

CIV/APN/110/2001
IN THE HIGH COURT OF LESOTHO

In the matter between:-

BOFIHLA NKUEBE	1ST APPLICANT
CHARLES D. MOFELI	2nd APPLICANT
JUSTIN S. NTLHABO	3rd APPLICANT
ALEX K. MAKARA	4 TM APPLICANT
MOOKI V. MOLAPO	5th APPLICANT
BERENG SEKHONYANA	6th APPLICANT
LIKHETHO RAKUOANE	7th APPLICANT
RAKALI KHITSANE	8 TM APPLICANT
NTJA THOOLA	9th APPLICANT
THUSO LITSOANE	10th APPLICANT
MOTIKOE MOTIKOE	11th APPLICANT
ANTHONY C. MANYELI	12th APPLICANT
MAMELLO MORRISON	13th APPLICANT
THABO PITSO	14th APPLICANT
LEBONA NTSASA	15th APPLICANT
MTHUTHUZELI TYHALI	16th APPLICANT
MOEKETSI MALEBO	17th APPLICANT
MOLETSANE MONYAKE	18th APPLICANT
PHEELLO MOSALA	19th APPLICANT
LEMAKATSO NTAKATSANE	20th APPLICANT
TSELISO MAKHAKHE	21st APPLICANT
SEKOALA TOLOANE	22nd APPLICANT
SEFATE DEMOCRATIC UNION	23rd APPLICANT
INTERIM POLITICAL AUTHORITY	24th APPLICANT
AND	
THE MINISTER OF LAW & CONSTITUTIONAL AFFAIRS	1st RESPONDENT

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THE MINISTER OF INFORMATION & BROADCASTING	2nd RESPONDENT
THE DISASTER MANAGEMENT AUTHORITY	3rd RESPONDENT
THE ATTORNEY GENERAL	4th RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice S.N. Peete on the 10th July 2001.

This Judgment involves unique issues of supreme constitutional importance.

Background

The twenty two (22) applicants in this case are members of the Interim Political Authority (IPA) a statutory body established in 1998 by the Interim Political Authority Act No. 16 of 1998 whose preamble reads thus:-

"An Act to establish an authority to facilitate and promote the preparation for the holding of the next general elections and for connected purposes. "

Section 4 of the same Act outlines the objectives of the Authority as-

"4. The objectives of the Authority shall be to facilitate and promote, in conjunction with the Legislative and Executive structures in Lesotho, the preparation for the holding of general elections to be held within a period of 18 months from the date of commencement of this Act by-fa) creating and promoting conditions conducive to the holding of free and fair elections;

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- b) levelling the playing field for all political parties and candidates that seek to participate in the elections;
- c) eliminating any impediments to legitimate political activity;
- d) ensuring that no person is victimised on account of his political beliefs;
- e) eliminating any form of intimidation which has a bearing on the elections;
- f) ensuring that all political parties and candidates are free to canvass support from voters and to organise and hold meetings, and for that purpose to have access to all voters;
- g) eliminating political patronage of any kind; and
- h) ensuring equal treatment of all political parties and candidates by all government institutions and in particular by all government-owned media, prior to and during the elections. "

It is common cause that all the first twenty-two applicants are representatives of many political parties in Lesotho and are members of the IPA having been appointed thus under section 5 of the Interim Political Authority Act. It is also common cause that these political parties have no representation in the National Assembly of the Parliament of Lesotho (save a single member of Parliament belonging to the Basotho National Party). These opposition parties have members who constitute a majority in the IPA, whilst the ruling party, Lesotho Congress for Democracy, has only two members in the Authority.

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Section 6 of the Interim Political Authority Act lists the powers of the Authority. It reads :-

"6. The Authority shall have the following powers-fa) to request and obtain, subject to any other provision of this Act, all such information or, documents as may be necessary for attaining its objectives, from the relevant public institutions;

- b) to review the Electoral Code of Conduct especially its enforcement mechanisms;
- c) to take decisions on all matters relevant to its objectives and to ensure the implementation of such decisions by making recommendations to relevant structures;

- d) to review the Independent Electoral Commission and make appropriate recommendations to the relevant public institutions on its structure and functions;
- e) to review the Lesotho electoral system with a view to making it more democratic and representative of the people of Lesotho;
- f) to recommend changes to existing laws, including the Constitution, to relevant public institutions in order to enable it to attain its objectives;
- g) to take such lawful steps as may be necessary to exercise its powers; and
- h) to take such lawful action as may be necessary to fulfil its objectives."

