

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CONS/08/2019

In the matter between:-

**TRANSFORMATION RESOURCE CENTRE
MAIEANE KHAKETLA
AFRICAN ARK (AA) AREKA EA BASOTHO
AND**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT**

**THE COUNCIL OF STATE
HIS MAJESTY KING LETSIE III
DIRECTORATE ON CORRUPTION & ECONOMIC OFFENES
MINISTER OF PARLIAMENTARY AFFAIRS
WORK PLACE SOLUTIONS (PTY) LTD.
INDEPENDENT ELECTORAL COMMISSION
THE ATTORNEY GENERAL
ALL BASOTHO CONVENTION
ALLIANCE FOR DEMOCRATS
ALL DEMOCRATIC COOPERATION
AFRICAN UNITY MOVEMENT
BAENA
BASUTOLAND AFRICAN NATIONAL CONGRESS
BASOTHO BATHO DEMOCRATIC PARTY
BASUTOLAND CONGRESS PARTY
BASOTHO DEMOCRATIC NATIONAL PARTY
BASOTHO NATIONAL PARTY**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT
12TH RESPONDENT
13TH RESPONDENT
14TH RESPONDENT
15TH RESPONDENT
16TH RESPONDENT
17TH RESPONDENT**

BASOTHO THABENG EA SINAI	18TH RESPONDENT
COMMUNITY FREEDOM MOVEMENT	19TH RESPONDENT
DEMOCRATIC CONGRESS	20TH RESPONDENT
DEMOGRATIC PARTY OF LESOTHO	21ST RESPONDENT
HAMORE DEMOCRATIC PARTY	22ND RESPONDENT
LESOTHO CONGRESS FOR DEMOCRACY	23RD RESPONDENT
LEKHOTLA LA MEKHOA LE MEETLO	24TH RESPONDENT
LESOTHO PEOPLE’S CONGRESS	25TH RESPONDENT
LESOTHO WORKERS PARTY	26TH RESPONDENT
MOVEMENT FOR ECONOMIC CHANGE	27TH RESPONDENT
MAJALEFA DEVELOPMENT MOVEMENT	28TH RESPONDENT
MAREMATLOU FREEDOM PARTY	29TH RESPONDENT
NATIONAL INDEPENDENT PARTY	30TH RESPONDENT
PROGRESSIVE DEMOCRATS	31ST RESPONDENT
POPULAR FRONT FOR DEMOCRACY	32ND RESPONDENT
REFORMED CONGRESS OF LESOTHO	33RD RESPONDENT
SANKATANA SOCIAL DEMOCRACY	34TH RESPONDENT
SOCIAL REVOLUTION	35TH RESPONDENT
TRUE RECONCILLIATION UNITY	36TH RESPONDENT
TSEBE SOCIAL DEMOCRATS	37TH RESPONDENT
WHITE HORSE PARTY	38TH RESPONDENT
SEABATA MOTSAMAI	39TH RESPONDENT
DR MABATAUNG KHATI	40TH RESPONDENT
KHOSI EMMANUEL MAKUBAKUBE	41ST RESPONDENT
HON. JUSTICE M. RAMOLIBELI	42ND RESPONDENT
DR FAKO JOHNSON LIKOTI	43RD RESPONDENT
MPHASA MOKHOCHANE	44TH RESPONDENT
MONYANE PAANYA PHOOFOLO	45TH RESPONDENT

