

CIV/APN/292/2011

IN THE HIGH COURT OF LESOTHO

In the matter between:

KALINYANE SEITLHEKO

1st Applicant

KHOPOTSO TS'EHLO

2nd Applicant

SOKE MOLEFE

3rd Applicant

and

SERAME KHAMPEPE

1st Respondent

KIMETSO MATHABA

2nd Respondent

LETUKA NKOLE

3rd Respondent

NTJA THOOLA

4th Respondent

NTHEKELENG MOFOLO

5th Respondent

DANIEL NKOPANE

6th Respondent

MAQETELO KHETLA

7th Respondent

MALIAU PITA

8th Respondent

KHOLOANG MOLOI

9th Respondent

NATIONAL EXECUTIVE COMMITTEE OF

THE NATIONAL INDEPENDENT PARTY

10th Respondent

NATIONAL INDEPENDENT PARTY

11th Respondent

THE REGISTRAR GENERAL
THE ATTORNEY GENERAL

12th Respondent

13th Respondent

Coram: **Hon. Hlajoane J**

Date Heard: **1st August, 2011, 3rd October, 2011.**

Date of Judgment: **11th November, 2011.**

Summary

Locus standi of applicants – they are card carrying members of the 10th respondent – other members have signed a petition attached – on urgency – fact known for more than two years – non-joinder – parties to be affected by outcome and whose decision challenged to be joined.

JUDGMENT

[1] The prayers sought in this application are couched in the following terms:-

That a *rule nisi* be issued returnable on the date to be determined by the Honourable Court, calling upon the 1st to 13th respondents to show cause, if any, why, an order in the following terms shall not be made:-

(a) That the Rules of this Honourable Court relating to notice and service be dispensed with and the matter be heard on urgent basis.

- (b) Declaring that the term of office of current members of 10th respondent expired on or about the 13th April, 2009.
- (c) Declaring that 11th respondent's special conference held on the 29th January, 2011 for the purpose of considering the amendment of the Party Constitution was unconstitutional and therefore null and void.
- (d) Declaring the amendment of 11th respondent's constitution registered under No.84/39 on the 1st March, 2011 unconstitutional and therefore null and void.
- (e) Directing 2nd to 11th respondents to prepare for and hold 11th respondent's National Conference not later than 28 days of the final order hereof.
- (f) Interdicting and restraining 2nd to 8th respondents from holding themselves out as substantive office bearers of the 10th respondent other than the latter's interim committee members.
- (g) Interdicting and restraining 2nd to 9th respondent from transacting any business of 11th respondent other than matters incidental to the preparation for the holding of 10th respondent's National Conference referred to at 1 (e) above.
- (h) Directing the respondents to pay costs of this application only in the event of contesting same.

- (i) Directing that applicants be granted further and / or alternative relief.

That prayer 1 (a) operate with immediate effect as an interim interdict

[2] There were some points of law raised by the respondents' counsel. But before dealing with those points of law applicants' counsel intimated that they have decided to abandon prayers © and (d) of the notice of motion.

[3] The respondents have raised some points *in limine* in their papers.

They are:

- *Locus standi*
- Lack of urgency
- Non – joinder

[4] *Locus Standi*

It has been the respondents' case that the applicants have failed to show that they have direct and substantial interest in the matter. That the mere fact that they are members of the association would not mean they have no duty to prove a direct and substantial interest.

- [5] It was at the replying stage that the 1st and 2nd applicant attached copies of renewal of their membership, for the current year. As for the 3rd applicant he has pointed out that he has renewed his membership but has misplace his card.
- [6] The respondents went further on this point by showing that the mere fact that the applicants have an interest does not mean that every member had a direct and substantial legal interest to sustain the requisite *locus standi*. That a party has to have a direct and substantial interest peculiar to himself.
- [7] Respondents further showed that if a party brings an application based on the interest he has in common with the rest of his co-members in the association, he would have to join the other members as well.
- [8] **Mofolo J in Mokhotlong Constituency Committee and 6 others v Pakalitha Mosisili and 30 Others**¹ had this to say that;
“This Court could never subscribe to the proposition that because individual members have surrendered their powers to the Party congress or conference they are thereby zombies and mummies never to raise their voices against unconstitutional acts of the congress or conference.”

