



LESOTHO

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) 76/2022

CIV/T/122/2016

CIV/T/389/2019

In the matter between:

LESOTHO PEOPLE'S CONGRESS (LPC)

NATIONAL EXECUTIVE COMMITTEE - LPC

MOLAHLEHI LETLOTLO

MABALA MAQELEPO

THAPELO NTSOELE

SOPHIE MALIMABE

**KOANTLE TSEKO
APPELLANT**

MOELETSI QEKISI

'MAPABALLO MOLIBELI

MOEKETSI MONYANE

**'MAKOPANO SEKHOB
APPELLANT**

FIRST APPELLANT

SECOND APPELLANT

THIRD APPELLANT

FOURTH APPELLANT

FIFTH APPELLANT

SIXTH APPELLANT

SEVENTH

EIGHTH APPELLANT

NINETH APPELLANT

TENTH APPELLANT

ELEVENTH

**KOPANANG MOREBOLI
APPELLANT**

TWELFTH

**MALESELI LESELI
APPELLANT**

THIRTEENTH

LEHLOHONOLO MOKAU

FOURTEENTH APPELLANT

'MATEFO RABOKO

FIFTEENH APPELLANT

'MAMAHLAPE KHETSI

SIXTEEH APPELLANT

'MAPASEKA MOTHAE

SEVENTEENTH APPELLANT

**TELANG MPOLE
APPELLANT**

EIGHTEENTH

AND

MABUSETSA MAKHARILELE

FIRST RESPONDENT

**MOIPONE PIET
RESPONDENT**

SECOND

SEFAKO PHOSISI

THIRD RESPONDENT

**TLALI MOHLOMI
RESPONDENT**

FOURTH

BOKANG RAMATSELLA

FIFTH RESPONDENT

MAFEREKA TSUKULU

SIXTH RESPONDENT

**MAPHUMA SEJANAMANE
RESPONDENT**

SEVENTH

MATLA SEPITLA

EIGHTH RESPONDENT

KHITSANE LETSOARA

NINETH RESPONDENT

MANTJA MAKHAKHE

TENTH RESPONDENT

**KUENANE NKUEBE
RESPONDENT**

ELEVENTH

**SECHABA TSEHLANA
RESPONDENT**

TWELFTH

**'MAKOPANO MAFUBE
RESPONDENT**

THIRTEENTH

**'MASEKHOANE MOKOALELI
RESPONDENT**

FOURTEENTH

THE REGISTRAR OF SOCIETIES

FIFTEENTH RESPONDENT

THE ATTORNEY GENERAL

SIXTHTEENTH RESPONDENT

AND

CIV/T/389/2019

LESOTHO PEOPLE'S CONGRESS (LPC)

FIRST APPELLANT

NATIONAL EXECUTIVE COMMITTEE - LPC

SECOND APPELLANT

MOLAHLEHI LETLOTLO

THIRD APPELLANT

MABALA MAQELEPO

FOURTH APPELLANT

THAPELO NTSOELE

FIFTH APPELLANT

SOPHIE MALIMABE

SIXTH APPELLANT

**KOANTLE TSEKO
APPELLANT**

SEVENTH

MOELETSI QEKISI

EIGHTH APPELLANT

'MAPABALLO MOLIBELI

NINETH APPELLANT

MOEKETSI MONYANE

TENTH APPELLANT

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THIRTEENTH APPELLANT

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FOURTEENTH APPELLANT

'MATEFO RABOKO

FIFTEENTH APPELLANT

**'MAMAHLAPE KHETSI
APPELLANT**

SIXTEENTH

**'MAPASEKA MOTHAE
TELANG MPOLE**

**SEVENTEETH APPELLANT
EIGHTEENTH APPELLANT**

AND

MOIPONE PIET

FIRST RESPONDENT

**SEFAKO PHOSISI
RESPONDENT**

SECOND

TLALI MOHLOMI

THIRD RESPONDENT

MATLA SEPITLA

FOURTH RESPONDENT

MOTSOANE NYELIMANE

FIFTH RESPONDENT

SECHABA TSEHLANA

SEVENTH RESPONDENT

MANTJA MAKHAKHE

EIGHTH RESPONDENT

MOTLATSİ MOKEBE

NINETH RESPONDENT

MOTLATSİ MOKEBE

TENTH RESPONDENT

LETSOAEA KHITSANE

NINTH RESPONDENT

MAKHANG MATJAMA

ELEVENTH RESPONDENT

PULANE MOKHATI

TWELFTH RESPONDENT

**KUENANE NKUEBE
RESPONDENT**

THIRTEENTH

**MORAPELI LEJONE
RESPONDENT**

FOURTEENTH

SAM SEBOLAO

FIFTEENTH RESPONDENT

THE REGISTRAR OF SOCIETIES'

