IN THE COURT OF APPEAL LESOTHO

HELD AT MASERU

C OF A (CIV) 01/2021

CIV/APN/382/2021

In the matter between

SENKATANA SOCIAL DEMOCRACY	**APPELLANT**
And	
LEFULESELE RAMMINA	**1ST RESPONDENT**
MINISTER OF LAW AND JUSTICE	**2ND RESPONDENT**
NATIONAL REFORMS AUTHORITY	**3RD RESPONDENT**
ATTORNEY GENERAL	**4TH RESPONDENT**

CORAM	MOSITO P
	MUSONDA AJA
	VAN DER WESTHUIZEN AJA
HEARD	13 OCTOBER 2021
DELIVERED	12 NOVEMBER 2021

SUMMARY

Membership in the National Reforms Authority- Respondent purportedly removed by the nominating political party in contravention of Section 5 (6) and 9 respectively of the National Reforms Authority Act of 2019- respondent not heard by appellant- the audi alteram partem rule must be observed- appeal dismissed.

JUDGMENT

MUSONDA AJA

Introduction

[1] This was an appeal against the High Court Judgement (Banyan J.). The appellant is a political party duly registered with the Independent Electoral Commission (IEZ). The registration entitles it to have representation in the National Reforms Authority (herein called the NRA), established under Section 4 of the National Reforms Authority Act, No.62 of 2019. The 1st respondent was nominated to represent the appellant party in November 2019. She was subsequently gazetted as a member of the NRA in gazette No. 94 of the 27th November 2019. After failed attempts to withdraw and replace her in the NRA the appellant approached the Court a quo on urgent basis on the 2nd November 2020.

[2] The following orders were sought from the Court a quo:

1) Dispensation with ordinary rules pertaining to ordinary modes and periods of service due to the urgency of the matter,
2) That the *rule nisi* be issued returnable on a date determinable by the Court a quo calling upon the respondents to show cause, why if any:-
    a) 3rd respondent shall not stop 1st respondent allowance as of 31st October 2020;
    b) 3rd respondent shall not remove 1st respondent as member from the NRA;
    c) 2nd respondent shall not cause to be gazetted Lehlohonolo Ts'ehlana in substitution of 1st respondent;

d) 1st respondent shall not be ordered to pay to applicant allowance received in September and October 2020;

3) Costs of suit in the event of opposition.
4) Further and/or alternative relief.
5) That prayers 1 and 2(a) operate with immediate effect as interim order.

Background

[3] The appellant in the year 2019 appointed Ms Lefulesele (1st respondent) as the party's representative in the NRA. A letter in that regard was written on 12th November by the Party leader, Ms. Lehlohonolo T'sehlana to the NRA. On 10th August 2020 Mr. Ramokotla wrote to the 1st respondent accusing her of failing to report back to the party about the progress in the NRA. She and her mother were accused of having insulted the party leader. She had to show cause within 3 days, why she should not be removed from the NRA. Mr. Ramokotla signed the letter on behalf of the Secretary General. The next day 11th October 2020, the Minister of Law was notified of the party's intention to remove the 1st respondent from the NRA.

[4] In an outstanding contradiction on 17th September 2020, the Secretary General of the Party (Mamoshe Mapetja) wrote a letter in concurrence with Mamonyane Rammuna (Chairperson), Mamojela Moshoeshoe (Deputy Secretary), Lefulesele Rammina and Tefo Phatona, informing the NRA that the Executive Committee never reversed its earlier decision of nominating Ms. Rammina as the party's representative in the NRA.

[5] The party leader (Mr. Lehlohonolo T'sehlana) wrote to various members congratulating them on their devotion to the party. They were invited in terms of the letter to a conference scheduled for the 3rd October 2020, whose agenda was to elect an interim committee to prepare for the annual conference slated for January 2022 and also to nominate the successor to the 1st respondent on the NRA.

[6] On the 4th October 2020, the new Secretary General, Ms. Moima, notified the NRA Chairperson, that the party had resolved that the 1st respondent's (Ms. Rammina) membership would be terminated and replaced by party leader (Mr. Tsehlana). A different reason was advanced this time that, she had failed to pay her subscription.

