CIV/APN/410/99

IN THE HIGH COURT OF LESOTHO

In the matter between:

BASUTOLAND CONGRESS PARTY	**1ST APPLICANT**
NATIONAL EXECUTIVE COMMITTEE OF THE BASUTOLAND CONGRESS PARTY	**2ND APPLICANT**

and

MOLAPO QHOBELA	**1ST RESPONDENT**
'MOLOTSI KOLISANG	**2ND RESPONDENT**

Ruling

Delivered by the Honourable Mr. Justice T. Monapathi
on the 17th day of January 2000

There were petitions from a great number of constituencies calling for a special conference. On receipt of these petitions it is said that the First Respondent instructed the Second Respondent to appoint a Special General Conference for that date of the 25th September 1999. There may have been a situation in the papers where the impression is given that neither of the Respondents could have appointed

=the conference but in the end we had a situation where it is agreed by the side of the First Respondent and the Second Respondent that they caused the conference to be appointed. I am saying it was agreed at the end that both of them caused the conference to take place that is why there was that conference. This dispute is about that conference.

I have said that other prayers seem to have fallen off except that one of the declaration. The reason was that the service of the interim Court Order had not been opportune enough to have stopped the Conference. This declaration to me was not a difficult decision to reach. It was because in the background was a rival National Executive Committee which had been elected and whose validity was later confirmed by this Court in that dispute in CIV/APN/205/99 (MAKHAKHE AND OTHERS vs QHOBELA AND OTHERS, per Ramodibedi J). It was elected and it was later confirmed by this Court. The other aspect is that I ended up concluding that it was in fact the First Respondent and the Second Respondent who called the conference. They may have been and I believe there were overwhelming reasons why they did that. There may have been good political reasons but that was not what concerned us here. What concerned us was whether they had the powers to call the conference.

We as judges are not overly concerned with what these two Counsel have

been doing in these three days arguing very strongly here in the most biased and partisan way . It is not even what these politicians would decide or what is in their minds. Our uppermost concern is the highest calling of maintaining law and order in the justice that we dispense. That there must be order according to law.

This resolution of disputes of this kind is not very difficult in institutions such as political parties which are registered with their Constitutions in this country. Our task as it should be circumscribed by one important consideration. It is that what we have to avoid is to be seen to be running parties for the party members or for the committees or getting involved in the internal affairs of those parties. It is with that first understanding that we are able to interpret the constitutions of the parties against what are alleged to be wrongs done by members or committees. We try as much as possible to avoid being involved in the administration of parties.

This matter of registration has got very important consequences because it calls upon the courts to always look for where the power and the control in the parties lie and if such powers and control disturbed whether was it regularly or irregularly done? That is why the Societies Act No.22 of 1966 will always require that a party's constitution and Executive Committee be registered. It is because the law of the country will always look for where there is control and once an Executive Committee is registered the presumption is that that is where the power lies and

where the main centre of control is. It is because the constitution is not only about duties and obligation but about division of powers.

The constitution will substantially prescribe as to who will do which things. Whether one call them powers, whether one call them obligations or duties but the constitution will ideally tell all about these. That is what guides the courts in disputes. So that one cannot ever at the worst of times say it is a tall order for the Court to come to a decision whether there was good justification why there was a disturbance to the powers that have been granted to an Executive Committee. It is not an overly a difficult task nor would one say it is difficult at all to decide whether the Respondents had the posers and rights to call the Special Conference.

I said if one is accused of having disturbed the powers that lie in certain people who have been given power it was not very difficult because the constitution will tell one whether he has done it regularly or irregularly. And that is what the Court has got to deal with because when one speak of a registered constitution the law will look as to who the one that has control, who is it that has got power. It is because the constitution binds every member to comply to its provisions. It has not been difficult in this argument before me to find out if there has been a disturbance of powers given to the Second Applicant's Committee. I concluded that it was of

a blatant kind. Whatever may have been the political justification it was pure expediency. It was also because the Respondents themselves conceded that there was a breach. They said there was a breach. I even suggested whether repudiation would not be a milder word.

The Respondents accepted that there had been a breach by themselves in appointing that conference. They afterwards attempted to justify why they did what they did. That is why in line with their submission this case of NTSOEBEA v NATIONAL PARTY CIV/APN/75/94 was quoted to me. In that submission they said there had been a necessity for what the Respondents did. The Respondent said that it was necessary to appoint the conference in view of the petitions by constituencies and the recalcitrant attitude of the Second Applicant. They said if they did not do that there would have been prejudice and that because of the absence of the working committee and the difficulty or intransigence on the part of the NEC members the party was not able to perform its functions.

The Respondents in justifying their action spoke of things to do with the need to call a conference such as this one as having been a matter of priority. That is why the two Respondents had to do what they did as a matter of urgency. Because the subject of the conference was an important one to resolve the problems of the party. That because the party was in shambles and there were problems and

misunderstandings between the Executive Committee members and there was misunderstanding, the relevant provisions of the constitution had to be given a fair large and liberal construction judging from that matter of priority of the petitions which addressed important issues of the party. That there was a need to interpret the actions of the Respondents as mitigated even if they were in fact breaches of the constitution as a matter of justice and reasonableness.

