IN THE HIGH

COURT OF ESWATINI

JUDGMENT

CASE NO.906/2021

In the matter between:

THE CHIEF JUSTICE OF THE KINGDOM OF ESWATINI N.O.	**1st Applicant**
THE JUDICIAL SERVICE COMMISSION	**2nd Applicant**

And

THE CLERK OF PARLIAMENT	**1st Respondent**
THE SPEAKER OF THE HOUSE OF ASSEMBLY	**2nd Respondent**
THE HONOURABLE SANDLA FAKUDZE N.O.	**3rd Respondent**
THE ATTORNEY GENERAL	**4th Respondent**

Neutral citation: *The Chief Justice of the Kingdom of Eswatini N.O. & Another v The Clerk of Parliament & 3 Others* (906/2021) *[2021] SZHC 45* (*8 April 2022)*

Coram : **T. Dlamini J**

Heard : 16 September 2021

Delivered : 8 April 2022

[1] Constitutional law – Referral of matter to a full bench – Lack of guiding principles within our jurisdiction – Judge to exercise discretion

Summary

The applicants seek an interdict against a parliament select committee constituted by the house of assembly to investigate reported gross maladministration, abuse of power and embezzlement

of estate monies at the master of the high court – The application is vigorously opposed by the respondents – A preliminary issue arose between the parties concerning the composition of the court – Applicants contend that the matter is one to be heard by a full bench of this court whilst the respondents contend that a single judge is empowered by the law to hear it and can properly and legally do so – The parties could not agree on the composition of the court, hence the court was called upon to first make a determination and finding on this issue.

Held

That the national importance of the determination that this court has been called upon to make on the application, the public interest in the matter, and the various constitutional provisions to be considered and interpreted, warrant that the matter be heard and decided by a full bench of this court – Each party ordered to bear its own costs.

JUDGMENT

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[1] The court is called upon to decide if the matter is to be heard by a single Judge of the High Court or by a full bench.

[2] This is an application in which the Chief Justice of the Kingdom of Eswatini, in his *nominee officio* capacity, and the Judicial Service Commission (JSC), seek an order interdicting a Parliament Select Committee from investigating the office of the Master of the High Court with regard to what they call '*its administrative and financial functions'*. Their contention is that the office of the Master, under the Judiciary, is independent from any organ of the state but only subject to the Constitution. They therefore contend that Parliament has no power to enquire into the administrative and financial operations of the office of the Master of the High Court (hereinafter referred to as "the Master").

[3] Through a letter dated 11th May 2021 attached as **annexure "AA2"** to the application filed before this court, the Master was invited to appear before a Select Committee of the House of Assembly on Friday 14 May 2021. The

invitation letter notified the Master that a Select Committee of the House of Assembly was appointed to probe her office pursuant to Motion 34/2020 passed on Wednesday, 09 December 2020. The Master was therefore requested to assist the Committee with her position on the House resolution.

[4] The terms of reference for the Select Committee were attached to the application as **annexure "AA3"**. They reflect that Motion 34/2020 moved that the Honourable House elects a seven member Select Committee "*to investigate the reported gross maladministration, abuse of power and embezzlement of estate monies at the Master of the High Court*." The Select Committee, per annexure "AA3", is to focus on the areas listed below:

1) To inquire and report on the alleged maladministration;

2) To inquire and report on the alleged abuse of power;

3) To inquire and report on the alleged embezzlement of estate funds;

4) To investigate incidental matters; and

5) To compile a report with findings and recommendations within sixty (60) days.

[5] In the morning of 14 May 2021 when the Master was to appear before the Select Committee, the applicants filed before this court an application under a certificate of urgency seeking an order in terms of the prayers set out below:

1. That the Applicants are condoned for their non-compliance with the forms, time limits, manner of service and that the matter be enrolled to be heard as one of urgency.

2. That a rule nisi is hereby issued calling upon the Respondents to show cause on a date to be fixed by the above Honourable Court why an order in the following terms should not be made final:

2.1 The Office of the Master of the High Court, under the Judiciary, in its administrative and financial administration

is independent from any organ of the Kingdom but only subject to the Constitution;

2.2 Parliament has no power to enquire into the administrative and financial operations of the Office of the Master of the High Court;

2.3 The Select Committee of Parliament is interdicted and/or restrained from investigating and/or probing the Office of the Master of the High Court with regard to its administrative and financial functions;

2.4 The Respondents are ordered to pay the costs of this application.

3. Pending finalisation of this matter in due course, prayer 2.3 above is ordered to operate with immediate and interim effect;

4. Granting the Applicants further and/ or alternative relief.

[6] In support of the prayers set out above, an affidavit deposed to on behalf of the applicants by Ms Lungile Msimango was attached. A resolution of the second applicant authorizing her to move the application was attached as **annexure "AA1"**. A supporting affidavit deposed to by the first applicant authorizing her to move the present application was also attached.