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Sections 13 and 14 of the Act read respectively: -

"Decision Making

13. Decisions of the Authority shall be by way of consensus.

Implementation

14. The Executive shall be obliged to implement all decisions of the Authority."

The Application

The order prayed for is couched in the following terms-

"1. Directing the 1st, 2nd and 4th respondents to comply with the decision of the Interim Political Authority dated 5th October 2000 ordering that:

- a) The IPA be entitled to a minimum of weekly slot on Radio Lesotho and periodic access to Lesotho Television.
- b) That all registered political parties with the I.E.C. be allocated time on both Radio Lesotho and Lesotho Television, to comment on any Bill of Parliament.
- c) All parties registered with the I.E.C, be allocated time to commend on any national policy being pursued by Government.
- d) All parties registered with the I.E.C. are entitled to make official announcements of their Annual General Meetings and district pitsos over Radio Lesotho.

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2. Directing the 3rd respondent to comply with the decision of the Interim Political Authority dated 4th December 2000 that:

- a) The use, by the Chief Executive of the DMA, of Members of Parliament and their appointees in the distribution of relief food in violation of the provisions of the Disaster Management Act No.2 of 1997.
- b) The use, by the chief Executive of the DMA, of Members of Parliament and their appointees in the identification of sites for silos and water tanks in violation of the provisions of the Disaster Management Act No.2 of 1997.

- c) The use of Constituencies, which are political entities, as the criteria for food distribution, in violation of the provisions of the Disaster Management Act No.2 of 1997.
- d) The DMA should be stopped forthwith and return to the position of legality as defined in the Disaster Management Authority Act No.2 of 1997, and also observe the principle of Separation of Powers by desisting from using Members of Parliament in its operations.

3. Directing the 1st and 4th respondents to supply or cause to be supplied the following pieces of information to the IPA in accordance with the decision of IP A dated 25th August 2000:

- b) The copy of the official notification of the establishment of the office of the "First Lady".
- c) The rationale behind the establishment of such office.
- d) Its structure, budget and composition of its staff.
- e) Whether the office's budget has been approved by the National Assembly.

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- f) Whether the establishment of this office and the mechanisms to regulate its activities have been gazetted.
- g) Whether the office is intended to serve the public of who its target beneficiaries are.

4. Directing the 1st and 4th respondents supply or cause to be supplied the following pieces of information to the IPA in accordance with the decision of IPA dated 28th September 2000 that:

- a) When the Board members of the Lesotho Fund for Community Development appointed? A copy the appointing instrument is requested.
- b) Have the names of the members of the Board been published in the gazette in terms of Regulation 8 (4)? If the answer is in the affirmative, a copy of such gazette is requested.
- c) If the Board has not been gazetted has it nevertheless been employing or appointing any person. If the answer is in the affirmative, on what basis is the piece of legislation of a copy thereof is requested.
- d) How many applicants submitted their names for consideration by the Board? Copies of such applications are requested. Were there a selection criteria are in writing, copies thereof are requested.
- e) Have there been requests for funding from the communities submitted to the funds? If yes, what criteria have been used or will be used to determine what a community is which makes it eligible and indeed entitled to submit a project proposal for due consideration by the fund.
- f) Has there been election held in accordance with regulation 23 for community project sub-committees? If the answer is affirmative, who supervised those elections and on what basis?

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- g) Is there a relationship between Village Development Council and the Community Project Sub-committee? Is there also any connection between the constituencies delimited in accordance with the constitution and communities entitled to elect project sub-committees?
- h) Who is to establish District Development Coordinating Committees and Community Councils and how are they established or and appointed?
- i) How much monies have been disbursed since the appointment of the board to any project? If the disbursement have been made what are the criteria for such and how much has project received?
- j) If there are projects receiving monies from the fund who is employing the people work in the projects and what is the criteria for their appointments?
- k) Has the transfer of funds from the Lesotho Highlands Revenue Funds to the present fund been effected?