ITHABELENG MAPATLO PHAMOTSE	46TH RESPONDENT
MOTLATSI RAMAFOLE	47TH RESPONDENT
TS'ELISO KHOMARI	48TH RESPONDENT
MAKHOJANE MONYANE	49TH RESPONDENT
BOOI FRANCIS MOHAPI	50TH RESPONDENT
MOEKETSI EZKIEL NKOE	51ST RESPONDENT
SOFONEA SHALE	52ND RESPONDENT
TOLO TEBOHO PETER	53RD RESPONDENT
DR KARABO MOHLAKOANA MOKOBOSHO	54TH RESPONDENT
PROF. THEKISO KHATI	55TH RESPONDENT
DR MAMPHO KOTELO 'MOLAOA	56TH RESPONDENT
DR LEBOHANG KHOMARI	57TH RESPONDENT
MABATAUNG CAROLINE LILLANE	58TH RESPONDENT
JOHN NAAZI OLIPHANT	59TH RESPONDENT
BOKANG VINCENT LELIMO	60TH RESPONDENT
TS'OEU PETLANE	61ST RESPONDENT
MATS'ELISO 'MATLALI MAPETLA	62ND RESPONDENT
DR EDWARD RETS'ELISITSOE NKO	63RD RESPONDENT

RULING ON POINTS OF LAW

Coram : Hon. Mahase J.
: Hon. Molete J.
: Hon. Moahloli J.

Date of hearing : 3 July 2019, various other dates

Date of delivered : 11 August, 2020

Summary

Constitutional law – Application for interdict, restraint, issuance of declaratory orders, review, mandamus and specific performance and other reliefs – Application being filed on urgent ex parte basis – Applicants having lumped together all reliefs sought in one Constitutional motion application in total disregard of the Constitution of Lesotho and the Constitutional Litigation Rules – Jurisdiction of the Constitutional Court in such instance. – Exhaustion of local remedies discussed – Respondents having raised several points of law/points in limine – The effect of upholding of those points.

ANNOTATIONS

CITED CASES:

- **Morienyane v. Morienyane, CIV/APN/204/2003**
- **Moosa v. The Magistrate His Worship Mr. Nthlakana C. of A. (CIV) No. 14/2007, 2008 LSCAT (11 April 2008)**
- **Nalane and Others v. Molapo and Others C. of A. (CIV) No. 8 (2008) LSCA 25 (17 October 2008)**
- **Mokhosi and fifteen Others v. Justice Charles Hungwe and Five Others - Constitutional Case No. 2/2019**
- **President of the Court of Appeal v. The Prime Minister, C of A. (CIV) 62/2013**
- **Sechele v. Public Officers Defined Contribution Pension Fund and Others – Constitutional Case No. 6/2010**
- **B.P. Lesotho (PTY) LTD. v. Stanley Maitse Moloi and Another, C. of A. (CIV) No. 1 of 2006.**

- **Mofomobe & Another v. Minister of Finance: Phoofolo K.C. & Another v. The Prime Minister & Others, C. of A. (CIV) No. 17/2017**

STATUTES:

- **High Court Rules No. 9 of 1980**
- **Constitutional Litigation Rules Legal Notice No. 194 of 2000**
- **The Constitution of Lesotho No. 5 of 1993**

BOOKS: None

[1] **INTRODUCTION**

The applicants approached this Court on an urgent ex parte basis on the twenty seventh June 2019. They invoked Rule 12 of the Constitutional Litigation Rules. The gist of their application is to interdict the Council of State from proceeding with the appointment of the Chairman and the Commissioners of the Independent Electoral Commission (IEC). The application is opposed by the respondents.

[2] **FACTUAL BACKGROUND**

The applicants have since obtained an interim relief in terms of which the Council of State has been interdicted from appointing the Chairman and the Commissioners of the I.E.C.

[3] The interim court order which was obtained before my brother Monapathi J. has since been extended from time to time because parties herein have been raising different interlocutory issues, as well as points of law.

- [4] A number of interlocutory issues which are relevant, include among others the recruitment and appointment criteria of the potential candidates. Briefly, the facts of this application are that the fifth respondent was awarded a tender through which it had to recruit, interview and nominate candidates to stand in for the vacant positions of the chairman and two commissioners of the I.E.C. Refer to annexure “C” at page 65 of the paginated record.
- [5] The facts have been summarized by the deponent to the founding affidavit in the notice of motion. These are not disputed even though the selection criteria is now questioned by the applicants. These are incorporated herein.
- [6] Points of law/points in limine centre around; but are not limited in scope, to the following:-
- The urgency of the application. It is being argued by the respondents that applicants have rushed to Court prematurely on an urgent, ex parte basis whilst they had other local or alternative remedies to exhaust.
 - That the applicants waited for some time after publication of annexure “C” referred to above before they approached the Court to challenge the validity or otherwise of the notification for interested potential candidates to apply as requested.
- [7] This, so it is argued is a self-created urgency particularly because it is clear on this notice that such parties should have submitted their names to the Clerk of the National Assembly together with curriculum vitae on or before the 5th June 2019 at 16:30 hrs.

