

HIGH COURT OF SWAZILAND

Held at Mbabane

Bongani Dlamini

1st Applicant

Sydney Nxumalo

2nd Applicant

vs

Chairman, Elections and Boundaries Commission

1st Respondent

Attorney General

2nd Respondent

Thandi Nxumalo

3rd Respondent

Make Msimango

5th Respondent

Civil Case No.3 882/08

Coram MAPHALALA PJ

For the Applicant MR. P. MSIBI

For the Respondent MR. T. MLANGENI MR. T.L. DLAMINI

Judgment

17th July 2009

[1] On the 14 November, 2008 this court dismissed this application on points *in limine* raised by the Respondents and stated that full reasons will be advanced in due course and following are those reasons.

[2] On the 6th November, 2008 the Applicants filed under a Certificate of Urgency an application in the following terms:

- "a) Dispensing with the normal time limits forms of service stipulated by the rules of court applicable in ordinary application proceedings and hearing this matter as a one of urgency.
- d) That an order do hereby issue declaring the secondary elections held under the Manzini South Inkhundla as illegal, irregular and not free and fair for the reasons appearing in the founding affidavit attached hereto.
- e) Directing the 1st Respondent to conduct a re-election at the Manzini South with immediate effect.
- f) That an order do hereby issue declaring null and void the election and nomination of the third Respondent as a member of the Parliament under the Manzini South Inkhundla.
- g) That an order do issue disqualifying the third Respondent from being a candidate for Member of Parliament under the Manzini South Inkhundla.
- h) Awarding Applicant cost of the application.
- i) Such further and/or alternative relief as the court deems fit."

The founding affidavit of the Applicants is filed in support of the application. The narrative of events is outlined thereto.

Further a supporting affidavit of one Mr. Sydney Dlamini is also filed. So is a confirmatory affidavit of one Solomon Shekwa who is a member of the Inner Council Manzini South Inkhundla. Furthermore, another confirmatory affidavit of one Mr. Augustine Dlamini is also filed. He was the Secretary of the Inner Council of Moneni.

The Respondents have filed opposing affidavits. The main opposing affidavit is that of Pitoli Shabangu who is Chief Mshositi's *indvuna* and chairman of the Inner Council

under Moneni chiefdom where the issues canvassed in the application took place. That at all material times to the allocation of land to Thami Nxumalo at Moneni he was occupying this position. Further a confirmatory affidavit of Lucy Ntshakala is also filed.

[6] The first and second Respondents have filed an answering affidavit where two points *in limine* are raised. Firstly, that the matter was not urgent and secondly, that the Applicants have not complied with the statutory procedure for dealing with objections to the inclusion of the name of the voter in the voter's roll of a particular place.

[7] I must mention that this judgment is concerned with these two points. On the first point of urgency in view of the time that has elapsed I will consider the application in the long form. In any event, the court issued its ruling on the matter as stated earlier on in para [1] *supra*. The only issue for decision therefore is the issue of non-compliance with the Voter's Registration Order.

[8] The first and second Respondents contend that the Applicants have not complied with the statutory procedure for dealing with objections to the inclusion of the name of a voter in the voter's list/roll of a particular *Inkhundla*, if it is alleged that the voter does not belong to that particular *Inkhundla*.

[9] The Respondents further contend that after the registration of the voters is finished, the voters' list/roll is published and kept open for public inspection. If any person has an objection to the inclusion of the name of any voter in the voters' list of that particular *Inkhundla*, then he/she is to lodge an objection with the Electoral officer of that *Inkhundla*. In this regard the court was referred to Section 12 and 13 of the Voters' Registration Order No.3 of 1992.

[10] That in the present case the voters roll was kept open for inspection by the public at all the *Mphakatsi*, and no objection was made about the 3rd Respondent's name in the Manzini South *Inkhundla*. There is no evidence that has been shown to prove that the

objection about the inclusion of the name of the 3rd Respondent in the voters' list/roll of Manzini South was made to the Electoral officer for Manzini *after* inspection of the voters' list/roll.

[11] Furthermore the Respondents contend that objections to the inclusion of the name of a voter in the voters' list of a particular *Inkhundla* are first to be determined and decided at the level of the Elections Officer of that particular *Inkhundla*. An appeal against the decision of the elections officer is to be determined by a Magistrate, in terms of statute law. In this regard the Respondent cited Section 13 and 15 of the Act. That in Section 15 a matter or complaint can only be heard by a Judge of the High Court on appeal against the decision of the Magistrate.

[12] After I have considered the arguments of the parties and the provisions of the Voters Registration Order I have come to the view that the application violates the statutory provisions of the Act and does not comply with the statutory procedure for dealing with the complaint that has been brought to this court. The matter has never at any stage been referred to the Magistrate Court, but was immediately brought before this court.

[13] I have also come to the considered view that the argument advanced by the Applicants in the replying affidavit that the statutory procedure laid down in the Voters Registration Order was waived by the Elections Officer Mr. Bhembe to be unsound. In this respect I am in total agreement with the Respondents that Mr. Bhembe did not have the power and authority to waive the application of the statute. The procedure is required to be followed in terms of the law.

[14] The fact that Applicants have not protested through the stated procedures in paragraph [11] *supra* the Applicants should be deemed to have agreed and acquiesced to the 3rd Respondent candidacy under Manzini South *Inkhundla*.

[15] The applicants did not challenge the qualification of the 3rd Respondent to stand in for the elections as a candidate immediately after the nomination, during the primary elections, during the introduction and campaign period, during the secondary elections and immediately after the secondary elections. Their complaint was only raised after the results were announced and the 3rd Respondent declared the winner of the elections.

[16] I wish to comment *en passant* that the conduct of the elections is a specialised field and therefore it is imperative to observe the tenets of the statute that governs them.

In the result, the above are the reasons for the order made by the court as mentioned in paragraph [1] *supra*. The Applicants to also pay costs of the application.

MAPHALALA PJ