¹ 1991 – 96 LLR 671 at 712

[9] The Court said this after referring to an unreported case by my brother **Monapathi J** in **Leonard Ntsoebia v Basotho National Party**² where it was said;

“All members are bound by the decision of the majority at a properly convened meeting, but any individual member may act to protect the interest belonging to all, in his personal capacity.”

On the basis of the authorities shown above, since the applicants are card carrying members of the party they have *locus standi*.

[10] I distinguish this case from the case referred to by the respondents, **Marumo and Others v National Executive Committee and 2 Others**³, delivered by my sister **Guni J** on the 9th September 2011. In that case the Court dismissed an application filed by three card carrying members of the Lesotho Congress for Democracy (LCD). The Court in dismissing the application said;

“They cannot call for what is in every member’s interest without involving every member. On their own they have no *locus standi*.”

[11] There has been a petition attached to the founding papers, Annexure ‘S.T.M3’ which showed that other members from different constituencies were of the same view with the present applicants. The 1st, 4th and 5th respondents have confirmed that

² CIV/APN/75/94

³ CIV/APN/213/2011

there has been such a petition which was presented to the 10th respondent. This was a clear indication that it was not only the applicants who wanted the conference to be held.

[12] **Urgency**

Respondents contended that the cause of complaint herein was nothing new. Those applicants were well aware that the last conference was held on the 12th April, 2008. Also those applicants were well aware that the respondents were continuing to transact the business of the party and that on the 29th January 2011 a special conference of the party was held.

[13] The respondents further pointed out that applicants have been aware of the outcome of that special conference and consequent registration of the Amended Constitution of the party on the 1st March, 2011.

Respondents have supported their argument with the following cases where the Court of Appeal has expressed concern that the procedure of urgent applications is abused;

- **Mahlakeng & 55 Others v Southern Sky Ltd and 7 Others**⁴
- **Lutaru v NUL**⁵
- **Commander LDF and Another v Matela**⁶.

⁴ 2000 – 2004 LAC 742

⁵ 1999 – 2000 LLR & LB 52

[14] The respondents have not denied that they acted contrary to the provisions of the Constitution by not holding the conference to elect the new committee when the term of the committee expired in April 2008. They are only advancing reasons why that has been so.

[15] But on the authority of the decisions shown above and many others the delay has been just too long.

The applicants have relied on the case of **Mona and Another v Khoarai and Another**⁷ (unreported) as authority for the proposition that a continuing injury suffices to contribute a ground for urgency.

[16] That may well be so but where there has been unexplained inordinate delay a party cannot be allowed to take his time and when it suits him come and cry urgency. Even the petition is dated 27th March, 2011.

[17] The term of the committee expired in April 2008 and the applicants have been keeping quiet since that time only to come and cry urgency in 2011.

⁶ 1999 – 2000 LLR & LB 13

⁷ CIV/APN/258/99

[18] On this ground alone the application stands to be dismissed.

[19] **Non – Joinder**

The respondents here are saying the applicants have also failed to join the delegates who were present as the constitution was amended. But because the respondents have abandoned prayers 1 © and (d) of the notice of motion there would be no need to proceed with this point.

[20] I have allowed both points of law and the merits to be argued at the same time. I have already decided that the applicants have *locus standi*.

[21] I have also decided that the matter is not urgent and this goes to the roots of this application.

[22] On that score the rule is discharged.

On the question of costs, since this a matter for members of the same political party and as such are like family members I will make no order as to costs, but that each party to bear its own costs.

[23] Though I have not gone into the merits of this application, but I am going to say something by way of advice, that political parties must learn to always abide by the conditions of their constitutions.

A. M. HLAJOANE
JUDGE

For Applicants: Mr Mda

For Respondents: Mr Shale