

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:**

<b>KALINYANE SEITLHEKO</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>SERAME KHAMPEPE</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>NTJA THOOLA</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>NATIONAL EXECUTIVE COMMITTEE</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>NATIONAL INDEPENDENCE PARTY</b>	<b>5<sup>TH</sup> APPLICANT</b>

**AND**

<b>LETUKA NKOLE</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>INDEPENDENT ELECTORAL COMMISSION</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>REGISTRAR-GENERAL</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>ATTORNEY-GENERAL</b>	<b>4<sup>TH</sup> RESPONDENT</b>

**JUDGMENT**

<b>Coram</b>	<b>:</b>	<b>Hon. Moiloa AJ</b>
<b>Date of Hearing</b>	<b>:</b>	<b>18<sup>th</sup> April 2012</b>
<b>Date of Judgment</b>	<b>:</b>	<b>19<sup>th</sup> April 2012</b>

**Summary**

*Motion proceedings – where there is no bona fide dispute of fact on competing versions of events, the Court is entitled on balance of probability of the correctness of one version and its inherent credibility, to decide the dispute between the parties on the papers before Court without reference to viva-voce evidence.*

[1] A worrying trend has developed in the landscape of political parties' behavior leading up to general election time in Lesotho. This case is a typical example of this worrying trend.

[2] Although in the pleadings various points in *limine* had been raised, to the commendable attitude of both counsel, at the hearing these points in *limine* were no longer pursued. Accordingly, counsel devoted their efforts to arguing the relative merits of their respective causes in the dispute. The issue for determination by the court then was: did the elective conference of NIP abort on 30<sup>th</sup> March 2012 or was its business transacted to its conclusion. It is largely, therefore a determination of credible facts on a balance of probability. Below I proceed to deal with the facts and deal with their probable merit as to the truth of what transpired on the night of General Conference of NIP at Maputsoe.

[3] On or about 30<sup>th</sup> March 2012 a group of men and women ostensibly members of National Independence Party from various parts of Lesotho descended upon a small town of Maputsoe with a common purpose at top of their minds of electing a National Executive Committee of NIP. This was the single most important agenda for the day. But as it turned out later some had a hidden agenda, namely, to be elected to the NEC by fair means or by not so fair means.

[4] The elective conference was to take place inside the conference hall of Sekekete Hotel in Maputsoe. On the day of the conference a credentials table had been set aside inside the hall to verify delegates to the conference. Normally preparations for the conference are made by the outgoing NEC and therefore the credentials table and persons manning it had been organized by the outgoing committee.

[5] On the morning of the conference, Applicants allege that Respondents demanded that their delegates subject themselves to vetting by the credentials committee at the table. They objected to this procedure because, according to them it was an unreasonable demand as according to them it was contrary to past practice in terms of which leaders of delegations simply provided a list of their delegates to chairman of conference.

[6] When the outgoing committee insisted on delegate's credentials being vetted by the credential committee, it resulted in an impasse. It is common cause that a scuffle ensued between opposing factions of delegates, the one faction insisting on acceptance of delegate's lists being provided by delegate's leaders while another faction insisted on delegates to the conference being vetted by the credentials committee at the credentials table set aside for the purpose. According to Applicants the commotion was not serious and ended within a short time. But according to Respondents the scuffle was so serious that it threatened serious bloodshed if no drastic measures were taken immediately. Accordingly Respondents reported the situation to hotel management and hotel security. Head of hotel security himself and hotel proprietor came to the conference hall and found the situation so serious that their efforts in trying to bring the situation under control failed. Consequently, the NEC being conference organizers decided that in the circumstances it was best to abandon the elective conference until some future date when circumstances would be calm enough to allow the party to hold its General Conference and elect its new leadership. Delegates were requested to leave the conference hall. All delegates left the hall and the hotel proprietor Vusi Chabalala locked the hall and left with the keys of the conference hall with his hotel security personnel. These then were the circumstances under which the Annual General Conference of NIP aborted on 30<sup>th</sup> March 2012.

[7] Applicants say that the conference was never abandoned and it continued to transact its business and elected its new leadership which included 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants in its new leadership. But against this assertion of Applicants are the affidavits of Mr. Chabalala (hotel proprietor) and Mr. Mokaoli, the head of security at the hotel all supporting 1<sup>st</sup> Respondent that they were called to a rowdy conference hall hired out to NIP and informed of the decision to abandon the conference as a result of commotion and disorderly conduct of delegates and that they proceeded to evacuate the hall and lock it up. Messers Chabalala and Mokaoli are independent witnesses of events at the conference hall with no particular interest to them on the outcome of the voting at the conference.

[8] Against this evidence of Chabalala and Mokaoli, all that the applicants are able to say is that Chabalala and Mokaoli being businessmen of Maputsoe where the conference was held are prepared to tell lies to support First Respondent in his cause to remain leader of NIP. Nothing further substantive and more concrete is offered by Applicants why I must seriously believe this explanation of theirs. In addition in his replying affidavit First Applicant avers that there were police officers at the conference who would have intervened if there was serious disturbance at the conference. But Applicants have not filed supporting affidavits from those police officers to the effect that Messers Chabalala and Mokaoli are fabricating their story. If I had had a police version directly contradicting Chabalala and Mokaoli on this issue, I would have seriously considered referring this particular issue to oral evidence to resolve it for I would have had two differing independent versions on the issue whether the conference was so rowdy and disorderly that it threatened ugly violence and bloodshed. In *casu* there is no serious dispute of fact that the conference aborted on 30<sup>th</sup> March 2012 as a result of disorderly conduct of conference delegates which necessitated abandonment of the

conference and closure of the conference hall by the hotel proprietor with assistance of the hotel security personnel. I am satisfied that there is no bona fide dispute of fact rendering determination of this matter in capable of resolution by the court on the papers before court.

[9] In these circumstances I find that indeed the Annual Conference of NIP did abort and no fresh leadership of NIP was elected at the conference. I accordingly dismiss the application with costs to Respondents.

**J.M. MOILOA**  
**ACTING JUDGE**

For Applicants : Adv. K.J. Nthontho  
For 1<sup>st</sup> Respondent : Adv. S.P. Shale