

CIV/APN/263/96

IN THE HIGH COURT OF LESOTHO

In the matter between

**HAPE TSAKATSI
TS'ELISO RAMOCHELA**

**1ST APPLICANT
2ND APPLICANT**

and

**MOHOLO TS'OSANE
MOSOLA PALI
'MALEHANA MAKOETJE
ALICE 'MAMOLEFI RANTHIMO
ALPHONCINA MOJAKI
SELLO TS'UKULU
EXECUTIVE BOARD OF LESOTHO
FEDERATION OF DEMOCRATIC
UNIONS
LESOTHO FEDERATION OF
DEMOCRATIC UNIONS
CONSTRUCTION AND ALLIED WORKERS
UNION OF LESOTHO
LESOTHO COMMERCIAL, CARTERING
FOOD AND allied WORKER UNION
LESOTHO CLOTHING AND ALLIED
WORKERS UNION
LESOTHO TRANSPORT
COMMUNICATIONS ELECTRICAL AND
ALLIED WORKERS UNION**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT

7TH RESPONDENT

8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT
12TH RESPONDENT**

JUDGMENT

Delivered by the Honourable Mr. Justice M.M. Ramodibedi, Judge,
On 4th day of February, 1997.

On the 19th day of July 1996 the applicants obtained a Rule Nisi from this Honourable Court calling upon the Respondents to show cause, if any, why:

“(a) First to Sixth Respondents shall not be ordered jointly and severally, to hand over the property and administration of the Eighth Respondent to the Applicants and the Executive Board which was in existence before the 2nd day Of June 1996 pending the outcome of this application.

(b) The proceeding of a special meeting of the Seventh Respondent held on the 2nd day of June 1996 shall not declared (sic) null and void

(c) The decision of the First to Sixth Respondents, purporting to be the Executive Board which was taken on the 12th day of June 1996 shall not be declared null and void

(d) The purported dection (sic) of the First to the Sixth Respondents to the Executive Board of the Eighth Respondent shall not be declared null and void

(e) First to Sixth Respondents shall not be interdicted forthwith from unlawfully interfering with the property, administration and affairs of the Eighth Respondent pending the outcome of this application

(f) Respondents shall not be ordered to pay the costs of this application

(g) Applicants shall not be granted such further and/or alternative relief”

In the special circumstances of the case prayers (a) and (e) were ordered to operate with immediate effect pending the finalisation of this application and after several extensions of the Rule the matter was finally argued before me on 10th December, 1996.

Mr.Mpopo for the Respondents raised 3 points in limine namely:

(1) that this Honourable Court has no jurisdiction in this matter by reason of the fact that it concerns trade unions which is, so the argument goes, the purview of the Labour Court,

- (2) that there are material disputes of facts,
- (3) that there was no urgency shown in the matter.

After hearing argument from both sides in the matter I dismissed the points in limine with costs and intimated that the reasons thereof would be filed together with reasons in the main application. These are the reasons:

JURISDICTION

Mr. Mpopo submits that this is a matter that concerns trade unions and that therefore the Labour Court has exclusive jurisdiction in the matter in terms of section 25 (1) of the Labour Code Order 1992 which provides as follows:

“25. Exclusive Civil jurisdiction

- (1) the jurisdiction of the Labour Court shall be exclusive as regards any matter provided for under the Code, including but not limited to trade disputes. No ordinary or subordinate court shall exercise its civil jurisdiction in regard to any matter provided for under the code.”

Now the term trade dispute is defined in section 3 of the Labour Code Order 1992 as

“.....any dispute or difference between employers or their organisations and employees or their organisations, or between employees and employees, connected with the employment or non-employment, or the terms of the employment, or the conditions of labour, of any person.”

Applying the above definition of a trade dispute I am satisfied that the case before me has got nothing to do with a trade dispute nor is it a dispute between employer and employee or between employees and employees connected with the employment or non-employment, or the terms of the employment, or the conditions of labour of any person. As I see it the case before me is basically a dispute between trade unions and individual members of the Executive Board of Lesotho Federation of Democratic Unions.

