IN THE HIGH COURT OF LESOTHO

CIV/APN/37/2001
CIV/APN/38/2001

In the matter between:

LEPITIKOE LEPITIKOE	1st Applicant
SELLO MONAHENG	2nd Applicant
MOHAPI LEPITIKOE	3rd Applicant

and

NATIONAL EXECUTIVE COMMITTEE LESOTHO CONGRESS FOR DEMOCRACY (NEC)	1st Respondent
LESOTHO CONGRESS FOR DEMOCRACY (LCD)	2nd Respondent

and

ETSANG MOENO	1st Applicant
ZULU KHOTLE	2nd Applicant
PITSO MAKHETHA	3rd Applicant
RANKHAHLE RAMABUSE	4th Applicant
RETŠELISITSOE MPITI	5th Applicant

and

NATIONAL EXECUTIVE COMMITTEE OF LCD (NEC)	1st Respondent
LESOTHO CONGRESS FOR DEMOCRACY (LCD)	2nd Respondent

Mr. Phafane : **For Applicants**

Mr. Teele : **For Respondent**

REASONS FOR JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 10th day of July 2001

I granted the prayers sought with costs on the 26th January 2001 while the Court was in vacation. I said my reasons for judgment would follow later. Hereinunder are those reasons.

The disputes concern two constituencies of the Second Respondent political party (the party) about an appointed Annual General Meeting (AGM) for the year 2000. The two matters CIV/APN/37/2001 (Lithoteng Constituency) and CIV/APN/38/2001 (Mafeteng Constituency) were consolidated and argued as one. Mr. Phafane appeared for the Applicants and Mr. Teele appeared for the Respondents. Other two matters concerning the AGM which had been filed were not opposed. They were settled and granted without any order of costs.

The instant matters concerned an ongoing A G M of the Second Respondent party in which the Applicants and others sought to be allowed to participate as the prayers in the notice of motion show. By others I meant those who would be inevitably affected but not directly mentioned in the effect of prayer (a) of the notice of motion. The urgency was dictated by the fact that the conference was coming

the very evening when the Court was being addressed by Counsel. The parties had had no interest to have the Conference interdicted and stopped. Hence there was no prayer for suspension of the Conference.

Counsel provided the Court with a copy of the Constitution of the party and Mr. Phafane provided the Court with his brief heads of argument. Mr. Teele did not. This was understandable in the circumstances. He had been briefed late the previous night and had had to cause an answering affidavit to be settled hurriedly because the matter was extremely urgent. Counsel urged me to make an impromptu ruling at the end of the arguments which was late at night, understanding that the reasons for judgment would follow later on.

It was indicated as said earlier that the application would be addressed jointly although revolving or hovering around application CIV/APN/38/2001 for convenience. There were two issues for determination by the Court and there were two categories or cadres of the Applicants. Firstly it was the category of Applicants who were seeking entry to the conference by reason of the fact that they were office bearers in their respective constituencies. As such they were ex-officio delegates to the conference - namely LEPITIKOE LEPITIKOE in CIV/APN/37/2001 and ETSANG MOENO in CIV/APN/38/2001. The second category (the rest) was those of persons who would be referred to as delegates from the branches of the

parties properly said to be delegates per se.

I noted that the responses of the Respondents as regards the first category differed from their response as regards the second category. It is because the first category might well succeed while the second might fail and vice-versa.

Article 8 of the Constitution of the party deals with the composition of the Annual General Conference of the party as to people who had a right to attend. Amongst the delegates who attend the conference as a matter of right are the Chairman, the Secretary and the Treasurer of all the Constituencies. These are the three delegates office bearers. They are not elected to the conference like those referred to herein of as the second category. This was said to be common cause.

