IN THE HIGH COURT OF SWAZILAND

CASE NO. 2051/99

IN THE MATTER BETWEEN:

JOHN MAZALENI DLAMINI APPLICANT

AND

THE CHIEF ELECTORAL OFFICER

UMPHATSI LUKHETFO 1st RESPONDENT

ATTORNEY - GENERAL N.O. 2nd RESPONDENT

CORAM : MASUKU J.

FOR APPLICANT : : ADV. L. M. MAZIYA (Instructed by Ben J.

Simelane & Associates FOR 1st & 2nd RESPONDENTS : MR PROFESSOR MSIBI

RULING 3/9/1999

This is an application dated 19th August, 1999 brought under a Certificate of Urgency and in which the Applicant prays for inter alia:-

(a) That the Rules of Court in respect of form manner and of service and time limits be dispensed with and the matter be heard as one of urgency.

(b) Restraining and interdicting the 1st Respondent from conducting the nominations scheduled for the 21st August, 1999 at KAPHUNGA CHIEFDOM pending finalisation of this matter,

(c) That a rule nisi be and is hereby issued calling upon the Respondents to show cause on a date to be fixed by this Honourable Court why, an order in the following terms should not be issued:



i) directing the 1st Respondent to revive the 1998 election process at KHUBUTA INKHUNDLA and cause it to proceed from the stage at which it was suspended by the Office of the 1st Respondent on or about the 10th October, 1998.

(d) That prayer (b) should operate with immediate effect as interim relief.

(e) Costs of this application.

On Friday 20th August, 19991 refused to grant prayer 1 and stated that reasons for the refusal would be handed down in due course. These now follow: -

The Applicant is a male Swazi adult of KaPhunga area under Chief Hhandeleka. In his Founding Affidavit, he states that he registered as a voter and candidate for the position of constituency Headman (Indvuna YeNkhundla). The Applicant alleges that he won the nominations and the Primary Elections at KaPhunga Chiefdom.

On the 10th October, 1998 the day appointed for campaigning for secondary elections at INkhundla level, the Applicant states that he together with other candidates and aspiring Members of Parliament were informed by the Returning Officer that secondary elections at Khubuta INkhundla would not be conducted until further notice. The Applicant states that since that day, no communication has been relayed to him by the 1st Respondent concerning this matter until he was shown an issue of the Swazi

Observer dated 18th August, 1999, in which it was reported that the 1st Respondent announced that nominations for KaPhunga Chiefdom will be conducted on the 21st August, 1999.

The Applicant further alleges that he was shocked by the newspaper report, especially that nominations had been continuing because although he lives in kaPhunga, he conducts business of welding storage tanks at Tri - Cash store in Sidvokodvo and only returns home in the evenings. The Applicant further states that he was never informed of the nominations, either by the 1st Respondent or the Chief's Kraal notwithstanding his interest in the matter. Furthermore, he was unaware that



the nominations and primary elections of 1998, in which he participated were nullified.

The urgency alleged is that if the nomination process proceeds as scheduled on the 21st August, 1999, the Applicant would be greatly prejudiced since he would not be allowed to stand for these elections. He states further that had he been aware, he would have challenged the re-registration process when it commenced.

At the time that the matter was heard, the 1st Respondent had not been served with the papers and Mr Msibi stated that although he did not have instructions in the matter, he would confine his opposition to prayer 1 i.e. urgency. Mr Msibi brought it to the Court's attention that a Notice was issued by the 1st Respondent for general information that nominations would be conducted on the 21st August, 1999. This information is contained in an Extra Ordinary Government Gazette dated 15th July, 1999 (No.490). This Gazette further informed members of KaPhunga Umphakatsi in terms of the provisions of Section 5(3) of the Voters Registration Order, 1992 and Section 9 of the Establishment of Parliament Order 1992, who are above eighteen years of age that registration shall be from the 31st July, 1999 to 8th August, 1999, both days inclusive. It is against this background that the urgency in this matter must be assessed.

