

IN THE HIGH COURT OF LESOTHO

In the matter between:-

<b>LESOTHO CHAMBER OF COMMERCE AND INDUSTRY</b>	1 <sup>ST</sup> APPLICANT
<b>MASERU REGION TRANSPORT OPERATORS</b>	2 <sup>ND</sup> APPLICANT
<b>CONGRESS OF LESOTHO TRADE UNIONS</b>	3 <sup>RD</sup> APPLICANT
<b>LESOTHO LABOUR COUNCIL</b>	4 <sup>TH</sup> APPLICANT
<b>LESOTHO TRADE UNIONS CONGRESS</b>	5 <sup>TH</sup> APPLICANT
<b>LESOTHO CONGRESS OF DEMOCRATIC UNIONS</b>	6 <sup>TH</sup> APPLICANT
<b>BOKANG RAMATŠELLA</b>	7 <sup>TH</sup> APPLICANT

AND

<b>COMMISSIONER OF POLICE</b>	1 <sup>ST</sup> RESPONDENT
<b>MINISTER OF HOME AFFAIRS</b>	2 <sup>ND</sup> RESPONDENT
<b>MINISTER OF LAW AND CONTITUTIONAL AFFAIRS</b>	3 <sup>RD</sup> RESPONDENT
<b>MINISTER OF DEFENCE AND NATIONAL SECURITY</b>	4 <sup>TH</sup> RESPONDENT
<b>ATTORNEY GENERAL</b>	5 <sup>TH</sup> RESPONDENT

JUDGMENT

**CORAM** : HON. MR JUSTICE S.N. PEETE

**DATE** : 29<sup>TH</sup> AUGUST, 2011

**DATE OF HEARING:** 17<sup>TH</sup> AUGUST, 2011

## Summary

**Constitution of Lesotho 1993 – Supremacy of – Sections 15 and 16 of the Constitution - Benevolent interpretation of – Sections 3 and 4 of the Public Meetings and Processions Act No. 14 of 2010 - Restrictive interpretation of exceptional and compelling circumstances – What are – Powers of the Police – Scope of.**

*Where a group or association of persons gives notice to police in terms of section 3 of the **Public Meetings and Processions Act 2010** applying to hold a public meeting or a procession, the police should exercise their power timeously and favourably unless there are exceptional and compelling circumstances or there exists a reasonably suspected threat or harm to peace, public safety, security or public order.*

*Whether such exceptional or compelling circumstances exist is a matter essentially of fact; mere conjecture or perception shall not suffice. All surrounding circumstances must be honestly considered objectively, impartially and without bias. Irrelevant factors such as political prejudice and other rivalries must be discarded in exercising powers under the Act. The power should always be exercised by the police timeously, rationally and with all fairness.*

### Obiter Dictum

- *Refusal of permission or its cancellation can be appealed against under section 6 and the court has the ultimate power to review the Minister's decision and can determine on review whether the refusal or cancellation was reasonable or unfair.*
- *The constitutionality of the provisions of the **Public Meetings and Processions Act 2010** has not effectively been challenged by the applicants.*

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***Annotations:***Reported cases

- *Lesao Lehohla v National Executive Committee of the Lesotho Congress for Democracy – 1997-98 LLR 104*
- *Prins v Carstens - 1953 (4) SA 107.*
- *Estate Docrat v Isaacs – 1956 (2) SA 35.*

Statutes

- *Constitution of Lesotho 1993*
- *Public Meetings and Processions Act No.14 of 2010*
- *Police Service Act No.7 of 1998*
- *National Security Service Act No.11 of 1998*
- *Criminal Procedure and Evidence Act No.9 of 1981.*

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**Peete J.:**

[1] It is indeed befitting for this Court to hand down a written judgment in this case of great national importance in the constitutional annals of Lesotho only for reasons of posterity and of precedence. This case is fundamentally about rights and freedoms of the people under the Constitution. It is about the freedom of peaceful assembly. It is about limitations that may be imposed by law and justification therefor.

[2] Whereas the Bill of Rights<sup>1</sup> is specially enshrined under the Constitution of Lesotho 1993, the government must also fulfil its political role as a lawfully elected government within the clear parameters of the Constitution to protect lives and property, to

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<sup>1</sup> Chapter II of the Constitution.

promote peace and security and the general wellbeing of the people of Lesotho.<sup>2</sup>

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### ***Supremacy of the Constitution of Lesotho 1993***

- [3] The Constitution of Lesotho of 1993 is the supreme law of democratic Kingdom of Lesotho. *Section 2* solemnly declares:-

#### **“The Constitution**

2. *This Constitution is the supreme law of Lesotho and if any other law is inconsistent with this Constitution, that other law, shall to the extent of the inconsistency be void.”*

Upon this section, the supremacy of the **Constitution of Lesotho** is founded and entrenched.

- [4] Chapter II of the Constitution contains a **Bill of Rights** and is perhaps the most important chapter in the democratic constitution. It is a *sine qua non* of its democratic character. The Bill of Rights is specially entrenched under the Constitution and cannot easily be attenuated or abridged.<sup>3</sup> A democratic constitution without a strong and enforceable Bill of Rights is not worth the paper it is written on!

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<sup>2</sup> Lesotho has also ratified many an international Covenant, protocol and treaty on these importance issues.

<sup>3</sup> Section 85 of the Constitution.