The factual situation can be approached in this way. Respondents case was that the three officials in respect of the two constituencies could not attend because their respective constituencies do not exist because their committees had since been disbanded by the First Respondent (NEC). The officials were consequently no longer being office bears nor would there be any delegates who would come by virtue of being office bearer of those respective constituencies. The question then would be how this was done and when it was done. In the affidavit of Mr. Mabusetsa Makharilele (the Deputy Secretary General) some indication is given at

paragraph 7 (d) (iii) of his affidavit. He says:

> "As regard Mafeteng a decision was taken by the NEC in 1998 because it had failed to unify the control structures in its constituency." (My underlining)

They scrapped the constituency as suggested. If they did the question would be whether they properly did so according to the parties constitution.

The other leg of the Respondents' case was like as regards Mafeteng there had been no fruitful elections since1997. And the committee that held itself as a committee was last elected in 1997 and since all attempts to replace that committee were abortive no elections had since been held. It was that the period of office had expired and they could not therefore continue to hold themselves as a constituency committee as their period in office had lapsed. This turned out to be the line of argument that Mr. Teele for Respondents stood up to say they would not pursue presumably because it was tenuous. On the general principle if an elected committee is in place, not replaced, dismissed or disbanded it remains in existence. What remained therefore was the argument that the committees were disbanded in 1998 while the committees said they were not and continued organizing and running the affairs of the constituencies.

Mr. Phafane submitted that in the circumstances there was a duty of the

NEC to show how they disbanded these constituency committees whether with letters or otherwise. How were the committees disbanded? The Respondents in adverting to the circumstances said -

> "In 1998 conference was attended by branches and there having been no constituency conferences that approved delegates. The decision was taken by the First Respondent in 1998 to do away with the constituency committees."

The operative word was "do away." It means the same thing as disbanding. The committee was said to have defaulted by having failed to unify and control structures of the party in its constituency. That was why in 1988 Mafeteng was represented by branches. The NEC had directed so. The Court was never told how the constituency committees were done away with. In reply this committee claim that they are still in office. It was further said when attempts were made by NEC in 2000 to hold a conference. That this attempts failed because of the disagreements between branches. There had been other attempts the year before. The Court was never told, as Mr. Phafane correctly submitted, nor was anything tangible put forward to indicate how the committees were put out of the office by the NEC. There had been a duty and it was imperative for the NEC to indicate how they had removed the committees and if so how lawfully this was done.

The Court's attention was drawn to what was said to have been a clear and

unambiguous procedure that was to be followed by the NEC of the party in the event of its being inclined to remove disband a constituency committee. This Court was referred to Article 2(e) of the constitution of the party. That was to be read with Article 28(b) as well as Part IV of the constitution which deal with matter of discipline. More particularly Article 9 of that part. The duties of the NEC in Article 2(a) which include that punishment on or constituency committee can take the form of suspending such a committee for some time or its removal or disbandment. Those power to NEC does have. The question however is how they should be exercised in proper circumstances. Can they do it in any manner or as they please? Surely they cannot do that. That is remove a committee for alleged misconduct without having gone through or resorted to those provisions that prescribe for disciplinary action.

The disciplinary given under Article 28(b) are subject to the procedure laid down in part IV 9. The latter lays down the procedure. Assuming that the NEC could not have disbanded or suspended a committee for the "fun of it", it must have been for misconduct or delinquent behaviour, mal-functioning mal-administration and so forth Part IV 9 prescribes that in that event there shall be a written charge, providing an opportunity to the defaulter to make representations before a finding is made. This means that they ought to have been given a hearing and an inquiry should have been made. This seems just and democratic. It was submitted quite

