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THE HIGH COURT OF SWAZILAND

CASE NO.3749/02

In the matter between:

SANELE CELE	**1ST Applicant**
MBONGENI DLAMINI	**2ND Applicant**
MAKHOSINI MAMBA	**3RD Applicant**
LINDA NXUMALO	**4TH Applicant**

and

UNIVERSITY OF SWAZILAND	**1ST Respondent**
VICE CHANCELLOR, UNIVERSITY OF SWAZILAND	**2ND Respondent**

CORAM	:	**MASUKU J**
FOR APPLICANTS	:	**Mr. T.R. Maseko**
FOR RESPONDENTS	:	**Mr. M.B. Magagula**

JUDGEMENT
31st December,2002

The four Applicants are students of the University of Swaziland, studying in one or more of its three campuses. They have approached this Court on an urgent basis, seeking the following relief:

1. Waiving the usual requirements of the Rules of this Honourable Court regarding notice and service of applications, and hearing this matter as one of urgency.

2. Declaring Regulation 1.5.2(a) of the University of Swaziland Regulations for Student Discipline as amended, to be null and void and of no force and effect on the ground that it is inconsistent with Article 13 of the Constitution of the Student Representative Council of the University of Swaziland as approved by the Council of the University of Swaziland in terms of Section 24 of the University of Swaziland Act NO.2 of 1983 as amended.

3. Declaring the Memorandum issued by the University of Swaziland to all student (sic) dated 2nd and 3rd December, 2002 respectively null and void and of no force and effect on the ground that it was issued contrary to the University of Swaziland Act and statutes promulgated thereunder, particularly Section 15 thereof.

4. The Respondents be called upon to show cause if any, on a date and time to be fixed by this Honourable Court why paragraph 2 and 3 above should not be made final.

5. Pending the return date, that paragraphs 2 and 3 operate as an interim order with immediate effect.

This application first served before me on the 6th December, 2002, whereupon the following Order was issued by consent namely, a rule *nisi* was issued calling upon the Respondents to show cause why prayers 2 and 3 should not be made final. The return date was declared to be the 12th December, 2002. Both parties were put to terms to file their Answering and Replying Affidavits, respectively.

Prayer 5 was however not granted nor applied for by the Applicants for the obvious reason that it would work some hardship on the Respondents.

Background

The facts giving rise to this application may be summarised as follows:- The Respondents, through their structures amended Regulation 1.5.2(a) of the Regulations for Student Discipline, which in its amended form prescribes that Joint Student Body Meetings are to be held on Saturdays, whereas the Student Representative Council Constitution (referred to hereinafter as the "SRC Constitution"), provided that special or emergency meetings may be held if the majority of the SRC Executive deem it necessary to do so or on a written request of the holding of the meeting signed by not less than 25% of the Student Body. No days or times were stipulated in the SRC Constitution for holding any category of meetings.

The First Applicant was elected as the Chief Electoral Officer and caused a memorandum to be issued regarding election of Campus Governments. The first Applicant, as empowered by the Constitution convened a student meeting for all the campuses but it was not quorate. Notices for further meetings also hit the same snag. The failure for the meetings to be quorate was attributed to the amended Regulation 1.5.2(a), which was regarded as unworkable as it prescribes that such meetings are to be held on Saturdays when the Students have to attend to their private engagements. The first Applicant and his assistants, due to frustration in their efforts, perceived to be caused by the said Regulation, decided to tender their resignations in the last failed meeting of the 1st December 2002. These resignations culminated in the breakdown of effective lines of communication between the Student Body and the University of Administration.

The Administration had prior to that issued a memorandum on Friday 29th November, 2002, specifying the days and times on which meetings could be held in each of the Campuses and when Joint Student Body Meetings could be held. Due to the inability to hold a Joint Student Body Meeting and out of frustration, the students refused to attend classes in protest of the amended Regulation. Upon a realisation that it was becoming impossible to control the students, the Applicants then decided to withdraw their resignations on the 3rd, 4th and 5th December, 2002, respectively. The University's response to the class boycott was to issue an ultimatum to the students informing them that if they did not return to class on 4th December, 2002 by 09h00, the University would be closed. The students did not adhere to the ultimatum and they were therefor instructed to vacate the University premises as the Institution was declared closed.

