

IN THE HIGH COURT OF ESWATINI
JUDGMENT

Case No. 2222/2023

HELD AT MBABANE

In the matter between:

SIBUSISO GOODWILL MABHANISI DLAMINI

1st Applicant

NKAMBULE JABULANE

2nd Applicant

DUDU ZWANE

3rd Applicant

And

BHEMBE MTHEMBI PURINE

1st Respondent

MNCEDISI DLADLA

2nd Respondent

FUNDIE DLAMINI

3rd Respondent

SIPHIWO DLAMINI

4th Respondent

THABO HLANZE

5th Respondent

BONGANI HLOPHE

6th Respondent

KHAZI MKHWANAZI

7th Respondent

NCAMSILE MTHETHWA

8th Respondent

KHAYALETHU NDLANGAMANDLA

9th Respondent

ZANELE NXUMALO

10th Respondent

BHEKISILE SHONGWE

11th Respondent

SIFISO SHONGWE

12th Respondent

SABELO YENDE	13 th Respondent
ZWELIBANDZI DLADLA	14 th Respondent
KHANYISILE DLAMINI	15 th Respondent
MTHUNZI DLAMINI	16 th Respondent
MICHAEL MNDZEBELE	17 th Respondent
NHLANHLA THWALA	18 th Respondent
SIFISO ZWANE	19 th Respondent
MCOLISI DLAMINI (N.O)	20 th Respondent
BHEKI MAGONGO (N.O)	21 st Respondent
ELECTIONS AND BOUNDARIES COMMISSION	22 nd Respondent
THE ATTORNEY GENERAL	23 rd Respondent

Neutral Citation: *Sibusiso Goodwill Mabhanisi Dlamini and Others vs Bhembe Mthembi Purine and Others (2222/2023) [2023] SZHC 269 (27/09/2023)*

Coram: J. M. MAVUSO J

Heard: 25th September, 2023

Delivered: 27th September, 2023

SUMMARY: *Civil law – Application for review reviewing and setting aside of the result of the special voting conducted on 22nd August 2023 – Order sought to have primary election special voting exercise for Correctional Facilities started afresh and that pending review application and the special voting exercise started de novo – Applicants be allowed to participate as candidates in the*

secondary elections scheduled for the 26th and 29th of August 2023 – Points of law raised by 22nd Respondent dismissed – Applicants' application on the merits dismissed – Each party to pay his or her own costs.

JUDGMENT

J.M. MAVUSO – J

- [1] The gist of the Applicants complaint in this matter is that the counting of the Correctional Facilities Special Votes was not done in their presence. This is borne out of paragraph 35 of their founding affidavit where they state as follows:

“We then queried both the Presiding Officer and Returning Officer about the results of the Correctional Facilities Special Voting exercise and we were only shown the results thereof on a piece of hand written paper and the opening of the ballot boxes and counting thereof was never done in our presence.”

- [2] As a result of the above, Applicants have approached this Court seeking the following orders:

- “1. Declaring that the Counting of Special Votes for Correctional Facilities and announcement of the results thereof to be in Contravention of Section 62, 63 (1), 64, 66 and 68.*
- 2. Reviewing and setting aside the results of the Special Voting for Correctional Services due to the flawed, if not unlawful manner, in the process of the counting of the said votes.*
- 3. Directing that the Primary Election Special Voting exercise for Correctional Facilities be started de novo (afresh).*
- 4. Pending finalization of Prayers 1, 2 and 3 above the Applicants be allowed to participate as Candidates in the Secondary elections scheduled for the 26th and 29th days of August 2023.09.27.*
- 5. Costs in the event of unsuccessful opposition.*
- 6. Further and/or alternative relief.”*

[3] The 22nd Respondent has raised a number of purported points of law. They are as follows, that:

3.1 2nd and 3rd Applicants are prematurely before Court.

3.2 The Applicants adopted a wrong procedure when approaching this Court.

3.3 The application is defective.

3.4 That the prayers in particular prayers 2 and 4 are incompetent and/or unenforceable.

[4] In addition to the purported preliminary points, as 22nd Respondent has preferred to call them, it filed an answering affidavit on the merits. Applicants have not filed a replying affidavit. In the haste in which this case has been prosecuted the parties have also not filed a book of pleadings. The obvious effect of this is that the Court will be obliged to take "*as is*" what is stated by the 22nd Respondent in the answering affidavit, on the merits of this case.

[5] Whilst the Respondents points of law are unmeritorious, the fifth (5th) point stands out for consideration.

(i) Starting with prayer 4 which reads thus;

“Pending finalisation of prayers 1, 2 and 3 above the Applicants be allowed to participate as candidates in the Secondary Elections scheduled for the 26th and 29th days of August 2023.” (prayer 2)

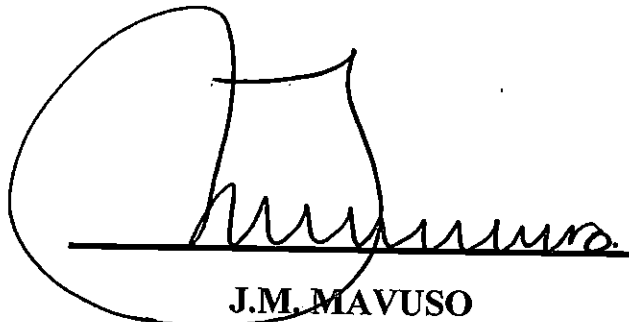
from a reading of the Elections Act 6 of 2013, there is no provision permitting such, a candidate cannot be catapulted by the Court to the Secondary Elections but must do so through amassing more votes than his or her competitors.

(ii) Turning to the prayer to;

“Review and setting aside the results of the Special Voting for Correctional Services due to the flawed, if unlawful manner, in the process of counting the said votes.”

the Court finds it difficult to accede to this prayer as a sufficient case is not made out for a review, notwithstanding that this is also not provided for in the Elections Act. Whilst the 22nd Respondent's answering affidavit remains undisputed, Applicants having not filed a replying affidavit, on the merits, the Court has no alternative but to dismiss this application.

- [6] This application is accordingly dismissed, each party to pay his or her own costs.

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J.M. MAVUSO
JUDGE OF THE HIGH COURT OF
THE KINGDOM OF ESWATINI

For the Applicants: ATTORNEY GENERAL

For the Respondents: SIVESONKHE NGWENYA ATTORNEYS