

CIV APN/283/00

IN THE HIGH COURT OF LESOTHO

In the matter between:

THABANG NCHAI
 THELLE NTHEJANE
 THABISO MOLIKENG
 SEPHOTHA LIETE
 LEPEKOLA MOKEMANE
 BERENG SEKHONYANA
 THUSO LETELE
 'MAMOSILI MOKOROSI
 MONYANE MOKITIMI
 'MAMOPHETHE TŠIU

1ST APPLICANT
 2ND APPLICANT
 3RD APPLICANT
 4TH APPLICANT
 5TH APPLICANT
 6TH APPLICANT
 7TH APPLICANT
 8TH APPLICANT
 9TH APPLICANT
 10TH APPLICANT

and

MINISTER OF LOCAL GOVERNMENT
 THE ATTORNEY GENERAL
 PAUL 'MATLI QOBO

1ST RESPONDENT
 2ND RESPONDENT
 3RD RESPONDENT

For Applicants : Adv. M. Mosae
For 1st and 2nd Respondents : Adv. T. Putsoane
For 3rd Respondent : Adv. S. Phafane

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 27th day of November 2000

I have already, on the 10th November delivered my decision in this matter.
My reasons therefor now follow.

Applicant in this matter moved Court on urgent basis seeking an order in the following terms:

- (a) That the purported repeal by 1st Respondent of Legal Notice No. 126 of 1999 extending the term of office of the Councillors of the Maseru City Council be declared null and void and of no force and effect by reason of its illegality.
- (b) That 3rd Respondent be restrained from exercising the powers conferred by Legal Notice No. 117 of 2000 titled "Appointment of an Interim Town Clerk Notice 2000" pending the outcome hereof.
- (c) That 1st Respondent be directed to reinstate Applicants to their positions in the Maseru City Councillors, or alternatively,
- (d) That 1st Respondent be directed to pay to Applicants their respective allowances for the remaining period of their term of office or for the remaining period until elections are held, whichever occurs sooner.

(e) Costs of suit.

'Prayer (b) was granted and made to operate with immediate effect and was later discharged as its continued operation would mean that the work of the Council would be extended while virtually it had been made to step down by the said Legal Notice No. 117 of 2000 (the second gazette). This status quo ought to be so until variation by Order of Court.

The facts were that on the 8th June 1996 Applicants were elected into office as Councillors. Their term of office was to run for three years and it did end on the 3rd July 1999. Elections should have been held some four days before the expiration of the term but that was not done. The Councillors had to vacate office but they were informed by the Minister through the Principal Secretary that they would continue in office until their term of office would have formally been extended. That formalization or the extension took place in November 1999 when the Minister retrospectively published in Legal Notice No. 126/1999 (the first gazette) the extension of office with effect from the 1st August 1999. The first gazette was annexed as "TN "1". It was a term of the extension that Applicants would remain in office until a new body was appointed or elections held.

Then on the 28th June 2000 Applicants were served with letters from the First Respondent informing them that he had decided to cancel the first gazette since the extension of their term of office had been a temporary measure. The said letter to all the Councillors was in the form of annexure "TN "2" which

was copy of letter sent to Councillor Thelle Nthejane the Second Applicant in this matter. It is important now to quote the letter starting from the second paragraph of that letter:

“Your may recall that sometime in August 1999 your term of office as a Councillor of MCC was extended in terms of Legal Notice no. 126 of 1999 and that this was stated to be a temporary measure while preparations were being made to elect a new council. This extension was done under the provisions of section 7 of the Local Government Act of 1997.

Since that measure was temporary I have decided to cancel the Gazette that extended your term of office. By way of this letter you are being an opportunity to show reasons, if any, why the gazette that extended your term of office may not be cancelled.

Your are humbly requested to present your written representations towards this letter within a period of seven days after receipt thereof.” (My underlining)

I have made my own underlining for emphasis about aspects of a letter which became important issues later in the judgment. This letter was followed by a response from the legal representatives of the Applicants which letter was date the 1st July 2000 addressed to the Minister of Local Government. The heading of the letter was “End of Extended Lifespan of the Present Council.”