SIXTEENTH RESPONDENT

INDEPENDENT ELECTORAL

**COMMISSION
RESPONDENT**

EIGHTEENTH

CORAM: MOSITO P
CHINHENGO AJA
BANYANE AJA

HEARD: 25 OCTOBER 2023

DELIVERED: 17 NOVEMBER 2023

SUMMARY

Voluntary association – political party – conflict within the party – Rival National Executive Committees of the Party – Both NEC having convened conferences contrary to the constitution of the party – Resolutions taken at such purported Conferences a nullity – Judgment of High Court dismissing the action set aside and replaced by one: (i) The NEC members elected on 1 November 2014 are the lawfully elected office-bearers of the LPC.; (ii) It is that committee which should make arrangements for elections of a new committee according to the constitution of the LPC: (iii) Each party bear its own costs.

JUDGMENT

MOSITO P

Background

[1] This appeal arises from a trial action instituted by the appellants in the High Court on 7 March 2016. In that matter, the appellants sought an order in a declaration in the following terms:

- (a) A declaratory order that the third to eighth Plaintiffs are the lawfully constituted National Executive Committee members of LPC (second Plaintiff).
- (b) A declaratory order that the Annual General Conference of LPC held at Masite St Barnabas on the seventh and eighth of February 2016 was lawfully constituted, and its resolutions binding.
- (c) An order interdicting and restraining first to fourth defendants from holding themselves out as *bona fide* members of the National Executive Committee of LPC.
- (d) An order interdicting and restraining first to fourth Defendants from interfering with third to eighth Plaintiff's exercise of rights as *bona fide* members of second Plaintiff other than by due process of law,
- (f) first, to fourth defendants be ordered to pay costs of suit.
- (g) Further and/or alternative relief.

[2] There was also a matter which the parties were litigating under CIV/T/389/2019. By agreement of the parties, the court a quo consolidated the matters in CIV/T/122/2016 and CIV/T/389/2019. In CIV/T/389/2019, the appellants sought interdictory reliefs to restrain respondents from holding themselves out and from conducting themselves as members of the NEC in various capacities, as well as declarators that respondents were elected correctly. The matters were heard over a period until 20 June 2022. On 8 September 2022, the learned judge in the court a quo (Moahloli J) handed down his judgment. In his judgment, the learned judge ordered as follows:

"I therefore order in CIV/T/122/16 that prayers (a), (b) and (c) are not granted. And that the Plaintiffs are ordered to pay the costs of this suit.

I further order in CIV/T/389/19 that prayers (1), (2), (3), (4), (5) and (6) are not granted. Plaintiffs are ordered to pay costs of the suit.”

[3] The appellants were dissatisfied with the judgment and noted an appeal to this Court on eleven grounds. In the notice of appeal to this Court, the grounds of appeal are set out. I shall revert to these grounds later.

The Facts

[3] The Lesotho People’s Congress (LPC) is a political party and voluntary association. On 1 November 2014, the Annual General Conference of the LPC, in line with the LPC’s constitution, elected the National Executive Committee (NEC) of the LPC. The third appellant was elected leader, while the first respondent was elected deputy leader of the first appellant. According to the party's constitution, the NEC's tenure was two years. Thus, arithmetically, the said NEC’s tenure was to expire on 31 October 2016. Before 2 February 2015 National Elections, the fifth respondent appeared in the proportional representation (PR) list of the Lesotho Congress for Democracy (LCD). The appellants allege that he had switched allegiance from LPC, while the respondents allege that he had been “lent” (*sic*) to the LCD. Whatever the case, he was consequently suspended as the LPC Publicity Secretary for appearing in the LCD PR list.