correctly therefore that there was an absolute need on the NEC to have followed the proper procedure if the disbandment of the committee was a proper case. It was clear therefore that none of the procedures were followed nor does the NEC provide a scintilla of evidence that this was done when they purportedly disbanded the committees if they did at all. It was unarguable that the constitution has not been followed and the committees had not been given a hearing according to the principle of *audi alteram partem* "let the other side be heard". The case of RAKHOBOSO v RAKHOBOSO 1997-1998 LLR & LB at 4-5 PHAI FOTHOANE AND ANOTHER v CDP AND OTHERS CIV/APN/243/99 per Mofolo J. and Zimbabwean Supreme Court case of SEKAI HOLLAND AND OTHERS v MINISTER OF PUBLIC SERVICE NO SC 15/97 were referred to this Court. In the latter case the Minister had even been empowered by statute to disband a committee without a hearing. It was then said in judgment that it had been unfair and unconstitutional. The treatment by the Court of Appeal of the right to a hearing is comprehensively dealt with in RAKHOBOSO case. See also the remarks of Mofolo J in PHAI FOTHOANE case. I concluded that the cases accurately reflected the law and properly illustrated that the right to be heard before an adverse or prejudicial action is fundamental. A fair hearing so I would say this was the case in the present matter. On the facts it was clear that at no stage did the NEC disbarred the committees in question. There was no evidence that a decision was taken by the NEC sitting in quorum nor were the circumstances of the sitting

show. There was also no evidence that such a decision (if any) was communicated to the person affected. See SEEISO NQOJANE v NUL 1985-1989 LAC 369 at 383 AB. Clearly NEC has gone against its own constitution and that was even contrary to the spirit and the letter of the Constitution of the land. It was correctly submitted that the purported decision to disband the committees was a nullity. The constituency committees of Lithoteng and Mafeteng remain and are entitled to attend the conference. I was unpersuaded that these committees or are often could not have attended on the strength of the act of the NEC. It can only mean that they did not assert their rights not that what was purportedly done by the NEC was good and lawful. There could have been a number of reasons why they did not attend when they did not. Without a clear demonstration as to the cause of their conduct it remains difficult for this Court to conclude on the probability suggested by Respondents in the absence of clear proof. It could not in my view be seriously concluded that since they did not attend the 1999 conference they ought not to attend the one of the year 2000.'

Almost the same circumstances were said to have prevailed even at Lithoteng where no elections were held and the constituency was equally not conforming and could not be controlled as to NEC suggested. There was however nowhere it was said they were disbanded. At paragraph 11 of the answering affidavit the same language is used. The constituency was not functioning, members were nowhere

to be found, there was anarchy and the NEC decided to disband them. The decision was communicated to the constituency committee as alleged. It was however not clear how this was done. That is why Mr. Phafane made some play of the fact that the NEC's deponent who was not secretary general in 1999 or 1998 could not have been expected to know anything at all least of all the circumstances of the alleged disbanding when it was realized that the constituency committees was failing in its task in 1999. There were no useful circumstances which were suggested to assist the Court. The NEC decision was that it would henceforth deal with branches directly. As it was contended that was before the December 1999 conference. It did not explain when that particular decision was made. If there was a meeting at which people participated in the meeting it would attract a better inquiry. Here it does not because it appears the circumstances are not mentioned or are as I observed there are insufficiently shown in a rather dangerous way.

It was common cause that delegates who attend at the grass roots level, being branch delegates and being elected by different branches with a constituency these people are elected at a certain ratio 1 to 500 as Mr. Phafane submitted the argument here was that as the Applicants said they had been duly elected at their branches to come to the conference. What mattered most as they submitted was that as a fact and undeniably they had been elected. It did not matter therefore that certain bureaucratic procedures and red tape which were matters of procedures

were not followed including forwarding of certain administrative communication to the secretary-general which impliedly Applicants agree was not done. This what was not denied by Applicants included the fact that a constituency committee had not been held whose duties was to form a joint delegation with reports and mandate to the conference. Each Applicant, or those other people elected in their branches, would say that what was important was that they having been elected they had a right to represent their own people or electors at the annual conference. They were invariably elected by a majority of the people at different branches. As I agreed, they had a right to represent their branches despite the Constituency Committee. That is, whether constituency meetings had been held or not.