5. Directing the 1st and 4th respondents to comply with the decision of the Interim Political Authority of the 11th October 2000 which provided for the transformation of the Commission established in terms of Legal Notice No.33 of 2000 to a full-fledged truth and reconciliation commission with power to grant amnesty and order compensation as per Annexure "H".

6. Costs of suit.

7. Further and/or alternative relief."

Prayer 5 concerning the Leon Commission of Inquiry was however abandoned by the applicants at the hearing of this application.

Mr Bofihla Nkuebe has made a sworn affidavit on behalf of all the applicants. It is perhaps proper for the completeness of the judgment to recite in full the material paragraphs of his affidavit.

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"5.

As of December 1998, myself and the other twenty-one applicants were duly appointed as members of the Interim Political Authority and two members representing the ruling party. We have been duly discharging our responsibility by passing decisions to the Executive authority of the Government of Lesotho through the office of the 1st respondent.

6.

In terms of Section 4 of the IPA Act No.16 of 1998 the objective of the Authority is to facilitate and promote the preparation for the holding of general elections by performing certain tasks specified. Some of the specified tasks of the Authority are to eliminate political patronage by all Government Institutions and in particular to ensure equal access to Government owned media prior to and during the elections.

7.

The Authority is empowered by Section 6 (a) of the IPA Act to request and obtain all such information or documents as may be necessary for attaining its objectives as spelt out in paragraph 6 above.

8.

In pursuit of its objectives and powers the Interim Political Authority by consensus passed the following decisions that are binding on the Executive and were duly transmitted:

8.1 The decision to request information pertaining to the establishment of the office of the FIRST LADY dated the 28th August 2000 attached hereunto as Annexure "D".

8.2 The decision to request information in relation to the operationalization of the Lesotho Fund for Community Development dated the 2nd October 2000 attached hereunto as Annexure "E".

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8.3 The decision on access to the media by the IPA and political parties registered with the IEC dated 5th October 2000 attached hereunto as and marked Annexure "F".

8.4 The decision against acts of political patronage by the DMA is hereunto attached and marked "G".

9.

The respondents in their capacities as part of the Executive have failed and/or neglected to comply with the above-mentioned decisions which are binding on them in terms of Section 14 of the Interim Political Authority Act. As a result the applicants individually and collectively have decided to request intervention by the Honourable Court in order to ensure that the rule of law is observed by all persons and institutions in Lesotho.

10.

I submit that the application is an imperative as failure to comply with the said decisions would defeat the operations of the IPA which is to level the playing field in the forthcoming elections. If the radio is monopolized by the ruling party, which is the case presently, and information, pertaining to patronage is withheld then the peace agreement signed by the parties and guaranteed by SADC will be undermined.

11.

I humbly submit that issues raised in this application cry out for urgency and as such the application is urgent as the monopoly on Radio Lesotho must be ended if elections are to be free and fair and also information which will show whether any of patronage is being committed is desperately needed by the Authority and the applicants to discharge their functions. I am convinced that failure to supply the information is undermining the objectives of the Authority and frustrating the efforts of its members.

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12.

I aver that the applicants have a clear right in respect of the implementation of their decisions in as much as they are all members of the 24th applicant. The decisions of the 24th applicant are intertwined.

13.

I further aver that the question of avoidance of political patronage is one of monumental importance to the democratic dispensation and constitutional rule in the Kingdom of Lesotho. The final determination of this application will expedite the smooth and speedy preparation

for national elections, the resolution of the problem therefore remains ever urgent and pressing. If this Honourable Court does not intervene, the applicants and the nation at large will suffer irreparable harm under the claws of political patronage practicing authorities. The need to provide information as afore-outlined is one of critical significance in this matter. I aver that the facts in this case cry out for urgency and that applicants have no other alternative relief than to approach this Honourable Court in the manner they have done.

