

**IN THE HIGH COURT OF LESOTHO**

**CIV/APN/106/2021**

**HELD AT MASERU**

In the matter between

**SILASE MOKHITLI**

**1<sup>ST</sup> APPLICANT**

**SEMONKO LESENYEHO**

**2<sup>ND</sup> APPLICANT**

**MAKO CHOBOKOANE**

**3<sup>RD</sup> APPLICANT**

**KHOALE THEBE**

**4<sup>TH</sup> APPLICANT**

**THABO NKESI**

**5<sup>TH</sup> APPLICANT**

**MATHABO MOKALANYANE**

**6<sup>TH</sup> APPLICANT**

**AND**

**MOTINYANE MOTINYANE**

**1<sup>ST</sup> RESPONDENT**

**MATSEKISO MOTINYANE**

**2<sup>ND</sup> RESPONDENT**

**MATOKELO MORIE**

**3<sup>RD</sup> RESPONDENT**

**MPHONYANE KEKANA**

**4<sup>TH</sup> RESPONDENT**

**NONDABEZITHE BABELI**

**5<sup>TH</sup> RESPONDENT**

**LELIMO MONESE**

**6<sup>TH</sup> RESPONDENT**

**NATIONAL EXECUTIVE COMMITTEE OF**

**ALL BASOTHO CONVENTION**

**7<sup>TH</sup> RESPONDENT**

**ALL BASOTHO CONVENTION**

**8<sup>TH</sup> RESPONDENT**

**MONTOELI MASOETSA**

**9<sup>TH</sup> RESPONDENT**

**MASEENG MAPUTSOE**

**10<sup>TH</sup> RESPONDENT**

Neutral Citation: Silase Mokhehi & 5 others vs Motinyane Motinyane & 9 others [2022] LSHC Civ 267 (29 September 2022)

**CORAM** : **M.P. RALEBESE J.**

**HEARD** : **07 SEPTEMBER 2022**

**DATE OF JUDGMENT:** **29 SEPTEMBER 2022**

### **SUMMARY**

*Inter Political Party dispute - Challenge over elected constituency committee – Applicants raising new case in arguments –Matters raised purely political – Political disputes deserve political resolution –Application dismissed with costs.*

### **ANNOTATIONS**

### **CITED CASES:**

#### **LESOTHO**

Basutoland Congress Party and Another v Molapo Qhobela and Another (CIV/APN/410/99) [2000] LSCA 10 (17 January 2000)

Frasers Lesotho v Hata Butle (Pty) Ltd LAC (1995-1999) 698

Koko-koro constituency committee and 2 others v Executive Committee – ABC and 8 others C of A (CIV) N0.10 of 2019

Lesotho National Olympics Committee v Morolong (2000-2004) LAC 450

Pela- Tsoeu No.10 Constituency Committee of the Basutoland Congress Party v Basotho Congress Party and Executive Committee of the Basotho Congress Party (CIV/APN/360/08) 2011] LSHC 129 (22 June 2011).

## **OTHER JURISDICTIONS**

Patrick Bandawe v Malawi Congress Party CIVIL CAUSE NO. 1010 OF 2018 [2019] MWHC 3 (08 January 2019)

Trackman No v Livshitz 1995 (1) SA 282

## **JUDGMENT**

### **Background and facts**

1. This case involves a dispute between members of the All Basotho Convention (ABC) political party from Thetsane Constituency No.34 arising from elections of the Constituency committee. The 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> applicants withdrew as parties in this matter immediately following its institution. The remaining applicants are seeking the following substantive prayers:-
  - (a) That all the transactions made by the 1<sup>st</sup> to 6<sup>th</sup> respondents from 25<sup>th</sup> July 2022 to the date of final judgment be declared null and void ab initio.
  - (b) That Thetsane Constituency committee elections of the 2<sup>nd</sup> July 2022 in terms of which the 1<sup>st</sup> to 6<sup>th</sup> respondents were purportedly elected as members of the said constituency committee which were conducted by the 9<sup>th</sup> and 10<sup>th</sup> respondents be declared null and void for violating the constitution of ABC.

(c) That it be declared that the validly elected committee for Thetsane Constituency no.34 is that which comprises the applicants and other structures of the party who are committee members *ex officio*.