The Respondent argued that branches cannot come to the conference because they did not have a constituency committee though which they should have come to an Annual General Conference. This I have already answered. As I observed the argument was a simple one. The constitutional argument was that the delegates elected of various branches levels must join with the chairman, secretary and treasurer at the constituency level and then come to the conference understandably under the leadership of the constituency officials who are, then heads. The NEC virtually says: "You do not come to a conference because you do not have a head" while the NEC has chopped the head as Mr. Phafane analogized. If they say the body cannot move without a head then the question that ought to

have been answered was how and why the head was chopped off.

The above would invite the question as to whether the Court would then be expected to stand aside when a people's rights were trampled by use of wrong procedures or underhand ways. This would depend also on whether it is deniable that the branch delegates were in fact elected at their branches. It was never suggested that they were not. The NEC's attitude was that there was no such constituency conference of which a resolution was passed to recognize the delegates, meaning that the constituency conference was a pre-condition to the branch delegates being able to proceed and participate at a conference. See paragraph 8(b). Ideally this should be so. But the circumstances suggested herein were not ideal. Still the elected people's rights, which they possessed by reason of having been elected at branches ought to be recognized. I do so by this judgment.

The argument goes on by reference to Mafeteng affidavit at paragraph 11(3). It was suggested that no branch may sent a delegate to represent it at a national conference unless the branch attended a constituency conference which is constituted by the constituency committee and a minimum of three branches and in such a conference the delegates have after a constituency election been approved in terms of a special resolution recognizing and presenting them as representatives of the constituency 8(b)(i). I was invited to recognize this as the normal

constitutional position but that it was purely a ceremonial matter. If, as it was argued, a delegate may be turned down and be eliminated because that the exercise was not strictly followed that would be unfair. I did not agree with the submission with respect.

Another argument is that the formulas used such as 1 - 500 to a branch and so forth have no significance when a candidate has in fact proceeded having been regularly elected meaning that at the constituency level. I would not get into that inquiry. Here it is about the rights of people who have already been elected. It is not electors but structures which assemble. These formulas do not interest me. My task is to recognize people who have been elected and have not been removed by due process. The argument which I accepted was that once elected it mattered not whether or not there was a constituency conference which when assembled confirmed people as delegates. This confirmation would be insignificant in the circumstances of this case. But I would hesitate to say that that requirement would not "normally" be mandatory. Mr. Phafane said even taking the version of the Respondents that such a conference was not held it made no difference to the rights of the branch delegates once elected. It appeared to be undeniable that such a conference was not held at Lithoteng. In Mafeteng it was said it was held. Mr. Teele was concerned that the Mafeteng papers revealed that no such conference was held on account of certain difficulties. It ended up being that what was not

elected was a new constituency committee. This meant in effect that there must have been branch elections and branch delegates who emanated from Mafeteng I thought surely there would have to be no complication on this one, having concluded that the NEC had not lawfully removed any delegates. If there had been substitution of certain delegates by others then the Court ought to have been told so.

It was never said there were no branches nor committees in Mafeteng. It was rather that the NEC had said it no elections were held except when last held in 1997. It meant that by the same token assuming the correctness of the NEC's decision there were branch delegates and constituency committee last elected in 1997 in terms of section 8 (ii) and (iv), such delegates and still existed. Then there was no vacuum. If the argument holds that the purported disbandment of the constituency and branches was irregular then there remained at least branch delegates and constituency committee existing since 1997. It is because there could not have been a vacuum. It meant that in a similar manner branches could not be dissolved by the NEC without proper procedures, most importantly having to hear what the other side had to represent in the light of a clear act or proven misconduct and intention to dissolve such elected bodies. I thought this logic allowed for no complication or esoteric arguments from either side about what proper approach to follow when some facts seemed to be undeniable primarily because they were

common cause.

What the annual conference proper would have to deal with, as it normally should, is the identity or credentials of the people elected but certainly not that there were no delegates or some delegates are questionable at all even by the act of the NEC. This decision of the NEC I have faulted as having been improper by reason of its being an irregular procedural step. This would not be a denial that there were problems in those constituencies that had to do with either their naivety or their being troublesome as the NEC may correctly have perceived. This I need not decide except to recognize that the two constituencies exhibited exceptionally worrying political behaviour (if the NEC is believed) that in all probability was not found at other "normal" constituencies.

