



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 1670/2013

In the matter between:

MADANDANE JULIET MAVIMBELA

Applicant

And

THE SPEAKER, HOUSE OF ASSEMBLY

1st Respondent

THE CLERK TO PARLIAMENT

2nd Respondent

THE CHAIRMAN

ELECTIONS AND BOUNDARIES COMMISSION

3rd Respondent

THE ATTORNEY GENERAL

4th Respondent

Neutral citation: *Madandane Juliet Mavimbela v The Speaker, House of Assembly (1670/2013) [2013] SZHC 253 (12th November, 2013)*

Coram: **M. Dlamini J.**

Heard: **25th October 2013**

Delivered: **12th November 2013**

– motion proceedings – no causa - application dismissed.

Summary: By means of a certificate of urgency, the applicant sought for orders directing the 1st and 2nd respondents to comply with sections 86 (1) and (2), 95 (3) read with 121 (a) of the Constitution and interdicting them from proceeding with the second sitting pending compliance with the provisions cited.

[1] When the matter appeared before me on 25/10/2013, having heard both Counsel, I dismissed it for reasons to follow:

[2] It is apposite to regurgitate the averments as found in the founding affidavit in support of the prayers.

“1. I am an adult female of Luhleko, Manzini District, the applicant herein.

2. The first Respondent is the Speaker of the House of Assembly cited as such in terms of Section 102 (1) of the Constitution of Swaziland.

3. The Second Respondent is the Clerk of Parliament cited as such in terms of Section 132 (1) of the Constitution of Swaziland.

4. The Third Respondent is the Chairman of the Elections and Boundaries Commission cited as such in terms of Section 90 (1) of the Constitution.

5. The Fourth Respondent is the Attorney General cited as such in his capacity as the principal legal adviser to

Government of Swaziland in terms of Section 77(1) of the Constitution

6. *Where I advance legal argument and or make legal submission I do so on the advice of my legal representative.*
7. *The first sitting of the House was scheduled for Thursday the 17th October 2013 of Parliament as announced by the Office of the 1st Respondent and the elected members were duly sworn in on this day. The first sitting of the House was held on Thursday the 17th October 2013, wherein only the swearing in of the of the elected members of Parliament was carried out by the fourth Respondent and thereafter the proceedings were adjourned to Monday 21st October 2013 by the second Respondent.*
8. *On Monday the 21st October 2013, the House duly convened wherein the Speaker of the House was nominated and elected, whereafter the House adjourned till Tuesday the 22nd October 2013.*
9. *On the 22nd October 2013, the House once again, reconvened wherein the Deputy Speaker was duly elected and the process of nomination of Ten Senators to the House of Senate in terms of the law duly commenced, whereafter the House adjourned till 23rd Octobe 2013.*
10. *On Wednesday the 23rd October 2013 the processing of the nomination of members to the House of Senate*

continued until late into the night whereafter the House was adjourned until further notice. The ten members elected to the House of Senate have since been announced.

- 11. I am advised and verily believe that in terms of Sections 20 and 28 (1) of the Constitution that all persons are equal before the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law further that the applicant should not be discriminated against in any way. The rights and freedoms of women are clearly affirmed in Section 28 (1).*
- 12. I am further advised that in terms of sections 86 (1) and (2) and 95 (3) of the Constitution of Swaziland that the House is enjoined to elect four women from each region in the Kingdom of Swaziland at the Houses first sitting.*
- 13. It is submitted further that in terms of sections 2 (2) and 14(1) (7) that the fundamental rights of the Applicant are protected and further that the applicant has the right and duty at all times to uphold and defend the Constitution. Furthermore that the three arms of government are obliged to respect and uphold these rights, and the role of law.*
- 14. It is submitted by virtue of the provisions of Constitution in terms of the law relating to the first sitting of the House that the 1st and 2nd Respondents are legal duty bound to adhere to the terms of the provisions referred to*

in paragraph 9 above read with Section 121 (1) (VII) which deals with the Regulation of Procedure in Parliament relating to the nomination or election of women.

15. *It is respectfully submitted that in terms of section 35 (1) & (2) of the Constitution which relates to enforcement of protective provisions, that the above Honourable Court has the jurisdiction to hear and determine the present application before Court. Further, that 1st & 2nd Respondent should be restrained from holding a further sitting of the House pending determination of the application.*

16. *It is further submitted the matter is urgent in that if the application before Court is not determined before the second sitting of the House that the applicant would have been prejudiced in so far as her Constitutional right to the determination of Applicants right to representation shall have been denied and such would be unconstitutional.”*

[3] From the reading of the entire affidavit one fails to find the *causa* for the application.

