



## **IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CIVIL CASE NO. 3299/08

In the matter between:

ALFRED BOY BOY MANDZEBELE

APPLICANT

and

MPUMELELO MAMBA N.O.

1<sup>ST</sup> RESPONDENT

LUCY DLAMINI N.O.

2<sup>ND</sup> RESPONDENT

THE ELECTIONS & BOUNDARIES

COMMISSION

3<sup>RD</sup> RESPONDENT

THE COMMISSIONER OF POLICE

4<sup>TH</sup> RESPONDENT

THE ATTORNEY GENERAL

5<sup>TH</sup> RESPONDENT

ESTHER DLAMINI

6<sup>TH</sup> RESPONDENT

TERESA HLOPHE

7<sup>TH</sup> RESPONDENT

NICOLENE MABUZA

8<sup>TH</sup> RESPONDENT

DUMSANI ZWANE

9<sup>TH</sup> RESPONDENT

MPHIKELELI MSIBI

10<sup>TH</sup> RESPONDENT

CORAM

: Q.M. MABUZA -J

FOR THE APPLICANT

: MR. M. MABILA

FOR THE 1<sup>ST</sup> - 5<sup>TH</sup> APPLICANTS

: MR. T. DLAMINI

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FOR THE 6<sup>TH</sup> RESPONDENT

: MR. M. MDLULI

FOR THE ELECTIONS &

**JUDGMENT 23/9/08**

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[1] This matter came by way of urgency for inter alia the following orders:

1. That the elections process for Member of Parliament under Mbabane East Constituency be set aside.
2. That the ballot box for Member of Parliament under Mbabane East Constituency be not opened pending the outcome of the investigations pertaining to the seal thereof.
3. That in the event the Respondents proceed with the opening of the ballot box referred to in prayer 2 above the results thereof be void.

Prayers have been overtaken by events. I will deal with prayer (1).

[2] Primary elections for Mbabane East were conducted on the 23/8/08 and 24/8/08. The result thereof was as follows:

Esther Dlamini (6 <sup>th</sup> Respondent)	=	963
Alfred Mndzebele (Applicant)	=	151

Mphikeleli Msibi (10 <sup>th</sup> Respondent)	=	97
Dumisa Zwane (9 <sup>th</sup> Respondent)	=	94
Colleen Mabuza (8 <sup>th</sup> Respondent)	=	39
Theresa Hlophe (7 <sup>th</sup> Respondent)	=	50

[3] Prayer is to the effect that the primary elections be set aside because the ballot box was tampered with. In paragraph 12 the Applicant sets out his complaint. He states that the official seal of the ballot box was torn. He referred the court to photographs he had taken in order to bolster the his complaint. The photographs are not clear and cannot help the court nor the Applicant at all. He states that he approached 1<sup>st</sup> and 2<sup>nd</sup> Respondents and enquired as to what had happened to the seal. He further communicated his suspicion to them that the votes had been tampered with. He further informed them that the ballot box in question should not be opened pending an outcome of an investigation by the 4<sup>th</sup> Respondent as to who was responsible for the torn official seal.

[4] When the matter came before my brother Annandale J, he ordered a verification of the votes. This was done in the 4<sup>th</sup> and 5<sup>th</sup> September 2008. The ballot papers were thereafter taken into the custody of the court

official, Mr. Shongwe who was seized with the verification process. He placed the ballot papers in the boot of a Government motor vehicle SG 81 JU which is used by the staff of the High Court. The ballot papers remained there until the 10/9/08 when another verification exercise was carried out where only the Applicant's attorney was present but Mr. Dlamini and Mr. Mdluli were absent. The ballot papers were removed from the boot of the Government car and taken to Mr. Shongwe's office where this exercise was carried out. They remained in Mr. Shongwe's office until the verification exercise carried out by Mrs Maziya took place. The contents of the report which was filed by Mrs. Maziya and that of the supplementary report of the 10/9/08 are not dissimilar.

- [5] The Applicant does not state how the votes were tampered with nor how he was affected by the tampering of the votes. Were the votes for the Applicant removed or were votes for 6<sup>th</sup> Respondent added to? The Applicant does not address this aspect as a result it is not clear how he was prejudiced. He got 151 votes and the 6<sup>th</sup> Respondent 963 votes. He does not address how the wide gap came about and how he will close it if I agree to set aside the primary elections. He has not stated whether or not his

prospects of success are good and on what he premises this belief on.

[6] In their answering affidavits the 1<sup>st</sup> and 2<sup>nd</sup> Respondents deny the accusations levelled at them. This creates a dispute of fact which the applicant ought to have foreseen. The Royal Swaziland Police were ordered by the Court to investigate the allegations of the Applicant. Their report concludes by stating that the ballot boxes were not tampered with and that the allegations by the complainant are baseless and unfounded.

[7] I agree with them. In my considered view the ballot boxes and votes were not tampered with by the 1<sup>st</sup> and 2<sup>nd</sup> nor 6<sup>th</sup> Respondents. The ballot papers were highly compromised when they left Nkanini and by remaining in the boot of a car and by remaining in the office of Mr. Shongwe. Both the boot and his office are unsafe nor secure. The court order did not authorise their removal from Nkanini offices. But of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's

[8] It will serve no useful purpose for me to set aside the results of the primary elections. The candidates that

lost did so dismally including the Applicant. Short of a miracle there is no way that he can bridge the gap between him and the 6<sup>th</sup> Respondents. The application is dismissed with costs.

**Q.M. MABUZA -J**