

IN THE HIGH COURT OF LESOTHO

CIV/APN/358/2011

In the matter between:

THE NATIONAL EXECUTIVE COMMITTEE OF LEKHOTLA

LA MAHATAMMOHO (Basotho Congress Party)

1ST APPLICANT

LEKHOTLA LA MAHATAMMOHO (Basotho Congress Party)

2ND APPLICANT

AND

NTSUKUNYANE MPHANYA

1ST RESPONDENT

MATSOBANE PUTSOA

2ND RESPONDENT

LEKHOTLA LA MAHATAMMOHO KOMITI EA 17.

3RD RESPONDENT

INDEPENDENT ELECTORAL COMMISSION

4TH RESPONDENT

REGISTRAR OF SOCIETIES

5TH RESPONDENT

ATTORNEY GENERAL

6TH RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngcongo

On the 16th of September 2011

The applicants moved court on a certificate of urgency for prayers in the following terms:

1. That a *Rule Nisi* be issued returnable on a date and time to be determined by this Honourable Court calling upon the 1st, 2nd and 3rd 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 periods of notice and service be dispensed with and the matter be heard on an urgent basis.
 - (b) That 1st, 2nd and 3rd Respondents and/ or their agents, supporters and/ or anyone acting in concert with them and/ or anyone acting in furtherance of a common purpose with them, be interdicted forthwith from organizing and/ or holding a purported Annual Conference of **Basutoland Congress Party** currently called **Basotho Congress Party** (2nd Applicant) on the 23rd to 24th July, 2011 or at all, pending the determination of these proceedings.
 - (c) That 1st to 3rd Respondents and/ or anyone acting in concert with them and / or in furtherance of a common purpose with them be restrained and/ or interdicted from holding themselves out as legitimate representatives of Basutoland Congress Party pending the determination of these proceedings.
 - (d) That 4th and 5th Respondent's be interdicted from dealing with and / or entertaining 1st to 3rd Respondents and /or their agents in any manner whatsoever in relation to the affairs of the 2nd Applicant save by and through 1 Applicant.
 - (e) Declaring the letter or circular issued under the hand of the 1st Respondent unconstitutional and **Ultra vires** the powers of 1st Respondent and/or his **Lekhotla la Mahatammoho Committee of 17** to

the extend that it relates to the **Basotho Congress Party** (currently called **Basotho Congress Party**) and therefore null and void.

(f) Declaring that **Basutoland Congress Party** is one and the same entity as **Basotho Congress Party** (2nd Applicant).

(g) That the purported Annual Conference of Basutoland Congress Party called by 1st to 3rd Respondents for 23rd to 24th July, 2011 be declared null and void and of no force and effect.

(h) That 1st to 3rd Respondents be ordered to pay costs of this application jointly and severally and 4th to 6th Respondents to pay only in the event of contesting this application.

(i) That applicant's be granted such further and/or alternative relief.

2. That prayers 1(a), (b) and (c) operate with immediate effect as an interim interdict.

This application stems from a letter dated 26/06/11 under the heading "**Lekhotla la Mahata mmoho Committee of 17**" and in brackets (Basutoland Congress Party). It is addressed to members of Lekhotla la Mahatammoho, Basutoland Congress Party. It invites them to an annual conference on the 23/24 July 2011 to be held in Maseru to elect a National Executive Committee. It is that conference which, through a *rule nisi* issued on 22nd July 2011 was effectively aborted by the

applicants. The deponent does not say when this letter came to the applicants' attention.

The respondents then filed a notice of intention to oppose. Together with it they filed what they called a "*Counter application in terms of the rules as well as what they called Points of Law Raised in Limine*". I will not deal with whether or not the counter application had merit; it was not pursued in argument. Also I will not deal separately with the so called points of law as I ordered that the respondents file an answering affidavits in terms of the discretion conferred upon the court in terms of the Rule 8(12). I did so because as when counsel started arguing these points it became clear that he was raising factual issues which could properly be ventilated in affidavits. These points were basically that the application lacked urgency and that the applicants did not have *locus standi in judicio*. In the event these were addressed in the answering affidavit of Matsobane Putsoa.

The founding affidavit is deposed to by Tsoeu Thulo Mahlakeng who describes himself as the President of the first applicant and the leader of the second applicant. He says he is duly authorized to depose to the affidavit on behalf of the applicants in his capacity aforesaid.

The first applicant, he says, is the NATIONAL EXECUTIVE COMMITTEE OF LEKHOTLA LA MAHATAMMOHO (BASOTHO) CONGRESS PARTY, a constitutional organ of the second applicant whose role is to manage the affairs of the second and to implements its resolutions.

The second applicant is, he says “THE LEKHOTLA LA MAHATAMMOHO (BASOTHO CONGRESS) formerly BASUTOLAND CONGRESS”

It will seem in the latter regard that the applicants actually prayed that the court declare that Basutoland Congress Party is one and the same entity as Basotho Congress Party (prayer 1 (f)).

The respondents disagree and say that Basutoland Congress Party is not the same as Basotho Congress Party. And there lies the crux of this matter.

The Applicants’ contention that Basotho Congress Party is the same entity as the Basutoland Congress Party rests on the averment that there was and I quote from par.8 of the founding affidavit that it was

“the change of the English version of the second applicant from Basutoland Congress Party to Basotho Congress Party”. And secondly that:

“[the] change as is the amendment of the translated name of the party was done in accordance with the constitution of the second applicant and in a lawfully constituted annual conference of the second applicant and by the delegates of the second applicant, in an annual conference held on the 29th and 30th January 2005”.