14.

I am making this affidavit in support to the present application."

Advocate Mosito, for the applicants, agreed that the Interim Political Authority is not a constitutional but a statutory body whose powers and functions are limited to the parameters of the creating Act and that the IPA Act was to be interpreted in such a manner as not to conflict with the Constitution of Lesotho of 1993 which is the supreme law of Lesotho and that if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void. This is the trite principle of constitutionalism.

As a preliminary objection, Advocate Mosito raised a rather unique observation by submitting that all the affidavits made in support of the respondents do not allege that

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"the facts deposed to herein are within my personal knowledge and I verily believe the same to be true and correct." He submitted therefore that this deficiency affected their evidential weight and the court could only rely on those factual issues upon which they were at ad idem with the founding affidavit. He quoted in support of his submission the cases of Lawrence Matime vs Authur Moruthoane - 1985-89 LAC 281 and Moletsane - CTV/APN/496/96.

I should however point out that, despite the alleged deficiency, all these affidavits begin thus:-

"I, the undersigned
do hereby make oath and say" and end up with a declaration –

"Thus signed and sworn to before me this day of March 2001 by the deponent having acknowledged that he knows and understands the contents hereof.

Commissioner of Oaths".

I dismiss this objection summarily because there is no format in the High Court Rules that lays down the particular wording of an affidavit; I am however satisfied that each of the deponents of the answering affidavits took an oath before a commissioner of oaths acknowledging that he knows and understands the contents of his affidavit.

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Advocate Mosito submits in the main that the applicants being members of the IPA are seeking information in exercise of the powers of the IPA under Section 6 (a) of the principal Act which reads-

"6. The Authority shall have the following powers-fa) to request and obtain, subject to any other provision of this Act, all such information or documents as may be necessary for attaining its objectives, from the relevant public institutions ". (my underline)

"relevant public institution" is defined under section 2 of the Act as "Any Government ministry, department, parastatal or any other institution wholly or partly funded by the Government"

In my view, the information being requested by the IPA must satisfy the basic and crucial test under Section 6 (a), that is, it must be information as may be necessary for the attainment of objectives as listed under section 4; it is clear to me that the listed objectives are aimed at facilitating and promoting the preparation for the holding of the genera] elections in Lesotho.

I will therefore subject all four prayers (i.e. 1,2,3 and 4) in this application to this test.

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Prayer I

Prayer 1 reads-

"Directing the 1st, 2nd and 4th respondents to comply with the decision of the Interim Political Authority dated 5th October 2000 ordering that-

- a) The IPA be entitled to a minimum weekly slot on Radio Lesotho and periodic access to Lesotho Television.
- b) That all registered political parties with the Independent Electoral Commission be allocated time on both Radio Lesotho and Lesotho Television to comment on any Bill before Parliament.
- c) All parties registered with the IEC be allocated time to comment on any national policy being pursued by the Government.
- d) All parties registered with the IEC are entitled to make official announcements of their Annual General Meetings and district pitsos over Radio Lesotho."

The relevant decision by the IPA was made on the 5th October 2000 - Annexure "F".

It reads :-

"INTERIM POLITICAL AUTHORITY DECISION ON ACCESS TO THE MEDIA BY THE IPA AND POLITICAL PARTIES REGISTERED WITH THE I.E.C.

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In pursuance of one of its objectives contained in section 4 (b) (f) and (g) of the I.P.A. Act 1998 read with section 14(1) and (4) of the Constitution of Lesotho, the Interim Political Authority has decided at its Plenary Meeting of October 2000 that-

- a) The Authority be entitled to a minimum of weekly slot on Radio Lesotho and periodic access to Lesotho Television.

- b) That all registered political parties with the I.E.C. be allocated time on both Radio Lesotho and Lesotho Television to comment on any Bill before Parliament.
- c) All parties registered with the IEC be allocated time to comment on any national policy being pursued by Government.
- d) All parties registered with the I.E.C. are entitled to make official announcements of their Annual General Meetings and district pitsos over Radio Lesotho.

Thus done in Maseru on 5th October 2000."