It was urged that I must condone the breaches having in mind this factors that have been spoken about in the case of NTSOEBEA (supra). The breach should be condoned because one has to look at these factors which I have just spoken about which have been cited in that case. I speak for this case of NTSOEBEA because I know those reasons. It had to do with postponing a date of an Annual General Meeting. The Executive Committee was saying that in order to have held a general meeting the membership of the constituency had to be culled first. That had not yet been done. The failure to hold the Annual General Meeting must be condoned because of that reason. Here it appears to be quite different. One has first to see whether the two Respondents could not have had avenues within the party, if it was the difficulty of the other members of the NEC be they the majority or minority. If the Respondents could not petition the Court (even if their reasons were overwhelming) this what they did did not entitle them to wresting the power from the NEC or to take the law into their own hands.

I repeat that one may even perhaps think that there were overwhelming political reasons why the conference was called or that there could have been or there was extreme neglect on the part of the NEC or members thereof and that the party may in fact be in shambles. What was important was the power that had been allocated for certain people in terms of the constitution. As Court we are very careful about the latter. That is why I have given the background about the policy of the law behind the need to register a constitution and the need to register on a yearly basis the Executive Committees of registered political parties with the Registrar General. It is intended to indicate where the power and the control lies. So that one may clearly see a situation where there is impatience, intolerance and everything that has to do with people who no longer understand each other and are therefore unprepared to cooperate in a common endeavour. This I speak about the NEC including the two Respondents. Hence that example of the swimmer. One may even suspect that this problem in the party is surely about power playing, sheer power playing. Again the example of swimmers who are minimally interested in delivering or solving problems for their followers. It may even be that situation where once the Committee was elected it has neglected how to resolve problems which are the welfare of its people.

The two examples and the background comments that I have given are intended to indicate how I viewed the need to settle the matter. The above brief

statement was about the main reason, on basis of which I will dispose of this matter by allowing it or dismissing it. There were other submissions, about the standing of members of the NEC to bring the application in the name of the NEC not in their individual names in addition. And whether the matter was correctly brought on the basis of urgency without notice on the Respondents. And whether the NEC had correctly resolved to bring the proceedings. The submission connected with the requirement in the COMMANDER OF LESOTHO DEFENCE FORCE AND ANOTHER v MATELA C of A (CIV) No3/99 to spell out the reasons of urgency in the Certificate of Urgency. Those I would deal fully therewith in my reasons for judgment. It suffices to say that in none would I in my discretion decide for the Respondents. This matter of the breach of the constitution remains the main reason because of the fact that the constitution is the contract between members. See (MAKHAKHE AND OTHERS V QHOBELA AND OTHERS CIV/APN/205/99 PER RAMODIBEDI J). It made this Court's work easy and called for a simple way of resolving this dispute. I would have no reason to disassociate myself with the judgment. I associate myself fully with its reasoning. Essentially my task is to see if there is illegality, whether there are breaches of the parties common constitution, whether the breaches can be condoned or not and whether they are of a serious kind or not.

I state the obvious that the breach of the parties constitution by the

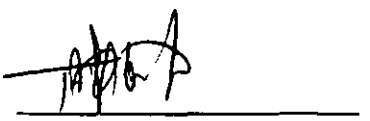
Respondent was a serious one by having on their own appointed the conference. They wrested the powers to appoint such a conference from the repository of the power (the NEC). It was self-help. It may perhaps be that the NEC officials are perceived to be bad politicians or bad people by the Respondents and others. But that is the problem of the administration and governance of the party. It is not a legal problem. The NEC official deserve like everyone else to be treated fairly in their own rights or normal rights. There must be legality in any approach towards them in any of their capacities and this is made easy if there is compliance with the constitution. And when these are well done they can generally result in law and order and justice between man and man which this Court stands for.

I would risk repetition, which I cannot avoid, to say that the act of registration of constitutions actually lays open, at a certain level, to scrutiny of the activities of the parties, the level being whether there was compliance with the party's constitution where a litigant invites the Court to decide a dispute. The Courts can only always be worried that they be careful in that they will not be seen to be deciding administrative affairs of a party.

In this matter there may have been that extreme degree of intolerance and impatience if the party members or officials do not have enough discipline that it is their business. But they should encroach the rights of other in a way that is

unconstitutional. That appeared to be the learned judge's sentiments in MAKHAKHE & ORS v QHOBELA & ORS (supra) with which I align myself to say that a serious breach of the provisions of the constitution merits censure. If litigants complain that their power have been unfairly wrested from them the Court will look into that. So that in the end I allow the prayers that that conference of the 25th September 1999 be declared null and void.

With regard to costs I may merely say there should be costs on the ordinary scale against the Respondents. I was persuaded that there must have been something wrong that urged for the petitioning of a special conference. It may surely be political but there is something that needs to be ventilated by way of a conference that gave the petitions a genuineness about it apart from the illegality of the appointment of the Special Conference itself. Indeed the Respondents may have been overzealous or got into a rush to do unconstitutional things to boot. I merely settling the decision that costs shall be ordinary costs.



T Monapathi
Judge

17th January 2000