[4] With time, an internecine conflict developed amongst the members and the NEC was split. The leader led one faction (from

now on referred to as the Letlotlo faction), while the deputy leader led the other (from now on referred to as the Makharilele faction). The conflict culminated in the third appellant suspending six other NEC members (namely, Mabusetsa Makharilele (Deputy Leader), Sefako Phosisi (Deputy Chairperson), Maphuma Sejanamane (Deputy Secretary General), Matla Sepitla (Deputy Publicity Secretary), Mafereka Ts'ukulu (Member) and 'Mantja Makhakhe (Member) and one Tlali Mohlomi). The NEC allegedly confirmed the suspensions on 22 January 2016.

[5] On 22 December 2016, the Letlotlo faction resolved to hold an Annual General Conference of the LPC on 27 and 28 February 2016. At this conference, the Secretary-General (Moipone Piet) and Bokang Ramatsella (Publicity Secretary) were purportedly expelled from the party. Their expulsion was because they had purportedly called a Makharilele-faction Annual General Conference of the LPC on 27 and 28 February 2016 at Lesotho Cooperatives College. The Makharilele-faction Annual General Conference of the LPC held on 27 and 28 February 2016 at the Lesotho Cooperatives College purported to elect a new NEC.

The issue for determination

[6] The central issue is which of the two factions is the lawful NEC of the LPC. The determination of this issue must proceed on the basis that each of the factions claims to be the authentic LPC.

The law

[7] In ***Rethabile Marumo and Others v National Executive Committee of Lesotho Congress for Democracy and Others***,¹ this Court restated the salutary principle that a political party is a voluntary association and the relationship between the party and its members is contractual. The terms of the contract are contained in the constitution of the party.²

[8] In ***Koro-Koro Constituency Committee and Others v Executive Working Committee: All Basotho Convention and Others***,³ This Court approved the decision in ***Ishmael Chafukira vs John Zenus Ungapake Tembo and Malawi Congress Party***⁴ It is in the interest of political groupings to avoid the judicialisation of political disputes. Democracy, by its very nature, means dialogue or discussion among persons of different political persuasions, inclinations, or even thoughts.

[9] In the past, this Court has held in the case of ***National Executive Committee of the Basotho National Party and 9 Others v Majara Jonathan Molapo***⁵ that where the constitution of a voluntary association must be interpreted, the courts should adopt a benevolent approach in construing its constitutional provisions. Concerning how political parties have to operate; I

¹ *Rethabile Marumo and Others v National Executive Committee of Lesotho Congress for Democracy and Others* C OF A (CIV) NO.42/2011,

² See, for example, *Matlholwa v Mahuma and Others* [2009] 3 All SA 238 (SCA) at para 8,

³ *Koro-Koro Constituency Committee and Others v Executive Working Committee: All Basotho Convention and Others* C OF A (CIV) NO.10 OF 2019 at para 52.

⁴ *Ishmael Chafukira vs John Zenus Ungapake Tembo and Malawi Congress Party* Civil Cause No. 371 of 2009 (unreported).

⁵ *National Executive Committee of the Basotho National Party and 9 Others v Majara Jonathan Molapo*, C of A (CIV) No. 34/2011, at para. [11].

share the views of Yacoob J in ***Ramakatsa v Magashule***⁶ that ‘the right to participate in the activities of a political party confers on every political party the duty to act lawfully and in accordance with its own constitution. This means that our Constitution gives every member of every political party the right to exact compliance with the constitution of a political party by the leadership of that party.’ With the above legal principles in mind, I proceed to consider this appeal.

[10] A voluntary association, such as a political party, is bound by its own constitution. It has no powers beyond the four corners of that document. A political party’s constitution forms the agreement entered with its members. The constitution must be interpreted in accordance with the ordinary rules of construction applying to contracts in general.

Evaluation of the appeal

[11] The first ground of appeal raises the issue whether the court below erred in holding that the warring factions of the National Executive Committee (NEC) of the Lesotho People’s Congress (LPC) held parallel meetings to elect the NEC. The substantial contention advanced on the appellants' behalf on this aspect was that the evidence before the court was clear that the Masite, St Barnabas High School conference did not elect an NEC.