Rule 6(25) which deals with urgent applications provides as follows;-

(a) In urgent applications the Court or a Judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules)as to the Court or Judge, as the case may be, seems fit.

(b) In every affidavit or petition filed in support of an application under paragraph (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims he could not be afforded substantial redress at a hearing in due course.



In the judgement of Dunn J. in HUMPHREY H. HENWOOD vs MALOMA COLLIERY LIMITED AND ANOTHER, CASE NO. 1623/94 (unreported), it was held that these provisions cited above are mandatory.

From a reading of the Applicant's papers, I am of the view that the matter is not sufficiently urgent to warrant the jettisoning, of the normal provisions of the Rules because of the notice in the Government Gazette dated 15th July, 1999. In terms of the Sections cited therein, it is not incumbent upon the 1st Respondent to personally inform every interested person of the election or nomination. In fact it would be preposterous to expect the 1st Respondent to personally inform every person interested in the election and it would be humanly impossible for him to do so. Publication in the Gazette is regarded as sufficient information.

The Gazette was issued on the 15th July, 1999, and more than a month has elapsed without the Applicant taking any action. Furthermore, the registration process, according to the Gazette' (there is nothing to gainsay this) commenced on the 8th August, 1999 but still, this could not be sufficient to spur the Applicant to action.

Furthermore, it is inconceivable that the Applicant never heard a word about the nomination process in his area, which must have commenced on the 8th August, 1999, The Applicant does not allege that he works everyday, including weekends. In any event, topical issues relating to elections are normally discussed in communities, especially in the rural areas. The Applicant must have heard the issue discussed, even by members of his Own family during the evenings, assuming in his favour that everyday, he returned home late in the evenings. This is moreso since Applicant's family must have known of his interest particularly, that he was successful in the previous election process.

The Court also takes judicial notice of the fact that the 1st Respondent causes announcements to be published in all the country's media houses for informing the general public of the events taking place appertaining the elections. For these reasons, I am of the view that no convincing grounds for urgency are alleged and proved.

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Furthermore, the Applicant has dismally failed to make allegations why he claims that he cannot be afforded substantial relief at a hearing in due course. In the absence of this leg of the mandatory requirements, I can not possibly declare this matter to be one of urgency. In point of fact, and on an objective analysis of the facts, the Applicant can be afforded substantial redress at a hearing in due course. He can apply for the setting aside of the nominations and the Primary Elections, which order can be granted if the Applicant sets out good grounds therefor.

In this regard, I find it apposite to quote with approval from a judgement of Sapire C.J. in H.P. ENTERPRISES (PTY) LTD vs NEDBANK (SWAZILAND) LTD CASE NO.788/99 (unreported). At pages 2-3, the Learned Chief Justice stated as follows:-

"Litigants must guard against abuse of the urgency procedure more especially where it is calculated to produce an unfair result. If practitioners (whether they be attorneys Or advocates) issue certificates of urgency without regard to the objective urgency of the matter, the certification becomes meaningless and no credence can be given to such documents. Such practitioners owe a duty to the Court in certifying matters as urgent, to have satisfied themselves on objective assessment that the matter is indeed urgent, A litigant seeking to invoke the urgency procedure must make specific allegations of fact which demonstrate that observance of the normal procedures and time limits prescribed by the Rules will result in irreparable loss or irreversible deterioration to his prejudice in the situation giving rise to the litigation. The facts alleged must not be contrived or fanciful, but give rise to a reasonable fear that if immediate relief is not afforded, irreparable harm will follow".

It appears to me that no such objective assessment of the attendant facts of the case vis-a-vis the urgency was undertaken by the applicant and/or his representatives. I also asked Maziya to address me on whether a case had been made out for the grant of interim relief. Without making a definitive ruling on this question, it does not appear that the Applicant has fulfilled all the requirements for the grant of an interim interdict as set out by Prest C.B., "Interlocutory Interdicts", Juta & CO, 1993 at page 55.

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In the result, I refuse to grant prayer 1. No application for an order for costs was made by the 2nd Respondent's representative and I will accordingly make no order as to costs.

T. S. MASUKU

JUDGE