It is on those grounds that the Applicants seek the Court to declare both Regulation 1.5.2(a) and the ultimatum referred to above, null and void and of no force and effect.

For the sake of convenience and redeeming time, I decided, with the concurrence of Counsel on both sides, to hear the matter on both the points *in limine* raised by the Respondents and also on the merits and I proceeded to do so. I was addressed by both Counsel extensively in respect of both aspects. I record my indebtedness to them for their industry and assistance rendered to this Court.

Points *in limine*

At the commencement of the hearing three points *in limine* were raised by Mr. Magagula for and on behalf of the Respondents, namely:-

(a) The Applicants have no authority to represent the Students of the University as they purport;

(b) Each of the Applicants does not have the *locus standi in judicio* to move the application in view of the fact that they resigned from their positions and the purported withdrawal of their resignations was ineffectual.

(c) The Applicants, including the students they purport to represent, flouted University Regulations and therefor have unclean hands, which should lead the Court to exercise its discretion against hearing them.

I shall now proceed to analyse and consider each of the above points and to make my Ruling thereon.

(a) Applicants' lack of authority

It was submitted on the Respondents' behalf that in order for the Applicants to legally represent the students, they were required to file a resolution by which they were so authorised to launch the proceedings. It was submitted that failure to provide that authority, particularly once it has been questioned should serve as a bar to the Applicants and that the absence of the resolution is sufficient to lead the Court to the conclusion that the present proceedings are unauthorised.

In my view, the proper approach to be followed in such cases, is akin to that applicable to corporate bodies, i.e. that it is customary and undoubtedly prudent for an applicant company to annex the resolution authorising the deponent to represent the company and to sign the petition or founding affidavit, as the case may be – See **DOWSON & DOBSON V EVANS & KERNS (PTY) LTD 1973(4) SA 136 (ECD)** at 137-8.

In practice however, the Courts have not adopted an inflexible approach to an Applicant's failure to file a resolution. This is exemplified in the following cases:- **DOWSON & DOBSON V EVANS** (*supra*) at page 138A, where Addleson J. stated the following:-

> *"...but the absence of such a resolution is not necessarily fatal. Where, as here, it is expressly alleged and is nowhere denied by the respondent that Lindner is duly authorised by a special resolution of the Company and where, ex facie the papers, the overwhelming probability is that he is so authorised, failure to produce the resolution in question does not conclusively impeach Lindner's authority to act on behalf of the applicant."* (my emphasis). See the other cases therein referred to.

In **MALL (CAPE) (PTY) LTD V MERINO KO-OPERASIE BPK 1952(2) SA 347 (C.P.D.)** at 352 A-B, Watermeyer J. stated the following:-

> *"Each case must be considered on its own merits and the Court must decide whether enough has been placed before it to warrant the conclusion that it is the applicant which is litigating and not some unauthorised person on its behalf. Where, as in the present case, the Respondent has offered no evidence at all to suggest that the applicant is not properly before Court, then I consider that a minimum of evidence will be required from the applicant."*

The question to be decided, in view of the foregoing is whether it can be said that it is the Student Body that is litigating and not some unauthorised and unknown person on its behalf. Mr. Maseko, for the Applicant submitted that all the Applicants were acting in their representative capacities on behalf of the Student Body.

Whilst the concession made by Mr. Maseko may arguably apply to the 2nd and 3rd Applicants i.e. that the Applicants have applied in a

representative capacity, it certainly cannot apply to the 1st Applicant. I say so because whilst the 2nd and 3rd Applicants in their Supporting Affidavits state that they deposed to same in their representative capacities, the 1st and 4th Applicants claim that they derive the authority to act by virtue of their positions as Electoral Officers.

