

IN THE HIGH COURT OF LESOTHO

In the matter between

SEEISO SEHLOHO

APPLICANT

And

BASOTHO CONGRESS PARTY

1ST RESPONDENT

THE NATIONAL EXECUTIVE COMMITTEE

OF BASOTHO CONGRESS PARTY

2ND RESPONDENT

INDEPENDENT ELECTORAL COMMISSION

3RD RESPONDENT

JUDGMENT

Coram: His Honour Justice Keketso L. Moahloli

Heard: 5 March 2020

Delivered: 13 March 2020

SUMMARY

Civil Procedure – locus standi in judicio – It is for the party instituting proceedings to allege and prove that he has locus standi, the onus of establishing that issue rests upon the applicant – Affidavit not bearing its deponent's usual signature in his own hand-writing affixed in the presence of a commissioner of oaths is fatally defective and thus inadmissible for not conforming with regulation 4 (5) of the Oaths and Declarations Regulations 1964.

Moahloli J

INTRODUCTION

[1] The applicant, Seeiso Sehloho, approached this court on an urgent basis for the following relief:

- a) The periods and modes of service stipulated by the Rules of Court be dispensed with on account of urgency;
- b) First and Second Respondents be ordered and directed to allow applicant to participate in the upcoming conference scheduled for 26th to 27th January, 2019;
- c) First and Second Respondents be directed and ordered to allow other party members to participate in the conference scheduled to for 26th to 27th January, 2019;
- d) Alternative to prayer (a), (b) and (c) the conference scheduled 26th to 27th January be declared unlawful;
- e) That Respondents be ordered to pay costs only in the events of contesting this application;

[2] 1st and 2nd Respondents filed a notice of intention to oppose as well as an opposing affidavit. After some delays by the Applicant's counsel which resulted in wasted costs being awarded against Applicant on two occasions the matter was finally heard on 5 March 2020.

PRELIMINARY QUESTIONS OF LAW

[3] 1st and 2nd Respondents (for convenience referred to as "Respondents") raised several points *in limine* on the date of hearing, and asked the court to dismiss the application on those preliminary objections alone without entertaining the merits. In response, Applicant contended that for the reasons he advanced the points *in limine* could not stand and had to

be dismissed. I now turn to consider the submissions made by 1st and 2nd Respondents' attorney Mr Mahlakeng and Applicant's counsel Adv Mothobi on these points *in limine*.

[4] Lack of *legitima locus standi in judicio*

Mr Mahlakeng argues that Applicant's founding papers are fatally flawed because he has not placed anything before the court to substantiate his claim, which Respondents vigorously deny, that he is a member of the Basotho Congress Party ("BCP") and as such has *locus standi* to bring this application. Furthermore, he has not placed anything before the court to show that he is a delegate to the impugned annual conference of the party, which is attended by delegates only.

[5] Adv Mothobi's response is that in paragraph 4 of his founding affidavit Applicant has averred that he is a "subscribed member of the [BCP] and as such legit (sic) to participate in the ... national conference..." Adv Mothobi further argues that Applicant has shown in paragraphs 3, 6 and 7 of his replying affidavit that "he is a member of the party in as far as he has complied with Article 8.1 read with 8.5 of the party's Constitution" (i.e. he has submitted a form for re-application for membership and paid the subscription due).

[6] However Mr Mahlakeng strongly objects to the admission of this replying affidavit because it has not been signed by the Applicant personally as required by the Oaths and Declarations Regulations 1964. And it is therefore not sworn evidence.

[7] I will now consider these objections *in seriatim*. Firstly, it is trite law that the person bringing the application bears the onus of proving that he has *locus standi*¹. And in all cases

¹ Mars Inc v Candy World (Pty) Ltd 1991 (1) SA 567 (A) 575 H; Kommissaris van Binnelandse Inkomste v Van der Heever 1999 (3) SA 1051 (SCA) para 10

an applicant must allege sufficient facts in his founding affidavit to indicate that he has the necessary *locus standi* to institute the proceedings². In my view the pithy averment in paragraph 4 of Applicant's founding affidavit that he is a subscribed member of the BCP, without any further elaboration and supporting documents (such as a membership card, for instance) falls far short of discharging his onus of proving that he has *locus standi*. Particularly because, as argued vis-à-vis material non-disclosure, his membership was already the subject of unresolved contestation before the courts³.

[8] Secondly, regarding the admissibility of Applicant's replying affidavit, Applicant's counsel did not deny that this document had not been signed by the Applicant personally, nor offer any explanation whatsoever why and how this came to be. Regulation 4 (5) of the Oaths and Declarations Regulations unequivocally enacts that "the deponent shall, after making the oath or affirmation, affix his usual signature in his own hand-writing on the affidavit in the presence of the commissioner of oaths". No injunction could be clearer. I have no doubt whatsoever that this is a serious and fatal flaw which renders the replying affidavit *null and void* and therefore inadmissible in these proceedings⁴.

[9] As a result, Adv Mothobi's argument that Applicant's failure to allege his *locus standi* sufficiently in his founding affidavit was cured by his replying affidavit cannot succeed, for the simple reason that there is no replying affidavit before me. But even if there was, "it has always been the practice of [our courts] to strike out matter in replying affidavits which

² Eagles Landing Body Corporate v Molewa NO and Others 2003 (1) SA 412 (T) para 36; Wilson v Zondi 1967 (4) SA 713 (N)

³ in CIV//APN/248/2016 and IEC v Seeiso Sehloho, C of A (CIV) 39/2018

⁴ a similar attitude was adopted by Majara AJ in Mothuntsane v Mothuntsane and Another (CIV/APN/67/2003) [2004] LSHC 159 (17 December 2004)

should have appeared in petitions or founding affidavits, including facts to establish *locus standi* or jurisdiction of the court”⁵.

[10] Lastly I want to mention *en passant* that if I had to determine the merits most annexures to the various affidavits would be inadmissible in evidence because of non-compliance with rule 59.

HOLDING

[11] For the reason of lack of *locus standi in judicio* I would dismiss this application. I do not find it necessary to go into the objections regarding material non-disclosure and misjoinder.

ORDER:

Application dismissed with costs.

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KEKETSO L. MOAHLOLI
JUDGE

Appearances

For the Applicant: Adv R. Mothobi

For the 1st and 2nd Respondents: Mr. T. Mahlakeng

⁵ To borrow the words of Viljoen J in *Titty's Bar and Bottle Store (Pty) Ltd v ABC. Garage (Pty) Ltd and Others*, 1974 (4) SA 362 (T) at 368]