I quote from the second paragraph of that letter which was TN "3" and in it it said:

"The said letter has been brought to our attention and we notice, much to our amazement, that you have taken the decision to cancel the said Gazette for the simple reason that "that measure was temporary". You would also realise, of course, that you have taken your decision which is prejudicial to our clients without having afforded them a hearing. Consequently, it does not make much sense to us that you are in the same vein inviting our clients to show reasons why the Gazette may not be cancelled.

However, if it was your intention that upon good cause shown you might reverse your decision, we wish to inform you that your cancellation of the said Gazette was unlawful as it interfered with the existing rights of our clients premised on their legitimate expectation to stay in their positions as councillors until a new body has been elected to replace them. We accordingly request you to reverse that decision and continue to co-operate with our clients in the execution of their public mandates as you have done in the past. Failure to do so would leave us no option but to approach the courts of law for relief." (My emphasis)

I have made my own underlinings in order to emphasise again some of the aspects which would form a basis for the issues that would be later discussed in the judgment.

On the 20th July 2000 First Respondent issued the second gazette. The Legal Notice was in the form of annexure TN "4" and it repealed TN "I". TN "I" being that appointment of the councillors which was said to have taken effect from the 1st August 1999. It was common cause that at the end of their term of office no elections of councillors were held as supposed to in terms of the law. Applicants however remained in office without any instrument being passed giving them mandate to continue as councillors until November 1999 when the Minister as aforesaid purported to extend their term of office retrospectively acting in terms of section 7 of the Local No.6 of 1997. It was not disputed that the law governing Municipal Councils had been the Urban Government Act of 1983 and further that this section 7 of the Local Government Act No.6 of 1997 was the only section put into operation when the whole Act had not come into effect.

Amongst others then Applicants' arguments was that annexure TN "4" was unlawful. First Respondent had not afforded Applicants a hearing as would otherwise be required by law. That the principle of *audi alterm partem* was one of the fundamental principles of natural justice and it must be observed whenever rights of persons are affected by the decisions of public authorities. In the instant case the Applicants say they`` were not afforded a hearing but First Respondent just decided to repeal annexure TN "I" simply because the latter was a temporary measure.

Mr. Phafane for the Third Respondent made several interesting

submissions when they referred to provisions of the Urban Government Act No.3 of 1983 with regard to the powers of the Minister to appoint Councillors and to order elections every three years (section 8(I). “And that Councillors shall retire after elections” when the newly elected Councillors shall come into office on the day on which the predecessors retire.” Again as to the Minister’s power to give effect to intent and purpose of the Urban Government Act in terms of which

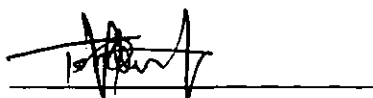
“The Minister may order all such steps to be taken as in his opinion may be necessary to rectify any such error, accident or omission or he may validate anything which may have been irregularly done as aforesaid so that the intent and purpose of this Act shall be given effect to.”

Again the power of the Minister to substitute the Town Clerk for a non performing Council in terms of section 8I. This together with the powers of the Minister to appoint Councillors and such as those contained in section 7(5) of the Urban Government Act and others served only to seek to broaden issues into a large discourse *ala academia*. This was unnecessary when it was to be understood the Minister has said that acted in terms of section 7 of the Local Government Act 1997. This the Applicants did accept without umbrage. The section reads as follows:

“7. For the purpose of any preliminary arrangements in connection with the constitution of any Council under this Act, it shall be lawful for the Minister, by Notice in the gazette, to issue all such directive as may be necessary or

I would dismiss all the prayers. I would endorse Mr. Putsoane's submission which was as follows: A Town Clerk had already been appointed to run the affairs of the City Council, as such, even if it could be held that repeal of first gazette was nullity (which was not) reinstatement was out of question. The only remedy could be one of damages claimed in an action and not on application. That claim for allowances for alleged remaining period of Applicants terms of office was untenable even vague as it was.

The application was accordingly dismissed with costs.

A handwritten signature in black ink, appearing to be 'T. Monapathi', is written over a horizontal line.

T. Monapathi
Judge