Mr. Phafane submitted that it was not mandatory that there be a constituency conference that recognised delegates and dealt with other business. I found the submission sweeping and not quite accurate. Rather, what I would accept was that the party was faced with a situation which was exceptional in those constituencies and that seemed to go contrary to the way the party intended to deal with things in their proper political context and even what was expected as stipulated in their constitution. My approach was that despite those difficulties NEC could not go to the extent of denying people vested rights when political

solutions have not been found despite what were *bona fide* attempts on the part of the NEC. How should the Court incline? Should not the elected delegates qualify to the conference despite the problems? That speaks about an approach from the Court in the two instant cases where clearly an abnormal situation prevailed. This should not be interpreted as precedent nor would it be intended to be so in normal situations in the future.

In the midst of arguing about the composition of the Annual Conference the Court ended up requiring an explanation as to the categories of Applicants as alluded to in the beginning. Counsel repeated that for Mafeteng there was one in first category (Moeno) and the second (Khotle and four) other category. In the same way as Lepitikoe (first category) Monaheng and Lepitikoe (second category) being people who are under threat of exclusion. They spoke for themselves and no "others were likely to surface." See however the effect of prayers 1(a) and Annexure "A" if granted. It would affect more people as Mr Phafane suggested. This was in reference to the point made that the people elected at branches had "only to come through" the constituency conferences.

Peculiarities about Mafeteng were then pointed out. The argument had gone that way. About the last conference as referred to in paragraph 7(d) (ii) and (iii) of the affidavit as a fact in 2000. The NEC did not disclose that in 1998 and 1999

national conference was attended by branches from Mafeteng there having been no constituency conference to recognize and usher delegates through. Nonetheless the branches attended. The NEC decided so having purported to do away with the constituency conference. That was why in 1998 and 1999 Mafeteng was represented only by branches for the NEC had so directed despite "an alleged" the absence of a constituency conference. Mr. Phafane submitted that it was the branches' right to attend and they did so not at the mercy of the NEC. If the NEC thought so that was a mistake. The branches were not being made a favour. It has happened in the past two years. Why would they object if they were acting in good faith? The bare denial by Mr Makharitele (Secretary General) Respondent's deponent in this regard was not helpful.

Applicants' Counsel's last submission was that even assuming that some article of the constitution as regards steps after elections of branch delegates were not complied with, that is some act to recognize the elected delegates or to conform with some formal requirements or reports the NEC had to take some steps to disqualify the delegates. This the NEC itself had to demonstrate in order to see if the requirement complied with the broad intention of the constitution. The reason being that in interpretation of any article in the constitution it has to be interpreted purposefully looking at the broad intention. See MOKAPELA v MINISTER HOME AFFAIRS C of A (CIV) No. 16/1995 and LESAO LEHOHLA v NEC-

LCD on CIV/APN/160/1998 which was confirmed by the Court of Appeal. Both cases show that the Court in interpreting legislation and constitution it must adopt an interpretation that gives effect to the purpose for which the legislation or the constitution has been enacted. This means for the broad and general purpose for which a constitution has been made "to avoid the austerity of tabulated formalism" which "accords full amplitude of its power ....". It mentions the ethos and aspirations of its people in terms of the parties constitution. Reference was made to the preamble in that regard in LESAO LEHOHLA'S case. In it there was something to do with promotion of democracy. This is realized by recognizing the rights of the electors and delegates. This is not to be achieved by denying the delegates a voice in the conference. The two groups of applicants should not be excluded if the ethos and aspirations of the party's constitution are to be realized. Why would it have to be selective in the way some are allowed and others are refused e.g. Mafeteng. Enjoyment of support of its people would certainly be the purpose of a party that is democratic in its dispensation. One question to ask would be what prejudice the party suffers if a small minority of its members being involved in its democratic activity.