[7] The applicants contend that the office of the Master is one that falls within the ambit and jurisdiction of the Judiciary. The complaints made against the Master's office, according to the applicants, are against the actions and/or decisions of the Master in the exercise of judicial administrative and financial functions in respect of Estate Funds. The applicants contend that persons aggrieved by the decision and/or exercise of such functions are not left without an effective and adequate remedy. They are permitted by **s.51 *bis* (8)** of the **Administration of Estates Act, 1902**, to apply to the High Court for judicial review.

[8] The applicants also contend that if there are any complaints against the office of the Master, those complaints should be submitted to the second applicant who in turn will investigate the matter and discipline those involved. They submitted that disciplinary powers vest in the second applicant in terms of **s.160 (2)** of the **Constitution of the Kingdom of Eswatini Act, 001 of 2005** (hereinafter referred to as "the Constitution"). The section provides as quoted below:

> (2) Without derogating from the provisions of subsection (1), the Commission has power to appoint persons to hold or act in any of the offices mentioned under subsection (3) including the power to exercise disciplinary control over those persons and the power to remove those persons from office.

[9] The persons mentioned under subsection (3) are the offices of Registrar of the Supreme Court, Registrar of the High Court, Deputy Registrar of the Supreme Court, Deputy Registrar of the High Court, Master of the High Court, Deputy Master of the High Court, Magistrate and such other offices connected with any court as Parliament may prescribe.

[10] The position adopted by the applicants is that should there be a need to have a wide scale general investigation such as a Commission of Enquiry, the first and second applicants are the ones with the requisite power to cause to be established such a Commission. It however would be necessary that evidence of some wrongdoing be placed before them for consideration. Accordingly, they contend that Parliament has no power to enquire into the administrative and financial operations of the office of the Master. They submitted that to do so is unconstitutional, hence the Select Committee of Parliament should be

interdicted and/or restrained from investigating the Master's office with regard to its financial and administrative functions.

[11] It was argued on the applicants' behalf that although there is no law in our jurisdiction which pronounce matters that are to be referred to a full bench, the practice is generally that constitutional matters are referred to a full bench. These matters are referred to the full bench by consent of the parties or at the discretion of the Judge before whom the matter appeared. This was the case prior to the 2005 Constitution. The case of the then **Chief Justice Sapire v Minister of Justice and Constitutional Affairs (2001)**, was given as an example of one matter that was referred to the full bench by the Judge before whom it appeared. The matter dealt with the retirement age of Justices of the Superior Courts.

[12] The **2005 Constitution of Eswatini** permits a single Judge of this court in sections **35 (1), (2) and 151 (2) (b)** read with **s.150 (2) (a)**, to hear constitutional matters. **S.35** concerns matters founded on Chapter III of the Constitution and relate to the protection and promotion of fundamental human rights. **Section151 (2)** states that "… t*he High Court has jurisdiction to enforce the fundamental human rights and freedoms guaranteed by this Constitution; and to hear and determine any matter of a constitutional nature.*".

[13] Mr Jele for the applicants argued that the practice is that matters of a significant importance and/or of public importance are referred to a full bench for adjudication. He submitted that this matter has a similar status because it is of great importance to the judiciary as a whole. He further submitted that an investigation into the affairs of the office of the Master is of general public

interest because of the position that the Master holds, and that the matter has already attracted public interest. He therefore argued that the matter is one that would be best suited to be heard by a full bench. He referred the court to the cases of **Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane (470/2013); Hlophe v Constitutional Court of South Africa and Others (08/22932) [2008] ZAGPHC 289 (25 September 2008);** and **Meerabux v The Attorney General of Belize and Another, Action [2005] UKPC 12 No.65**.

[14] Mr Khumalo who appeared on behalf of the respondents argued that there is no law which precludes a single Judge of this court from hearing the matter. Instead, there are legal provisions which empower a single Judge of this court to hear such matters. He submitted that this court is not to follow practice but the law. His argument is that a referral of a matter to the full bench is discretionary, and the discretion vest in the court seized with the matter. Any referral to a full bench is therefore not a requirement of the law, submitted Mr Khumalo.