(d) That the respondents be ordered to pay the costs of suit.

2. The facts of this case are that on 29<sup>th</sup> April 2022 the ABC National Executive Committee issued a circular in terms of which it publicised the timetable for holding elections for branches and constituencies committees. The circular directed that elections of committees should take cognizance of and accept any new branches following the delineation of constituencies by the Independent Electoral Commission (IEC).

3. The elections for branches committees were held on 15<sup>th</sup> May 2022 and reports were duly submitted to the then serving constituency committee. The branches then nominated representatives who attended the elective conference for the constituency committee on 11<sup>th</sup> June 2022.

4. The applicants conveniently refrained from disclosing the background of the elective conference and what transpired on the day of the elective conference in their founding papers. This background is very critical because it would enlighten the court on the genesis of these proceedings. The respondents are the ones who portray the picture and shed the light on the background to the elective conference and on the occurrences of the 11<sup>th</sup> June 2022 which would ultimately lead to the institution of the instant application.

5. In terms of the answering and supporting affidavits of the 9<sup>th</sup> and 10<sup>th</sup> respondents respectively, the genesis of the dispute in the instant case can be traced from the delimitation of constituencies by IEC which affected the structure of the six previous ABC branches comprising Thetsane constituency. Two of these branches were subsumed in Tsolo constituency no.35 and Maseru Central constituency no.33. Within the 4 remaining branches, there were challenges that some committee members no longer fell within the branches' boundaries. These led to disputes during the elections of the branches' committees and the resultant factions within the branches. In three of these branches, each of the warring factions elected its branch committee with the result that there were two committees in each of those branches.
  
6. On 11<sup>th</sup> June 2022, each of the warring factions in three branches sent their delegates to the constituency elective conference. This meant that the three branches were represented by delegates from two opposed committees.
  
7. There is also an issue of two newly established branches which is hotly disputed by the parties. The respondents averred that following the delineation of constituencies by the IEC, the Thetsane Constituency committee sought permission from the National Executive Committee (NEC) to establish new branches. The request was declined by the NEC which indicated that would be the role of the new Constituency Committee as the term for the then serving committee had expired. The applicants on the other hand insisted in their replying affidavit that two new branches were established and they were duly reported to the NEC. These two newly established branches also sent their delegates to the elective conference.

8. According to the respondents, the constituency committee elections did not proceed without challenges. Delegates from one of the warring factions in the three branches that had sent two groups of delegates were not recognised and they were disqualified from the elective conference. Delegates from the newly established branches were not recognised by the constituency committee which was then still in service but they were nevertheless allowed to participate in the elective conference. Elections proceeded out of which the applicants were elected.
9. The other factional committees that had been rejected and disqualified from participating in the elective conference met outside the conference venue and elected their constituency committee. This resulted in two constituency committees which were presented to the NEC.
10. On 27<sup>th</sup> June 2022, the applicants and members from the other newly elected committee as well as members of the old constituency committee were invited by the Secretary General of the party to a meeting that was chaired by Mr Masoetsa and Mrs Maputsoe (9<sup>th</sup> and 10<sup>th</sup> respondents respectively). An enquiry was made in the meeting as to why there were two constituency committees in the Thetsane constituency. At the end of the meeting, the decision was reached that there would be re-elections in the Thetsane constituency on 2<sup>nd</sup> July 2022.
11. The re-elections were indeed held on 22<sup>nd</sup> July 2022 and the 1<sup>st</sup> – 6<sup>th</sup> respondents came out winners. The elections were facilitated by the 9<sup>th</sup> and 10<sup>th</sup> respondents. The outcome of the elections, so it appears, led to the institution of the current application.

### **The issue**

12. The issue for determination by this court which will be dispositive of all other issues is whether the applicants have established grounds for review of the constituency committee elective conference of the 2<sup>nd</sup> July 2022 as being irregular and null and void ab initio.

### **The Arguments**

13. The applicants' case from their founding papers is premised on matters outlined in paragraph 36 of the founding affidavit, to wit:-

(a) The elective conference of the 2<sup>nd</sup> July 2022 was marred with irregularities which rendered it null and void.

(b) The elections did not follow the dictates of the ABC constitution.

