IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 2477/98

In the matter between

MVUSELELO GWEBU	APPLICANT
VS	
SHIYUMHLABA DLAMINI - THE RETURNING	
OFFICER FOR NKWENE & 3 OTHERS	RESPONDENTS
CORAM	S.B. MAPHALALA - J
FOR APPLICANT	MR M. MAHLALELA
FOR RESPONDENTS	MR MATSEBULA

RULING

(15/10/98)

The matter before court came with a certificate of urgency for an order in the following terms:

1. Dispensing with the time limits and forms of service prescribed by the rules of the court and hearing this matter as an urgent application.

2. Suspending the secondary elections set for Friday the 16th October 1998 under the Nkwene Inkhundla.

3. Declaring the actions of the first respondent to deny the applicant to campaign wrongful and unlawful;

4. That an order in terms of prayer 2 and 3 operate with immediate effect as an interim relief;

5. That a rule nisi do hereby issue returnable on the date to be fixed by this court calling upon all respondents to show cause why?

5.1 The order in terms of prayer 2 and 3 should not be made final

5.2 All the respondents should not pay costs of suit jointly and severally the one paying the other to be absolved

5.3 Any further and/or alternative relief.

The applicant has filed a founding affidavit supported by a number of confirmatory affidavits. I am not going to the merits of the matter but will address myself to the question of urgency. I have read the papers before me and also considered the arguments by Mr. Mahlalela for the applicant and Mr. Matsebula for the respondent. I tend to agree with Mr. Matsebula that a party in law is not allowed to create his own urgency. The facts giving rise to this application happened on Saturday last week and he chooses to bring

the matter on the eleventh hour. He does not even depose in his founding affidavit what he did from that date to resolve the matter. These are material facts which must be included in his founding affidavit to give his version some degree of credence. A meeting is called for him to go and campaign, he chooses to assume that there would be no people attending the meeting. He does not go there to satisfy himself as a matter of fact and not to invite the court to act on an assumption. Applicant is the author of his own fate. Even the service effected on the other parties affected is so short that it would be impossible for them to reply and they are thus put to a disadvantage by bringing the matter at the eleventh hour. The court is also put into an invidious situation to stop elections that are scheduled for tomorrow in direct contravention of the alterant partem rule of natural justice.

I agree in "toto" with the sentiments expressed by the CJ in the Civil Case No. 2331/98 and I am of the view that that case is at all fours with the present one.

In the result, I rule that the applicant has not established urgency in terms of the rules of this court.

I thus dismiss the application with costs.

S.B. MAPHALALA

JUDGE