[15] In expounding his argument, he submitted that the circumstances of this matter do not warrant a referral to the full bench. The reason, amongst others, is that it was brought under a certificate of urgency on the 14 May 2021, and only about eleven minutes were remaining before the matter was to be heard by the court. A single Judge heard the matter and granted a *rule nisi* (interim order). He therefore argued that there is no reason why the applicants now contend that a full bench is to be constituted when they have already benefited from an order granted by a single Judge. Looking at the applicants' conduct, per Mr Khumalo's argument, the urgency of the matter fell away because the order operates in their favour.

[16] Mr Khumalo also argued that if the applicants were not content with the matter appearing before a single Judge, they ought to have made that clear and done so at the inception of the application.

[17] Mr Khumalo referred this court to the case of **Jan Sithole and Others v The Prime Minister and 7 Others (792/2006)** and argued that this case was heard and decided by a single Judge although it involved important constitutional provisions relating to the conduct of elections. He argued that this matter was of great moment but was heard and decided by a single Judge. He referred to other cases which had, according to his wording, a "*constitutional flavor*" but were decided by a single Judge. These are the cases of **Swaziland National Ex-Miners Workers Association and Another v The Minister of Education and 3 Others (335/09); Doo Aphane v Registrar of Deeds [2010] SZHC 29; SNAT v Minister of Education and Others [2020] SZHC 183** and **Bhekithemba Dlamini v DPP (697/2019)**

[18] It is common cause that there is no legal requirement in this jurisdiction for the referral of any matter to the full bench. The decision to do so is discretionary and the discretion vest in the Presiding Judge. It however can be inferred from **s.150 of the Constitution** that some matters are contemplated to be best suited for adjudication by a full bench. This is my view because subsection (3) makes provision for a full bench constituted by three Judges. In terms of subsection (2), the High Court is constituted by a single Judge, while a full bench is constituted by three Judges in terms of subsection (3). Subsections (2) and (3) of s.150 provide what I quote below:

> (2) The High Court shall be duly constituted-
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> (a) by a single Judge of the High Court;
>
> (b) by a single Judge of the High Court with assessors; or

(c) by a single Judge of the superior courts with or without assessors.

(3) A full bench of the High Court shall consist of three Justices of the Superior courts.

[19] The above provision was enacted, in my view, because the drafters of the Constitution contemplated that some matters will be best suited to be heard by a full bench. The only lacuna is lack of a provision setting out the kind of matters that would warrant a referral to a full bench. As both parties submitted, the decision is made by the Judge before whom the matter has appeared. It has become the practice however, that constitutional matters are the ones referred to a full bench. It is for this reason, in my opinion, that a full bench in our jurisdiction is generally referred to and regarded as a Constitutional Court.

[20] Applicants insist that this matter is best suited to be heard by a full bench whilst the respondents insist, on the other hand, that no law precludes a single Judge from hearing the matter. The respondents' fundamental argument is that the applicants placed the matter before a single Judge and obtained an interim order. There is therefore no good reason why they now insist on a full bench when they are the ones who placed the matter before a single Judge and obtained an order that operates in their favour, although operating on an interim basis.

[21] I find it important to place it on record that the interim order was granted by the court on application, and by consent, of both parties on the 14 May 2021. The applicants were represented by Mr. M.M. Dlamini of Robinson Bertram while the respondents were represented by Mr P. Matsenjwa from the

Attorney General's Chambers. When the court resumed its business for the day, the attorneys sought an indulgence from the court and requested that this matter be called first because they have agreed to a consent order. They informed the court that they agreed to an order in terms of the notice of motion, and that prayer 2.3 is to operate with immediate interim effect. Filing timelines and a return date of 25 June 2021 were also agreed to and endorsed by the court. That is how the interim order was granted.

[22] In deciding the question of whether the matter is to be referred to a full bench or not, I will first consider the practice in other similar jurisdictions. In Lesotho, the High Court Act is silent on the referral of any matter to a full bench. There are however Rules of the Court which regulate the practice and procedure of the court. There are High Court Rules of 1980 which are invoked when the court exercises its ordinary unlimited original jurisdiction on civil and criminal proceedings. There are also Constitutional Litigation Rules of 2000 which are invoked when the court exercises its constitutional jurisdiction. A 'Court', in terms of the Constitutional Litigation Rules means the High Court exercising its jurisdiction under **s.22 of the Constitution**. The section confers upon the court the jurisdiction to hear and determine applications made by persons alleging a contravention, or likely contravention, in relation to them, of the provisions of sections 4 to 21 inclusive, of the Constitution. The court is thus conferred with constitutional jurisdiction in addition to its ordinary jurisdiction.