[7] The NRA Chairperson faced with these contradictions wrote to the party leader on 27th October 2020 requesting the party to resolve the conflicting decisions from the two Committees constituted by different people regarding the nomination to the NRA.

[8] In the founding affidavit the party leader (Mr. T'sehlana), averred that the 1st respondent had ceased to be a member of the party on which her nomination to NRC was anchored. This was as a consequence of her not paying subscription fees. When confronted why she had failed to pay the same, she hurled insults at him, nor did she respond to the 'show cause' letter dated 10th August 2020. In his replying affidavit, he made a damaging admission that since 1st respondent was, not a member

of the party he did not owe her a hearing and that the 17th September 2020 letter was a fraud.

[9] The 1st respondent vigorously contested the allegation, averring that she was a card holding member of the party and its Deputy Secretary General in the NEC. She joined the party in February 2014 and had religiously renewed her membership. The party membership card was attached to her answering affidavit. She denied receiving a 'show cause letter'. The Chairperson of NRC informed her of the intended removal after receipt of the letter dated 3rd September 2020. She was not accorded a hearing before the removal decision was taken against her. She averred that when the executive committee became aware of the unilateral attempt by the party leader to have her removed, they notified the Chairperson of NRC, that no change had been made regarding her nomination. She averred that the motive behind her removal was the allowance received by members of the NRA.

Consideration of the matter in the Court a quo.

[10] The learned Judge found it as a fact that there was no evidence that the 1st respondent had lost membership in the party, in terms of clause 6 of the party's constitution due to failure to pay subscription.

[11] When dealing with the validity of the 'show cause' letter dated 10th August 2020, the learned judge referred to section 5 (6) of the NRA Act, couched in these terms:

> *"5(6). An institution may not withdraw its representative from the authority, unless it has given the representative a written*

> *notice and an opportunity to make a representation seven days prior to the withdrawal."*

The 10th August 2020, letter gave the 1st respondent three days. This provision in peremptory and leaves no discretion on the party to do otherwise than required, so reasoned the learned Judge. The '***Audi'*** principle is an indispensable part of the removal process. A decision had already been made to withdraw her name; the 10th August letter was not intended for her to make representations as required by Section 5(6).

[12] The learned Judge agreed with Counsel for the 1st respondent, that a mere pretense of giving the person concerned a hearing does not constitute or amount to compliance with the ***Audi principle***. The case of ***Heatherdale Farms (Pty) Ltd v Deputy Minister of Agriculture and Another***[1], was cited in support. This decision was approved by this Court in ***Nkuebe v Attorney General and Others***[2]**.**

[13] It was strenuously argued, by counsel for the 1st respondent and the learned Judge agreed, that the conference was convened and constituted in violation of the party constitution. Firstly, there was no requisite quorum. It was not representative of all districts as required under clause 11.1 but was only constituted by six (6) constituencies and was not attended by the properly elected executive committee. Secondly, it was not convened by the Secretary General of the party as required by clause 19.3(a) of the party constitution. Thirdly, if this was a special conference. The special conference is convened by NEC in terms of clause

[1] 1980(3) SA 476 (T)
[2] LAC (2000-2004) 295 at 300 B-D.

28.1, or at the request of five (5) districts, women's league or youth league. A conference held in violation of the constitution of a voluntary association is invalid. The case of ***Private Sector Foundation of Lesotho v Qhesi and Others***[3], was cited as authority.

[14] The learned Judge agreed with Counsel for the 1st respondent who cited a legion of authorities stating that;

> *"In a voluntary association, its constitution is of paramount significance; that the rights and obligations of its members are derived from the constitution and for that reason, any acts performed by any member must be authorized by the said constitution. See* ***Manimo and Others v National Executive Committee of the LCD and Another LAC (2011-2012) 240***, ***Lesotho District of the United Church v Rev Moyeye and Others LAC (2007-2008) 103***, ***National Independence Party and Others v Manyeli and Others LAC (2007-2008)10***.