It is clear in my view, regard had to the 1st Applicant's duties as stipulated in Article 10 of the S.R.C. Constitution, that he is charged *inter alia*, with the convening of Joint Student Body meetings and which it is claimed cannot be done due to the promulgation of the amended Article 1.5.2(a). This therefor renders him unable to perform his constitutional duties such that he is in my view entitled *ex officio* to move the application, even in the absence of a resolution from the Student Body. One cannot help but comment that in view of the difficulties in forming a quorum for Joint Student Body meetings deposed to by 1st Applicant and which fact is not denied by the Respondents, it would have been impossible to summon a lawful meeting even if it was for the purpose of taking a resolution to launch proceedings of the nature presently serving before Court.

It is my finding, in view of the foregoing, at least in so far as the 1st and 4th Applicants are concerned, particularly the 1st Applicant, that the absence of a resolution does not *in casu* affect the proceedings insofar as it applies to them. I find it unnecessary to decide this issue as it relates to the other Applicants. I venture no opinion thereon. This point *in limine* therefor must fail and I so order. My finding is however subject to the question of the Applicants' *locus standi,* raised by the Respondents in view of their resignations.

(b) Locus standi in judicio

The Respondents' next line of attack was on the grounds that the Applicants do not have the *locus standi* to bring the proceedings

because they resigned from their positions in the Student Government and that the purported withdrawal of their resignations was ineffectual.

In support of this contention, Mr. Magagula submitted that the withdrawal of the resignations was ineffectual on the grounds that the letters of withdrawal of the resignations, which were dated 3rd and 4th December, 2002, respectively, were only received by the Administration on the 5th December, 2002. There was no student meeting, so the argument ran, to which the issue of withdrawal of resignations was tabled for acceptance of the withdrawals as the University, as far as the students were concerned, had already been closed.

In support of his contention, Mr. Magagula referred the Court to **RUSTENBURG TOWN COUNCIL V MINISTER OF LABOUR AND OTHERS 1942 TPD 220** at **224**, where Murray J. stated the applicable principles in the following language:

> *"The giving of notice is an unilateral act: it requires no acceptance thereof or concurrence therein by the party receiving notice, nor is such party entitled to refuse to accept such notice and to decline to act upon it. If so, it seems to me to follow that notice once given is final, and cannot be withdrawn-except obviously by consent-during the time in excess of the minimum period of notice."*

Unfortunately, the letters of resignation were not annexed to the papers in order for one to see the contents. In my view however, the Administration should have no interest or preference in the office bearers of the Student Government, save their identity. All that they require is information of who the office bearers are and if they have resigned, to be advised as to their replacements. If there has been a change of mind of those who have resigned, the persons to decide

whether the withdrawal of resignations is consented to must be the students, to whom the resignation should be addressed, the Administration being notified of the decision.

There is no iota of evidence on the papers before me that any student, who would have a substantial interest in the office bearers has taken issue with the Applicants' withdrawal of their resignations. In this regard, sight must not be lost of the circumstances under which the Applicants tendered their resignation and which the Respondents have not put in issue, namely that it was out of sheer frustration. When it became evident that their absence was inimical to the interests of both the Students and the Administration, the Applicants then withdrew their resignations in order to open the lines of communication. In the circumstances of this case, it is my opinion that the case does not assist the Respondents as it appears from objective facts that the withdrawal of the resignations was accepted by the Students. It would also appear to me that to transpose principles applicable to employment law to issues of student government, which is normally done on a voluntary basis, may be inappropriate.

