CIV/APN/243/99

IN THE HIGH COURT OF LESOTHO

In the matter between:

PHAI FOTHOANE	**1ST APPLICANT**
'MAMOKOTO SEKONYELA	**2ND APPLICANT**

and

PRESIDENT - CHRISTIAN DEMOCRATIC PARTY (NANABETSANE RAMOKUENA)	**1ST RESPONDENT**
GENERAL SECRETARY - C.D.P. ITUMELENG RAMONE	**2ND RESPONDENT**
CHRISTIAN DEMOCRATIC PARTY	**3RD RESPONDENT**
THUSO LITSOANE	**4TH RESPONDENT**
NTJA THOOLA	**5TH RESPONDENT**
THE MINISTER OF LAW AND CONSTITUTIONAL AFFAIRS	**6TH RESPONDENT**
THE ATTORNEY-GENERAL	**7TH RESPONDENT**

J U D G M E N T

To be delivered by the Honourable Mr. Justice G.N. Mofolo
on the 7th day of February, 2000.

The applicants Phai Fothoane and 'Mamokoto Sekonyela applied on an urgent basis to this court for an order in the following terms:

1. That the normal periods and modes of service be

dispensed with.

2. That a Rule Nisi be 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 removal of applicants from the Interim Political Authority shall not be declared null and void and of no force or effect.

   (b) The gazettment of the 8th and 6th respondents shall not be declared as null and void and of no force and effect.

   © The subsequent appointment of the 5th and 6th respondents in the Interim Political Authority shall not be declared null and void and of no force and effect.

   (d) Applicants shall not be re-instated as representative of the Christian Democratic Party in the Interim Political Authority.

3. Costs of suit.

4. Further and/or alternative relief.

5. That prayer 1 operate with immediate effect.

The application was opposed.

From a reading of 1st applicant's affidavit, he gives the unmistakable impression that his and the 2nd applicant's task was at all material times to represent the interests of the 3rd respondent and that they did represent these interests

consulting and reporting to the 1st respondent at all material times of their participation in the proceedings of the Interim Political Authority (see paragraphs 7 - 9 of the Founding Affidavit).

In answer to these allegations the 1st respondent has, in his Founding Affidavit , categorically denied them. At Paragraph 6 he denies 'Deponent ever gave me any reports at all since his appointment aforesaid, Deponent took himself to be above everybody including the very party that put him there ---.' At paragraph 7 after denying he continues '--- I went to Deponent's place to get an update as the party was in the dark as to the developments in I.P.A. She then asked me about models and I gave her instructions as to which model the party wanted.' At paragraph 9 1st respondent says when 1st applicant gave an interview to Mo-Afrika he had no mandate to do so for he had not consulted the executive committee or the 1st respondent. At paragraph 10 1st respondent says when the Prime Minister had called Party Leaders the deponent had not informed the party of the meeting. The tenor of 1st respondent's response is that he had to go to 1st applicant to be updated of IPA proceedings.

This court does not know and the applicants have not informed the court of the means and channels employed by the applicants to regularly report their activities to the 1st respondent.

From the record of proceedings before me, it would seem that the applicants were sworn in as members of the Interim Political Authority on 9 December, 1998 ostensibly following recommendation by the 3rd respondent for sub-section (2) of

section 5 of the Interim Political Authority Act, 1998 reads:

> subject to section 8 and 9, members referred to in sub-section 1 shall be appointed by their respective political parties.

In this court's view, if applicants were appointed by their party it follows that 3rd respondent can remove them from IPA. In fact section 5

subsection (3) reads

> A political party may, at any time, in writing, withdraw its representative from the Authority and such a representative shall forthwith cease to be a member.

Another reason for the withdrawal of a representative from the IPA is given as, vide section 10

subsection (3):

> where a member is absent or is otherwise unable to perform his duties, the party that appointed him may appoint a person to act in that position for that period.

Mr. Mosito for the applicant has raised three issues for determination by this court and these are:-

(a) Does a member of IPA have a right to a hearing prior to his withdrawal therefrom by his political party?

(b) Were applicants heard in this case before purported withdrawal?

© Was their withdrawal from IPA not null and void?

Regarding (a) above, although statutorily it would appear members of IPA are in the same class as common law employees and can be withdrawn on the whim of a political party so long as a political party has done so in writing or for reasons contemplated in section 10(3) of the IPA Act, above, the attitude of courts and no less this court is that notwithstanding that the withdrawal is statutorily authorised, since the statute does not exclude the need to be heard, a member must be heard before his membership is terminated. The hearing would of course be by the very political party which appointed the member to the IPA. Human being are never to be treated like hose but are to be treated fairly and with respect before their rights are taken away.

An important inquiry which arises is; were applicants heard before they were removed from IPA, by whom? According to annexure 'A' applicants were invited to Ha Tlali (Makhaleng constituency) by members of Makhaleng. It would appear the invitation was by Chairman of Makhaleng Constituency. 1st applicant has said the invitation was by a chairman and moreover there was no agenda. In the first place, the invitation had nothing to do with applicants in that applicants being members of the IPA are responsible to the 3rd respondent and not to a constituent member of the 3rd respondent. Secondly, applicants were not given a glimpse of what they were invited for in the form of an agenda in order to prepare themselves for the meeting.