[12] The appellants further argued that only the Lesotho Cooperatives College conference did. It should be borne in mind

⁶ *Ramakatsa v Magashule* (2) BCLR 202 (CC) where at para 16.

that the plaintiffs (current appellants) in CIV/T/122/2016 were seeking a declaratory order that they are the lawful NEC members of the LPC, while the respondents were not.

[13] It is common cause that on 1 November 2014, the Annual General Conference of the LPC, in line with the LPC's constitution, elected the NEC of the LPC, including the said appellants. It is clear from the facts and evidence before the court below that there was no election of the new NEC at the Letlotlo faction conference at Masite. What they purported to do was to replace with acting office bearers those who were still in lawful occupation of the offices but had been suspended.

[14] Suspension is usually a temporary measure taken while an investigation is conducted into alleged misconduct or other issues. The officer is typically not performing their regular duties during this period. The officer is presumed innocent until proven guilty, and the suspension is often a precautionary step rather than a definitive disciplinary action. If the investigation concludes that the officer is not guilty or the suspension was unwarranted, the officer may be reinstated.

[15] Suspension does not necessarily result in termination, so replacing an officer on suspension might involve returning the officer to their duties if cleared of allegations. Dismissal is a more severe disciplinary action and usually results in the permanent separation of the officer from their office. Replacing a dismissed officer may involve a replacement process rather than a simple

reinstatement, as dismissal implies a more severe and final action.

[16] As the High Court pointed out in ***Ntsu Mokhehle v Molapo Qhobela & 15 Ors.***⁷, '[i]t is, time to go strictly by the Constitution.' If there were no lawful elections of the NEC at any time after that, it would mean that the last lawfully elected members of the NEC of the LPC were those elected on 1 November 2014. As Monapathi J stated in ***Basutoland Congress Party & Another v Molapo Qhobela & Another*** '... if one is accused of having disturbed the powers that lie in certain people who have been given the power, it was not very difficult because the constitution tells one whether he has done so regularly or irregularly.' In ***Molapo Qhobela & Another v Basutoland Congress Party***⁸, Leon JA stated that it is possible to call a Special Conference in terms of the Constitution provided the procedure laid down in it is followed.

[17] If the Makharilele faction were dissatisfied with how the Letlotlo faction or any other official was performing their functions and discharging their duties, their remedy was to seek relief from the High Court. What they were not entitled to do was to act unconstitutionally in taking the law into their own hands and acting in flagrant violation of the constitution.⁹ The question is whether the Makharilele faction followed the LPC's constitution

⁷ *Ntsu Mokhehle v Molapo Qhobela & 15 Ors.*CIV/APN/75/97.

⁸ *Molapo Qhobela & Another v Basutoland Congress Party C of A (CIV) No. 8 of 2000*

⁹ *Ibid.*

when they planned and elected their new NEC. I now proceed to consider this issue.

[18] The 1 November 2014 Annual General Conference of the LPC elected the following office bearers: Molahlehi Letlotlo (Leader), Mabusetša Makharilele (Deputy Leader), Mabala Maqelepo ((National Chairperson), Sefako Phosisi (Deputy Chairperson), Moipone Piet (Secretary General), Maphuma Sejanamane (Deputy Secretary General), Bokang Ramats'ella (Publicity Secretary), Matla Sepitla (Deputy Publicity Secretary), Koantle Tseko (Newspaper Editor), 'Maleseli Leseli (Member),' 'Makopano Sekhobo (Member), 'Mantja Makhakhe (Member) and Mafereka Ts'sukulu (Member). These office-bearers were never relieved of their offices by a subsequent duly constituted Annual General Conference of the LPC, in line with the LPC's constitution. However, some might still be on suspension. This issue is not before us.

[19] Both sides conceded at the hearing of this appeal that no invitation notices for the holding of the two purported Annual General Conferences of the LPC were ever issued to have reached the constituencies secretaries' offices at least a month before the chosen day for the Annual General Conference of the LPC held by either of the two factions. This was a mandatory requirement for the validity of an Annual General Conference of the LPC in clause 8(3) of the party's constitution. It follows that both sides breached the constitution of the party. At the Annual General Conference of

the LPC, all members of the NEC must be invited and are entitled to attend as per clause 8(5)(a) of the constitution of the party.