[4] Rule18 (4) reads:

“18 (4) *Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient*

particularity to enable the opposite party to reply thereto.”

- [5] *In casu*, all that the applicant has done is to inform the court of the events leading to the nomination and election of the speaker and his deputy of the House of Assembly, and the ten members of the House of Senate.
- [6] At her paragraph 11, she deposes that “*all people are equal before the law in all spheres of political (sic) social and cultural life*” without any averments whatsoever as to whether her rights to equality have been violated and in what manner they have been violated by the respondent.
- [7] In paragraph 12 she states that as per the Constitution, Section 86 (1) and (2) and 95 (3) the “*House is enjoined to elect four women from each region*” without alleging any violation of the said sections and how it has been violated. She does not tell us what direct and substantial interest she has suffered and in what manner.
- [8] At paragraph 13 she tells us how Section 2 (2) and 14 (1) (7) protects her rights and that the applicant “*has the right and duty at all times to uphold and defend the Constitution*” and “*that the three arms of government are obliged to respect and uphold these rights and the role (sic) of law.*” Again the applicant fails dismally to tell us her complaint in regard to this section.

[9] In paragraph 15 she scanty states as a prayer:

“Further that 1st and 2nd respondent should be restrained from holding a further sitting of the House pending determination of the application.”

[10] The question then is *“What is it that must be determined?”* What is the controversy, in other words? In the vast rights raging from political to cultural as highlighted in paragraph 11 to House of Assembly electing Speaker, deputy and members of the Senate and finally to the three arms of government duty bound to uphold the Constitution, the poser still remains, what of them? As we put it in our Roman Dutch legal parlance, *“what is the causa for the application?”* The English courts would ask *“what is the statement of claim,* while the U. S. federal courts would pose, *“what is the complaint?”* All these refer to a set of facts sufficient to justify a right to institute legal proceedings. (see Nolo’s Free Dictionary of Law Terms and Legal Definition).

[11] Beek’s Theory and Principles of Pleadings in Civil Actions with reference to **Spedding v Fitzpatrick, 38 Ch. D** page 410.

“The old system of pleading at common law as to conceal as much as possible what was going to be proved at the trial (hearing); but under the present system we ought to see that a party so states his case that his opponent shall not be taken by surprise It follows therefore that the plaintiff (applicant) must set out his fact with such particularity that the defendant (respondent) will know exactly what facts he will have to meet so

as to enable him to disprove the corrections of the facts against him.”

[12] The application *in casu*, I am afraid, is not only lacking in particularity but the very basic facts necessary to inform the opponents as demonstrated above. For this reason alone, the application stands to fall.

[13] During submission, learned Counsel on behalf of applicant, persuaded the court to read paragraph 16 as setting out the *causa*.

[14] The paragraph reads:

“16. It is further submitted the matter is urgent in that if the application before Court is not determined before the second sitting of the House that the applicant would have been prejudiced in so far as her Constitutional right to the determination of Applicants right to representation shall have been denied and such would be unconstitutional.”

[15] There is nothing demonstrating how her right to representation “*shall have been denied*” in this application.

[16] I need not deal with the question of *locus standi* of the applicant who simply describes herself as follows:

“I am an adult female of Luhleko, Manzini District, the applicant herein.”

[17] The wise words of **Wessels J.** in **Darymple and Others v Colomal Treasurer 1910 TS** at 390:

“In a wide sense every individual has an interest in every suit that is pending for he may be placed tomorrow in the position of either plaintiff or defendant in a case which the same principle may be involved. Court of law, however, are not constituted for discussion of academic questions, and they require the litigant to have not only an interest that is not too remote.”

[18] The learned judge wisely concludes on this subject:

“Whether the interest is remote or not depends upon the circumstance of the case and no definite rule can be laid down.”

[19] The interest must be a direct and substantial.

[20] The applicant has not informed the court how her right to *“representation shall have been denied”* as per her paragraph 16 as she does not say whether she is a registered voter or intends to contest *“representation.*

[20] In the totality of the above the following orders are entered:

1. Applicant’s application is dismissed
2. Applicant is ordered to pay costs.

M. DLAMINI
JUDGE

For the Applicant : **S. Khoza**

For the Respondent :