I know of no law, rule, regulation or article in this case, which precludes a party who has previously resigned from withdrawing that resignation, particularly as here, where the Applicants' constituency does not raise issue therewith and none which is on all fours has been pointed out to me. The Applicants have in their papers cited an example of a situation where a resignation was withdrawn. In the absence of any indication that the withdrawal of the resignation resulted in the fracture of the S.R.C. Constitution, I am of the considered view that this point *in limine* is also liable to dismissal. The conduct of the Respondents, on receipt of the letters of withdrawal is in any event not one inconsistent with accepting the withdrawals. If the Respondents did not accept the withdrawals, wherever that authority would have come from, they did not register

their protest and non-recognition of the purported withdrawals, which indication would have necessitated the Applicants and their constituency to take appropriate steps. The Respondents' attitude towards the withdrawal of resignations appears to me to have all the hallmarks of an afterthought.

It is my finding therefor that the Applicants do have the *locus standi in judicio* in this matter. They clearly have a direct and substantial interest in these proceedings, both in their official capacities as well as individual students. I accordingly declare, as I hereby do, that this point of law must also fail.

© **The Doctrine of Clean Hands**

Launching his last salvo, Mr. Magagula urged this Court to use its discretion by refusing to hear the Applicants as they had dirty hands, thereby rendering them unfit to approach and touch the pure fountains of justice as it were. In support of this contention, Mr. Magagula strenuously argued that the Applicants and the entire Student Body had engaged in an unlawful boycott, thereby violating University regulations and procedures. He harped upon the following phrase, occurring in paragraph 30 of the 1st Applicants' paragraph 3 headed "Balance of Convenience", found in the Founding Affidavit:-

> *"The problem and misunderstanding between the students and the administration has not been resolved by the irregular closure of the University. So much so that even when the second semester commences the dispute will still be unresolved and the boycott may continue."* (My emphasis)

Mr. Magagula argued that the underlined portion above reflected a disdain of the University procedures and depicted the Students as hell-bent on continuing with the unlawful boycott. It was urged that

for the Court to grant an audience to such people who have the temerity to threaten to continue with an illegal boycott would be against public policy and would set a bad example.

The Court was in this regard referred to the case of **PHOTO AGENCIES (PTY) LTD V THE COMMISSIONER OF THE ROYAL SWAZILAND POLICE AND THE GOVERNMENT OF SWAZILAND 1970-76 SLR 398** at 407, where Nathan C.J. cited the following excerpt from **MULLIGAN V MULLIGAN 1925 WLD 164** at 167-168, with approval:-

> *"Before a person seeks to establish his rights in a court of law he must approach the Court with clean hands; where he himself, through his own conduct makes it impossible for the process of the Court (whether civil or criminal) to be given effect to, he cannot ask the Court to set its machinery in motion to protect his civil rights and interests... Were the Court to entertain a suit at the instance of such a litigant it would be stultifying its own processes and it would, moreover, be conniving at and condoning the conduct of a person, who through his flight from justice, sets the law and order in defiance."*

In response, Mr. Maseko submitted that if it is indeed true, as alleged, that the Applicants contravened University regulations, then it was still open to the University to subject the erring Students to the disciplinary procedures enshrined in the regulations and rules of conduct by Students.

One of the prime issues that persuaded the Court to uphold the doctrine of unclean hands in the PHOTO AGENCIES case (*supra*) was the question of public policy and international relations. In that case, the Applicant had moved an application for the release of a consignment of arms imported from Brazil, eventually destined for the

Republic of South Africa, contrary to and thereby circumventing a United Nations Security Council resolution imposing an embargo on the sale of arms to South Africa. Swaziland was used as an address to perpetuate this scheme of deception. The Court refused to use its processes to give effect to such a nefarious scheme, which would earn this country the censure and opprobium of the international community.

The operative words, in the MULLIGAN judgement (*supra*) are in my view the following, "whether the Applicant himself through his own conduct makes it impossible for the process of the Court (whether civil or criminal) to be given effect to..."