[15] Supplementing the decisions already relied on, was the decision in ***Fedsure Lite Assurance Ltd and Others V Greater JHB Transitional Metropolitan Council[4],*** in which the Court said the following;

> *"……it follows that nobody is permitted to exercise power and authority over others which was not referred upon his or her in terms of the law. It is for this reason that a political party is required to have a constitution in terms of which its affairs are regulated. These affairs would inter alia, include, membership, election of office bearers, their powers and responsibilities etc. Disputes relating to the termination of people's membership of political parties are naturally sought to be resolved with reference to the constitution of the particular political party.*

[3] LAC (2013-2014) 71 at 75 D-1
[4] 1998 12 BCIR 458

[16] The learned Judge concluded:

Having considered the facts in case and having considered the authorities, it is clear that the purported removal of the 1st respondent from the NRA, be it the unilateral attempt by the Party Leader (or those authorised by him) or through the irregularly appointed executive committee, has no legal basis. The party through its leader did not only disregard the party's constitution, but also failed to observe ***audi alteram partem*** rule, before it decided to withdraw the 1st respondent's name. Differently put, the 1st respondent was not given an opportunity to make representations. In addition, the meeting or conference of the 3rd October 2020 is a nullity and could not produce any valid results nor the committee so appointed make any valid decisions, either to have the 1st respondent removed or authorise institution of this litigation. For these reasons the application ought to fail. The learned Judge dismissed the application with costs, and she so ordered.

[17] Aggrieved by that decision, the appellant noted an appeal to this Court. It was the appellant's argument that the court a quo erred and misdirected itself in acknowledging the purported executive committee while there is a newly appointed committee of the appellant elected on 3rd October 2020. Secondly, that the court a quo erred and/or misdirected itself in holding the nomination of the first appellant to the third respondent as valid although the letter of nomination was penned by the leader of the appellant. On the other hand, the letter calling for a conference to

elect the interim executive committee, which was penned by the same leader of the appellant was regarded as irregular. It is further submitted that the honourable court ought to have considered the letter calling for a conference as valid because it has clearly indicated that appellant had lost shape as far back as 2012. Thirdly, that the court a quo ought to have considered all the discrepancies concerning the executive committee and held it to be invalid and should have regarded the one elected on 3rd October 2020 as legal. Fourthly, the court a quo erred in holding that the removal of the 1st respondent had no basis.

[18] For the appellant, Advocate Rakharebe, submitted that the 1st respondent had contradicted herself. Her version was that she was Secretary General, in other documents she appeared first as a member, especially in the letter purportedly written and signed by the Secretary General M Mapetla, in her opposing affidavit. She does not even appear as the deputy Secretary General of the appellant.

[19] It was the appellant's case in the court a quo, that there was a newly elected interim committee elected on 3rd October 2020. A letter calling for the conference for electing the interim committee had been issued on 21st September 2020, which was signed by the leader to have been signed by the Secretary General not the leader of the appellant. On the other hand, the letter nominating the 1st respondent dated 12th November 2019 was signed by the Leader of the appellant.

[20] The Court, ought to have acknowledged that the appellant had lost shape due to a myriad of factors, like the use of two

rubberstamps, letters authored before the elected new committee were penned by the Leader of the appellant, while others were penned by Ramokotla, the 1st respondent claims to be Secretary General and deputy Secretary General respectively, later she signed just as an ordinary member.

[21] The Court a quo reorganized the National Executive advanced by the 1st respondent, which was not the properly constituted committee, disregarding the properly constituted committee. The purported committee which authored the letter in support of the 1st respondent. The said M Mapetla, who claimed to be Secretary General is not the Secretary General, Mamojela Moshoeshoe who signed as deputy Secretary General and 1st respondent signed as publicity Secretary. Consequently, the letter of 17th September 2020 does not represent the decision of the executive committee of the appellant.