[20] Members of the NEC are elected to office for two years in terms of clause 12(1) of the party's constitution. However, regarding the said clause, the Annual General Conference has the power to remove them from office if they seem to expose the party to any form of harm in any manner whatsoever in its administration as per the party constitution.

[21] As indicated above, the Makharilele faction held a Special Conference of the LPC on 27 and 28 February 2016 at the Lesotho Cooperatives College. At the said conference, they purported to elect a new NEC. Such an activity was a nullity for two reasons. First, regarding clause 10 of the LPC's constitution, a special conference of the LPC has no elective power. Second, it was neither called at the instance of the NEC nor the constituencies.

[22] The evidence before the court *a quo* did not reveal that the LPC conference held at Masite, St Barnabas High School, did elect an NEC. From the evidence of Mr Letlotlo, what happened at Masite, St Barnabas High School, was the confirmation of the leader's suspension of the eight NEC members mentioned earlier. The Masite conference also resolved to endorse the suspension of Moipone Piet (Secretary General} and Bokang Ramatsella (Publicity Secretary). There was also an attempt to fill some positions with others.

[23] I also hold that considering the two years not having lapsed, the court *a quo* should have found that the conference at the Lesotho Cooperatives College had no authority to elect the new NEC, and therefore, the Committee elected thereat was illegal. I also hold that the court *a quo* erred in not finding that the conference held at the Lesotho Cooperatives College, being the Special Conference as admitted by the respondents, had no power to elect the new NEC; that power vests in the Annual General Conference in terms of the Constitution of the Lesotho People's Congress (LPC).

Disposal

[24] Considering the decision to which I have come above, it is unnecessary to consider the remaining grounds of appeal. This court has noted that there are two warring factions within the LPC. In this strife, the rank-and-file members are trapped in this fight of the elephants. The court below should have held that the NEC members elected in November 2014 remain the lawfully elected members of the LPC, which I accordingly hold.

[25] Supreme as it is over the party members, the party's constitution must be interpreted and applied consistently with the provisions and principles of the Lesotho Constitution (freedom of association). Even if there was an inherent power "to save the party", this power cannot give the NEC power to violate the constitution of the LPC willy-nilly. To endorse such a selection would be a sham of our constitutional democracy.

In conclusion, it is necessary to state that this Court is fully aware that the two factions have drifted apart over a period of almost eight years. After the factions crystallised into two, the Letlolo faction participated in a general election under the banner of a different political party, whilst the Makharilele faction participated as the LPC and was accepted as such by the IEC. This tended to embolden the Makharilele faction to view itself as the lawful LPC. This notwithstanding, the issue remains that the LPC as a political party has not moved, in respect of the composition of its NEC, from its position as at 1 November 2014. Be it that some members of the NEC were suspended, lawfully or unlawfully, a matter that has still not been resolved, they are still members of the original 2014 NEC, albeit on suspension. The conference held by each of the factions in February 2016 did not resolve the suspension issue. Neither of the factions is entitled, in our view, to arrogate to itself, as the authentic faction, the Party's name. However they manoeuvre as a collective from the position as it was in November 2014 is not for this Court to determine for them. All this Court can do, based on the provisions of the LPC constitution, is to declare that nothing done after November 2014 entitles any of the factions to hold itself as the authentic LPC. I do not think it would be right to burden any of the factions with an adverse order of costs on appeal. The dispute is in-house and must ultimately be resolved as such.

Order

[26] In the result, the following order is made:

The judgment of the Court a quo is set aside and replaced with the order in the following terms:

- (i) The NEC members elected on 1 November 2014 are the lawfully elected office-bearers of the LPC.
- (ii) It is that committee which should make arrangements for elections of a new committee according to the constitution of the LPC.
- (iii) Each party bear its own costs.



K. E. MOSITO

PRESIDENT OF THE COURT OF APPEAL

I agree



M.H. CHINHENGO
ACTING JUSTICE OF APPEAL

I agree



P. BANYANE
ACTING JUSTICE OF APPEAL

FOR APPELLANTS: MR P. J. LEBAKENG

FOR RESPONDENTS: MR Q. LETSIKA