

IN THE HIGH COURT OF LESOTHO

In the matter between:-

**TAKATSO RAMAKHULA  
LIPHALO MOEKETSI  
MOTLOANG MOLAPO  
THABISO MOKUOANE  
MOEKETSI MAITIN  
THABISO MATEANE  
PEKENYA NTOANE**

1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT  
4<sup>TH</sup> APPLICANT  
5<sup>TH</sup> APPLICANT  
6<sup>TH</sup> APPLICANT  
7<sup>TH</sup> APPLICANT

and

**MAKHETHA MOSOTHO  
FAKO HAKANE  
MPOI MATETE  
HAPE MOTŠOANE  
LEHLOHONOLO LEBOTSA  
SEBUSISO KEKETSI  
LESOTHO DEFENCE FORCE BOXING  
CLUB  
BEST BOXING CLUB  
MAKOANYANE BOXING CLUB  
LEROTHOLI POLYTECHNIC BOXING  
CLUB  
QOALING BOXING CLUB  
TŠOSANE BOXING CLUB  
KHUBETSOANA BOXING CLUB  
TEYATEYANENG BOXING CLUB  
MAFETENG BOXING CLUB  
BOTHABOTHE BOXING CLUB  
QACHA'S NEK BOXING CLUB**

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT  
7<sup>TH</sup> RESPONDENT  
8<sup>TH</sup> RESPONDENT  
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10<sup>TH</sup> RESPONDENT  
11<sup>TH</sup> RESPONDENT  
12<sup>TH</sup> RESPONDENT  
13<sup>TH</sup> RESPONDENT  
14<sup>TH</sup> RESPONDENT  
15<sup>TH</sup> RESPONDENT  
16<sup>TH</sup> RESPONDENT  
17<sup>TH</sup> RESPONDENT

<b>MOKHOTLONG BOXING CLUB</b>	18 <sup>TH</sup> RESPONDENT
<b>MOHALE'S HOEK BOXING CLUB</b>	19 <sup>TH</sup> RESPONDENT
<b>NATIONAL UNIVERSITY OF LESOTHO BOXING CLUB</b>	20 <sup>TH</sup> RESPONDENT
<b>LESOTHO AMATEAUR BOXING ASSOCIATION</b>	21 <sup>ST</sup> RESPONDENT
<b>LESOTHO SPORTS AND RECREATION COMMISSION</b>	22 <sup>ND</sup> RESPONDENT
<b>DIRECTOR OF SPORTS</b>	23 <sup>RD</sup> RESPONDENT
<b>MINISTER OF GENDER, YOUTH, SPORTS AND RECREATION</b>	24 <sup>TH</sup> RESPONDENT
<b>ATTORNEY GENERAL</b>	25 <sup>TH</sup> RESPONDENT

### JUDGMENT

**CORAM** : HON. MR JUSTICE S.N. PEETE

**DATE** : 26<sup>TH</sup> NOVEMBER, 2009

**PEETE J.:**

[1] On the 21<sup>st</sup> September 2009, the seven applicants moved an urgent application *ex parte* before **Monapathi J.** who granted them an order couched thus:-

*“IT IS ORDERED AS FOLLOWS:-*

1. *That the Rules of this Honourable Court pertaining to normal procedural formalities, modes and periods of service and time limits be dispensed with on account of urgency hereof and this matter be heard and adjudicated upon on an urgent basis.*

2. *That a rule nisi be and it is hereby and returnable on the 24<sup>th</sup> September 2009 calling upon the respondents to show cause, if any, why an order the following terms cannot be made final, to wit,*

- (a) That applicants be and are hereby declared to have been duly elected members of the executive committee of Lesotho Amateur Boxing Association with effect from the 29<sup>th</sup> August 2009.*
- (b) That respondents, specifically 1<sup>st</sup> to 6<sup>th</sup> respondents and 22<sup>nd</sup> respondent be interdicted from interfering with the applicants' rights to execute official duties of the 21<sup>st</sup> respondent including to participate in the on coming Congress of the 22<sup>nd</sup> respondent to be held on the 27<sup>th</sup> September 2009.*
- (c) That it is hereby declared that the 1<sup>st</sup> to 6<sup>th</sup> respondents are not the lawful executive committee members of the 21<sup>st</sup> respondent.*
- (d) That the 1<sup>st</sup> to 6<sup>th</sup> respondents be and are hereby interdicted from exercising the official functions of the executive committee of the 21<sup>st</sup> respondent pending finalization of this matter.*

- (e) *That the applicants be and hereby authorized to execute the official functions of the executive committee of the 21<sup>st</sup> respondent pending finalization of this matter.*
- (f) *That the respondents be put to such terms as the Honourable Court may deem fit in its discretion regarding filing of affidavits and hearing of this matter.*
- (g) *That only opposing respondents be ordered to pay costs at attorney and own client scale jointly and severally in the event of unsuccessful opposition.*
- (h) *That applicants be granted such further and/or alternative relief.*

3. *That prayers 1,2 (d) and (e) herein operate with immediate effect as interim relief.”*

[2] In their founding papers applicants contend that they had been lawfully elected as a new Executive Committee of the **Lesotho Amateur Boxing Association (LABA)**(the 21<sup>st</sup> respondent). It is common cause that 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents were erstwhile executive committee formerly elected into office on the 3<sup>rd</sup> December 2005 for four years.

