

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) 45/2011

In the matter between:

**THE NATIONAL EXECUTIVE COMMITTEE
OF LEKHOTLA LA MAHATAMMOHO (BASOTHO
CONGRESS PARY)
LEKHOTLA LA MAHATAMMOHO (BASOTHO
CONGRESS PARTY)**

1ST APPELLANT

2ND APPELLANT

AND

**NTSUKUNYANE MPHANYA
MATSOBANE PUTSOA
LEKHOTLA LA MAHATAMMOHO KOMITI EA 17
INDEPENDENT ELECTORAL COMMISSION
REGISTRAR OF SOCIETIES
ATTORNEY GENERAL**

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

6TH RESPONDENT

**CORAM : RAMODIBEDI, P
HOWIE, JA
HURT, JA**

HEARD: 23 JANUARY 2012

DELIVERED: 10 FEBRUARY 2012

SUMMARY

Political party seeking to restrain the respondents, allegedly unauthorized individuals, from calling the party's Annual Conference – The party having changed its name, the respondents contended that a new party had come into existence which, being unregistered, could not restrain them from calling the Annual Conference of their party, being the party bearing the original name – That two parties existed was wrongly held by Court below.

JUDGMENT

HOWIE JA:

[1] Having heard argument in the appeal the Court made the following order, indicating that the reasons for it would be delivered on 10 February 2012:

- “1. The appeal is allowed, with costs.
2. The order of the court below is set aside and the following order is substituted therefor –
 - ‘(a) Paragraphs (b), (c), (d) and (f) of the Rule nisi are confirmed.

- (b) First, second and third respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved.’ ”

The reasons follow.

[2] The political party named Lekhotla la Mahatammoho (LLM) has been in existence for many years and is lawfully registered. Its name in English, from inception and afterwards, was Basutoland Congress Party, from which the acronym B.C.P. is derived.

[3] The case for the appellants on the papers was that the party's name was constitutionally changed in 2005 to Basotho Congress Party, which change was duly registered in the office of the Registrar of Societies. In this regard the appellants annexed to their papers three cover pages of the Constitution of LLM. They read identically save that in brackets after the full name of LLM is the word “Basutoland” on two and “Basotho” on the third. They all bear date stamps of the Registrar-

General. The first bears the date 24 July 1969, the second the date 14 December 1999 and the third bears the date 12 July 2011. They all bear the number 69/10.

[4] In June 2011 the first three respondents, employing the name “Lekhotla La Mahatammoho Committee of 17 (Basutoland Congress Party)” on a letterhead, caused a notification to be sent to members in the party’s constituencies saying that the party’s Annual Conference would be held in July 2011. On the basis that those respondents had no authority to do so, the first appellant (LLM’s National Executive Committee) and LLM itself applied for urgent interdictory and declaratory relief. Also cited as respondents were the Independent Electoral Commission, the Registrar of Societies and the Attorney-General, none of whom took any part in the litigation. A rule nisi as prayed was granted by Nomngongo J. In the application papers the words “Basotho Congress Party” were inserted in brackets behind the respective applicant’s names.

[5] The case for the first three respondents (for convenience, the respondents) in their opposing affidavit (deposed to by the second respondent) was that the deponent to the founding affidavit “and a few individuals” had “unconstitutionally usurped the administration and property of BASUTOLAND CONGRESS PARTY registered under No 69/10.” The second respondent went on –

“Deponent and his colleagues have now unconstitutionally renamed BASUTOLAND CONGRESS PARTY as BASOTHO CONGRESS PARTY or LEKHOTLA LA MAHATAMMOHO. This new names (sic) have not been registered with the [Registrar] and cannot empower the applicants to purport to be officials of the BASUTOLAND CONGRESS PARTY which we insist is our organization registered as such....”

...

The correct position is that the registered BASUTOLAND GONGRESS PARTY under No. 69/10 is sometimes informally addressed as LEKHOTLA LA MAHATAMMOHO while the applicants’ unregistered organization is also sometimes called LEKHOTLA LA MAHATAMMOHO OR BASOTHO CONGRESS PARTY which are both unregistered and as such have no legal status....”

[6] The matter came before Nomngcongong J on the return day. The learned Judge came to the conclusion that in reality there were two co-existing entities involved; that the second appellant, being Basotho

Congress Party, was unregistered and therefore unlawful; that it had no “colour of right” to change the name of Basutoland Congress Party; and that the conclusion was inescapable that the date stamp of 12 July 2011 was the result of someone having “sneaked to the Register General’s office and contrived to obtain the date stamp and signature of that office...” The rule was accordingly discharged with an order that the costs be paid by the appellant’s deponent *de bonis propriis*.

[7] The conclusion of the court below that there were two entities is not supported by the evidence. Apart from the name of LLM having remained constantly the name of the party central to the dispute, and the fact of two printed LLM membership cards being in identical terms save for the one referring to “Basutoland” and the other to “Basotho”, the essence of the respondents’ own factual allegations was that what occurred was a change of name, not the establishment of a new party. No such establishment has been shown by any evidence. That the Registrar-General accepted the name change as in order is not disputed

on the papers. Accordingly, the respondents' reference to the second appellant as an unregistered organization must be understood on the basis solely of a change in the name of one and the same entity, not the coming into being of two. Certainly nobody suggested that the second followed on the demise of the first, for then the respondents would have had no party to support.

[8] There is also no justification for the finding that it was Basotho Congress Party that changed the name. The respondents' own case was that it was the original party itself (although allegedly unconstitutionally) which effected the change. However, in this regard the respondents failed to allege any respects in which the name change was contrary to the LLM Constitution. They also failed, it must be added, to show that the members of the first appellant were not constitutionally elected.

[9] The learned Judge drew support for his conclusion as to two entities from remarks in the judgment in High Court case CIV/APN/360/08. However there was no specific finding there which supports the conclusion and counsel for the respondents understandably did not seek to rely on the remarks in question.

[10] Then there is the finding of the court below, or at least the implication, that somebody had less than honestly obtained the Registrar-General's date stamp of 12 July 2011. A finding of that nature required an evidential basis. There was none. It was open to the respondents to have sought to counter the appellants' allegation of due registration by enquiring as to the availability of evidence from the Registry that none of the registrations alleged by the appellants had been effected. They did not take this step or, if they did, they unearthed nothing of significance. In any event a 2011 date stamp does not imply that there was not a constitutionally correct name change in 2005.

[11] It follows that the conclusion of the court below adverse to the appellants was misdirected and they were entitled to confirmation of the rule in the respects stated in this Court's order. Costs necessarily followed the result of the appeal and the confirmation of the rule.

C.T.HOWIE
JUSTICE OF APPEAL

I agree:

M.M. RAMODIBEDI
PRESIDENT OF THE COURT OF APPEAL

I agree:

N.V. HURT
JUSTICE OF APPEAL

For the Appellants : Adv Z. Mda

For the First, Second and Third Respondent : Adv. M.S Rasekoai
Mr. E.H. Phoofolo