The operative standard above accords with the words that fell from the lips of Lord Denning in **HADKINSON V HADKINSON (1952) ALL ER 571 at 574-5**. The learned Judge had this to say:-

> *"It is a strong thing for a Court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which the Court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing a compliance. Applying this principle I am of the opinion that the fact that a party has disobeyed an order of Court is not of itself a bar to his being heard, but if his disobedience is such that so long as it continues it impedes the course of justice in the cause by making it more difficult for the Court to ascertain the truth or to enforce the orders which it may make, then the Court may, in its discretion, refuse to hear him until the impediment is removed or good cause is shown why it should not be removed."*

In this case, there is no evidence before Court that the Applicants themselves actually breached the University rules and regulations by

engaging in the boycott. It does not necessarily mean that because the students, (and there is no evidence that all of them engaged in the boycott) that the Applicants were party thereto. More importantly in my view, Mr. Magagula failed to suggest the manner in which the Students' conduct in breach of the University regulations could in any way make it impossible for the process of this Court to be given effect to. That is in my view the most serious consideration.

Whilst the breach of the University regulations cannot be condoned by this Court, there is nothing that warrants that the Applicants or the Student Body, for that matter, be precluded from approaching the Courts, bearing in mind that the decision to preclude a party from a hearing is not lightly taken as it may have the most calamitous consequences to a party. I therefore agree with Mr. Maseko that if it is proved that the Applicants and/or the students have run roughshod over the University regulations, then the proper disciplinary procedures provided for in the appropriate enactments must be set in motion at the appropriate time, if the University be so advised.

The other difficulty with Mr. Magagula's proposition relates to the conditions to be attached, if any, to the Applicant's preclusion from approaching the Courts. I say so because it is not possible for them to now tender to return to the University to abide by whatever conditions are imposed. This I say in cognisance of the fact that the University is closed, whereas the resolution of the *lis* between the parties is likely from all indications to restore calm to the disputants.

More importantly, the considerations that the Court takes into account in closing its doors to a litigant must be closely scrutinised as did Thring J. in **SOLLER V SOLLER 2001(1) SA 570 (CPD)** at 573, E, where the learned Judge reasoned as follows:-

> *"It is not lightly that this Court will close its doors to a litigant. However, a litigant who has contemptuously turned his back on those doors and has repeatedly treated with contumely (sic) the Judges who sit within them, as the applicant has done, must not be surprised if when he attempts to re-enter the halls of justice to seek relief, he finds the way barred to him until he has purged his contempt before the very tribunal from which he now seeks justice."*

In the absence of such serious conduct gravely affecting public policy and which impacts negatively on this Court's ability to enforce its processes, I find that this point should also fail. See also in this regard the excerpt from **HADKINSON** *(supra)* quoted in full above. In doing so, the Court must in no way be regarded or perceived as condoning or legitimating the alleged illegal conduct of the students in any way. The University regulations must be followed to the letter by the University itself and Students alike and if there is any breach thereof by whichever party, then the appropriate measures must be invoked.

When the matter proceeded on the merits, there is a legal point which was raised by the Respondents, which in my view should have been included amongst the points *in limine.* It would be proper and convenient to address it at this juncture and as the fourth point *in limine.*

(d) <u>Failure to exhaust local remedies</u>

It was argued on behalf of the Respondents that the Applicants, notwithstanding that they knew of the existence of the channels of appeal provided for in the Statutes of the University, they decided nonchalantly to prematurely bring this matter to Court without

exhausting the remedies therein provided. It was argued therefor that the application should be dismissed with costs.

In response, Mr. Maseko argued that there was no need for the Applicants to exhaust local remedies because firstly, the Council to which an appeal from Senate lay had associated itself with Senate's conclusions and reasoning. In this regard, the Court was referred to annexure "M" of the Founding Affidavit, recording a letter from the University Council which reads as follows, in part;

"11th September, 2002

The Secretary-General
Student Representative Council
C/o University of Swaziland
KWALUSENI

Dear Sir,

RE: YOUR APPEAL TO COUNCIL

The University Council, at its meeting held on 28th August, 2002 received and considered your appeal against decisions of Senate on:

- *Conditions for re-admission of students after the closure of Kwaluseni Campus on 2001/02;*

- *New regulations for holding student body meetings.*

After careful consideration of the reasons for your appeal and other relevant factors, the Council resolved to uphold the decisions of Senate on the two issues. However, on the issue of the new regulations for

holding student body meetings, Council noted that the position may be reviewed in future."