[23] I have considered the provisions of the Constitution of Lesotho with regard to the powers and jurisdiction of that country's High Court. In my view, they are similarly drafted, and are equivalent, to the provisions of **s.35** of the

Constitution of Eswatini, 2005. **S.128 (1) of the Lesotho Constitution** provides that if in any subordinate court "*any question arises as to the interpretation of the Constitution*", the court "*may and shall, if any party to the proceedings so requests, refer the question to the High Court*". Per subsection (2), the High Court is to give its decision on the question and the court in which the question arose is to dispose of the case in accordance with that decision. If the High Court decision becomes a subject of appeal to the Court of Appeal, then the case is to be disposed of in accordance with the decision of the Court of Appeal. The Lesotho Constitution further provides in **s.22** that any person who alleges that any of the provisions of sections 4 up to section 21 of the Constitution has been, is being or likely to be contravened in relation to him, that person may apply to the High Court for redress.

[24] It therefore is apparent to me that in addition to the unlimited original jurisdiction conferred upon the High Court to hear and determine civil and criminal matters, **s.22** further confers upon the court constitutional jurisdiction to hear and determine applications made by persons alleging a contravention, or likely contravention, in relation to them, of the provisions of sections 4 to 21 of the Constitution. This provision is equivalent to **s.35 (1) and (2)** of the **Constitution of Eswatini, 2005**.

[25] In the Lesotho case of **Chief Justice & Others v Law Society (C of A (CIV) NO.59/2011) [2012] LSCA 3 (27 April 2012)**, **Smalberger JA** stated that although Lesotho has no specially designated Constitutional Court, it has been generally accepted that when the High Court exercises its

constitutional jurisdiction it sits as a Constitutional Court. Below I quote what **His Lordship Smalberger JA** stated:

> "While it is correct to say that Lesotho has no specially designated Constitutional Court, it appears to be generally accepted that when the High Court exercises its constitutional jurisdiction it sits as a Constitutional Court (See eg MOHAU MAKAMANE V MINISTRY OF COMMUNICATIONS SCIENCE AND TECHNOLOGY C OF A (CIV) NO.27/2011 (unreported) para 1. The Constitution therefore envisages the High Court sitting as such in the exercise of its ordinary jurisdiction, and as a Constitutional Court in the exercise of its constitutional jurisdiction."

[26] **Section 150 (3) of the Constitution of Eswatin**i envisages the High Court sitting as a full bench in certain matters. It is my considered view that a full bench is envisaged for the determination of constitutional issues. I am persuaded to think that way because our Constitution, in s.35, confers upon the High Court constitutional jurisdiction to hear and determine applications by persons alleging that the provisions under Chapter III of the Constitution are being, have been, or likely to be contravened in relation to them. The provisions under Chapter III are for the protection and promotion of fundamental rights and freedoms. These provisions are fundamental and important for our societies, and have become a benchmark of every society's democracy.

[27] I fully concur and align myself with Smalberger JA, and I do so with respect to the Constitution of Eswatini, that it envisages the High Court sitting and constituted by a single Judge when exercising its ordinary jurisdiction, and as a full bench when exercising its constitutional jurisdiction.

[28] In Namibia, **s.10 of the High Court Act 16/1990** permits a Judge to discontinue the hearing of a matter and refer it to the full court for hearing. It

also permits the Judge President or, in his absence, the most senior Judge, to order that a matter be discontinued and heard afresh before a full court if in his or her view the matter is of "***importance***". The section is quoted hereunder:

> 10. (1) (a) Subject to the provisions of this Act or any other law, the High Court shall, when sitting as a court of first instance for the hearing of any civil matter, be constituted before a single judge: Provided that the Judge-President or, in his or her absence, the senior available judge may, at any time direct that a matter be heard by a full court.
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> (b) A single judge may at any time discontinue the hearing of any matter being heard before him or her and refer it for hearing to the full court.
>
> (2) Any appeal from a lower court may be heard by one or more judges of the High Court, as the Judge-President may direct.
>
> (3) Whenever it appears to the Judge-President or, in his or her absence, the senior available judge, that any matter being heard before the High Court should in view of its importance be heard before a court consisting of a larger number of judges, he or she may direct that the hearing be discontinued and commenced afresh before a court consisting as many judges as he or she may determine. (underlining for own emphasis)

