

IN THE HIGH COURT OF ESWATINI

JUDGMENT

Case No. 2190/2023

HELD AT MBABANE

In the matter between:

ROSETA MUNRO	1st Applicant
XOLILE MOTSA	2nd Applicant
SIMANGA SIFUNDZA	3rd Applicant
HLOBSILE BHEMBE	4th Applicant
SEAN MASILELA	5th Applicant
NONTSIKELELO MFUMA	6th Applicant
SIPHILANGEZWI NHLEKO	7th Applicant
LUNGISILE DLAMINI	8th Applicant
NOSIPHO MABUZA	9th Applicant
NONCEDO MKHONTA	10th Applicant
SANELISIWE MNCINA	11th Applicant
LINDELWA MAGAGULA	12th Applicant
NTOBeko VILAKATI	13th Applicant
SELULEKO MASUKU	14th Applicant
NOMTHANDAZO SHONGWE	15th Applicant
NOMCEBO NDLOVU	16th Applicant

And

PHAZAMISA MHLANGA
DAVID SIHLONGONYANE
WITNESS DLAMINI
VUSI DLAMINI
RIDER MASEKO N.O.
ELECTIONS AND BOUNDARIES COMMISSION
THE ATTORNEY GENERAL

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent

Neutral Citation: *Roseta Munro and Others vs Phazamisa Mhlanga and Others (2190/2023) [2023] SZHC 268 (27/09/2023)*

Coram: J. M. MAVUSO J

Heard: 25th September, 2023

Delivered: 27th September, 2023

SUMMARY: *Constitutional law – Having been unable to cast their votes in the primary elections, Applicants who were registered to vote at Sigangeni Polling Station under Siphocosini Inkhundla, are before Court seeking an order directing the 6th Respondent (Elections and Boundaries Commission) to make arrangements for the Applicants to cast their vote, for the primary elections before the date of the secondary elections scheduled for the 29th September 2023 – Application dismissed for want of effectiveness – Each party to pay his own costs.*

JUDGMENT

J.M. MAVUSO – J

- [1] Applicants in this matter have brought an application before Court, under a certificate of urgency primarily seeking an order:

“directing that the 6th Respondent allows and/or makes arrangements for the Applicants to cast their vote for the primary elections for their registered voting station and/or Inkhundla per their right to do so in accordance with the Electoral laws of the Kingdom and to do so before the date of secondary elections being the 29th September 2023.”

The above order has been sought by way of a *rule nisi*. Due to the urgency of the matter, all papers were filed and for expediency's sake the matter heard all at once.

- [2] The Applicants cause of action, is ably set out at paragraph 34.1. The deponent states as follows:

“34.1 I state before this Honourable Court that myself and the other Applicants duly produced our voting cards upon arrival at the Polling Station as required by the above quoted provision but still our right to vote was violated as we were denied entry into the Polling Station and turned back without exercising our right.”

- [3] Responding to paragraph 34.1 above, the 6th Respondent, in its answering affidavit states as follows:

“34.1 I admit that the affidavits of complaint were filed by some of the applicants....”

From the foregoing, it is clear that at least some of the Applicants, lodged a complaint, with the 6th Respondent arising out of the incident.

- [4] The 6th Respondent in its answering affidavit has raised a number of points of law. It argues that the matter is not urgent, that the application is defective and has been brought under the wrong procedure, that the matter is still pending before it. The application is also sought to be impugned on the basis

that incompetent and/or unenforceable prayers are sought, that the application has material disputes of fact. Respondents further raise as a point of law, that the constitutional right Applicants seek to enforce is unenforceable in law. The last purported point of law raised by 6th Respondent is headed "*A polluted electoral process.*"

[5] The Court has considered the purported points of law as being unmeritorious in the present case and are accordingly dismissed.

[6] Whilst Applicants have a right to vote, being registered voters they face the following hurdles, in the exercise of their right:

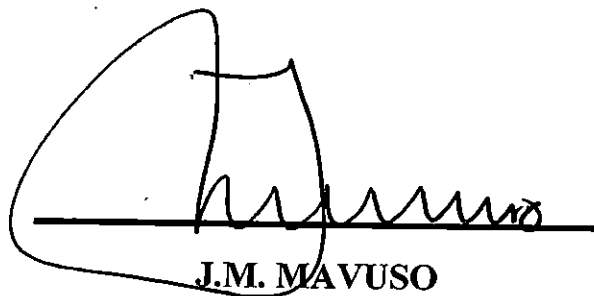
- (i) In their prayers, no order has been sought to have the secondary elections, due to take place on the 29th September 2023 stayed. Indeed that on its own would be a tall order.
- (ii) Similarly no order was sought to have the special voting, held on the 26th September 2023 stayed and indeed they have now been conducted.
- (iii) Whilst the Elections Act 2013 makes provision for the postponement of general elections and the holding of by-elections in Section 28 and

29 respectively, it is silent on whether a primary election can be postponed or not, nor does it make provision for the holding of by-elections, at the stage of primary elections.

- (iv) The doctrine of effectiveness, requires that courts pass orders which are practical and capable of enforcement. It would not be practical and effective, at this eleventh hour, without the orders referred to above, to order the 6th Respondent to:

“make arrangements for Applicants to cast their vote for the primary elections....”

- [7] Accordingly, Applicants’ application is dismissed, each party to pay its own costs.

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a series of connected loops and a final flourish. The signature is written over a horizontal line.

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

For the Applicants:

S.V. MDLADLA & ASSOCIATES ATTORNEYS

For the 1st – 5th Respondents:

MR. S. JELE

For the 6th and 7th Respondents:

THE ATTORNEY GENERAL