

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/167/2016

In the matter between:

LESOJANE LEUTA

APPLICANT

AND

NTHEKA MATOBO

1st RESPONDENT

THESELE 'MASERIBANE

2nd RESPONDENT

JOANG MOLAPO

3rd RESPONDENT

NATIONAL EXECUTIVE COMMITTEE –

BASOTHO NATIONAL PARTY

4th RESPONDENT

BASOTHO NATIONAL PARTY

5th RESPONDENT

JUDGMENT

CORAM:

HON. J. T. M. MOILOA J.

DATE OF HEARING:

13 JULY 2016

DATE OF JUDGMENT:

25 SEPTEMBER 2017

[1] INTRODUCTION

Applicant was Secretary-General of Basotho National Party until 8th June 2016 when he was dismissed from that post by the Executive Committee of the BNP. On the 10 – 12 June 2016 the BNP held a General Conference during which elections for office bearers of the new executive committee were held. In those elections the conference delegates of the BNP at its General Conference did not elect Applicant to any elective position in the party's National Executive Committee.

[2] **BACKGROUND FACTS**

2.1 **In re: CIV/APN/86/2015**

In March 2015 Applicant brought proceedings against the BNP, the NEC of the BNP and Deputy President of the BNP in which he sought orders in the following terms:

(a) That the purported suspension of Applicant from NEC of the BNP and duties of the Party by the Third Respondent [Deputy President of BNP] be set aside as null and void and of no legal effect.

(b) That the Third Respondent [Deputy President of BNP] be restrained and interdicted from interfering in any manner whatsoever with Applicant's membership, duties and functions in the BNP and its National Executive Committee.

(c) The Respondents [should] pay costs thereof.

2.2 That application was heard by the court on 20th of March, 2015. Judgment in it was handed down on 20th April, 2015. The court found for Applicant in that case on the grounds that on the facts it had been established that, firstly, Respondents had not given Applicant a hearing of any sort before suspending him and purporting to bar him from performance of his duties as Secretary-General of the BNP. Secondly, the court had found that in terms of the Constitution of the BNP the person vested with power of suspension was the Leader of BNP and not its Deputy Leader or the NEC. The court found that as the BNP was a voluntary organisation, its Constitution bound it and its members as a basis of the relationship between the two. Accordingly the court in that

matter found for Applicant that Respondents had been guilty of both breach of the *alterem partum* rule and non-compliance with its own Constitution which was a foundation of the BNP's contractual relationship with its individual members in the position of Applicant.

2.3 Although Respondents in that litigation noted an appeal, they were wise enough to abandon that appeal. So the matter in **CIV/APN/86/2015** ended as described in 2.2 above.

- [3] The decision in **CIV/APN/86/2015** essentially decided two key issues. Firstly that the relationship between a member and the political party or any voluntary association to which the member belongs is contractual and therefore is governed by the terms of that contract i.e the constitution of the party in this case. Consequently a breach by the party of its own constitution constitutes a basis by the affected member to be granted protection of his rights under the party Constitution. Secondly, the case emphasised that principles of fairness and justice are and require that those who exercise power over others must do so fairly and not arbitrarily. A person who holds an elected office has a detrimental impact on that official's reputation job security and fulfilment. He cannot be suspended summarily without first affording him an opportunity to make representations to the contrary on the contemplated suspension.
- [4] In the context of the facts in that case (**CIV/APN/85/2015**) it was found that the Political Party of which he was a member had failed him in those two respects, namely, that the Party had breached its own Constitution is suspending him in the sense that he was suspended by its Deputy Leader and National Executive while the Constitution of the party vested that

power in the Party Leader. Secondly, in **CIV/APN/86/2015** the court found on the facts that the Applicant had been summarily suspended and not afforded a fair opportunity to be heard prior to that suspension. I am not persuaded that any of my orders in **CIV/AN/86/2015** have been breached by NEC when it hired Lesenya. Neither am I persuaded by Applicant that NEC breached any of my orders therein made when it decided that keys to the 5th Respondent's safe call be kept by 5th Respondent's Treasurer General.

[5] **In re: CIV/APN/67/16**

In the instant case the facts reveal internal wrangling about who has power to appoint auxiliary office staff in the Party Head office. The National Executive holds the view that all administrative staff of the office are appointed by them and that in doing so they are not obliged to seek concurrence of Applicant. Secondly the NEC takes the view that they are entitled to give general directives of and concerning administrative directives including counter signature of all out-going correspondence emanating from their head-office. Applicant on the other hand seems to contend that such hirings and policy directives of an administrative nature are his preserve.