Section 14 (1) and (4) of the Constitution relied upon read as follows:-

"14.(1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

- 2)
- 3)
- 4) Any person who feels aggrieved by statements or ideas disseminated to the public in general by a medium of communication has the right to reply or to require a correction to

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be made using the same medium, under such conditions as the law may establish."

These provisions of the Constitution guarantee in a special way the individual's freedom of expression and of communication of ideas - in Lesotho. They guarantee the right to respond to statements disseminated through media. This is an important freedom in a democratic society and should be cherished by all.

Mr Nkuebe states in his founding affidavit that "we have been duly discharging our responsibility by passing decisions to the Executive authority of the Government of Lesotho through the office of the 1st respondent" and that "In terms of section 4 of the IPA Act No.16 of 1998 the objective of the authority is to facilitate and promote the preparation for the holding of the general elections by performing certain tasks specified. Some of the specified tasks of the Authority are to eliminate political patronage by all Government institutions and in particular to ensure equal access to Government owned media prior to and during the elections."

He goes on to state that the respondents in their capacities as part of the Executive have failed and/or neglected to comply with the above mentioned decision which is binding on them in terms of section 14 of the Interim Political Authority Act - which reads :-

"The Executive shall be obliged to implement all decisions of the Authority"

The meaning of the word "obliged" was discussed in *Anglo African Shipping Co. Ltd vs Harris - 1977 (2) SA 213* and held by Nicholas J. to mean "compelled", and

that the words created a contingent right entitling the applicants to approach the court for a declaration of rights. (See also section 2 (1) (b) of our High Court Act.)

In my view all decisions of the Interim Political Authority in order to bind the Executive, must pass the test under section 6 (e) of the IPA Act. It reads-

"6. The Authority shall have the following powers-

- a.
- b.
- c. to take decisions on all matters relevant to its objectives and to ensure the implementation of such decisions by making recommendations to relevant structures; (underlining mine)
- d."

The Honourable Minister of Communications Mr Nyane Mphafi in his answering affidavit states:

5.

"As Minister of Communications and as a member of the Executive of Lesotho I am conscious of the provisions of section 4 (h) of the IPA Act 1998 No.16 of 1998 which has obliged the Executive to ensure equal treatment of all political parties and candidates by all governmental institutions and in particular by all government owned media prior to and during the elections. The Government of which I am a member is firmly committed to fulfilling the above legal requirement.

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8.

"In the light of the Government's commitment, it is open to the IPA and all political parties to contact the Director of Broadcasting and to discuss with him the modalities as to how the request for equal opportunity on Radio Lesotho and Television could be accorded to all political parties."

9.

"I am rather surprised that IPA has thought it fit to rush to court with this demand. Neither me nor my Ministry nor any of its officials have ever refused to entertain any reasonable request by IPA or any political party."

It seems therefore that Prayers 1 (a) and (d) have no problems and are hereby granted. It is Prayers (b) and (c) that give rise to some concern and it should be noted that Mr Nkuebe has not sufficiently motivated them in his founding affidavit in which he only emphasises political patronage and access to the Radio and Television. This court will therefore disallow these prayers for that reason - the applicant should stand or fall by his affidavit; but more importantly, I should state that whilst one may understand that the 1998 general election results gave the majority of the political parties in Lesotho no representation in the National Assembly, it would be improper for this court to sanction the creation of an extra-

parliamentary opposition debate on the Bills before the Parliament of Lesotho. The right and privilege to debate Bills presented to Parliament is vested by the Constitution and by the Power and Privileges of Parliament Law in the honourable members of the Senate and of the National Assembly. Granting these prayers as presently couched would indeed amount to an encroachment by the Judiciary upon legislative power (see *Mulaudzi and Others vs*

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Chairman Implementation Committee - 1995 (1) SA 509 where van den Heever AJ said at page 545-

"As to the internal procedure relating to the domestic conduct of its business, Parliament is its own master and can amend or ignore such procedural prescriptions or conventions at will and no outside body, including the courts, will intervene in this regard."