In Attorney-General v Lesotho Teachers Trade Union and 4 others C of A (Civ) No. 29 of 1995 Steyn JA (as he then was) had this to say at page 22:

“In essence, the Labour Court is a Court of equity enjoined to keep the scales of justice in balance between the conflicting demands of employer and employee. Disputes that come before it are not “civil proceedings” as provided for in either section 2

of the High Court Act or The Constitution. Therefore, great care must be taken to ensure that the ambit of its jurisdiction is not extended to matters which would require it to decide issues which are not compatible with the purpose for which such tribunal was created. In this respect, section 24 of the Code and the definition of "trade dispute" have been enacted to circumscribe the limitations on its jurisdiction. such matters are "matter(s) provided for under the Code, including but not limited to trade disputes" and when formalised are not converted into "civil proceedings" as defined in the Constitution and in the High Court Act. It must be stressed, however, that our Courts should be astute to ensure that the powers of the Labour Court to adjudicate upon such matters are strictly confined to matters that are either "trade disputes" *stricto sensu*, or are clearly identifiable as issues contemplated by the legislature as defined in section 24."

I respectfully associate myself with these remarks.

It is significant that section 119 of the Constitution of Lesotho confers unlimited jurisdiction in the High Court as follows:

"119. (1) There shall be a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or

proceedings of any subordinate or inferior court, court-martial, tribunal, board or officer exercising judicial, quasi-judicial or public administrative functions under any law and such jurisdiction and powers as may be conferred on it by this Constitution or by or under any other law.”

Section 2 of the Constitution also significantly provides as follows:

“This Constitution is the supreme law of Lesotho and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.”

Section 2 of the High Court Act No.5 of 1978 (as amended) also provides in no uncertain terms that the High Court shall have:

“(a) unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law in force in Lesotho.”

In view of the above mentioned statutory provisions and following the case of Attorney General v Lesotho Teachers Trade Union and 4 others (supra) I have come to the conclusion that the Labour Court has no jurisdiction in the matter before me. I am further fortified in this view by the fact that the case before me is in the nature of a declaratory order for which in my judgment only the High Court has jurisdiction in terms of Section 2 of the High Court Act 1978.

That there are material disputes of facts.

Mr. Mpopo identified the alleged material disputes of facts as follows:

- (a) that each party claimed to be in office;
- (b) whether the term of office of the applicants had expired by effluxion of time;
- (c) whether the applicants had been lawfully dismissed;
- (d) whether there had been any meeting as provided for by the Constitution of the eighth Respondent namely Lesotho Federation of Democratic Unions.

It became apparent to me from the proper reading of the papers filed before me that all the alleged disputes of facts are matters which are covered by the Constitution of the eighth Respondent which was annexed to the papers before me.

In the circumstances I came to the conclusion that there were no genuine or material disputes of facts which could not be decided on paper with the additional help of the eighth Respondent's Constitution. In essence the task of the court, as I saw it, was simply to interpret the said Constitution.

That there was no urgency shown in the matter.

In paragraphs 32, 33 and 35 of his founding affidavit Hape Tsakatsi deposes as follows:-

“32.

Sixth Respondent is no longer using the Eighth Respondent's offices but he has moved to old Christian Council's House and he is purporting, together with First Respondent to Fifth Respondents, to be working as the Executive Committee and/or Board of the Eighth Respondent.

33.

As the result of this situation the affairs of the Eighth Respondent are administered by two bodies i.e. one purported to have been removed from the office and the one run by First to Sixth Respondents thereby causing confusion.

35.

This is a matter for urgent relief regard being had to the proper administration of the Union as the rights of members are being threatened by this situation now prevailing.”

I observe that in their opposing affidavits neither Mohlolo Ts’osane nor Sello Ts’ukulu deny the aforesaid specific allegation in paragraph 35 of the founding affidavit of Hape Tsakatsi that the rights of members are being “threatened” by the situation prevailing namely that the affairs of the eighth respondent are being administered by two bodies “thereby causing confusion.” I found as a fact therefore that there was confusion and that the rights of the members of the eighth respondents were threatened.