(c) The elections were overseen by the 9<sup>th</sup> and 10<sup>th</sup> respondents without a circular of the NEC outlining the purpose of the 9<sup>th</sup> and 10<sup>th</sup> respondents' presence in the constituency; the mandate they had been given by the NEC; and the communication whether there had been a complaint from Thetsane constituency and by who.

14. The respondents opposed the application and their defense was that the applicants participated in the re-election without raising any objections and they could not turn around and contest the same elections. They also contended that none of the ABC constitution provisions had been violated as alleged by the applicants.

## Analysis

15. It is apposite to indicate that the case argued by the applicants' counsel in the written and oral submissions was not what the applicants had pleaded in the founding papers. The gist of Advocate Molise's written and oral submissions was that the 9<sup>th</sup> and 10<sup>th</sup> respondents were not members of the ABC Conflict and Dispute Resolution Committee (CDRC) as defined in the ABC constitution and as such, they did not have the mandate to resolve whatever Thetsane constituency dispute that had been tabled to the NEC. This issue came up for the first time in the arguments. It was never raised by the applicants in the founding papers.
16. The applicants' case in the founding papers was never focused on the legitimacy of the mandate of the 9<sup>th</sup> and 10<sup>th</sup> respondents regarding the mediatory role that they played in the meeting of 27<sup>th</sup> June 2022. Their case centred on the alleged irregularities during the re-elections of the 2<sup>nd</sup> July 2022 as outlined in paragraphs 36.1 through 36.15. Even the letter of complaint that the applicants wrote to the NEC on 04<sup>th</sup> July 2022 (**SM7**), two days after the re-elections, focused on the alleged irregularities surrounding the re-elections. The letter made no mention whatsoever of the legitimacy of the role played by the 9<sup>th</sup> and 10<sup>th</sup> respondents in the meeting on 27<sup>th</sup> June 2022.
17. It is trite that in motion proceedings, the applicant stands and falls by the founding affidavit and the facts alleged therein (**Lesotho National Olympics Committee v Morolong**<sup>1</sup>). The applicants cannot be permitted to plead one case in their founding papers and to argue another case in

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<sup>1</sup> (2000-2004) LAC 450 at 457



thier submissions as that would be tantamount to litigation by ambush. The applicants' case to which the respondents were called upon to answer, and the court was called upon to resolve must be the one contained in their founding papers. It is impermissible for the applicants to direct the attention of the respondents to a case about the irregularities surrounding the constituency elective conference and to canvas the legitimacy of the mandate of the 9<sup>th</sup> and 10<sup>th</sup> respondents to have mediated the constituency dispute in arguments. (**Frasers Lesotho v Hata Butle (Pty) Ltd**<sup>2</sup>). Indeed the respondents, in this case, focused their answer and defense on the alleged irregularities surrounding the elective conference. The applicants' latter argument focused on the legality of the 9<sup>th</sup> and 10<sup>th</sup> respondent intervention is therefore dismissed.

18. Now focusing on the applicants' case in terms of their founding papers, they have raised what they call irregularities in the manner in which the re-elections were conducted. The first issue they raise is that the 9<sup>th</sup> and the 10<sup>th</sup> respondents did not have the mandate of the NEC to oversee the re-elections. This submission is without merit as it will herein be demonstrated. The deponent to the founding affidavit averred in paragraph 30 that he got a call from the Secretary General of the party on 24<sup>th</sup> June 2022 in which he was invited to report at the party's national office with other members of the constituency committee on the 27<sup>th</sup> June 2022. The applicants heeded the invitation and that was where they found the 9<sup>th</sup> and 10<sup>th</sup> respondents who chaired the meeting. The said meeting resolved that there would be re-elections of the constituency committee for Thetsane no.34. On 2<sup>nd</sup> July 2020 the re-elections were held under the stewardship of 9<sup>th</sup> and 10<sup>th</sup> respondents and the applicants duly took part therein. The applicants accepted the mandate of the 9<sup>th</sup> and 10<sup>th</sup>

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<sup>2</sup> LAC (1995-1999) 698 at 702

respondents when they mediated in Thetsane constituency dispute on 27<sup>th</sup> June 2022; and when they headed the re-elections on the 2<sup>nd</sup> July 2022 without any issues or objections. They never raised any issues regarding the legitimacy of their role in the meeting or at any time soon thereafter, during the re-elections or soon following that. They accepted their role without issues or questions because they were aware that the Secretary-General was the one who had authorised the meeting of the 27<sup>th</sup> June and whatever that flowed therefrom, being the one who had called and summoned them to the meeting.