This letter was signed by Mr. S.S. Vilakati, the 1st Respondent's Registrar. Mr. Maseko further argued that the Applicants could therefor not be said to have had an effective remedy if the matter was referred by them back to Council, in view of the contents of the letter under reference. I also understood Mr. Maseko to argue that there was no duty on the Applicants' part to follow the local remedies available. In this connection, he referred the Court to Lawrence Baxter, "Administrative Law", Juta & Company 1st ed, 1984, at page 720, where the learned author cited with approval a passage from **GOLUBE V OOSTHUIZEN 1955(3) SA 1(T)** at 4, where De Wet J stated the following:-

> *"The mere fact that the Legislature has provided an extra-judicial right of review or appeal is not sufficient to imply an intention that recourse to a Court of law should be barred until the aggrieved person has exhausted his statutory remedies."*

I have recently had occasion to consider the very question of exhaustion of local remedies in **JABULANI B. SIMELANE VS THE COMMISSIONER OF POLICE AND THREE OTHERS CIVIL CASE NO.755/2000** at page 11. In addressing the question whether domestic remedies should be exhausted first and therefor deciding whether the matter should be deferred first, I cited from Baxter (*op cit*) at page 720, where the learned author stated that the operative and paramount considerations are the following:-

(a) *whether the domestic remedies are capable of providing effective redress in respect of the complaint;*

(b) *whether the alleged unlawfulness has undermined the domestic remedies themselves.*

In order to address the two requirements, it is in my view necessary for one to chronicle and place the events in proper historical perspective. After the Council wrote annexure "M", referred to above, it is common cause that the Registrar received an application from the 1st Applicant and in which a request was made for the convening of a mid-week Student Body meeting. The memorandum in reply thereto, dated 12th November, 2002, reads as follows and is marked "N" to the Replying Affidavit:-

"RE: YOUR APPLICATION TO CONVENE A MID-WEEK MEETING

I am writing to acknowledge receipt of your letter dated 8th November, 2002 on the abovementioned subject matter.

As you are aware, in terms of Regulations for Student Discipline, as amended by Senate and endorsed by Council recently, Student Body Meetings can only be held during the day on Saturdays.

You may however, make representations to the Senate on the matter at a regular meeting to be held on Tuesday, 19th November, 2002.

In the meantime you are strongly advised to adhere to the regulations."

On the 29th November, after the meeting referred to in annexure "N" above, the Acting Registrar wrote a memorandum of even date, marked "D2", which was addressed to the Chairpersons of the Campus Governments, whose contents follow herein below:-

"RE: CONVENING OF STATUTORY/EXTRA-ORDINARY STUDENT BODY MEETINGS

The University Senate at its meeting held on 29th November, 2002 resolved as follows:-

1. *That the domestic Campus should hold their Statutory/Extra-Ordinary Domestic Student Meetings on Monday afternoon, between 1.00pm and 5.00pm.*
2. *That the Kwaluseni and Mbabane Campuses should hold their Statutory Extra-Ordinary Domestic Student Body Meetings on Friday afternoons between 1.00pm and 5.00pm.*
3. *That Joint Statutory/Extra-Ordinary Student Body Meetings be held on Friday afternoon between 1.00pm and 5.00pm and/or weekends between 7.00am and 4.00pm."*

It is clear from the contents of annexure "N" that the issue of the holding of meetings by students was not closed, hence an invitation was extended by the Acting Registrar to the 1st Applicant, to make representations to Senate on the 19th November. The Respondents referred to annexures "LM1", being such representations from the Luyengo, Kwaluseni and Mbabane Campuses. I immediately discounted the memorandum from Luyengo as having been a response to annexure "N", for the reason that it pre-dated annexure " N", it bearing the date 31st October, 2002 on the face of it.