For my part this court was certainly not prepared to allow such a chaotic and unruly situation to prevail any further in the matter to the detriment of members of the eighth respondent. The court had to uphold the letter and spirit of the Constitution of the eighth respondent in the matter before it was too late.

In the circumstances therefore I came to the conclusion that the matter was indeed urgent.

After I had dismissed the points in limine with costs as earlier stated Mr. Khauoe then made an application from the bar for amendment of prayers 2 (a) and (c) of the Notice of Motion to delete the date of 2nd day of June

1996 and 12th day of June 1996 appearing therein and to substitute it with the date of the 8th day of June 1996.

Mr.Mpopo objected on the sole ground that he was not served with a Notice of amendment. He was however unable to show that there would be any prejudice to his clients if the amendment was granted. I could not find or perceive prejudice either. In the circumstances I invoked the provisions of Rule 59 of the High Court Rules in the interests of justice and accordingly granted the application for amendment.

I proceed then to deal with the merits of the application before me and in doing so I observe straight away that the following scenario is indeed common cause in this matter:

In June 1994 the Applicants and sixth Respondent Sello Ts'ukulu were duly elected as office bearers of the Seventh Respondent namely The Executive Board of Lesotho Federation of Democratic Unions which is the board governing the eighth Respondent. The First Applicant was elected as President while the Second Applicant was Assistant General Secretary in the Executive Committee thereof. The Sixth Respondent was the Secretary General.

Now Section 4.7 of the Constitution of Lesotho Federation of Democratic Unions (eighth Respondent) provides for election and removal of office bearers as follows:-

“4.7.1 The Executive Committee shall be elected biennially at every Biennial Conference. Notwithstanding the foregoing, as any member may be removed from office by the Executive board:

4.7.4 The office bearers of the Federation, shall hold office for a period of two (2) years.

4.7.5 The office bearers of the Beinnial (sic) Conference shall also be the office bearers of the Executive Board and Executive Committee.

4.7.6 The office bearers shall vacate their seats during their term of office if they cease to be members of the affiliate unions or if a Special Beinnial (sic) Conference so decide by resolution carried by two thirds (2/3) majority. Vacancies occurring in the positions of the office bearers shall be filled by the Executive Board on nomination duly seconded.”

In paragraphs 25 - 26 of his founding affidavit the 1st Applicant Hape Tsakatsi avers as follows:

“25.

On or about the 12th day of June 1996 I received an information that all the members of the Executive Committee of which I am the President have been removed from the office. I had not received any notification to that effect. I however decided to ignore the same as I did not have any official notification from any authority with such powers to remove my committee including me from the duly elected committee.

26.

To the best of my knowledge my committee had never set (sic) to decide any urgent matter involving the Federation for expeditions (sic) information of the Executive Board nor has there ever (sic) any meeting of the Executive Board to call an extra-ordinary conference in terms of the constitution.”

Hape Tsakatsi concludes in paragraph 34 of his founding affidavit:-

“I aver that regard being had to the forgoing our removal from the office is unlawful as it is unconstitutional.”

The Respondents’ answer to these allegations is contained in paragraphs 10 - 11 and 18 of the opposing affidavit of Mohlolo Ts’osane as follows:-

“10.

AD PARAGRAPH 25

I confirm that a letter dated 12/06/96 was written and hand delivered to first Applicant and received on the same date. I deny that all members of the executive committee were removed. I aver that the general secretary (6th Respondent herein) presidents and general secretaries of each affiliate union remained. Only five (5) office bearers were removed. Annexure “HT2” is self-explanatory that 1st Applicant was notified. The authority emanated from resolutions taken at a special meeting, following formal notification to Applicants to attend the meeting which they ignored and/or refused to attend (see annexures “A”, “B” and “C”).

11.

AD PARAGRAPH 26

I note the contents thereof save to say that the deponent himself refused to attend a special meeting petitioned by the affiliate member unions together with presidents and general secretaries comprising the executive committee. The tenure of office of the founding members of the executive committee in which

Applicants were members had expired by effluxion of time in terms of Article 4.7.4. of the federation's constitution a copy of which is annexed hereto marked "D".