[8] None of them has offered any explanation why they could not meet the stated or specified time frames for the submissions of their names to the Clerk of the National Assembly.

- None of them has explained why they had to approach the Court as they did on urgent ex parte basis.
- According to the first applicant, it has been in operation since the year 1985 but has waited until now, the year 2019 to challenge and or to complain about the none existence of the procedure which the registered political parties have adopted and or which they have not adopted, (whatever the case may be) in the selection or shortlisting of potential candidates for the positions of the Chairman and Commissioners of the I.E.C..
- The argument of the fifth respondent is actually that whilst the first applicant has been in existence since the year 1985; and whilst on the other hand the second amendment to the Constitution which allows for the registered political parties to decide on a procedure to follow in shortlisting candidates as indicated above, it is untenable for the first applicant to have waited for twenty years to complain or to challenge the none existence of such a procedure.
- In a nutshell, and if one were to agree with the fifth respondent, it is inordinately late for the first applicant to raise this issue some twenty years or so since its establishment and since the second amendment of the Constitution of Lesotho was effected; whilst it ought to have known or it ought to have reasonably known about this fact.

- The question relating to when the third applicant (erroneously written as the third respondent) was actually registered is not easy to answer or to attend to because, firstly, it has not annexed a copy of its certificate of incorporation nor has it as so much indicated in the founding affidavit when it was incorporated.

[9] Be that as it may, it is a matter of common cause that the third applicant is a political party formally registered as such in terms of the laws of Lesotho. The applicants numbers one up to three have launched this application against the respondents number 1 up to 63. Their application centres around the alleged exclusion of them and their political parties from being invited and actively participating in the recruitment of Commissioners of the Independent Electoral Commission.

[10] The process from which they were allegedly excluded took place on the 29th May 2019. The third applicant has clearly and ably articulated the flaws which marred the said deliberations of that day. I will however not deal with same as they hinge on the merits of this case.

[11] However, it has already been indicated above that the applicants failed to meet the deadline of the 5th June 2019 for submission of their names to the Clerk of the National Assembly. This, coupled with the fact that the third applicant has not disclosed its date of incorporation inflicts a blow to its case because it becomes impossible for this Court to say it too like the first applicant which has been in existence for many years, ought to reasonably have known about

the absence of the selection procedure of the Independent Electoral Commissioners.

- [12] The none disclosure of the date of their incorporation and their prior participation in this kind of exercise does not advance their case nor does it support the alleged urgency of the application in question.
- [13] This being proceedings on motion, the third applicant ought to have disclosed this fact to Court.
- [14] The issue of urgency in respect of all the applicants has ably and clearly been articulated and spelt out at subparagraph 3.4 (a), (b), (c) and (d) of the fifth respondents' written submission.
- [15] The first applicant alleges that it was denied its right to participate in the selection process on an undisclosed date. Once again, the none disclosure of this particular date is highly suspect and in fact it delivers a blow on their case it has failed to justify the filing of this application on urgent ex parte basis on, the very day and time when the first respondent had already set to deliberate on the exercise of the appointment of the Chairman and Commissioners of the Independent Electoral Commission, thereby bringing to an abrupt hold that business of the first respondent.

[16] This is a process which is undertaken well after all the initial procedures have been finalized. These are lengthy procedures which are undertaken and gone through before this final stage of actually appointing such officers. Why the applicants waited to file their application until on that very day and time has not been explained at all.