It is in my view however clear that it was addressed to the Senate's Secretary and suggested that Monday would be suitable for those students. This Senate considered, as can be seen from annexure D2 of the Replying Affidavit. I am prepared to accept the memoranda from Kwaluseni and Mbabane as having been written in response to annexure "N". Mr. Maseko did not argue otherwise.

It is in my view clear that Senate considered the representations, conceding in the process that the issue was not closed and as a result accommodated the Students by sanctioning meetings, not for a particular request or a limited duration of time, but rescheduling and in effect amending Regulation 1.5.2(a) to the extent reflected in annexure "D2".

The students did not take advantage of the amendment contained in annexure "D2", in order to at least experiment how the changes contained therein would affect or improve their quest to form a quorum in Student Body meetings. One thing led to another and the boycott eventually resulted, leading to the closure of the institution. In my view, Mr. Magagula's point that the local remedies were not exhausted appears to be valid because not only did the Students not seek to take advantage of annexure "D2", but they never appealed at all to Council against Senate's resolution contained in "D2". I say this because Senate's shifting of positions on the Regulation in issue in my view afforded the students a new and fresh opportunity to appeal to Council. This they evidently did not do.

In considering the two pronged requirements by Baxter referred to above, it is my considered view, in the light of the events recorded above that the domestic remedies available i.e. appealing again to Council against Senate's decision, were capable of providing effective redress to the Students. Council was clearly at large to deal with the matter, juxtaposing in the process, the Students' contentions on the one hand, and Senate's resolution on the other. Mr. Maseko's contention that Council had dealt finally and definitively with the issue on 9th September 2002 must be rejected as it is not supported by the letters and events considered above.

Regarding (b), it would appear, and I stand corrected on this, that the question of unlawfulness of the Regulation in question has, from the correspondence filed of record, been raised before this Court for the very first time. None of the 1st Respondents' bodies, it would appear were ever called upon to decide the issue as presently presented. No unlawfulness has in this case been raised which would be regarded as having undermined the domestic remedies themselves. No question of bias, prejudice or such other improper conduct has been raised which would serve to undermine the local remedies *in casu.*

It is well to remember the relevant factors that Courts take into account in determining the course of these matters. In this regard, Baxter, (*op cit*) at page 720-721 cites the following excerpt from **LAWSON V CAPE TOWN MUNICIPALITY 1982(4) SA 1**© at 6-7 with approval. The following appears:-

> *"In considering the question whether, on the proper construction of the statute, judicial review is excluded or deferred, Courts have regard to a number of factors. Among these are: the subject matter of the statute (transport, trading licences, town planning and so on); the body or person who makes the initial decision and the basis on which it is to be made; the body or person who exercises appellate jurisdiction; the manner in which that jurisdiction is to be exercised, including the ambit of any 'rehearing' on appeal; the powers of the appellate tribunal, including its power to redress or 'cure' wrongs of a reviewable character; and whether the tribunal, its procedures and powers are suited to redress the particular wrong of which the applicant complains."*

It would not do to merely pay lip-service to these important considerations, which have in part been dealt with above. It is in my view important *in casu* that the matter be deferred for the reasons that

although some legal issues do arise, they are interwoven with issues of policy, which should best and first be dealt with by the institution concerned before the intervention of the Courts.

It is my considered view that this is a proper case for deferment until the local remedies, which have clearly not been exhausted are fully exhausted. In my finding, this point is well taken and I therefor find it unnecessary and inopportune to consider the matter on the merits and on which as I have stated before, I was fully addressed.

(e) Conclusion

In sum, the application is deferred, pending the exhaustion of local remedies. Costs will follow the event.

T.S. MASUKU
JUDGE