18.

AD PARAGRAPH 34

As aforesaid the special meeting was constitutional and lawful as such I deny the contents thereof."

The special meeting in question was apparently convened by the sixth Respondent purportedly as General Secretary of Lesotho Federation of Democratic Unions (eighth Respondent) in his undated letter Annexure "B" which reads as follows:

"TO: ALL AFFILIATES OF LFDU

Fellow trade Unionists,

Notice is hereby given that some of the affiliates of the federation have requested me to call a special meeting of the Executive Board of LFDU as I hereby do.

The meeting will be held at I.L.S. (IEMS) on Sunday 2nd June 1996 under the Agenda hereby reflected in the self explanatory petition from the affiliates.

Regards

Yours

Justice Sello Ts'ukulu
GENERAL SECRETARY."

The petition and agenda for the special meeting read as follows:

"RE: PETITION FOR A SPECIAL MEETING OF THE EXECUTIVE
BOARD OF THE LESOTHO FEDERATION OF DEMOCRATIC UNIONS
(LFDU)

We, the undersigned affiliates of the Lesotho Federation of Democratic Unions (LFDU) do hereby instruct the General Secretary of the Federation to call a meeting for the Executive Board on Sunday 2 June 1996 from 10.00 A.M. at I.L.S. (I.E.M.S.) to address the following crucial matters affecting the federation.

AGENDA

1. Head office Report by the General Secretary including all correspondence.
2. A detailed financial report by the Treasurer.
3. Failure of the National Office Bearers to give a detailed financial statement to all affiliates monthly as required by the provisions of the LFDU constitution.

4. Release of our internal affairs to the media by certain office bearers without our knowledge and approval.
5. Legal action by the President against the General Secretary without our knowledge and authorization.
6. Failure of the President to call the meeting of the National Executive Committee to address complaints laid down by the General Secretary in writing in March 1996. The letter was further circulated to all affiliates.
7. Nullification of the terribly unprocudural (sic) and unconstitutional so-called meeting of the Executive Board of LFDU said to have been held on the 5 May 1996 without knowledge of majority of the affiliated unions according to a letter from the president to the General Secretary dated 20 May 1996.
8. Claims by the Assistant General Secretary in some of the correspondence that he is a General Secretary of the Federation without knowledge and approval of any Committee of the Federation.
9. Request for affiliation by the Lesotho Wholesalers and Catering Workers Union (LEWCAWU)."

It is further common cause that on the 2nd June 1996 the said special meeting did not take place as scheduled due to lack of a quorum. The meeting was then adjourned to the 8th June 1996 on which date elections or nominations (it does not matter which) took place resulting in the removal of the applicants as office bearers of the seventh respondent.

There is no evidence in the papers before me that there was ever any written notice to members and particularly the applicants, of the adjourned meeting of the 2nd June 1996 to the latter date of the 8th June 1996. I find

that this is contrary to section 4.3 (c) of the Constitution of the eighth respondent which reads thus:

“(c) Quorum of the Executive Board:

The Executive Board shall meet at least once in three (3) months. A majority of the Executive Board members shall constitute a quorum at meetings. If within one hour of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following at time and place decided by the Executive Board. At such adjourned meeting the members present shall form a quorum. Written notice of such adjourned meeting shall be given to members who were absent. Resolutions shall be adopted by majority vote, provided that full time officials shall not be entitled to vote. The President shall have a deliberative and casting vote.”

I observe that this section is enacted in a mandatory form. Accordingly I find that the meeting of the 8th June 1996 could not lawfully proceed without written notice thereof and that consequently such meeting was unlawful and unconstitutional. Nor does the matter end there.

Section 4.6. (e) of the said constitution also provides as follows:-

“If within one hour of the time fixed, for any meeting quorum is not present the meeting shall stand adjourned to the same day in the following week at the time and place decided by the president and General Secretary. Written notices of such adjourned meeting shall be sent to members who were absent. The next meeting shall constitute a quorum.”