See also *Mpangele v Botha* - 1982 (3) SA 638; *Poovaligam vs Rajbansi* 1992 (1) SA 283; *Rex vs Ndobe* 1930 AD 484.

The futility or impotence of these items of the request is underscored by the fact that even after any such extra-parliamentary debate, the IPA or its members would have no deliberative vote in the legislative process. Prayer 1 (b) and (c) are therefore disallowed.

Prayer 2

At its plenary meeting on the 4th December 2000, the IPA declared the following actions by the Disaster Management Authority (DMA) as constituting political patronage.

a) The use by the Chief Executive of the DMA of members of Parliament and their appointees in the distribution of relief food in violation of the provisions of the Disaster Management Act No.2 of 1997.

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b) The use by the Executive of the DMA of members of Parliament and their appointees in the identification sites for siloes and water tanks in violations of provisions of the Disaster Management Act No.2 of 1997.

c) The use of constituencies, which are political entities, as criteria for food distribution, in violation of the provision of Disaster Management Act No.2 of 1997. these practices should be stopped forthwith and that the DMA should return to the position of legality as defined in the Disaster Management Authority No. of 1997 and also observe the principle of separation of powers by desisting from using members of Parliament in its operations."

The Prayers is silent as to what sections of the Disaster Management Act have been violated by the Chief Executive in using the services of members of Parliament. The Prayer does not state in what capacity and when the members of Parliament were used for food distribution and selection of silo sites. Without questioning the wisdom of the IPA decision of the 4th December 2000 to the effect that use of Parliamentarians constituted political patronage, it should be made clear that constituencies in Lesotho have been created by the Constitution of Lesotho (section 67) and cannot be described as political entities.

The general powers of the Chief Executive of the Disaster Management Authority DMA are listed under section 21 of the DMA Act. Section 23 of the Act establishes

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what are called District Disaster Management Teams to assist District Secretaries in discharging responsibilities relating to disaster management in the districts concerned. It is clear from this list that the list is based upon district and not constituency delimitations. The Chief Executive Officer of the DMA admits that he has sought the assistance of members of Parliament "to assist him with a list of persons to assist (him) to oversee the implementation of disaster management." I do not think the Chief Executive Officer was correct in doing so because the Act clearly stipulates that this function belongs to the District Disaster Management Teams and not persons listed by the member of Parliament. This Act was passed by Parliament whose members saw it fit to exclude themselves. It is not proper for the members of Parliament to usurp, so to speak, the functions of committees or teams established under the Act - without being formally coopted by the Disaster Management Team under section 23 (3) of the Act. A disaster is a calamity that befalls a community through e.g. disease, storms, drought, quakes, floods etc. It is proper, as the Parliament saw it fit, that the response to disaster be community based. Members of National Assembly are representatives of political parties and political patronage can sometimes influence political appointments. It was difficult to come to any definite meaning of what constitute political patronage; I was not asked to define it. I can only say that The Chief Executive Officer should comply strictly with the provisions of the Disaster Management Authority Act and should not do anything that is not sanctioned under the Act. Practical expedience should not be allowed to violate the provisions of the law, notwithstanding the good intentions of the Chief Executive Officer. Throughout the whole Act there is no reference to "members of Parliament" participating in the disaster management activities - I therefore fail to see their involvement in DMA activities. This Prayer is therefore allowed.

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Prayer 3

This Prayer is for an order directing 1st and 4th respondents to supply or cause to be supplied the following pieces of information to the IPA in accordance with the decision of the IPA dated 25th August 2000.

- a) The copy of the official notification of the establishment of the office of the First Lady.
- b) The rationale behind the establishment of such office.
- c) Its structure, budget and composition of its staff
- d) Whether the office's budget has been approved by the National Assembly.
- e) Whether the establishment of this office and the mechanisms to regulate its activities have been gazetted.
- f) Whether the office is intended to serve the Public and who its target beneficiaries are.

In considering the information required in this Prayer, one should bear in mind that the information requested should be such as may be necessary for the attaining of the IPA objectives under section 4.

