

CIV\APN\283\98

IN THE HIGH COURT OF LESOTHO

In the Application of :

**MOEKETSI TSATSANYANE
PETITIONERS AS PER ANNEXURE "A"**

**1st Petitioner
2nd Petitioners**

vs

**LITSITSO SEKAMANE
INDEPENDENT ELECTORAL COMMISSION
THE DIRECTOR OF ELECTIONS
PETITIONERS AS PER ANNEXURE "B"**

**1st Respondent
2nd Respondent
3rd Respondent
4th Respondent**

Held at Maseru

Coram : **Lehohla, J
Mofolo, J
Ramodibedi, J**

COURT ORDER

Lehohla, J

On a Notice moved *ex-parte* the first Petitioner has approached this Court seeking leave to withdraw his petition in CIV\APN\283\98.

The Court learnt that at first opportunity *Mr Phoofolo* for the Petitioner intimated this to *Mr Matsau* representing respondents 1, 2, and 3.

Thereupon *Mr Matsau* was amenable to terms of the proposed order appearing in prayers 1 and 2 but not to prayers 3 and 4.

The order sought was couched in the following terms, viz, the granting of an order -

1. Dispensing with periods of notice provided by the Rules of Court and treating this matter as one requiring urgent attention;
2. Directing that the election petition in CIV\APN\283\98 be and it (*sic*) is hereby withdrawn;
3. Directing that Applicant's (*sic*) security in respect of the above-mentioned application be transferred to the petition in CIV\APN\275\98; alternatively
4. Directing that the applicant pay security in the amount of M100-00 in CIV\APN\275\98;
5.
6. Costs in the event that this application is opposed.

Mr Phoofolo addressed the Court on the points covered in the 1st petitioner's affidavit embracing the prayers set out above.

Mr Matsau in response briefly advanced his reasons why prayers 3 and 4 should be dismissed.

Both parties' representatives were given an opportunity to address the Court on the question of costs. It was in the course of arguments by both attorneys that it emerged that *Mr Phoofolo* is not aware of a High Court Judgment relating to the question of costs still outstanding from the 1993 Elections Judgments. See CIV\APN\152\97 *Basotho National Party vs Attorney-General* (unreported) and dated 28th April, 1998 by Ramodibedi J. This Court felt that in view of the fact that of paramount importance when considering the question of security for costs all circumstances pertinent thereto have to be taken into consideration, fixation of security for costs in the amount that makes it less irksome for the victorious party to recover his or her costs is not out of step with basic tenets of doing justice to parties to a suit.

It also emerged during addresses that in fact CIV\APN\275\98 was not prepared by *Mr Phoofolo* but someone else though involving the same petitioner that he is representing. The Court is indeed grateful for the fact that this state of affairs was straightened and it became clear that the Petitioner's attorney didn't know of the existence of CIV\APN\275\98 at the time of preparing founding papers in

CIV\APN\283\98

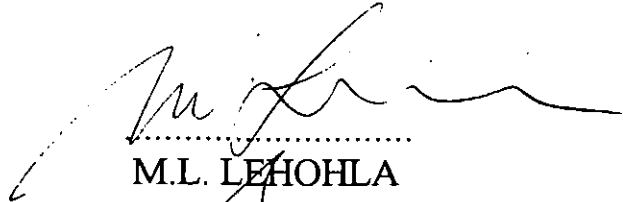
With respect to prayer 3 the Court felt that it could not grant it without thereby rendering nugatory the order it gave on 10th July to the effect that every petitioner is required to pay the amount fixed that day within a specific period of five days of the granting of the Court's Order.

Flowing from that order which fixed the amount of security in the sum of M1000-00 per petitioner payable within the said period it stands to reason that prayer 4 seeking in the alternative that the applicant be allowed to pay only M100-00 in CIV\APN\275\98, would equally amount to circumventing the order made by this Court at the opening of the Petitions Session on 10th July, 1998 covering all Elections Petitions filed before the date line falling due at the end of June 1998.

In the result the Court makes an order granting prayers 1 and 2 and dismissing with costs prayers 3 and 4.

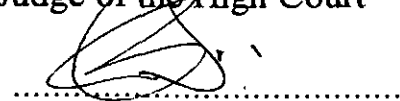
The petitioner Moeketsi Tsatsanyane is at large to have his security for costs in the amount of M1000-00 refunded to him provided he shall have met the 1st

respondent's costs.




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M.L. LEHOHLA
Judge of the High Court

I agree :



.....
G.N. MOFOLO
Judge of the High Court

I agree :



.....
M.M. RAMODIBEDI
Judge of the High Court

Delivered at Maseru on the 21st day of July, 1998