[22] The 1st respondent was given an opportunity to make representations, but instead chose to convene a disguised National Executive Committee on 17th September 2020, which authored the 17th September 2020 letter to the NRM. This was intended to frustrate the removal of the 1st respondent, as evidenced by the letter by NRM chairman to the appellant dated 27th October 2020. The NRM Chairman observed that, two letters were received from two different committees, which complicated the removal of the 1st respondent.

[23] Advocate Rakharebe augmented the written submission by Oral submissions. The appellant was seeking removal of the 1st respondent, because she was not reporting back to the appellant.

She insulted the leader. Her and her confederates formed their own committee without reporting to the leader. The appellant wants her removed and replaced by the leader in the NRA. The NRA should stop remunerating her and started remunerating the leader. In a nutshell that was the appellant's case.

The 1st Respondent's Case

[24] Mr Letsika for the respondent submitted that there was no evidence that the meeting, which on the version of the leader was held on 3rd October 2020, was attended by the current members of the NEC. The Secretary General did not convene the meeting as required by Clause 19.3 (a) of the appellant's constitution. The lawfulness of the 3rd October 2020 meeting has been seriously challenged and it follows that the National Executive Committee was illegally elected.

[25] The Court of Appeal has held that where a person's authority to represent a juristic person is challenged it is sufficient if that person produces the resolution[5]. It is submitted that in these proceedings the appellant was obliged to provide such evidence. Such a resolution would not suffice because the very body that would have authorised it would have been an illegitimate structure.

[26] In support of the proposition that a conference that is held in violation of the constitution of a voluntary association is invalid, the case of ***Private Sector Foundation of Lesotho V Heisi and Others***[6], was cited in support.

[27] In ***Marumo and Other V National Executive Committee of the LCD and Another***[7], it was held that members of the party have the necessary Locus standi to uphold the constitution of the political party to which they were members. It was held that the national executive committee was bound to hold a special conference once members sought the same in compliance with the constitution of that party. The court uphold the statements of the law in ***Wilken V Brebner and Others***[8] where the court remarked that:

> *It may be conceded at once that whether nationalist party is a universitas or a voluntary association, the majority cannot act contrary to express terms of the constitution. If the resolution is in violation of the constitution of the party or ultra vires of the conference, and if the constitution does not deprive the individual member of a say in the matter, then our law will assist him to see that no injustice is done to the minority. It is, however, essential to consider whether an individual member of the party or even several members of the party have a right to ask this court to interfere with the resolutions of the conference of the party. The question whether an individual member has such right depends on the nature of the voluntary association and the terms of the constitution.*

In ***Lesotho District of the United Church V Rev Moyeye and Others***[9], this court restated the sanctity of party constitutions in governing the relationship between the members.

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[5]Fu V Lesotho Stone Enterprise (Pty) Ltd C of A (CIV) 7 of 2021 unreported, Lesotho Revenue Authority and Others V Olympic Offsales LAC (2005-2006) 535 at 543, Mau (cape) Pty Ltd V Merino Ko-operasi BPIC 1957 (2) SA 347 (c) at 352 A-B
[6]LAC (2013-2014) 71 at 75 D-I
[7]LAC (2011-2012) 240 at 244 E-J 245 A-B
[8]1935 A-D 175 at 180

We said churches as voluntary associations have no powers to act except under those conferred by the constitution so submitted Mr Letsika alluded to a comedy of violations of the party constitution. There was a breach of Clause 11, which requires that all districts are represented at the conference. The incumbent national executive committee was oblivious of 3rd October 2020 meeting, and it was supposed to attend and vote. In terms of clause 12 A (4), there is supposed to be an interim committee, which should be established for the purposes of administering the annual general conference. Clause 28.2 requires a circular inviting member to any conference must be made not less than a month before the conference is held. The invitation letter was sent on 21st September 2020 and the conference held on 3rd October 2020. Clause 19.3(a) requires the secretary-general to arrange the convening of the meetings and to arrange the agenda.

