

CIV/APN/204/2000  
IN THE HIGH COURT OF LESOTHO

In the matter between:

KHAUHELO RALITAPOLE  
VS  
SEKOALA MACHELI & 8 ORS.

INTERIM ORDER

by the Honourable Mr Justice WCM Maqutu on the 6th day of July 2000.

An application has been brought before this court in which applicant asks the court to set aside the decision of the National Executive Committee of the Basutoland Congress Party and of course the Basutoland Congress Party on the ground that the decision to remove applicant from the Interim Political Authority was taken without given her hearing, in the sense that she had not been invited to appear before the National Executive committee of the Basutoland Congress Party to make representations.

As Mr Panyane in his Heads of Argument crisply put the issue, the authority of the National Executive Committee is not challenged. "The question is not whether this political party has the prerogative, but how it exercises it". See Khauhelo 2 Ralitapole v Ntskunyane Mphanya & Ors. CIV/APN/394/99. In other words applicant only claims the right to be heard.

There are documents here that seem to indicate that the National Executive Committee of the Basutoland Congress Party tried to inform applicant of a date of hearing without success because applicant says she never got the letters in question, despite the D.H.L. receipts that seem to imply that she had got those notifications. Now it is clear therefore that we cannot have this case coming here merely because notifications cannot be properly sent because the parties for some reason don't seem to get on. They don't even get to applicant even where somebody knows clearly where applicant resides. He won't got there, they would rather send third parties. As Mr Panyane said the National Executive Committee of the Basutoland Congress Party paid M57.00 for that notification which doesn't seem to have materialised. There was a prior application (before the Chief Justice) like this one in which a similar decision to the one before me was set aside because there was no notification to applicant. There's likely to be another failure if again if another effort to notify applicant is made. This court has a lot of work, it is not going to be hearing one case over and over again merely because a simple thing can't be done.

Mr Panyane and Mr Phafane who appear for applicant and The National Executive Committee of the Basutoland Congress Party (1st), 3rd and 7th respondents

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respectively agree that it would be far better that this court should make a decision in which there are no small hitches like failure to notify etc. The Chief Justice set aside the prior removal of applicant from the IPA on grounds of failure to notify her. I am expected again to make a similar decision on the grounds that there was no prior notification so that she could make representation. I am glad both counsel realize that we can't have this repetition of the same thing merely because parties can't get on. Whatever decision we make will still have the

same problem of having a party who will say where it wasn't properly notified etc. Both counsel after a short argument asked for a short adjournment to resolve this notification problem.

Well, today they are all here in court and know what is going on and what has to happen. Counsel have handed a signed paper which overcomes the hurdle of notification for both sides here in court. It was signed by Mr Macheli and Mr Phafane counsel for the parties on behalf of the parties. Just for ease of reference and to avoid any doubt I would ask Khauhelo Ralitapole the applicant to stand up, Sekoala Macheli the 7th respondent to stand up. The National Executive of the Basutoland Congress Party is several people. But who are the members of National Executive Committee present?

I specifically asked them to stand up and asked them: Who are you? And they replied:

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I am Thulo Mahlakeng the chairman, Sekoala Toloane deputy leader, Tseliso Makhakhe leader of the Party, Jack Mopeli member of the Committee Sekoala Macheli secretary general, Thoathoa Makuta member of the committee.

There's someone who was mentioned here Molapo Qhobela I understand that he also is the leader of the Party and he is supposed to be present at that meeting too, according to this signed paper. Now all these people are here in court you'll tell those that are not there. You may be seated.

Right, now it has been agreed and your counsel who confirm they have consulted you and they want me to make this an order of the court and I will do so. The signed paper says that a meeting consisting of the National Executive Committee of the B.C.P. at which Mr Molapo Qhobela will attend be held on the 12th July, 2000 at 9,30 a.m. In that meeting applicant will be given an opportunity to make representation to the N.E.C as to why she should not be removed by the B.C.P. from the Interim Political Authority (IPA). Counsels for applicant and respondents will attend the said meeting as observers. The said meeting will be held at a conference room to be provided in the High Court premises by the Registrar of the court. The N.E.C. of the B.C.P. with Molapo Qhobela attending should meet immediately after the said meeting mentioned above and make a decision on the fate of applicant in the IPA and give such a decision in writing to applicant and respondents immediately. I

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think they should give that decision to counsel for applicant and counsel for respondents immediately. This proposed settlement is dated at Maseru of the 6th July, 2000. It is signed for by a counsel for applicant Mr Panyane and counsel for respondent Mr Phafane. I am asking you both counsels: Did you do this with the consent of your clients?. Both counsel confirmed that they did in the hearing of their clients. Right, thank you. You may be seated.

It has to be noted that this is not a case involving the settlement of the dispute between the factions within the party. It has to be noted that this is not a case settling the dispute between the factions which are called the Makhakhe and Qhobela factions in the Party. In respondents' papers it is said Qhobela has been removed as leader. Applicant in her replying papers says Qhobela has not removed from leadership. Well, whatever may be the case the issue before

me is not whether that is proper or is not. That is not what this court is seized with because if Mr Qhobela or anybody had any complaint, a proper case on that issue should have been brought. That issue should be settled elsewhere. This case is about applicant's removal from IPA.

When the application began applicant accepted the present National Executive Committee of the BCP as the lawful one. There's no challenge of its legitimacy. It may or may not have done things properly. This court is not going into the dispute of party factions at all because it is a dispute which has been resolved by the courts. The 6 parties in this case wisely decided this should not stand in the way. The issue before me is whether this committee that is legitimate has or has not acted in a procedurally correct way in removing applicant from the 1PA. Mr. Qhobela will be there in that meeting as it appears applicant's complaint was that he was not there. Respondents have no objection if he is present as the signed proposed settlement shows. He will participate along with the Executive Committee in decision-making because parties want him to do so. A decision will be made in his presence because apparently from what I gathered from the applicant's replying papers he is leader and Executive Committees have to come and go under him. Executive Committees have to come and go under him, and take whatever decisions it sees fit. So his presence as one man makes no difference as the parties have wisely recognized. If he can persuade the others, well, decisions will go the way he wishes but then the majority counts as has always been the case. So the National Executive Committee whose legitimacy is not challenged, will sit with those two leaders under their chairman who is not challenged take a decision pure and simple and then having taken that decision the court will then come and finalise this matter.

This interim decision which authorises Mr Qhobela to sit with the National Executive Committee is based on the decision of the parties before me, and for this case only. I'm glad also that Mr Qhobela who according to the papers appeared to have been made a parcel where a rubber stamp is just used for him is still sufficiently

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well and of sound mind. Whether it is lawful and or unlawful for a rubber stamp to be used in his affidavits, both parties agreed that they accept he was there and he cannot write as he has had a stroke. I am glad they have agreed this should not be pursued, his mind at least is clear. He is not a parcel, the right hand side cannot write and he did talk in court and clearly. So I'm working under no misconception that he was used as a parcel. So then that is it, go and do your thing.

Come and tell me your decision, now I'll tell you when you will bring this decision. This matter is postponed to the 14th July 2000 at 9.30 a.m. at that seating the court will finalize this matter. This matter is still subjudice no final decision has been made the decision of the court will be made following on the deliberation of the National Executive Committee of the Basutoland Congress Party in terms of a settlement signed by the parties. A copy of this document is annexed hereto.

WCVT MAQUTU  
JUDGE

For applicant : Mr Panyane

For respondents : Mr S Phafane