[29] A foreword by the Chief Justice of Namibia concerning the Supreme Court, states, *inter alia*, that a quorum of this court is ordinarily constituted by three Judges. In matters of "***constitutional and public importance"***, a quorum is constituted by five Judges (a full bench). The '*constitutionality*' and '*public importance*' of the matter appears, in my opinion, to be the benchmark and key words that determine if a matter is to be referred to a full bench or not.

[30] The position in South Africa seems to be similar to that of Namibia. **The Superior Courts Act 10/2013** makes provision for, *inter alia*, the manner of arriving at decisions by the High Court, Supreme Court of Appeal and the Constitutional Court. **S.14** of this Act permits a Judge of the High Court to

discontinue the hearing of any civil matter before him or her and refer it to the full court of that Division. It provides as quoted below:

> 14. (1) (a) Save as provided for in this Act or any other law, a court of a Division must be constituted before a single Judge when sitting as a court of first instance for the hearing of any civil matter, but the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available Judge, may at any time direct that any matter be heard by a court consisting of not more than three judges, as he or she may determine.
>
> (b) A single judge of a Division may, in consultation with the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available Judge, at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of that Division as contemplated in paragraph (a).

[31] **S.13 (1)** of the **Superior Courts Act** permits the President of the Supreme Court of Appeal to direct that a matter be heard by so many Judges as the President may determine. It provides as quoted below:

> 13. (1) Proceedings of the Supreme Court of Appeal must ordinarily be presided over by five judges, but the President of the Supreme Court of Appeal may-
>
> (a) direct that an appeal in a criminal or civil matter be heard before a court consisting of three judges; or
>
> (b) whenever it appears before him or her that any matter should in view of its importance be heard before a court consisting of a larger number of judges, direct that the matter be heard before a court consisting of so many judges as he or she may determine. (underlining for own emphasis)

[32] In my finding, the '***importance***' of the matter is the key word used in the Republic of South Africa to determine if a matter is to be referred to a full bench or not. Such determination is at the discretion of the court.

[33] The dispute between the applicants and the respondents concerns the powers and/or functions of the Judiciary and the Legislature. It is a matter of great

public importance and interest because it concerns organs of the state, and depicts conflicting legal opinions of the Chief Justice and the Attorney General. I say so because of facts that I mention in paragraphs [34], [36], [37] and [38] below. The importance of the matter is not only to the litigants, but to the country and the general public. It is also a matter of fundamental importance for our constitutional law and the development of the country's jurisprudence.

[34] The Legislature receives legal advice from the learned Attorney General and he is the one who represents this organ in these proceedings. The Judiciary has the Honourable Chief Justice as its head. The Chief Justice also heads the JSC (2nd applicant). He deposed to a supporting affidavit confirming the position of the JSC, a position which he concurred with. The country thus finds itself in a situation where organs of the state have dragged each other to court over the constitutional status of the powers and functions that each organ has, particularly as against each other. Persuaded by the positions of the other jurisdictions I referred to above, it is my opinion and finding that this matter is best suited to be heard by a full bench of this court. It is a matter of constitutional and public importance.

[35] Another determination I am called upon to make concerns the '**authority**' that is empowered to empanel a full bench. I listened to arguments for and *contra*. I have also considered the affidavits deposed to by the parties. The matter requires a consideration and interpretation of sections, amongst others, 62, 129, 138, 139, 140, 141, 159 and 160 of the Constitution. The respondents further relied on sections 56, 161, 183, 199, 200, 207, 208 and

209 of the Constitution to make their case. It therefore is an undeniable fact that several constitutional provisions are to be considered and interpreted.