I should first observe that this Prayer has not been motivated at all by Mr Bofihla Nkuebe in his founding affidavit. This makes the task of this court rather difficult, if not nigh impossible. It seems to me that some form of political patronage or nepotism is being alleged or suspected because the EPA decision of the 28th August 2000 makes reference to Section 4 (g) of the IPA Act which reads "eliminating political patronage of any kind"

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Mr Moblabi Kenneth Tsekoa the then Government Secretary deposed to a lengthy affidavit in which explains the real motive and rationale behind the creation of the Office of the First Lady, but maintained that the issue concerning the establishment of this office does not fall in the purview of the provisions of section 6 (a) of the IPA Act. Mr Tsekoa further states that at the time when he deposed to his affidavit this office's structure, budget, composition of its staff were as yet unfinalised.

As I said earlier the pieces of information which the IPA, rightly or wrongly, requested were not supplied by the Executive until seven months later when an application for mandamus was lodged and this information now comes by way of an answering affidavit! Perhaps a timeous response could have forestalled this part of the application.

That notwithstanding it seems to me that under this Prayer the onus lies upon the applicant to show that the information it seeks falls under the purview of Section 4 and (6) (a) of IPA Act. As I have already stated Mr Nkuebe has hardly motivated this prayer in his founding affidavit and it is not possible to grant this Prayer upon the papers as they stand.

In the political world of to-day, political patronage abounds as part of permissible political activity. Political patronage may mean the usual political control of appointment of senior important officials of government; for examples of political patronage can influence: appointments of Cabinet Ministers, senior government officials like principal secretaries and ambassadors.

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The office of "First Lady" is a novelty and hitherto unknown in the public service in Lesotho. Mr Tsekoa explains in detail the considerations that preceded its establishment. In the arena of executive or administrative action where political considerations are brought to play, judicial restraint is often justified - Baxter Administrative Law, p.490. Creation of offices in the public service is the prerogative of the Executive through its Minister responsible to the Public Service. [Public Service Act 1995 section 9]. The affidavit of Mr Nkuebe fails to show that the creation of the office of the First Lady constitutes a matter that falls under the purview of Section 4 (g) of the IPA Act. Elimination of political patronage in the context of the IPA Act should be premised upon the primary objective of facilitating and promoting the preparation for the holding of general elections. I fail to see how the creation of the office of First Lady affects adversely or otherwise the facilitation or promotion of general election in Lesotho.

If this office of First Lady is an office in the public service it is subject to the ordinary provisions of the Public Service Act 1995 which proscribes against political party activity of public servants; the First Lady would not therefore lawfully become an active member of a

political party or speak in public on any party political matter or indeed take active part in the support of any political party.

I am however of the view that despite the spousal relationship concomitant to this office, the applicants have failed to discharge the onus resting on them to show that the creation of this office and appointment thereto of the wife of the Prime Minister

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in any way thwarts the objectives of the IPA under section 4 of the IPA Act. This Prayer therefore fails.

Prayer 4

This Prayer requests information involving the activities of the Lesotho Fund for Community Development (LFCD). The IPA requested information on the 28th September 2000 and it is again to be regretted that there was no response from respondents up until the present mandamus application was lodged. Mr Tsitso Monaheng only made his answering affidavit in which he divulges the requested information some 7 months later in April 2001! It seems to me that reference to Section 4 (g) of the IPA Act in the decision of the IPA also implies that political patronage was being suspected in the operationalization of the Lesotho Fund for Community Development.

The applicants have not replied to the answering affidavit of Mr Monaheng and the court is entitled to infer that the applicants were satisfied with the information supplied under this Prayer; the answering affidavit of Mr Monaheng addresses fully the concerns raised in the IPA's decision. It is not for this court to go into the wisdom of the administrative processes under this Fund.

I consequently do not make any order under this Prayer.

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As regards costs, I should point out that whilst the Interim Political Authority was entitled under law to request certain information, in some instances the request was justified, while in some misconceived; the respondents however unreasonably delayed their response thus necessitating an application for a mandamus. I am of the view that justice requires that each party bear its own costs.

S.N. PEETE
JUDGE

For Applicants : Mr Mosito
For Respondents : Mr Tampi