[17] The above equally applies to the second and the third applicants. The applicants should each have advanced a reasonable and plausible justification for their inaction in filing this application on urgent, ex parte basis and with full knowledge that the process of selection of the said officers by the first respondent was already in progress. This is a gross abuse of Court processes, particularly in the obtaining circumstances of this application whose net effect has been to render the office of the Independent Electoral Commission dysfunctional.

[18] It is regrettable that, the applicants, and for unexplained reasons, have to date stifled the operations of such an important national institution by having filed an urgent exparte application as they have done. This I say with the greatest respect to everybody including the respondents.

[19] **Locus Standi:**

The next point raised is that of locus standi of some of the applicants in this application. The respondents, especially the political parties argue that the first and third applicants do not have locus standi in judicio in this application.

In advancing their argument, they argue that the right guaranteed in section 20 of the Constitution of Lesotho of 1993, inheres in individual persons not juristic persons. This is indeed so. The wording used in this section is very clear and need not be explained further, particularly sub section 1(a).

[20] **Local Remedies:**

Further, the respondents argue that the applicants are prevented by the provisions of section 22 (2) of the same Constitution from pursuing this application because they have other alternative and adequate remedies that would achieve the same result and redress their complaints.

[21] Finally they argue that reliefs numbers three, four and six could be granted by the High Court had the applicants sought a prayer for review as envisaged in Rule 50 of the High Court Rules. Put differently, respondents' argument is that the applicants have a remedy under Rule 50 of the High Court Rules, which Rule provides in mandatory terms the procedures and processes that must be followed in a case such as that launched by the applicants herein.

[22] A very brief synopsis of the respondents' (political parties) argument is that the applicants numbers one and three in their respective capacities as registered societies in terms of the Societies Act No. 20 of 1966 are not contemplated by the provisions of the Constitution of Lesotho; section 20 thereof as a "person". This section, so they argue, contemplates that every

citizens of Lesotho must enjoy the right to take part in the conduct of public affairs, directly or through freely chosen representatives.

- [23] These respondents indicate in their argument that the persons therein contemplated in this section are individual persons as contrasted with “juristic persons”. It is, so they argue; individual persons who are contemplated as being entitled to the right to participate in public affairs. In their argument, they contrast and or compare the individual persons as against the juristic person by relying on the provisions of section 4 (1) (p) of the said Constitution under chapter II which deals with “Protection of the Fundamental Human Rights and Freedoms”. This particular section 4 (1) p) states that:-

“Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms, that is to say, to each and all of the following:

“..... 4 (1) (p) the right to participate in government”.

- [24] Indeed, a literal meaning and or interpretation of this particular section of the Constitution contrasts the juristic persons from individual persons – say human beings because the juristic person lacks the characteristic so outlined herein such as race, colour, sex etc. even though such juristic persons are run or operated by human beings. Reference and this distinction made between the individual and juristic persons cannot be overlooked and or disregarded in interrogating the issue of locus standi because, indeed, entities such as societies, companies, political parties are not human beings as we understand

but they are entities comprised of certain human being or individuals, they do not vote nor do they as such perform certain acts listed therein. Individuals persons do so on behalf of those entities.

[25] The point that juristic persons such as the first and third applicants are not, on their own entitled to vote is a fact of life which cannot be wished away. The analogy herein made and or submitted on behalf of the respondents (political parties) is a reality which one cannot ignore. This does not mean that the first and the third applicants are not in existence but the fact of the matter is that the rights so envisaged, protected, and stated to be enjoyed by individual persons cannot in real life be accorded to any juristic persons.

[26] In the premises, and in considering the various sections relied upon by the respondents (political parties) with regard to the issue of locus standi, of the first and third applicants, it is the considered view of this Court that the point of law herein taken in this regard has been well taken. It is accordingly upheld.

[27] A holistic reading of the sections 4 to 21 (inclusive) of this Constitution relates to persons or individual persons who form or have formed such juristic persons or entities as being the ones who are entitled as to enjoy such rights, freedoms, protections etc. and nothing else, because the qualities therein specified and or contemplated, are by their very nature only available or exist in human beings.