Now the decision in **CIV/APN/86/2015** has nothing to do with the subject matter in **CIV/APN/67/2016** (i.e. present application). In this case it would seem that Tšeliso Lesenya was hired by NEC without consultation with Applicant. I do not see a provision in the Constitution that requires that Secretary-General must be consulted by NEC before head office staff are to be appointed. If this issue of staff hiring is not in the Constitution of the party which is a binding contract between the

Applicant and the party of which he is a member I cannot see how I can fault the NEC, being a superior organ to Applicant, for appointing Lesenya. I am not the one to order that it is perhaps better in my opinion that colleagues in executive positions need to work harmoniously with each other. This is not my function. My function is to interpret the document (Constitution of BNP) that governs the relationship between members inter se and the relationship between members and structures of BNP with each other.

- [6] There is one other point to make here. In terms of the Constitution of BNP the highest decision making authority is its Annual General Conference. It is common cause that per letter dated 26 October 2015 the Fourth Respondent appointed Tšeliso Lesenya as Executive Secretary at its Head-office. The letter of appointment was copied to Secretary-General (Applicant). Applicant did not welcome appointment of Lesenya without his prior concurrence that Lesenya be appointed as Executive Secretary. On 24 February 2016 Third Respondent wrote to Applicant advising him that all mail emanating from the BNP Head-office shall henceforth be countersigned by him as Acting Leader of the Party on his absence by the National Chairman of the Party. This was said to be done pursuant to a decision of the NEC. This elicited an angry reaction of Applicant alleging that both Third and Fourth Respondents were ill-advised and in violation of this court's orders in **CIV/APN/86/2015**. Ultimately on 13 May 2016 Applicant launched the present application seeking to annul decision of NEC regarding safe keeping of keys to the BNP safe.

On 9 June 2016 parties appeared before court and advised that pleadings had been closed and sought a date of hearing. The court allocated 13 July 2016 for hearing, a date during court's vacation.

[8]

8.1 On 13 July 2016 the matter was heard. Mr. Mosotho for Respondents advised the court that since closure of pleadings and allocation of hearing date there had been developments which placed the need for continued pursuit of this matter superfluous in the light of the results of Fifth Respondent's Annual General Conference held from 10 – 12 June 2016.

8.2 The court was advised that on 10-12 June 2016 BNP held an Elective Conference of office bearers. At the Conference Applicant was not elected to any position in the NEC. On 23 June 2016 Attorneys of Respondents wrote to Applicant's Attorneys pointing out that the courts judgment would be of no value. Applicant's attorneys disagreed. In the view of the court the nature of the prayers in the Notice of Motion, if the prayers were to be granted, had the effect that the status quo as existed on 13th May 2016 (being the date on which the present application was launched in court) would be restored. Such a judgment would be of no practical value in view of the results of the BNP AGM Conference held from 10 – 16 June 2016.

8.3 The above facts that were not disputed. In fact Counsel informed the court that they were common cause between the parties. It is trite law that courts of law cannot entertain moot points unless the

interests of justice clearly so require see **C of A (CIV) 38/2015 LNDC v Maseru Business Machines (Pty) Ltd and 4 Others**. In **Geldenhuis & Neethling vs Benthin 1918 A.D 426 Innes C.J.** put it this way:

“After all, courts of law exist for settlement of concrete controversies and actual infringement of rights, not to pronounce upon obstruct questions or to advise upon differing contentions, however important.”

[9] For reasons set out in the preceding paragraph I have come to the conclusion that Applicant misconstrued the rationale of my decision in **CIV/APN/86/2015**. The essence of my decision in that case was that principles of fairness and justice require that those who exercise power over others must act fairly and not arbitrarily. The decision further confirmed the principle that suspension of someone who holds an elected office has a detrimental impact on that official’s reputation job security and fulfilment. He may not be suspended summarily without first affording him an opportunity to be heard in order that he may make representations to the contrary on that contemplated suspension. That was what had happened in **CIV/APN/86/2015**. That is a far cry from the present case of Applicant issue of breach of orders I made in **CIV/APN/86/2015** does not arise in the present application.

[10] Applicant’s motion is dismissed with costs to Respondents.

J. T. M. MOILOA
JUDGE

FOR APPLICANT: **Adv. R. D. Setlojoane**

FOR RESPONDENTS: **Adv. T. Mosotho**