[36] Having considered the papers filed and heard arguments thereafter, I come to the conclusion that the conflicting legal opinions are primarily that of the Honourable Chief Justice and the Learned Attorney General. I so conclude because the founding affidavit, in paragraphs [28] and [29], state what I quote below:

> 28. On the 10th December 2020, the first applicant as head of the Judiciary noted through the print media that Parliament has passed a resolution to probe and/or investigate the office of the Master of the High Court for alleged misappropriation of estate funds, abuse of power and maladministration. As stated above, the Office of the Master of the High Court falls under the Judiciary arm of the government.
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> 29. The first applicant then addressed a letter, attached marked **"AA 4"**, to the Honourable Minister of Justice and Constitutional Affairs on the same date and it reads:"
>
> *Honourable Minister*
> *Ministry of Justice and Constitutional Affairs*
> *Dear Sir*
> ***RE: PARLIAMENT PROBE INTO THE OPERATIONS OF THE MASTER OF THE HIGH COURT***
> *1. We have learnt with shock from the print media that the House of Assembly has reached a resolution to probe the operations of the Master of the High Court.*
> *2. …*
> *3. The resolution reached by Parliament in this regard interferes with the fundamental principle of the independence of the Judiciary as enshrined in the Constitution. Accordingly, the resolution taken by the House is unconstitutional.*
> *4. …*
> *5. …*
> *6. The office of the Master of the High Court, by copy hereof, is advised accordingly.*
> *With kind regards,*
> ***M. C. B. MAPHALALA***

[37] It is public knowledge that the letter referred to in the above paragraph was reported about in the local media. A response to it, by the learned Attorney General, was also reported by the local media. The response of the learned Attorney General disputed the correctness of the contents of the letter written by the first applicant (Chief Justice). In a nutshell, the application concerns conflicting legal views of the learned Attorney General and the Honourable Chief Justice. This therefore makes the matter, in my opinion, to be a serious constitutional issue, and is of great public importance and interest.

[38] During arguments, Mr Khumalo submitted that in order to have a matter determined by a full bench, the first applicant must empanel the full bench. He argued that the first applicant is a party to these proceedings. He also argued that the first applicant wrote many letters concerning the mater, and that he also deposed to an affidavit in the present proceedings. He therefore argued that the first applicant would be conflicted, and is accordingly not the appropriate person to empanel a full bench for the matter.

[39] Mr Khumalo was however asked by the court about what his position would be, in the event, the court agrees with him but then direct the Principal Judge to empanel the full bench. His response was that he is not sure if the court has the power to do that. He submitted that there is not even one matter in which a full bench was empaneled by another Judge other that the Chief Justice. He then referred this court to the cases listed in paragraph [17]

above and stated that the Chief Justice empaneled the full bench in all those matters.

[40] Mr Jele submitted, on the other hand, that this court has the power to make an order directing another Judge to empanel a full bench in situations where the Chief Justice is found to be conflicted, and that there is nothing that precludes this court from directing the Principal Judge to empanel the full bench.

[41] In my opinion and conclusion, the learned Attorney General is correct that the Honourable Chief Justice is conflicted in this matter. I so find because of the interest he has in the matter. It therefore would be unjust and unfair to allow him to choose and decide the Judges who are to hear the matter. I come to this conclusion because the founding affidavit makes it clear that the Honourable Chief Justice is the one who noted and became aware that parliament passed a resolution to probe the office of the Master. He is also the one who wrote a letter to the Honourable Minister of Justice and Constitutional affairs telling her that the resolution taken by the House of Assembly interferes with the fundamental principles of the independence of the Judiciary as enshrined in the Constitution. He also deposed to an affidavit in support of the application before court, and is the first applicant in the matter. Notwithstanding the *nominee officio* capacity that he acts upon, whoever he represents, is an artificial person on whose behalf he makes decisions.

[42] I therefore come to the conclusion that I must invoke the inherent jurisdiction conferred upon this court and direct that the Principal Judge, by

virtue of being the most senior Justice of the High Court (per s.150 (5) of the Constitution), be and is hereby ordered to empanel a full bench that will hear and decide this application.

[43] On the issue of costs, I am of the view that it would be justified to order each party to bear its own costs because this is a constitutional matter which benefits not only the litigants but the country and every *Liswati* citizen as it pertains the powers and functions of the state organs. In addition to that, whichever party might be ordered to pay the costs, the payment responsibility will, either way, be for the government to bear.

[44] For the foregoing, I make the following order:

44.1 The matter is referred to a full bench of this court.

44.2 The Honourable Principal Judge, by virtue of being the most senior Justice of the High Court, is ordered to empanel a full bench to hear and decide this matter.

44.3 Each party is ordered to bear its own costs.

For Applicants : Mr. Z. Jele
Snr. Attorney, Robinson Bertram

For Respondents : Mr. S. M. M. Khumalo
Attorney General