Reportable:	*Yes/No*
Circulate to Judges:	*Yes/No*
Circulate to Magistrates:	*Yes/No*

IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE HIGH COURT, KIMBERLEY)

CASE NO.: 2021/2017

Date heard: 07-12-2018
Date delivered: 13-03-2019

In the matter between:

The Khoi San Revolution	**1st Applicant**
William Roderick Stanley Peterson	**2nd Applicant**

And

Frank Smith	**1st Respondent**
Louisa Uithaler	**2nd Respondent**
Juleen Denise Josephs	**3rd Respondent**
Gert Bitterbos	**4th Respondent**
Marthinus Pieters	**5th Respondent**
The Nama Khoi Local Municipality	**6th Respondent**
The Municipal Manager:NamKhoi Local Municipality	**7th Respondent**
The Independent Electoral Commission	**8th Respondent**

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. In this application the 2nd applicant, Mr WRS Peterson seeks an order declaring him to be the legitimate and duly elected president of the 1st applicant, the Khoi San Revolution and that any of the respondents who oppose the application be ordered to pay the costs of the application.
2. The Khoi San Revolution is a political party, registered as such in terms of the Electoral Commission Act, No 51 of 1996 (the Act).
3. The 1st to 5th respondents were all at one stage or an other members of the Khoi San Revolution and are described as being joined in the application as they all dispute the fact that Mr Peterson is the duly elected president of the party.
4. The Nama Khoi Local Municipality, The Nama Khoi Municipal Manager and the Independent Electoral Commission (IEC) are respectively the 6th, 7th and 8th respondents, joined in this application due to the interest they may have in the outcome hereof.
5. Only the 3rd respondent, Ms Juleen Denise Joseph and the 5th respondent, Mr Marthinus Pieters, whom I shall refer to as the respondents, oppose the application.

Background

6. The establishment of a political party for the Khoi San Community was the brainchild of the 2nd applicant. He started putting ideas into action during the latter half of 2015 by contacting various organisations, businesses and individuals for support, drafting a constitution for the 1st applicant and designing its emblem.

7. During January 2016 the 2nd applicant embarked on a road show with members of the Khoi San Community to create awareness of the party and to invite the public to join the 1st applicant as members.

8. On 8 to 10 January 2016 a conference – referred to as a "mini-konferensie" – was held in Upington where a decision was taken to officially register the 1st applicant as a political party with the IEC.

9. At the same mini-conference the 2nd applicant was elected as the president of the 1st applicant, the 2nd respondent, Ms Louisa Uithaler as the secretary and a certain Mr Joseph Van Wyk as the treasurer. These members formed the initial National Executive Committee (NEC) of the 1st applicant.

10. The 1st applicant won a seat on the Municipal Council during the 2016 Municipal elections and could appoint the speaker. The 3rd respondent was accordingly appointed as the speaker of the Nama Khoi Local Municipality. She appears to hold this position, as a member of the 1st applicant, to date.

11. Barely a year after its establishment, the 1st applicant, consisting of some 6500 members was split into two factions. I do not, for purposes of this judgment, need to go into details of the allegations of misconduct made by one side against the other and *vice versa*. Suffice to say that at a meeting of the extended National Working Committee (NWC), held on 12 April 2017 it was resolved to terminate the membership of the 3rd respondent with immediate effect. Thereafter and allegedly at a meeting of the NEC held on 27 May 2017, it was resolved that

the 2nd applicant be removed as president of the 1st applicant and that his membership of the 1st applicant be terminated.

12. Following upon the termination of her membership, the 3rd respondent brought an application in the Western Cape High Court for *inter alia* the review and setting aside of the decision to terminate her membership. That application was removed from the court roll by agreement between the parties and the 3rd respondent's membership was apparently reinstated. However the NWC again during June 2017, terminated the 3rd respondent's membership.

13. Any change in a political party's leadership and executive membership particulars requires notification to the IEC in terms of Regulation 9 of the Act. However as a result of the disputes relating to the termination of the membership of 2nd applicant and the 3rd respondent, the IEC in a letter dated 3 July 2017 suggested that the dispute relating to the legitimate leadership of the 1st applicant be adjudicated upon by a court of law. It is for this reason that the application *in casu* served before me.

The issues

14. The respondents raised a number of points *in limine* in their heads of argument. Mr Olivier, who appeared for the respondents however confined himself to only two issues:

That of *locus standi* and a factual dispute which cannot be determined on the papers. These issues are to a large extent interlinked and I therefore do not intend to deal with it separately.

15. The argument by the respondents can be summarised as follows:

15.1 The 2nd applicant is no longer president of the 1st applicant and as such has no authority to bring the application in the name of the 1st applicant;

15.2 In any event, in terms of the constitution of the 1st applicant (clause 12.2.3,) it is the NEC, which has the power to institute and defend legal proceedings on behalf of the 1st applicant. The 2nd applicant has failed to attach a resolution by the NEC authorising him to bring this application.

