

IN THE HIGH COURT OF LESOTHO

In the matter between:

SEFATE DEMOCRATIC CONGRESS

APPLICANT

AND

INDEPENDENT ELECTORAL COMMISSION

RESPONDENT

JUDGMENT

Coram : **Hon. Moiloa AJ**
Date of Hearing : **15 April 2012**
Date of Judgment : **17 April 2012**

Summary

Interpretation of statutes – Sections 24, 25, 26, 27, 29 and 196 of National Assembly Elections Act 2012 – Political party failing to comply with Section 27 is liable to be de-registered as a political party by Independent Electoral Commission.

[1] Applicant had been a registered political party in Lesotho since 16 May, 1994 until Respondent deregistered it on 9th January, 2012 on the ground that Applicant no longer complied with Section 27, National Assembly Electoral Act, 2011.

- [2] Applicant disputes that it no longer complies with any provision of National Assembly Electoral Act, 1911. In support of its contention, Applicant annexed SDC 7 being, a copy bundle of its documents taken from inter alia, its register books of members. In one such list appear at least 754 names. In another list appear 2000 names. I will come back later to this matter of the list of names appearing in SDC 7.
- [3] When the matter came before me on 28 March 2012 when counsel began to argue the matter before me, there were several areas of dispute between the parties including (a) whether Applicant kept an office at which notices intended for it may be served or inspection of its records may be made pursuant presumably to Section 24 (2) (a) and (b) of the Act, (b) whether Respondent went to serve Applicant at its registered office at all but found no such office, or (c) whether Respondent finally served Applicant by delivering a notice pursuant to Section 27 (1) (c) at the home of Applicant's president at Upper Qeme, or (d) whether Respondent's officers refused to examine Applicant's records (SDC 7) when Applicant's president took them to Respondent's offices to prove that Applicant complied fully with the requirements of National Assembly Electoral Act, 2011.
- [4] In an effort to expedite determination of the application I suggested to the parties herein that the real dispute between them was whether or not information contained in annexure SDC 7 made Applicant compliant with Section 24, 25, 26, 27, 28 and 29 of National Assembly Electoral Act, 2011. Both counsel agreed that I had identified the real dispute between the parties correctly. I suggested to them that in order to eliminate the other preliminary disputes the parties could agree that Respondent go and examine

SDC 7 and make a call on whether SDC 7 complied with Sections 24, 25, 26, 27, 28 and 29 of National Assembly Electoral Act, 2011. Both parties agreed to my suggestion. Accordingly on 28th March 2012, I made an order to that effect and postponed the matter initially to 29 March 2012 for report back and argument if need be. On 29th March 2012 when the matter was called counsel reported that they needed more time and suggested that the matter be postponed to 12th April 2012. The matter was accordingly postponed to 12th April 2012 pursuant to the parties' request. On 12 April 2012, Respondent reported back that it had examined SDC 7 thoroughly and satisfied itself that SDC 7 did not meet requirements of the Act. At the same time, Mr. Mda handed into court an affidavit of Respondent setting out its position. Mr. Molapo naturally wished to file an affidavit in response. The matter was postponed to the next day to enable him to do so. He did.

[5] On 13 April 2012 the matter was argued before me. In addressing arguments to me Advocate L.D. Molapo for the Applicant insisted that SDC 7 fully complied with requirements of Section 25 (1) (c) (iii). He urged me to bear in mind the provisions of Section 196 (1) of the Act in assessing compliance of SDC 7 with Section 25 (1) (c) (iii) of the Act. Section 196 (1) of the Act which Mr. Molapo referred me to simply says that “compliance with forms is not strict and the Commission [Respondent] may condone any failure to comply with a form provided that the requirements of the form are substantially complied with”.

[6] I now proceed to examine SDC 7 and to test whether SDC 7 does in fact “substantially” comply with the requirements of the Act. Section 24 (1) (f) provides that a political party may register with the Commission if it has

paid-up membership of at least 500 electors. Section 24 (2) (b) of the Act provides that the Commission may verify the paid-up membership of a registered political party by checking, inter alia, the political party's membership register and its receipts register of its membership. Section 2 (1) of the Act defines an "elector" as a person who is registered as an elector in relation to a particular constituency being a person whose name appears in the elector's register prepared for that constituency. In terms of Section 27 (1) (c) read with Section 24 (1) (f) of the Act, the Commission may cancel the registration of a political party if it no longer has a paid-up membership of 500 or more electors. Section 29 (3) read with Section 25 (1) (c) (iii) of the Act provides that a registered political party shall provide its current paid-up membership to the Commission annually by means of a declaration signed by such members whose names appear on the party register. In terms of Section 25 (2) (a) and (b) the declaration must include full names and postal addresses and names of constituencies in respect of which signatories are registered and the constituencies in which each such declarant is registered. Section 24 (3) provides in peremptory terms that the Commission shall not accept the application for registration of a political party if it is satisfied that the political party concerned does not have a minimum of 500 paid-up members. The legislature demonstrates its seriousness about the accuracy of these records and the stringent requirements placed on the political parties by visiting any political party that is found to have provided false information by banning it from registering with the Commission for a period of five (5) years. I observe that these stringent requirements are necessary because registered political parties are granted allocations of funds from the Consolidated Fund. These are called "political party campaign funds". Also, political parties are given permission to solicit donations,

within limits, from members of the public within and outside Lesotho pursuant to Section 70 of the Act. It therefore makes perfect sense that political parties be held accountable by the Commission for these public funds; otherwise political parties would become fertile ground for fraudsters.

[7] In annexure SDC 7 papers, in the register therein reflecting 2600 names there is no indication what year these names relate to nor constituencies in relation to which these names are registered. There are no addresses, no constituencies, no signatories; these are just names written in the Applicants' book and it is not in reality discernable for what purposes. There is no compliance with Section 2 (1) read with Section 24 (1) and (2) as well as Section 25 (1), Section 25 (2) and Section 25 (3) of the Act. The declaration forms on SDC 7 are not signed by anybody; there are in fact two (2) blank forms. On 14 March 2012, Applicant filed another seven (7) completed forms with signatories purporting to be in respect of 4 constituencies. These later documents were not filed with annexure SDC 7 and there is no indication that they are meant to be a part of SDC 7. But even if they were meant to be part of SDC 7 (and I gave them that favourable interpretation) they all fall far short of the requirements of Section 24 (1) and (2) and Section 25 (1) (c) (iii), Section 25 (2) (a) in that there were only 7 of them instead of 500 such forms.

[8] In the circumstances disclosed above when the court scrutinized SDC 7 for compliance with Section 24 and 25, the court has come to the conclusion that Applicant has woefully failed to meet the requirements of the Section 24 and 25 of the National Assembly Electoral Act, 2011. Accordingly, I hold that the Respondent was fully justified in removing Applicants from its

register of political parties to take part in the 2012 General Election on 26 May 2012.

[9] I dismiss Applicant's motion with costs to Respondent.

J.M. MOILOA
ACTING JUDGE

For Applicant : Adv. L.D. Molapo
For Respondent : Adv. Z. Mda K.C