



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No.1822/12

In the matter between:

PIETER PIETERSE

Appellant

and

GOODNESS LUKHELE

1ST Respondent

BONGANI MNGOMETULU

2ND Respondent

MELUSI HLANZE N.O.

3RD Respondent

MANDLA MAVUSO N.O.

4TH Respondent

HLATIKULU TOWN BOARD

5TH Respondent

MINISTRY OF HOUSING & URBAN DEVELOPMENT

6TH Respondent

ATTORNEY GENERAL

7TH Respondent

Neutral citation: *Pieter Pieterse vs Goodness Lukhele & 7 Others (1822/12) [2012] SZHC*
268 (21 December 2012)

Coram: **MAPHALALA PJ**

Heard: 1 NOVEMBER 2012

Delivered: 21 DECEMBER 2012

Summary: The Application is whether the matter was urgent by virtue of the fact that 1st and 2nd Respondents were campaigning and were due to stand for elections conducted on Saturday 3 November 2012. The court held that the matter was urgent and granted the Application with costs.

[1] On the 1st November, 2012 that was yesterday an Application under a Certificate of Urgency was filed before this court for an order in the following terms:

- “1. Dispensing with the procedures and time limits pertaining to formal manner of service and filing of papers (and hereof set out in the Rules of the above Honourable Court and directing that the matter be heard as of urgency);
2. Condoning the Applicant for non-compliance with the said Rules of above Honourable Court;
3. Ordering and directing the 1st Respondent to produce proof that she is up to date and/or she is not owing rentals to the Hlatikulu Town Board;
4. Ordering and directing the 2nd Respondent produce proof that he resides within Hlatikulu Township and/or he lawfully runs a business within the township and/or he owns immovable property in the township;
5. Alternatively;

- 5.1 Interdicting and restraining the Respondents from standing for the elections to be conducted by the Hlatikulu Town Board on the 3rd November, 2012;
 - 5.2 Ordering and declaring that the Respondents are disqualified from standing for the elections and/or for being elected as councilors of Hlatikulu Town Board;
 - 5.3 That prayer 3 and prayer 4 above operate as an interim order within immediate effect.
6. Costs of this Application in the event of opposition;
 7. Further and/or alternative relief.”

[2] The Application is founded on the affidavit of the Applicant where he has set out the sequence of events in this matter. In the said founding affidavit he has stated at paragraph [26] thereof as follows:

“I discovered all of the aforementioned information in respect of the 1st and 2nd Respondent, and/or finalized my investigations on or about the 25th day of October, 2012 and I duly informed the Electoral Officer, one Melusi Hlanze as well as the Town Clerk about the ineligibility of the Respondents but they advised me that it is within our rights as candidate to challenge their qualifications in court if we so wish.”

[3] The 1st and 2nd Respondents oppose the above orders and have filed opposing affidavits which addresses the merits of the dispute.

[4] When the matter was called at 9.30am on the 1st November, 2012 the attorney for the 1st and 2nd Respondents indicated that he wished to raise two points *in limine* for the bar outside the answering affidavit. These two points revolves around the procedure to be followed in filing objections to these elections. The second issue raised *in limine* is that of urgency. The court stood the matter down until 3.00pm as the court was still engaged in another matter that was on the roll for the day.

[5] Indeed, at 3.00pm the court heard the various of arguments from the attorneys in this case and postponed this matter to today 2nd November, 2012 to lead the evidence of the Electoral Officer. I must say this came after Miss Mdluli for the Swaziland Government made submissions to the effect that the two Respondents has been reinstated in the current list for candidates. It may be that they have been reinstated but that does not help the court as the deficiencies pointed out by the Applicants have not been removed. Therefore the calling of this officer to give evidence is neither here nor there.

[6] I have considered the affidavit filed or record and the arguments of the parties on the two points *in limine* and I agree *in toto* with the submissions of the Applicant. First, I agree with the Applicant's attorney that Applicant is entitled to approach the court for a

remedy in this election moreso, after being advised by the Electoral Officer himself on the 25th October, 2012 as stated above in paragraph [2] of this judgment.

[6] I find that in view of paragraph [2] of the Applicant's founding affidavit urgency has been proved in accordance to the Rules of this Court. See *Shell Oil Swaziland Ltd vs Motor World (Pty) t/a Sir Motors Appeal No.23/2000* (unreported).

[7] Furthermore, there is an uncanny aspect in respect of the 1st Respondent involving the payment of rent. That according to legislation a candidate who is in default of payment of rent is disqualified from standing for election. On seeing this flaw the 2nd Respondent has quickly paid the said outstanding rent. In my view, she has approached this court in bad faith.

[8] In respect of 2nd Respondent the Applicant has averred in paragraph [23] of his founding affidavit as follows:

“[23] In respect of the 2nd Respondent, I did conduct my investigation also with the Hlatikulu Town Board, in particular with the Clerk and discovered that the 2nd Respondent is not occupying and/or owning any immovable property in the Hlatikulu Township, and is also not running any lawful business with a valid licence and/or permit within the Township. I also personally know the 2nd Respondent that he does not reside within the

Township boundaries and is from Mahlshaneni a place which is far from or out of the Hlatikulu Township boundaries thus is not qualified to stand for the elections or to be registered as a voter.”

[9] I must mention that nothing is said in respect of the 3rd and 4th Respondents it is only 1st and 2nd Respondent who seem to be the subject matter of the case. Therefore, the court finds that they have not filed an opposition and therefore the dispute will be decided in their absence. I also do not make any orders against them as nothing was said about them in arguments.

[10] All in all, it is my considered view that in the circumstances the order ought to be granted forthwith. Therefore, an order is granted for an interim order in terms of prayer 5.3 of the Notice of Motion returnable on a date to be agreed by the parties for the determination of the merits of the case. I also make no order for costs to be costs on the merits of the Application.

STANLEY B. MAPHALALA
PRINCIPAL JUDGE

For Applicant : **Mr. K. Simelane**

For 1st, 2nd & 3rd Respondents: **Mr. Dlamini**

For 6th & 7th Respondents : **Miss Mdluli**