[28] With regard to the second applicant, there is no doubt that being an individual person, he cannot be classified as a juristic person; so he has rights as contemplated under sections 4 to 22 of the Constitution of Lesotho, but for having approached this Court in the way in which the respondents have complained.

[29] However, it need be emphasized that, all the three applicants have prematurely or irregularly approached this Court as they did because they have at their disposal alternative adequate remedies which provide them other sufficient redress against their complaints.

[30] In short, it is argued that the applicants have not exhausted the other available local remedies in the High Court before approaching the Constitutional Court. In essence, the respondents bemoan the fact that instead of going by way of review, in terms of Rule 50 of the High Court Rules the applicants opted to invoke section 12 of the Constitution (supra). It is their argument that reliefs pertaining to interdict, specific performance, mandamus van spolie, and review are common law remedies for which the applicants also have a remedy under the High Court Rule 50.

[31] A proper reading of Rule 12 (2) of the Constitutional Litigation Rules requires that

..... “an application made under sub-rule (1) shall be on notice of motion accompanied by an affidavit stating explicitly the circumstances which justify a departure from the ordinary procedure”. (my own underlining).

- [32] In the instant application, the director of the first applicant, Tsikoane Peshoane, has not explicitly stated the circumstances which justify a departure from the ordinary procedure as required in the above-mentioned subsection.
- [33] To merely state as he does at subparagraph 7.1 that an advert was circulated in the print media calling upon interested persons to apply for vacancy in the portfolio of I.E.C., was done with haste does not provide any justification for the applicants to have approached the Constitutional Court in the way that they have done.
- [34] Whilst there is no specific date showing when annexure “C” was publicized, it is nonetheless clearly stated that the closing date for the submission of names and the curriculum vitae was the fifth June 2019 at 16:30 hrs.
- [35] Nowhere is it stated in this affidavit how the date of the fifth June 2019 and the time therein stated were a haste nor how or why the first applicant’s director could not meet that time limit.
- [36] The first applicant’s director does not even say who of its individual interested persons/candidates was/were not able to apply for the vacancy therein advertised in annexure “C”.

- [37] There is of course, nothing peculiarly wrong if by that time the advert was circulated the Council of State had duly advised all the registered parties to commence the process of nominations in line with section 66 (4) of the Constitution of Lesotho 1993 (as amended).
- [38] According to the mandatory provisions of section 66 (4) of the Constitution (as amended) it is the duty of the Council of State (not of any of the applicants number one to three) to select the names of persons to be submitted to the King under subsection (3). The Council shall request all registered political parties to jointly propose to the Council, a list of not less than five names from which the King will select members of the Independent Electoral Commission.
- [39] The duty to make a selection of names is placed upon the Council of State, whilst the names from where such a selection is made are proposed by the registered political parties jointly. There is nowhere in the Constitution where the first applicant plays any role in the proposal of names from where the Council of State will select such names for onward submission to the King.
- [40] As for the procedure about which the first applicant's Director complain, they have a remedy under review in terms of Rule 50 of the High Court Rules (supra). This issue has already been addressed to above.

[41] One may only comment that, whilst the objectives of the first applicant as clearly spelt out in the founding affidavit of the Director, and in their Constitution; annexure “A” herein, are noble and well intended objectives, they do not, cannot and should not override Constitutional provisions since the Constitution is the Supreme Law of Lesotho. Refer to section 2 of the Constitution (supra) which reads as follows:

The Constitution

“This Constitution is the supreme law of Lesotho and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void”.

[42] In the instant application, reliance in support of the first applicant’s argument that among others, *“the decision to exclude us is anti-thetical to due process and contravenes section 20 of the Constitution”*. etc. holds no water at all.

[43] The said annexure “A” of the first applicant is binding only between or amongst the members of the first applicant and not against the respondents nor against some other similar institutions or individuals who are not its members.