A good example of where a party's constitution was interpreted in such a way as to allow the demands of the supreme law to override the party constitution is to be found in the case of **Tšolo Lelala v Basotho National Party,**

Retšelisitsoe Sekhonyana and Leseteli Malefane CIV/APN/156/98, 6th May 1998, per Guni J. This case was referred to this Court by the Applicants. The party's constitution allowed the party leader to vary or veto the outcome of election of candidates being put forward to the national elections. This was refused by Guni J. Her Ladyship said at page 6:

> "The Second Respondent is ordered to forgo any powers which he might have as a leader of BNP in terms of BNP constitution ....."
>
> See page 6.

The learned judge continued at page 6

> "In all respects the conduct of the electors as ordered by this Court must be in accordance with the constitution of the BNP in so far as it is consistent with the 1993 constitution."

Although the learned judge was speaking about section 20(1) (b) of the constitution of Lesotho; I would share the same sentiment in relation to the "Freedom of Association" in favour of the Applicants as enshrined in section 16 of the constitution of Lesotho.

The Court in MOKAPELA judgment warns against curtailing or abridgement of rights or freedoms which in this case would be against that purposeful interpretation of the parties constitution. The idea behind a conference attended by delegates from all over the country is popular representation. Where

that is achieved there is almost a completeness of purpose. This then enables resolution of issues and elections of a central committee and all other important committees. That appears to be the purpose of the constitution in making people or delegates participate. Indeed it should be the most serious of hurdles that can be placed before a delegate or delegates is excluded. It should be for the most serious of reasons. It should be after all methods have been adopted to avoid the most serious of the dangers to the party if representation by certain member is disallowed. In this case it even appears that attendance of the delegates would go a long way towards curing any defects and visiting all malfeasances with the necessary punishments or warnings, if attendance of the delegates was facilitated. Why should certain delegates attend for purpose of attending to inquiry about their misconduct act to conference and be excluded for other purpose? I took the view that this did not make sense.

The constitution must be interpreted bearing in mind the whole purpose of a conference. Counsel cited LEHOHLA'S case which related to non-compliance of statutory requirement in an election law. The point taken was that it was found to be wrong that an aspiring candidate to an election could not be nominated because his name was not proposed by the NEC on a certain date at a nomination Court. His name was not suggested on a certain specific date. The NEC was denying the candidacy of the candidate because it had not approved it. That was

said to be undemocratic and contrary to the letter of the statute and the constitution. Something about the preamble and the aims and objective was cited in support of the party constitution. This approach was advocated in this Court. I respectfully agreed with the approach.

Counsel for Applicants cited prejudice and inconvenience as the considerations which if the Respondents proved then their case would stand the test. I concluded that no prejudice or inconvenience was to be found and that the Respondents would suffer if its own members attended its own conference so the Applicants were to be allowed to participate in the conference. I certainly found that there would be no such prejudice nor inconvenience to the party's general conference.

It was contended that in the application proceedings of an urgent nature as this one the Applicants ought to disclose as much as would assist the Court and in good faith. I agreed where there were sets of affidavits and contents denied the other side filing an answering affidavit or reply the contents of the former must be taken to be correct. I found this approach not quite practical or germane to the problems at hand quite apart from minor deficiencies which were pointed out.

It was said in all constituencies the committees were disbanded and that the

people did not attend the previous conference because they were aware of their disabilities of the decision of the NEC. It was said this was not gainsaid. If this had been true and correct it could not in my view prevent the delegates or Applicants from later challenging the NEC's decision on any good reasons. One of the reasons could be that there was no proof of that act of disbandment or that act was irregular, undemocratic and unconstitutional. I did not think this submission carried the Respondents case any far. There could even be many reasons why they did not attend and none of those reasons could in my view stop the Applicants from challenging and addressing an irregular decision of the NEC.