[29] In ***National Independence Party and Others V Manyeli and Others***[10], the leader of a party usurped the functions of the secretary-general, by submitting a proportional representation list, when the Secretary-General had already done so, the decision of the leader was set aside, it was argued that the function of convening annual general conferences and special conferences fell squarely on the Secretary General in terms of Clause 19 3(a). The conference being a nullity, it follows even those elected thereat were invalidly elected into office, so it was argued.

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[9]LAC (2007-2008) 103 at 107B-D Par 11

[30] The appellant's case was founded on two grounds. First the appellant argue that the respondent should be removed from the NRA because she is no longer a member of the appellant. It was alleged that "she failed intentionally" to pay her subscriptions. Second the appellant suggested that it wrote to the respondent on 10th August 2020 directing her to cease membership of the NRA on the sole basis that "she failed intentionally" to pay her subscription. The suggestion that the respondent failed to pay her subscription is disputed by the respondent who provided evidence by way of annexure "A3" being a membership card that shows that the respondent renewed her membership on 27th January 2020. According to the respondent her membership is valid for a year. This court was implored to follow the rule in ***Plascon-Evans Pants Ltd V Van Riebeeck Pants (Pty) Ltd***[11], which provides that where the allegations of both the appellant and the respondent differ materially on an issue the respondent's version must be accepted. It has been held that a court of law will not grant final order in the form contemplated by the appellant if the versions of the parties are such that they create a dispute of fact unless if it could be said that the version of the respondent is so far-fetched that it could not be believed.

[31] For the purposes of determining the matter on affidavits there was respondent's allegations must be accepted as correct[12],

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[10]LAC (2007-2008) 10 AT 24E-J
[11]1984 (3) SA 623 (A) at 634A-635C

in ***Makhutla and Another V Makhutla and Another***[13], this court held that:

> *There being a dispute of fact on the issue it must follow, therefore, that the courts a quo should have assumed the correctness of the version of the appellants who were respondents thereat. This is a principal now well settled that there is hardly any need to cite authority in support thereof. It shall suffice merely to refer to the leading case of Plascon-Evans Paints Ltd V Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 A at 634-635, which has been followed in numerous decisions of this court. It follows that the version of the respondent must be accepted as correct, and the appeal must be dismissed with costs.*

[32] The right to fair hearing contemplated in section 5 (6) does not have to meet formal requirements of court proceedings. Mr Letsika cited a plethora of authorities on the importance of the maxim *audi alteram partem*, ***S V Ngwevela***[14], ***Rakhoboso V Rakhoboso***[15], ***Administrator, Transvaal and Others, V Trauls and Others***[16], ***Naran V Head of Department of Local Government Housing and Agriculture (House of Delegates) and Another***[17]

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[12]Monyane V Manager of the Mafeteng LEC
Primary School and Another LAC (2000-2004) 364 at 366A
[13]LAC (2000-2004) 480 at 485H-L
[14]1954(1) SA 123 (A) at 131H
[15]LAC (1995-99) at 366A-J – 339 A-E
[16]1989(4) SA 731(A) at 189
[17][1993] (1) SA 405 (T) at 407 B-C

However, I need not go into the niceties of these decisions as they affirm the importance of the rule, save and accept that ***The speaker of the National Assembly V De Lille and Another***[18], the Supreme Court of Appeal elaborately articulated the principal thus:

> *This is why Lord Lorebum LC quite rightly considered a fair hearing to be a duty lying upon everyone who decides anything Mrs De Lille was not given a hearing at all in the National Assembly whereas the purported hearing before the ad hoc committee violated the common law rules of natural Justice. She was entitled to be heard fairly by unbiased committee and she was entitled to make representations regarding the proposed sanction against her. South African courts have repeatedly laid down that the common law rules of natural Justice apply unless their relevant statute has expressly or by necessary implication exclude them. These rules require that when a statute empowers a public official or a body to give a decision prejudicially affecting an individual's rights, interests or legitimate expectations, such an individual must be heard before the decision is taken or, I would add, before any serious recommendations prejudicially affecting such rights or interests, or legitimate expectations are made by the body concerned. Surely the exercise by the body of a disciplinary power over one of its members is an obvious case in which fairness requires that the rules of natural Justice should be complied with. It follows therefore whatever the source of power that was exercised by the Assembly to suspend the first applicant, it had to be done in accordance with the dictates of fairness and natural Justice.*

[18] 1999 ZASCA 50

[33] **Consideration of the Appeal**

The issues to be decided in this appeal are fairly plain and simple.

