated in the Constitution, section 66 clearly excludes the Director of Elections from membership of the Commission. The Commission as defined in section 66 does not include the Director of Elections; he is not a member of the Commission.

So if that is the case it is clear that the applicant has not exhausted the local remedies. After the unfavourable decision given by the Director of Elections, it was his duty to go to the Commission itself and then the appeal from there would have to come to the High Court. He has not followed that procedure. He decided to come straight to the High Court without getting the decision of the Commission.

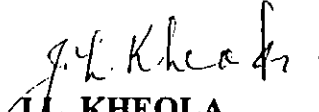
The section clearly indicates that this court can only deal with an appeal from the Commission and not from the Director of Elections. The application is not properly before this court. It had to go through the proper authorities. Mr Mosito attempted to say that the Commission includes the Director of Elections. He was apparently wrong; he had not read the Constitution properly.

That section which I read does not include the Director of Elections. He is not a member of that

Commission. Now, he has tried to justify coming direct to the High Court by saying that this court can at any time intervene and hear a complaint by a person like the applicant. I do not think so. You have to exhaust the local remedies. His client has not done so; he came prematurely to the High Court. He will have to exhaust the local remedies by going to the Commission and get its decision and then appeal against that decision.

As I was saying earlier, Mr Mafisa and I recently made rules regarding the procedure in this court from the appeal or review of the decision of the Commission. We have prepared rules which will in any case be similar to the review procedure under section 50 of the High Court Rules.

For the reasons that I have given, it is quite clear that this application has been brought before me prematurely. It has short-circuited the procedure that has been described. For that reason only and without even going into the merits the rule is discharged with costs.


J.L. KHEOLA
CHIEF JUSTICE

20TH MAY, 1998

FOR : APPLICANT - Mr Mosito

: RESPONDENT - Mr Matsau