- [3] It is common cause that Lesotho Amateur Boxing Association (LABA) is a voluntary boxing association whose objective is to promote, foster and safeguard the interests and welfare of amateur boxing in Lesotho. Affiliated to it, are several amateur boxing clubs to wit 7<sup>th</sup> to 20<sup>th</sup> respondents.
- [4] Under the Constitution of LABA, the supreme governing body of LABA is the Congress which consists of “*the President, the General Secretary, Vice President and other members of the Executive, Chairperson and the delegates of the affiliated clubs*”. (see Article V-A & D)
- [5] Under Article VI of the constitution, a “*meeting of the ordinary congress of LABA shall be held at least every four years ...*” and it is at such meetings that the LABA Executive Committee shall be elected for a term of four years.
- [6] It is important to note that under the Constitution of LABA the election of the Executive Committee is the domain and prerogative of the Ordinary Congress at its meeting after every four years. The use of the mandatory word “*shall*” exclusively limits the election of the Executive Committee to the Ordinary Congress.
- [7] Despite its voluminous pleadings and annexures, this case in reality turns upon the issue of scope of authority of the Special Congress in purporting to elect the Executive Committee of the Applicants on the 29<sup>th</sup> August 2009. Under Article VI the procedure for summoning a

Special Congress is outlined and as specified it delimits the scope of its agenda.

- [8] Even assuming in favour of the applicants that the proper procedure was followed in convening the Special Congress, a critical question to be decided is whether, without amending or violating its Constitution, the LABA Executive Committee had a constitutional authority to usurp, so to speak, the constitutional powers of the Ordinary Congress to elect a new Executive Committee for a term of four years (Article VIII –E).
- [9] In our view the maxim “*generalia specialibus non derogant*”<sup>1</sup> applies. The specific wording: “*Executive Committee shall be elected at an Ordinary Congress for a term of four years*” should not be attenuated by the general wording of Article VII (special congresses). Moreover, a Special Congress could only exercise such powers as directly vested in it by the Constitution and not as requisitioned by the erstwhile Executive Committee; and furthermore, the right of affiliate clubs to elect an Executive Committee could only be exercised at an “*ordinary Congress and not at a special congress*”.
- [10] Under the LABA constitution the election of the Executive Committee is entrusted exclusively to an ordinary Congress at end of every four years and not to a special congress requisitioned for that

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<sup>1</sup> **Devenish** – Interpretation of Statutes; see also **Cape United Sick Fund Society v Forrest** – 1956 (4) 519 per Centlivres CJ.

- purpose. There is no provision in the LABA Constitution vesting such fundamental power upon a special congress.
- [11] It may be fairly surmised that the main purpose of providing for a special congress during the 4 year term is to address pressing administrative issues and for LABA's general efficacy; and no interpretation of the LABA constitution, no matters how generous, how permissive or how benevolent can endow the special congress with powers otherwise vested in the Ordinary Congress. It is not the best interests of the affiliate clubs and/or its members that is decisive but the interpretation of the clauses of the constitution which basically is a contract regulating exercise of powers and rights within the Association.
- [12] Without making any directive, it should be borne in by mind all concerned that the tenure of the purported ousted Executive Committee was due to end on the 3<sup>rd</sup> December 2009 (four years from 3<sup>rd</sup> December 2005).
- [13] In my view, therefore whatever resolution was taken by the erstwhile Executive Committee to hold a Special Congress on the 29<sup>th</sup> August 2009 with a specific agenda of electing a new LABA Executive Committee was *ultra vires* Article VIII-E of the LABA Constitution. Furthermore, the election of whomsoever at the Special Congress of 29 August 2009, was *ultra vires* the LABA constitution and was therefore *null* and *void*. This obviates the need to determine issues on non-joinder and dispute of fact raised by respondents *in limine*.

[14] The rule is therefore discharged and the application is dismissed with costs.

**S.N. PEETE**

**JUDGE**

For Applicants : **Mr Molati**

For Respondents : **Mr Mda**