[44] In the absence of any specific Constitutional pronouncement nor amendment to incorporate the objectives and other purposes for which the first applicant stands; it cannot seriously be argued that it had a meaningful or appropriate role to play in the business of the first respondent and those of the registered

political parties registered in terms of the laws of Lesotho. This excludes the fifth respondent which is a private individual entity. As already indicated above, the issues with regard to the fifth respondent should have been dealt with by way of review. Alternatively, the applicants should have awaited the results of the investigations of the third respondent before rushing to Court as they have now done.

[45] Another, thorny point of law which has been raised on behalf of the fifth respondent is that, there is a conflict of interest between the first applicant and the Independent Electoral Commission.

[46] In brief, the clear facts of this issue which have been brought out to the fore by the Director of the fifth respondent is that the first applicant and the sixth respondent have a working partnership through which the first applicant has been given and or awarded huge sums of money by the sixth respondent. This confirms that the first applicant has received a pecuniary benefit from the sixth respondent but despite that it (first applicant) wants to participate and be involved in the selection and shortlisting of top officials in the very institution with which it has a working relationship.

[47] Indeed, this point has been well taken. Besides the fact that the first applicant is not an individual person; but it is a juristic person, it is against all known rules of good governance for it and its officials to be involved in the selection and shortlisting of top officials in an institution in which it has benefited in the way that the fifth respondent explains. This is a clear conflict of interest.

[48] Also, it offends against morality that this conflict of interest herein alluded to should be ignored. It is further difficult to understand how the first applicant who is a juristic person would participate in this process except through its members who have not been individually cited as parties in this application. In any case the sole responsibility of the selection process of members to the chairman and commissioners, lies with the committee forum of registered political parties and not with an entity such as the first applicant.

[49] If this were allowed, it would amount to an abuse of the Constitutional process and would result in the illegal usurpation of the functions of the registered political parties. This would be contrary to the clear constitutional provisions. As indicated above, this point in limine/point of law has also been properly taken. To come to any other decision would be stretching the words participation in the public affairs by the first applicant too far off from the Constitutional requirement with bizarre consequences, particularly also, because no such duties of selection and shortlisting of top officials of the Independent Electoral Commission are part of the partnership contract (annexure “B”) between the I.E.C. and the first applicant.

[50] The case of the third applicant is somewhat very strange. As a matter of common cause, this particular applicant, (entity) was expelled and prohibited from participating in the process of selection etc. of the top officers to the Independent Electoral Commission for specified reasons. It elected not to challenge that expulsion in the appropriate court under review but at this late hour, it then moves this application which, unfortunately had the effect of

bringing to a hold the selection, recommendation and appointment of the top officials of the Independent Electoral Commission. This has unfortunately now rendered the said office inoperative contrary to section 66 (4) of the Constitution of Lesotho (as amended). This is a very regrettable state of affairs.

[51] The three applicants, have also challenged the manner in which the fifth respondent has been awarded a tender to select, interview and ultimately to recommend persons eligible for the posts in question. Without going into the merits or the demerits of this point of law, one can straight away reiterate that even this point of law is not a subject to be dealt with by the Constitutional Court. It could either have been challenged by way of a review under the High Court Rules and or by invoking the Public Procurement Regulations of 2007 in which there are appropriate remedies provided. To this extent, it follows that the Constitutional Court, sitting in terms of the Constitutional Litigation Rules – Legal Notice No. 194 of 2000, has equally no jurisdiction in this matter.

[52] All in all, the applicants have, in approaching this Court as they did, abused Court processes and have failed to exhaust the local remedies referred to above.

[53] In their urgent quest to stop the proceedings of the Council of State at the eleventh hour; they included and lumped together every conceivable relief in a Constitutional motion thereby dismally failing to exercise their minds to the proper formulation of the reliefs which should be sought from or in the

Constitutional Court in terms of the Constitutional Litigation Rules referred to above.

[54] For the foregoing reasons and regard being had to the surrounding circumstances of this application, this Court makes the decision that it has no jurisdiction to entertain this matter. The points of law raised herein are upheld.