In my calculation since the adjourned meeting was on the 2nd June 1996, which was a Sunday, the next meeting ought to have been held on the following Sunday the 9th June 1996 in terms of this section. Yet on the contrary the meeting was in fact held on Saturday the 8th June 1996 in contravention of the said section 4.6 (e) of the constitution. I have come to the conclusion therefore that the said meeting of the 8th June 1996 was once more unlawful and unconstitutional.

There is again the aspect of the agenda. It is apparent from the agenda as fully reproduced above that elections or nominations were not on the agenda for the meeting of the 2nd June 1996 or 8th June 1996 in terms of Annexure “B”.

In this regard section 4.2 (c) of the Constitution of the eighth Respondent provides as follows:-

“(c) Business of the Extra-Ordinary Conference

The business of the extra-ordinary conference shall be determined by the Executive Board, provided that it shall not include any matters other than those for which it was convened.”

Since the question of elections or nominations as office bearers of the seventh Respondent did not appear in the agenda I have come to the conclusion that the purported resolution, elections or nominations arising therefrom and resulting in the removal of the applicants as office bearers thereof were unconstitutional, invalid and a nullity.

See Lesotho Congress of Free Trade Unions v Ts’eliso Ramochela and others 1982 - 84 LLR 442 at P447 - 448 where Aaron JA delivering judgment of the Court of Appeal had occasion to deal with a substantially similar situation in like manner.

Because of the conclusion at which I have arrived in this matter it is strictly unnecessary for me to consider other issues raised in this application save to highlight some of the constitutional provisions which were transgressed by the respondents in their purported removal of the applicants as office bearers of the seventh Respondent.

In terms of section 4.7.1 of the eighth Respondent’s Constitution removal of officer bearers is the function of the Executive Board which is defined in Section 4.3 (a) of the Constitution as follows:-

“4.3 THE EXECUTIVE BOARD

a) there shall be an Executive Board which shall comprise of the following:

- Members of the Executive Committee:

- i two representatives from each affiliated union with less than 2,000 members at least one of whom shall be a worker delegate.

- ii Four Representatives from each affiliate Union with more than 2,000 members at least two of whom shall be worker delegates of such an affiliated Union.”

Now the said petition and Agenda Annexure “B” as fully reproduced above has left me with the impression that the purported notice for the meeting of the 2nd June 1996 was not addressed to members of the Executive Committee as such judging from the fact that they are not mentioned at all in the letter. On the contrary the addresses are referred to as “Fellow trade Unionists” which would seem to suggest that only trade unions were given notice of the meeting contrary to section 4.3. (a) of the constitution.

Mr.Mpopo submits that the two years for which the Applicants were elected office bearers of the 7th Respondent expired by effluxion of time in June 1996 and that therefore there was a vacuum entitling the Respondents to convene an Extra-ordinary Conference resulting in the removal of the applicants from office on the 8th June 1996.

It is significant that in terms of section 4.7.2 of the Constitution of the eighth Respondent “the election of office bearers shall be made on nomination duly seconded at the Biennial Conference.”

Now section 4.3 (a) and (b) of the said Constitution provides as follows:-

“4.3 EXECUTIVE COMMITTEE

Biennial Conference

(a) There shall be the Biennial Conference which shall be the supreme authority of the Federation.

(b) The Biennial Conference shall be held biennially and under no circumstances shall be held later than the first week of October of the second year.”

In the circumstances therefore I reject Mr. Mpopo's submission that there was a vacuum in the office bearers of the seventh Respondent. I find that the Biennial Conference was not yet overdue on the 8th June 1996 and that it could constitutionally be held any time before the first week of October 1996.

In the result therefore the Rule is confirmed as prayed in terms of prayers 2 (a), (b), (c), (d) and (e) of the Notice of Motion with costs.



M.M. Ramodibedi

JUDGE

4th day of February 1997

For Applicants : Mr. Khauoe

For Respondents: Mr. Mpopo