It was not suggested nor contemplated by the Applicants that the NEC could never disband it or remove members, delegates or structures for good reasons. It was being submitted instead and quite correctly that proper procedure had not been followed. The case of CAPE INDIAN CONGRESS AND OTHERS v TRANSVAAL INDIAN CONGRESS 1948(2) SA 595 (AD) at 597 was cited. The decision of SOUTH AFRICAN MINEWORKERS UNION v SCHOEMAN NO 1939(1) PH(M) 30 was also cited to show the approach about things to do with the NEC having certain powers. But the argument was that certain antecedent procedures had to be gone through before the NEC actually decided or made a final resolution on certain matters. The existence of a right was recognized apart from the modalities on different things. It was agreed that the right existed. I

thought the Applicants' case had a lot to do with challenging the modalities. I did not appreciate Mr. Teele's argument that it was not even obliquely suggested on the papers that that was the challenge. That is why I had to say that the NEC's powers were never doubted. What was challenged was the way the NEC said it went about disbanding the committees all which things the Applicants came to Court because they were well aware of the NEC's attitude.

The question that remained was whether the NEC had gone properly about things even if the exceptional circumstances of the two constituencies prevailed, in a proper way. It was therefore arguing circuitously to say that the Applicants have not disclosed that they were aware of the NEC's action against them when what had actually brought them to Court was the conduct and attitude of the NEC. There would be no basis for presuming that the NEC's actions were regular where clearly serious rights of people were touched and these were being challenged. I reminded Counsel of the case of GERARD POKANE RAMOREBOLI AND 2 OTHERS v NTSU MOKHEHLE AND 6 OTHERS 1991-96 LLR 927. It was about an extreme example where almost similar breach of rights was successfully challenged. It had to be borne in mind as valuable precedent. See the remarks of Cullinan CJ about absence of estoppel need for representations, inherent prejudice, acting ultra vires of the constitution and consequently such action being declared null and void at page 934

I did not think it was correct that there was not sufficient disclosure of the facts basing the challenge to the decision of the NEC's . Nor could this be to an extent where I would have to decide that the Applicants ought be non-suited for absence of a cause of action. I did not agree with Mr. Teele that the Applicants original papers contained no suggestion nor enough facts or assertions to indicate the full challenge by the Applicants to the NEC. Even the joinder of issues suggests as much. Most of the matters of fact which were not denied corroborated what the Applicants challenged. For example that they were going to be wrongfully denied entry at the conference. The question to be decided then was why. What has been already answered in this judgment was argument as to whether there were good reasons for the denial of what the Applicants regarded as their right. That is of participating at the conference. I did not find any good reasons. That was more so when the delegates had not been lawfully removed or at all.

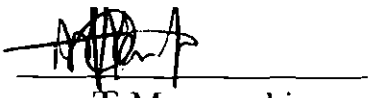
I was satisfied that in the special circumstances of this case there were a lot of things which were merely in the nature of bureaucratic red tape not constitutional requirements. There are things that should per fore be overlooked with regard to the peculiar hardships of the two constituencies. One of them was the transmission of party funds or rather division of those subscription to the branch, to the constituency and finally to the party headquarters. I was satisfied that once full subscriptions had been paid as Counsel said were shown as a fact the

other requirements could be condoned or rather be followed up afterwards. I did not regard such non-compliance as having to pose as impediments to the members participating in the conference.

The second aspect was that of forms to be filled on payment of subscription. Counsel were not on common ground that in each case such subscription had to be accompanied by a form to be forwarded to the constituency or party headquarters. If payment of subscription was in fact made this seems to satisfy the requirements. I was not told that on all occasion a card would have to be issued. I presumed however that the procedures were fully complied with on first occasion or application as membership card would only then be issued. On second payments only as endorsement on the already issued would be made as a matter of practice.

All in all I was satisfied that whatever attempts were made by the NEC to sideline the party members who would be delegates or to disband structures subject of the dispute this ran short of the requirements to grant hearing or to file actions for misconduct as the constitution demanded. To that extent the NEC could not have acted according to the constitution of the party.

As I concluded the application succeeded with costs.



T Monapathi
Judge

Judgment noted by Mr. M. Lenono.