

ANNOTATIONS

Cases

Khasu v Thabane NO & Others, LAC (2015-2016)573

NDPP v Zuma 2009(2) SA 279 (SCA)

Wightman t/a JW Construction v Headfour (Pty) Ltd & Another 2008(3) SA 371 (SCA)

MOAHLOLI J

[1] This application was brought by the Marematlou Freedom Party (“MFP”), 1st Applicant and its National Executive Committee (“NEC of MFP”), 2nd Applicant. They are seeking the following substantive orders:

“2.4 That the decision of the respondents to hold an annual conference and/or any conference in the names of the MFP be reviewed and set aside as unlawful.

3. That it be declared that the first to eighteenth respondents were unlawfully registered as members of the National Executive Committee of the MFP.

4. That the conduct of the first to eighteenth respondents of convening a party conference in the names of the MFP is unlawful.

5. That the Registrar of Societies be ordered to expunge the names of the first to eighteen respondents as members of the national executive committee of MFP from the public registers.” [Emended]

[2] The notice of motion is supported by the founding affidavit of one Nthabiseng Babeli (“Babeli”) who describes herself as the Leader of the MFP, and the affidavit of one David Ntšihlele (Ntšihlele) who says that he is the First Assistant Secretary of the party’s NEC.

[3] The respondents are opposing. They have filed an answering affidavit of one Tlhoriso Lekatsa (“Lekatsa”), who describes himself as the Leader of the MFP pursuant to a conference that was held on 20-21 March 2020. Lekatsa raises a point *in limine* that Babeli and Ntšihlele do not have *locus standi* to sue in the name of the MFP since their membership of the party was revoked at the above-mentioned conference.

[4] I will deal with this issue first as, if upheld, it will be dispositive of the entire case. Respondents argue that Babeli and Ntšihlele are no more members of the party, let alone its office bearers, since the revocation of their membership at the 20-21 March 2020 conference of the party. However, Babeli, in her founding affidavit, contends that the two of them are still legitimate members of the party and its duly elected office bearers since that conference and its resolutions were a nullity because it was held in violation of clauses 11,12,13 and 17(5) of the party’s constitution. Babeli unpacks these allegedly fatal irregularities at great length in paragraphs 36 to 37 of her founding affidavit. Oddly enough, Lekatsa does not respond issuably to these specific issues in his answering affidavit (paragraphs 21 and 22 thereof). Instead he attempts to substantiate his insistence that that conference was legitimate by arguing that it was subsequently endorsed and legitimised by the Registrar of Societies. He has filed a letter written by himself and “Secretary General Lorna McKenzie” to the Registrar General, Law Office

on 06/04/2020, purporting to communicate the names of new office bearers of the MFP and the resolution to revoke the membership of Babeli, Ntšihlele and three others. On the face of that letter, I cannot understand in what way it can be said to constitute proof that the Registrar General endorsed and legitimized the conference. In my view the only reasonable inference that may be drawn is that the office of the Registrar General acknowledged receipt of the letter by affixing its date stamp. But even then what appears to be the office's date stamp is so faint that one cannot read what is on it. And it is not even signed. So one cannot say who affixed the stamp. I therefore cannot accept that it constitutes proof that the said conference was convened and held in compliance with the constitution of the party. Respondents should have filed an affidavit from the Registrar General or his representative corroborating their averments. But they rather chose to rely on their own surmise. In the premises the respondents' preliminary point that applicants do not have *locus standi* (standing) to institute these proceedings is dismissed.

[5] Another problem that I find with the emergency conference of 20-21 March 2020, which goes to the very root of this case, is whether this court has been provided with cogent proof that the conference was properly convened, and by persons who had authority to do so. Lekatsa claims that the conference was held in terms of Clauses 11 and 12(e) of the party's constitution. But he has not provided the court with the minutes and resolution authorising it to be convened; the notice calling it; the signed attendance register (in order to prove that it was constitutionally composed); and the actual minutes and resolutions of the conference. All he has provided is his own letter to the Registrar General (date 06/04/2020). This is not cogent evidence to support

his claim that there was a proper change of guard on 20-21 March 2020. That he and his cohorts continue to occupy the offices of the party is of little consequence.

[6] Another related matter, which considerably weakens Lekatsa's position, is whether he in actual fact still is a legitimate member of the MFP or not; and consequently whether he is eligible to hold the office of Leader of the party. In their papers applicants contend that Lekatsa was suspended and expelled from the organisation and his expulsion was subsequently confirmed and ratified by the Emergency Conference of 14 December 2019. They further claim that his expulsion remains valid until set aside by a court of law.

[7] I agree with the applicants that in his answering papers Lekatsa does not squarely and issuably controvert these allegations about his expulsion. He contends himself with just repeatedly making bald denials at paragraphs 11.2, 11.3, 13.1, 13.2, 15 and 16 of his answering affidavit. Because his version consists of bald and uncreditworthy denials, this court is justified in rejecting them merely on the papers.¹ In my view there cannot be said to be any real, genuine and *bona fide* dispute of fact because Lekatsa has in his affidavit not seriously and unambiguously addressed the fact said to be disputed.² On the contrary, after this fateful conference of 14 December 2019, Lekatsa instituted several court challenges which he either lost [CIV/APN/41/2020] or subsequently withdrew [CIV/APN/102/2020 and CIV/APN/428/2020].

¹ NDPP v Zuma 2009(2) SA 279 (SCA) at para 26 [quoted with approval in Khasu v Thabane NO at para 12]

² Wightman t/a JW Construction v Headfour (Pty) Ltd & Another 2008(3) SA 371 (SCA)

[8] For the above reasons I come to the conclusion that applicants have proved their case on a balance of probabilities and must succeed.

[9] I therefore grant prayers 2.4, 3, 4, 5 and 7 in the notice of motion.

KEKETSO L. MOAHLOLI

JUDGE

Appearances:

For Applicants : Adv T. Fiee

For Respondents : Adv M. Tlapana