19. The respondents' averred that it had been agreed during the meeting on 27<sup>th</sup> June 2022 that the re-elections would be overseen by delegates from the NEC and this has not been opposed by the applicants. The applicants never objected to the 9<sup>th</sup> and 10<sup>th</sup> respondents' presence at the re-elections conference. The only reasonable explanation for their silent acceptance throughout the elections is that they already knew about the mandate of those respondents at the elective conference. Indeed this is confirmed by paragraph 3 of the letter of complaint which the applicants wrote to the Secretary-General dated 04<sup>th</sup> July 2022 (**SM7**). In that letter the applicants acknowledged that the two respondents had been delegated by NEC to oversee the elections in the following words:

*“To our surprise, the two delegates sent by the National Executive Committee infringed what was agreed upon that the elections were to consist of six (6) branches....”*

20. The 9<sup>th</sup> respondent averred in paragraph 5.10 of his answering as supported by the 10<sup>th</sup> respondent's supporting affidavits that they had been mandated by the NEC to mediate over the Thetsane constituency case where there were two constituency committees. This averment has not been specifically denied by the applicants. The applicants' submission

that the 9<sup>th</sup> and the 10<sup>th</sup> respondents did not have the mandate of the NEC to oversee the re-elections is therefore dismissed as being baseless.

21. The applicants further argued that the elections of the 2<sup>nd</sup> July 2022 were marred with irregularities in terms of which some provisions of the ABC constitution had been violated, in particular clause 8 (4) (b). The applicants only annexed the ABC constitution to the replying affidavit, though they mentioned it in the founding affidavit and even indicated therein that it was annexed. Though that was an inelegant way of pleading, it cannot be argued that the applicants by so doing, made out a new case or augmented their case at the reply stage. This is more so considering that the parties in this matter are all from ABC. I should point out that I perused the ABC Constitution in vain searching for clause 8 (4) (b).

22. The other issue raised by the applicants is that there was no circular from the NEC authorizing the holding of the re-elections. The applicants have failed to refer the court to the clause of the ABC Constitution that requires the circular before the constituency elective conference can be held. Furthermore, the applicants participated in the re-elections and even contested for some portfolios. By so doing, they acquiesced to the absence of a circular that confirmed; the purpose of the 9<sup>th</sup> and 10<sup>th</sup> respondents' presence at the elective conference; the mandate they had been given by NEC; communication that there had been a complaint and by also; and how the NEC had resolved the complaint. Nowhere in the applicant's founding papers have they alleged that they contested the absence of the circular either before the commencement of the elective conference or during the conference. The issue of the circular surfaced for the first time in their complaint letter of 04<sup>th</sup> July 2022 (**SM7**). The

applicants cannot, therefore, complain about the elections in which they duly participated without a complaint while they were already aware of the absence of the alleged authorizing circular. This belated complaint gives the irresistible suspicion that it arose just because the applicants had lost in the elections race.

23. As I have already indicated, the courts should avoid being seen as running political parties for the party member or committees or getting involved unnecessarily in the internal affairs of political parties. The applicant's complaint about the absence of the alleged circular is a typical one which the court should be wary to involve itself in as there is no apparent or alleged illegality unfairness or arbitrariness which could justify the intervention of the court (**Basutoland Congress Party and Another v Molapo Qhobela and Another**<sup>3</sup>).