I AGREE

Moahloli J

[55] I have had the opportunity to read the judgment of my sister Mahase ACJ, with which I am in complete agreement. However, I feel constrained to add certain further observations of my own for the sake of completeness.

Whether the TRC has *locas standi in judicio*

[56] The TRC contends that it has *locus standi* to institute this application in conjunction with the 2nd and 3rd Applicants. It contends further that it is thus entitled to seek, *inter alia* a declarator (prayer 5) that the decision of denying it right to participate in and have access to the deliberations of the subcommittee or body of Registered Political Parties established in terms of section 66 of the Constitution of Lesotho 1993 for the selection and/or recruitment of Independent Electoral Commission Commissioners is unconstitutional.

[57] In the founding affidavit of the Director of the TRC/1st Applicant deposes as follows at paragraph 4:

“LOCUS STANDI

The 1st APPLICANT is a juristic body registered as such in terms of the laws of the Kingdom of Lesotho and its respective members are citizens of Lesotho and its primary objects are to promote, preserve and protect human rights standards in THE KINGDOM OF LESOTHO. The organization is thereby falling within a class of organized groups of concerned citizens who have the object that promotes democracy and peace as a matter of principle. Above all, it aims to promote constitutional values and ethos of Human Rights, peace and good governance as underpinned under SECTION 20 OF THE CONSTITUTION OF LESOTHO 1993 (as amended).”

[58] The TRC further argues that as a voluntary association it clearly has the requisite *locus standi*. It has a fundamental right under section 20 of the Constitution to take part in the conduct of public affairs in Lesotho. This is clearly inclusive of the recruitment process of prospective IEC Commissioners. The TRC lastly asserts that the recruitment of IEC Commissioners is not a privileged process, exclusive to political parties, but rather, ordinary members of the public (including non-governmental organisations) have the right of access to such deliberations as required by the core ethos of section 20 of the Constitution.

[59] *Locus standi in judicio* or standing to sue, traditionally implies that a litigant must have sufficient interest to apply to the court for the enforcement of the

right of another person, challenge the actions of the government, have a court declare a law unconstitutional or even to litigate in the interest of the public.

[60] Traditionally, our courts have always interpreted the principle of *locus standi* strictly, in the sense that standing is accorded to the person who shows cause of action or sufficient interest. Our constitution contains no express provision for the liberalization of the rules of *locus standi*, unlike the constitutions of jurisdictions such as the Republic of South Africa. The common law posture remains.

[61] Our apex court in the cases of *Lesotho Human Rights Alert Group v Minister of Justice and others*; *Dr Kananelo Mosito and Others v Qhalehang Letsika and Others*; *Mofomobe and Another v Minister of Finance, Phoofolo KC and Another v the Right Hon Prime Minister* held that for a litigant in the position of the TRC to succeed it must show that it has a direct and personal legal right or recognized interest in the matter, that is not abstract or academic, and that is present and not hypothetical [per Musonda AJA at para [32] in *Justice Hlajoane v Letsika* 2018 LSCA]. In the present case in my view the TRC has failed to prove that it has a sufficient direct, personal interest in this matter. The TRC cannot be said to be a citizen of Lesotho having the right to take part in the conduct of public affairs directly or through freely chosen representatives [section 20 (1) (a) of the Constitution]. It cannot claim to be a right holder envisaged by section 4 (1). It cannot therefore pretend to have *locus standi* to apply to this court for redress pursuant to section 22 (1). For these reasons it

cannot claim the relief sought in Prayer 5 of the Notice of Motion, or any other relief at that.

[62] It follows therefore that the Rule nisi of the twenty seventh June 2019 stands to be discharged. It is accordingly discharged.

[63] The following order is made;

The application is dismissed.

Costs:-

This being a Constitutional case of great interest to the public, it would not be advisable for this Court to make an order of payment of costs.

M. Mahase

Acting Chief Justice

I AGREE

Justice KL Moahloli

For Applicants: Messrs. Lephuthing, Rasekoai

For Respondents: Messrs. Letsika, Mokebisa, Maqakachane and Nyabela