The applicants have annexed to their founding affidavit the constitution of the Basotho Congress Party to which they have referred copiously for their claim that the intended conference by the respondents is invalid in law and that the first applicant is the only structure empowered to call annual conferences in terms of that constitution. *(my underlining)*

The respondents counter that the Basutoland Congress Party is the party registered under **N0.69/10** and not the Basotho Congress Party. The deponent to the answering affidavit says the deponent to the founding affidavit and a few individuals not only unconstitutionally usurped the administration and property of the Basutoland Congress Party but they have also unconstitutionally renamed it Basotho Congress Party, a party not registered with the fifth respondent, the Registrar General.

The question of the difference between the Basotho Congress Party and the Basutoland Congress Party arose in a case recently decided by Peete J. In **Pela-Tsoeu NO.10 Constituency Committee of the Basutoland Congress Party v Basotho Congress Party and Executive Committee of the Basotho Congress Party**. (CIV/APN/360/08). In that case the applicant sought an order directing the respondents (the present applicants) to call a special Conference for the purposes of electing a new national executive committee and declaring that the term of office of the bearers of the executive committee had expired. The application was unsuccessful and Peete J. observed as follows:

“At once it becomes crystal clear that whereas applicant calls itself the “PELA TSOEU NO.10 constituency of the BASUTOLAND CONGRESS PARTY”, it refers to 2nd respondent as “THE EXECUTIVE COMMITTEE OF THE BASOTHO CONGRESS PARTY”

There is a clear historical deference between “BASUTOLAND” and “BASOTHO” whenever these words are used. It is quite probable that the second respondent did not officially recognize a committee calling itself “PELA TSOEU NO.10 CONSTITUENCY COMMITTEE OF THE BASUTOLAND CONGRESS PARTY” – There certainly existed therefore two political parties

– one describing itself as Basutoland Congress and another as Basotho Congress (*Peete J's own underlining*).

In the face of this judgment couched in no uncertain terms which incidentally was in their favour and was argued by the deponent to the founding affidavit, Mr Mahlakeng, the applicants have approached the court seeking a declarator that Basutoland Congress Party and Basotho Congress Party are one and the same thing. They base their argument on the assertion that Basutoland is the English version or its translation. This is simply not correct. Basutoland was the colonial territory that is now the Kingdom of Lesotho and Basotho are the people who inhabit that territory. The applicants further say that the change or amendment was carried in accordance with the constitution of the second respondent being the Basotho Congress Party, in a lawfully constituted annual conference of the second respondent. Now that is disingenuous. The Basotho Congress Party had no colour of right to change or amend the name of the Basutoland Congress Party. Only that party could change or amend it, if so authorized by its constitution or by a majority vote of the party.

The applicants have annexed their constitution to the founding papers. There is no indication on that document that it has been registered as required by **section**

9 of the Societies Act n0.20 of 1966. In describing the second applicant Tsoeu Thulo Mahlakeng does not say that it is a society duly registered under the Societies Act. In fact the affidavit does not mention anything at all about registration. In my view this amounts to non-disclosure of a very material fact. This is more so because default in registration attracts criminal sanctions in terms of section 19 of the Societies Act and also has serious civil consequences in terms of section 20 of the Act.

The applicants then when the respondents pointed out that the second applicant was not registered attempted in reply to make a fresh case that it was in fact registered. Now the applicants know that they stand or fall by their founding affidavits. They cannot make a fresh case in reply. In any case their attempt to do so is a truly pathetic one. They annex the constitution of the Basutoland Congress party duly registered and with a seal and contend themselves with saying “Basutoland Congress Party, now Basotho Congress Party”. That cannot be – those names cannot be used interchangeably. Then they go on to refer to a document with Registrar General’s registration stamp dated the 12th July 2011 that was thrown in by the respondents without so much as an explanation. Surely the applicants cannot be saying that the Basotho Congress Party which applicants say had been operating under that name at least from 2005 only registered the

name just days after the 1st respondent Mr Mphanya was interviewed by the Sunday Express Newspaper on the 10th July 2011. The conclusion is inescapable that someone sneaked to the Register General's office and contrived to obtain the date stamp and signature of that office after realizing, after the interview, that Basotho Congress Party had not been properly registered.

Mr Mda correctly pointed out that section 7 (c) prohibits the use of a name of a society that is identical with that which a society in existence is already registered, or so closely resembles that name as to be calculated to create the impression that the two societies are one and the same thing. This is precisely what the second applicant did when it chose to go by the name of Basotho Congress Party. That name so closely resembles Basutoland Congress Party as to be calculated to create the impression that it is one and the same thing. In fact this was starkly illustrated in the PELA TSOEU NO.10 CONSTITUENCY COMMITTEE OF THE BASUTOLAND CONGRESS PARTY case (supra). The applicant in that case sued the Basotho Congress Party on the assumption that it was one and the same thing with Basutoland Congress Party and the court disabused him of this impression.

In conclusion the Basotho Congress Party is not the same thing as the Basutoland Party and is an illegal association for want of registration and therefore it has *no*

locus standi to sue (see section 18 of the societies Act; Wakefield v A.S.A (Pvt) Ltd 1976(4) 806) This disposes of the matter definitively and the application stands to be dismissed. The application is dismissed and what remains is the question of costs and in particular who bears the costs of this application. I was not addressed on this issue but on the facts before me and the law I find no difficulty in deciding this question. The law first provides that whoever manages or assists in the management of an unregistered society is guilty of an offence. I have found that the Basotho Congress Party which Mr Tsoeu Thulo Mahlakeng claims to be president of is an unregistered society which he manages by virtual of being the President of its national executive committee. I have no idea who else he runs it with. It seems to me therefore that Mr. Tsoeu Thulo Mahlakeng is liable for costs occasioned by this application.

I order there costs *de bonis propriis* against him.

T. Nomngcongo
Judge
16 September 2011

For Applicant: Mr. Mda
For Respondents: Mr. Sello