

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 3446/08

In the matter between:

**SIBUSISO MABHANISI DLAMINI & OTHERS  
APPLICANTS**

and

**THE CHAIRMAN OF THE ELECTIONS &  
BOUNDARIES COMMISSION  
THE ATTORNEY GENERAL  
RESPONDENT  
SIBUSISO NKHAMBULE  
RESPONDENT  
PURINE BHEMBE  
RESPONDENT  
FRANS MAZIBUKO  
RESPONDENT**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup>**

**3<sup>rd</sup>**

**4<sup>th</sup>**

**5<sup>th</sup>**

CORAM: Q.M. MABUZA-J

FOR THE APPLICANTS: MR. MSIBI

FOR THE RESPONDENTS: MR. T. DLAMINI & MR. MSIMANGO

**RULING 3/10/08**

[1] re: Withdrawal of Case

- Mr. Msibi submitted that when he relaunched the application, it was the Registry that gave him the same case number.

- The consent orders on the file covers indicates to me that there was condonation of whatever ill there was with the 2<sup>nd</sup> application.

[2] re: Urgency

This point has been overtaken by events and has fallen away.

[3] There are two issues that are of paramount importance and that influence the courts decision.

- The report by the Registrar shows that the observation by consent of the parties hereto showed that there were no unused ballot papers in respect of member of Parliament, Bucopho and Indvuna yeNkhundla. This leaves a doubt in the mind of the court as to the possibility that more people may have wished to vote. In this respect the court has regard to the fact that voting started late on the 23/8/08 because the ballot papers arrived late. That even though voting started on time on the 24/8/08 the ballot papers ran out at 12.30 p.m. until 15.45 p.m. when more ballot papers were provided and these also got finished.

[4] I am however puzzled as to why the member for Bucopho and Indvuna yeNkhundla would want the primary elections set aside and started afresh because they won in their respective categories. If I set aside the primary elections and they fail to win what will become of them? I shall however, exercise my

discretion in their favour and allow them their continued victory as nobody has challenged them.

[5] I am also persuaded by the fact that there is only a difference of 7 votes between the winner and the Applicant. The margin is fairly narrow.

[6] I order as follows:

- The primary elections for member of Parliament only are hereby set aside and not those for Bucopho and Indvuna yeNkhundla and ordered to start ***de novo***.
- Each party to pay its own costs.

**Q.M. MABUZA-J**