(I) Did the appellant constitutionally convene the conference, which was used as a vehicle to discipline the 1st respondent and the launching of these proceedings.

(ii) Was the appellant compliant with the NRA Act, in their attempt to remove 1st respondent.

(iii) Was the *audi alteram partem* principles complied with.

[34] The fundamental purpose of political parties having constitutions is to promote in intra-party democracy. There could be no furtherance of constitutional democracy in the Kingdom if parties that do not adhere to their own constitutions and indeed the national constitutional precepts, in the likely event they ascend to power. It is for that reason that Mosito P, delivering the unanimous Judgement of this court in ***Koro Koro Constituency Committee and Others V Executive Working Committee All Basuto Convention***[19], struck down Article 5 (e) of the Constitution of the Party which denied members access to courts in certain circumstances. Such Clause was held to be unconstitutional. It was not clear what legitimate purpose is served by this kind of Clause in a democratic society.

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He was of the view clause 5 (e) of the ABC constitution was constitutionally unconscionable when measured against a constitutional standard of access to Justice and right to a fair trial contemplated by section

12(8) of the Constitution of Lesotho, Para 84. The point being made is the courts will ensure that domestic constitutions are complied with, and more importantly the precept of the national constitution.

35. The first appellant violated clauses 11, 12 A(4), 19.3(a) and 28 of the domestic constitution whose provisions have earlier been alluded to. There was a breach of Clause 11, in terms of the Constitution of the conference, it had to be all the district not six (6) constituencies. There was no interim committee to organise the conference in terms of Clause 12 A (4). The conference was not called by the General Secretary in terms of clause 19.3. There was inadequate Notice in terms of clause 28.2 instead of 30 days only about 13 days' notice was given. The conference was therefore illegal, the elections and resolutions thereat invalid. There can be no Legality flowing from illegality.

[36] Section 5(6) of the NRA Act states that:

An institution may not withdraw its representative from the Authority unless it has given the representative a rewritten notice and an opportunity to make a representation seven days prior to the withdrawal.

Section 93 *the chairperson shall not remove a member from the Authority, unless he has given the member a written*

notice and an opportunity to make a representation seven days prior to the removal.

[37] In this litigation a triad of legal provisions provided for *audi* the Constitution of the party and two provisions in the NRA Act, were all violated. The appellant, apart from violating their own constitution, violated the NRA Act, in their quest to remove the 1st respondent from the Party and the NRA. Schisms within the Party should be resolved within the context of the party constitution and not outside it.

[38] This court was referred to a plethora of authorities in England, nearby here South Africa and decisions of this court I.e. ***Rakhoboso V Rakhoboso Supra, Nkuebe V Attorney General and Others Supra Matebesi, V Director of Immigration and Others Supra***, all emphasise the imperativeness of the *audi* principle, when an individual will adversely be affected by a decision of the authority the individual is subjected to, is to make or has made. The deprivation of party membership was going to imperil her political career. The removal from the NRA would profoundly and substantially affect her financial interest. These are decisions which cannot be made against the individual without affording that individual the right to be heard or make representations.

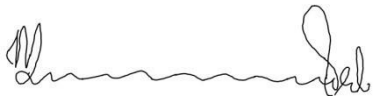
Conclusion

[39] There was palpable breach of the party constitution, the NRA Act, the common law rules of natural justice. The decision of

the learned Judge was inevitable. There is no merit in this appeal.

Order

[40] Appeal dismissed with costs



P MUSONDA
ACTING JUSTICE OF APPEAL

I agree

K.E. MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree

J VAN DER WESTHUIZEN
ACTING JUSTICE OF APPEAL

FOR APPELLANTS: ADV M M RAKHAREBE
FOR 1ST RESPONDENT: MR Q LETSIKA