16. The argument that the 2nd applicant is no longer the president is two-fold. In the first place it is contended that his leadership was terminated at a meeting of the NEC held on 27 May 2017 as alluded to in paragraph 11 above. The 2nd applicant denies any knowledge of such a meeting of the NEC or of having received any notification of disciplinary proceedings to be held against him. The 3rd respondent has failed to attach any such notification of the NEC meeting or of the disciplinary proceedings. She has also failed to attach the minute of such a meeting or even a confirmatory affidavit of a member of the NEC who had attended the meeting at which the leadership of the 2nd applicant has allegedly been terminated. There is in fact no substantiation for her averment that the 2nd applicant's membership/leadership has been validly terminated.

17. In these circumstances, the averments by the 3rd respondent regarding the termination of the 2nd applicant's leadership can in my view safely be rejected as false.

18. In the second instance, the argument is that the 2nd applicant has never been duly elected as the president of the 1st applicant. In this regard however it must be mentioned that the 3rd respondent acknowledges that the 2nd applicant was the president of the 1st applicant at some stage. The 5th respondent denies completely that the 2nd applicant was elected at the mini-conference of 8 to 10 January 2016 as president and states that the 2nd applicant was elected at the conference as an administrative official who was tasked with the registration of the 1st applicant.

19. The attitude of the 5th respondent, which is the basis of the factual dispute referred to, can however not be sustained, for the reasons which follow. The handwritten minute of the mini-conference which is attached to the founding affidavit and which is not specifically disputed, states at point 3 thereof that:

"'n Interim eksekutief moet gekies word. Die volk stem eenparig vir leier Stanley Peterson aan as leier, Pastoor Van Wyk as kassier en Louisa Louis as algemene sekretaresse."

Any factual dispute in the regard, emanating from the averments of the 5th respondent, is in any event countered by the subsequent registration by the IEC of the 2nd applicant as president and the recognition of his status as such by both the executive and non-executive membership of the 1st applicant. In my view no real dispute of fact has been raised in this regard and the dispute raised by the 5th respondent has no substance.

20. A further argument raised by Mr Olivier is that the Constitution makes no provision for an interim president and that the 2nd applicant is therefore not the president of the 1st applicant in terms of and as provided for in the constitution of the 1st applicant. Whilst it is so that the constitution does not provide for an interim president and in fact dictates that the president be elected by the National Conference (Clause 11.4), it should not be forgotten that at the time when the 2nd applicant was elected as *"interim"* president, the 1st applicant was still in the process of establishing itself. Structures within the 1st applicant had not been held established yet and even the Constition had not been formally registered yet. In the meantime interim executive leadership had to be elected in order for instance to have the 1st applicant registered as a political party. To now hold that the 2nd applicant (and by implication the interim executive committee, since the Constitution also makes no provision for such) was not validly elected could lead to the wholly unsatisfactory conclusion that the 1st applicant was never validly registered as a political party with the IEC.

21. In my view and until the 2nd applicant is lawfully dismissed as president of the 1st applicant or he is replaced as such by a meeting of the National Conference, the 2nd applicant remains the *de facto* president of the 1st applicant.

22. That being said I now turn to the second leg of the argument – that is that the 2nd applicant was not authorised by the NEC to bring this application on behalf of the 1st applicant.

    The 2nd applicant avers in the founding affidavit that he is duly authorised by the Management Committee and all delegates

who elected him at the conference to depose to the affidavit and to file the application on behalf of the 1st applicant. He does not attach a resolution to this effect by the *"Management Committee",* which I assume should in fact be the NEC. In fact it is clear from the replying affidavit that the NEC did not make such a resolution.

23. The 2nd applicant explains that as the president and head of the NEC, he is responsible to orientate and direct the activities of the NEC in terms of clause 14 of the Constitution, and that the Constitution does not require a resolution to be passed before he is entitled to bring legal proceedings on behalf of the 1st applicant. He further explains that he is the only remaining elected member of the NEC and that he has only appointed acting members to assist him in his duties until the next National Conference in 2019. I have been made to understand that the National Conference is scheduled to be held before 31 May 2019.

24. Be that as it may, the Constitution is clear that the NEC is endowed with the power to institute and defend legal proceedings on behalf of the 1st applicant, not an individual member of the NEC. The fact that the other members of the NEC are acting members does not detract from the fact that they constitute the NEC at present. Without a resolution authorising the 2nd applicant to bring the application also on behalf of the 1st applicant or even affidavits to this effect by the members of the NEC, the 2nd applicant has failed to prove his authorisation to do so.

This does not however mean that the application should fail, the 2nd applicant has also brought the application in his personal capacity and has in my view shown that he is entitled to the relief sought.

Costs

25. Despite having found that the 2nd applicant is entitled to the relief sought, the opposition of the respondents to his authority to bring the application on behalf of the 1st applicant, is well founded. They should therefore not be held liable for the applicant's costs. The 1st applicant should also not be held responsible for any costs pertaining to this application.

The following orders are made:

a) The second applicant, Mr William Roderick Stanley Peterson is declared to be the legitimate and duly elected president of the first Applicant.

b) I make no order as to costs, save to state that no costs pertaining to this application are to be recovered from the first applicant.

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CC WILLIAMS

JUDGE

For Applicant: Adv J M Rust

Elliot, Maris, Wilmans & Hay Attorneys

For the 3rd and 5th Respondents: Adv D Olivier

Fletchers Attorneys