According to Standing Orders and Rules of Procedure at Party Meetings of

the 3rd respondent, Rule 11.2

> is to be effected that: business shall be proceeded with in accordance with agenda unless otherwise decided by the meeting.

This is a peremptory requirement for the validity of a meeting. As the court understands the rule, an agenda must accompany notice of meeting for a meeting to be valid. In the meeting members may include matters not appearing on the agenda for

Rule 11.3 says:

> No questions other than those appearing on the agenda, shall be debated, provided that the meeting may by resolution agree to discuss a matter not included on the agenda.

This rule makes an agenda a pre-requisite of meetings prohibiting discussions on matters that don't appear on the agenda. While only matters on the agenda can be debated, by resolution other matters not included on the agenda can be discussed.

Since there was no agenda as required by laws governing the 3rd respondent, it stands to reason that as there was nothing to discuss in the so-called meeting of 25 May, 1999, there was no meeting at all. Annexure 'A' of 21 May, 1999 violated rules of the 3rd respondent and cannot be allowed to stand.

I do not know the purport of annexure 'B' dated 29 May, 1999; in any event it has nothing to do with annexure 'A'. 1st applicant at paragraph 13 says annexure 'B' and 'C' were 'purported to be notices to ourselves informing us of our

withdrawal from IPA---'. In answer to the 1st applicant, 1st respondent has said that applicants know that 'the issue of their performance and possible removal from the IPA was in the agenda for the said meeting which he decided not to attend ---'. I pause here to ask, which meeting? Well, if it was meeting of 25 May, 1999 I have already said that this was no meeting. 1st Applicant has said at paragraph 12 of his affidavit that he received annexure 'A' on 21 May, 1999 and annexure 'B' on 31 May, 1999 clearly after the 29 May, 1999 and 1st respondent's response in this regard is, total silence; his failure to answer of course amounts to an admission. What use was it, then, to receive an agenda after the meeting?

According to the 1st applicant, their withdrawal was made by one constituency namely, Makhaleng whereas the 3rd respondent has 3 constituencies namely:

Qeme constituency being that of 1st applicant
Koro-koro " " that of 2nd applicant
Makhaleng " " that of 1st respondent.

It will be seen that applicants' withdrawal from the IPA was made by a constituency applicants are not responsible to. To this anomaly the 1st respondent has said at paragraph 12 of his Opposing Affidavit:

> '--- The meeting that was called was a properly convened meeting. We were being called by our own base, that is the founder constituency and in any event the meeting had been called in consultation with the executive committee.'

Well, Makhaleng constituency is not the 3rd respondent. In any event if it was in consultation with the 3rd respondent it would be expected that minutes of the executive committee would have been tabled or submitted by the executive committee of the 3rd respondent failing which for the Secretary of the 3rd respondent to have confirmed by affidavit that there was such consultation.

I do not know in what capacity Agatha Patala wrote a letter of 29 May, 1999. In any event, unlike what 1st respondent said, she has not said that in recalling applicants from the IPA it was in consultation with the executive committee or she was authorised by it.

Of the value of natural justice Prof. Baxter in his Administrative Law at p.538 quoted Magarry, J. In *John v. Rees (1970) Ch. 345.402* who said:

> '--- the path of the law is stricken with examples of open and shut cases which, in the event, were completely answered; of inexplicable conduct which was fully explained, of fixed and unalterable determination that by discussion, suffered a change.'

I am not aware that the 1st respondent availed himself of an opportunity to call applicants before him to explain their inexplicable conduct which would have been fully explained and by discussion, their conduct suffered a change. The 1st respondent did not avail himself of such an opportunity because applicants were not responsible for conduct attributed to them. This is a strange country and the people are strange in that, belonging together, matters which would divide them are not brought to the fore in a spirit of friendliness and comradeship. Prof. Baxter at p.539

also reminds us of the remarkable expression of *audi alteram partem* as a process value in the Instruction of Ptahhotep, from the 6th Dynasty (2300 - 2150 B.C.), which bears repetition:

> 'If you are a man who leads,
> Listen calmly to the speech of one who pleads;
> Don't stop him from purging his body
> Of that which he planned to tell.
> A man in distress wants to pour out his heart
> More than that his case be won.
> About him who stops a plea
> One says: 'why does he reject it?'
> Not all one pleads for can be granted,
> But a good hearing soothes the heart.'

Lawyers and judges are not that heartless as some think. Applicants plea was not rejected, they were not given an opportunity to be heard and that by a doubtful body and certainly not by the 3rd respondent or through its offices.

This court has no hesitation in granting this application and accordingly the rule is confirmed with costs to the applicants.

G.N. MOFOLO
JUDGE
28th January, 2000.

For the Applicants: Mr. Mosito
For the Respondents: Mr. Phafane