24. As often said, the courts should try as much as possible to avoid being dragged into matters purely administrative of political parties. (**Basutoland Congress Party v Molapo Qhobela**<sup>4</sup>) What the applicants are seeking drags this court to intervene in the party's internal dynamics relating to the organisation of the constituency elective conference. This I say given the grounds put forth by the applicants to have the elective conference declared null and void. Those are pure political parties' dynamics that usually cloud or negate merit and are often influenced by power struggles, emotions and egos when it comes to scrambles for elections into political parties' governance structures. Courts should be wary of intervening in purely political disputes within the sphere of political parties (**Koko-koro constituency committee and 2 others v**

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<sup>3</sup> (CIV/APN/410/99) [2000] LSCA 10 (17 January 2000)

<sup>4</sup> Supra

**Executive Committee – ABC and 8 others**<sup>5</sup>). The issue of which committee for Thetsane Constituency is legitimate as well as the issues that the applicants have raised in paragraph 36 of the founding affidavit are purely political matters which should be resolved politically by ABC through its internal dispute resolution mechanisms. This Court cannot be the proper forum for such matters. This is more so when the applicants have failed to prove that any of the issues they complained of were in flagrant contravention of the Constitution of the party.

25. As stated in the case of **Patric Bandawe v Malawi Congress Party**<sup>6</sup> cited with approval by our superior court in the **Koro-koro Constituency** case (supra), the courts will intervene in political disputes if:

- (a) A political party is in breach of its constitutive document;
- (b) A political party acts in breach of the rules of natural justice;
- (c) A political party or its members act in breach of the laws of the country; and
- (d) A political party or its members conduct themselves capriciously or arbitrarily.

In the instant case, none of these four benchmarks has been established by the applicants. As already indicated, the applicants failed to refer this court to the exact provisions of the ABC constitution that they allege have been violated in the conduct of the re-elections.

### **Disposition**

26. In the final analysis, this court finds that the applicants have failed to establish justifiable grounds upon which they called upon this court to

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<sup>5</sup> C of A (civ) NO.10 of 2019

<sup>6</sup> CIVIL CAUSE NO. 1010 OF 2018 [2019] MWHC 3 (08 January 2019).

nullify the elections of the Thetsane Constituency Committee held on 2<sup>nd</sup> July 2022. The grounds advanced by the applicants for the prayer impugning and seeking nullification of the elections are purely political matters which demand political solutions by the internal structures of ABC. (**Pela- Tsoeu No.10 Constituency Committee of the Basutoland Congress Party v Basotho Congress Party and Executive Committee of the Basotho Congress Party and Another**<sup>7</sup>). The grounds advanced by the applicants as per paragraphs 36.1 through to 36.15 of the founding affidavit, have nothing to do with illegality, irrationality or unfairness which are ground upon which the court would be ready to intervene and exercise its review powers. Prayer (g) in the notice of motion is therefore dismissed. It follows therefore that prayers (f) and (h) also fall off as they were dependent on the court's finding on prayer (g).

27. As I earlier mentioned, the applicants failed to disclose material facts which would enlighten the court on the background of this case. In the first place they failed to disclose the issues that plugged the committee elections in some branches; they withheld information regarding what actually transpired on 11<sup>th</sup> June 2022 during the constituency elective conference. They also failed to disclose that there were two constituency committees elected on 11<sup>th</sup> June 2022 which prompted the meeting on 27<sup>th</sup> June 2022 and led to the decision to hold re-elections of the constituency committee. They also did not disclose that they participated in the re-elections for 2<sup>nd</sup> July 2022 and actually contested for some portfolios. I find the non-disclosure to have been a deliberate suppression of facts with the intention to mislead this court. As held in **Trackman No v Livshitz**<sup>8</sup> this non-disclosure calls for an order of costs against the applicants. The

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<sup>7</sup> (CIV/APN/360/08) [2011] LSHC 129 (22 June 2011)

<sup>8</sup> 1995 (1) SA 282 at 288 E-H

2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants should therefore bear the costs of suit jointly and severally an attorney and client scale for their failure to disclose material facts which would undoubtedly assist the court to better appreciate the background to their ease.

28. The 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> applicants should also bear the costs associated with their withdrawal jointly and severally pursuant to High Court Rule 43.

**Order**

29. (a) The application is dismissed with costs to be borne by 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants jointly and severally.

(b) The 1<sup>st</sup>, 3<sup>rd</sup> and 6<sup>th</sup> applicants should bear the costs associated with their withdrawal from these proceedings jointly and severally.

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**M. P RALEBESE J**

**JUDGE**

For the applicants: Adv. Molise  
For the respondents: Mr. Ndebele