



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3724/08

In the matter between:

SANDILE NXUMALO

APPLICANT

and

**ELECTIONS AND BOUNDARIES COMMISSION AND
5 OTHERS**

<u>CORAM</u>	:	Q.M. MABUZA -J
FOR THE APPLICANT	:	MR. M. SIMELANE
FOR THE 1 ST - 5 TH RESPONDENTS	:	MR. T. DLAMINI
FOR THE 6 TH RESPONDENT	:	MR. SHEKWA

JUDGMENT 21/11/08

[1] The application herein was brought upon a certificate of urgency. The Applicant sought a rule nisi seeking inter alia the following orders:

- 2.1 That the secondary elections process for Members of Parliament under the Somntongo Inkhundla conducted on the 19th September 2008 be set aside.
 - 2.2 In the event prayer 2.1 is not granted the ballot boxes for Member of Parliament from the Vimbizibuko polling station be declared not to form part of the voting papers that determined the winner for the Somntongo Inkhundla.
 - 2.3 That the counting should start afresh.
3. That the Order sought in Prayer 2.1, 2.2 and 2.3 above operate with immediate effect.
 4. Cost in the event of opposition.

[2] The 6th Respondent won the elections with 828 votes. The Applicant came second with 782 votes. The difference was 46 votes. At the hearing hereof only prayer 2.1 was pursued. His cause of complaint is that after the voters had voted the 4th Respondent failed to seal the ballot boxes on the sides and they were loaded on the 1st Respondent Kombi in a non-secure manner. The 4th Respondent informed the candidate that he had run out of sealing tape. The 1st Respondent's Kombi which had the ballot boxes disappeared along the way to the police station and arrived some 30 - 40 minutes later at the police station where the ballot boxes were kept for the night. He suspects that mischief occurred during the 30 - 40 minutes in that the ballot papers could have been tampered with, namely that some could have been removed and more added in favour of the 6th Respondent. This then is the alleged

irregularity.

[3] The Registrar of the High Court in the presence of the parties did a verification exercise and the ballot papers appeared to be in order. The allegation that mischief may have occurred during the 30 - 40 minutes absence is sheer speculation and nonsensical. It flies in the face of the verification exercise. Furthermore the alleged irregularity is too minor for this Court to order the election set aside. This Court has in numerous cases held that the irregularities complained of must be gross and should affect a majority of the voters or the result of the election.

[4] The application is dismissed with costs.

Q.M. MABUZA -J