[5] In my view the fundamental human rights and freedoms are not mere subjects of empty rhetoric or fiction, but should be living rights and freedoms which must be actively and fully enjoyed by all people within the limits of the law. These rights and freedoms are part of humanity which they endow and cloak with dignity and divine purpose. They are sacred, universal and indivisible.

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***Fact outline***

[6] On the 16<sup>th</sup> August 2011, the applicants filed an urgent application in which they sought relief couched as follows:-

*“1. That the Rules of this Honourable Court pertaining to normal procedural formalities, modes and periods of service and time limits be dispensed with on account of urgency hereof and this matter be heard and adjudicated upon on an urgent basis.*

*2. That a rule nisi be and it is hereby issued and returnable on the time to be determined by this Honourable Court on the 17<sup>th</sup> August 2011 before noon calling upon the respondents to show cause, if any, why an order the following terms cannot be made final, to wit,*

*2.1 That the 1<sup>st</sup> respondent decision refusing and/or canceling the applicants’ procession permit be set aside.*

*2.2 That the 1<sup>st</sup> respondent be directed to issue the applicants with a procession permit with immediate effect.*

2.3 *In the alternative the Honourable Court directs that the applicants' procession should proceed unhindered today on the 17<sup>th</sup> August 2011.*

2.4 *That it is hereby declared that the applicants have a full democratic right to engage in peaceful public procession."*

As fate had it, no answering affidavits were filed in these proceedings, time being in flight.

- [7] In his founding affidavit, **Mr Fako Hakane** – Secretary General of Lesotho Chamber of Commerce and Industry – the first applicant - chronicles the correspondence over what he described as “*issues of national interest*” and has attached letters addressed to The Right Honourable Prime Minister (5<sup>th</sup> May 2011 and 15<sup>th</sup> August 2011) itemizing their grievances. The concerns related to textile workers’ pay, owners fares and to other problems in general. The names of the applicants in the front page shows the spectrum of the interests involved.
- [8] The Notice made in terms of *section 3 (1)* of the **Public Meetings and Processions No.14 of 2010** was apparently received by Police on 11<sup>th</sup> August 2011 and it was only on the 16<sup>th</sup> August that the words “*cancelled*” were endorsed at the top of the Notice document.
- [9] It is only fair and proper here to state that where a notice has been made in terms of *section 3 (supra)*, the police commander served with the notice should “*within two days from the receipt at the application*

*notify the applicant of his decision including reasons for the refusal*"<sup>4</sup>.

This presupposes that this response should be in writing.

- [10] Failure by the police in the present case to have responded timeously as required by law, rendered their "*cancellation*" or refusal unlawful if not arbitrary. In this case apparently the cancellation or refusal (without reasons) was hurriedly made and endorsed on the Notice document on the 16<sup>th</sup> – some "*three days*" after the 13<sup>th</sup> August 2011 when the decision ought to have been made. When a power or discretion is being exercised, it must be exercised in accordance with circumstantial and procedural prerequisites prescribed by the empowering legislation otherwise it is *ultra vires*.<sup>5</sup> This must be understood by all concerned.

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- [11] In terms of the provisions of the **Public Meetings and Processions Act 2010** where a person has given to the police a notice of his intention to hold a public meeting or procession "*at least seven days*" before such meeting or procession, it shall be incumbent upon police to give priority to such notice, to apply their minds thereto and to give a swift decision "*within two days*" of the receipt of the notice.

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<sup>4</sup> Section 3 (1) (a) of the Act.

<sup>5</sup> Lawrence Baxter – *Administrative Law* (1994) 301.

[12] Any undue delay in responding to the notice may in some cases cause prejudice to the applicant in many ways, while in others, extraneous factors may intervene and influence the ultimate decision. Expedition is therefore of essence.

[13] It is however not necessary to dwell at length on these issues due to the fact that these application proceedings fortunately took a positive turn that culminated in an amicable settlement being reached through the gallant efforts of **Mr Molati** for applicants and of **Mr Letsie** and **Mr Sekati** for the respondents. For these efforts, the Court is indeed grateful because a crisis of great proportion was perhaps averted.

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*Sections 15 and 16 of the Constitution of Lesotho*

[14] *Section 15* of the Constitution guarantees “**freedom of peaceful assembly**” which is one of the fundamental democratic rights in the Bill of Rights. This freedom along with “**freedom of association**” is specially entrenched in the Constitution of Lesotho.<sup>6</sup> *Seriatim* they read thus:-

***“Freedom of peaceful assembly”***<sup>7</sup>

15. (1) *Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of freedom of peaceful assembly, without arms, that is to say, freedom to assemble with other persons.*

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<sup>6</sup> **Section 85 of the Constitution.**

<sup>7</sup> Section 17 of Constitution of South Africa reads:- “*Everyone has the right peacefully and unarmed to demonstrate, to picket and to present petitions.*” The limitation of the right can be made in terms of section 36.

- (2) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-*
- (a) *in the interests of defence, public safety, public order, public morality or public health;*
  - (b) *for the purpose of protecting the rights and freedoms of other persons; or*
  - (c) *for the purpose of imposing restrictions upon public officers.*
- (3) *A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by subsection (1) to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in subsection (2) (a) or for any of the purposes specified in subsection (2) (b) or (c).*

### ***Freedom of Association***<sup>8</sup>

- “16. (1) *Every person shall entitled to, and (except with his own consent) shall not be hindered in his enjoyment of freedom to associate freely with other persons for ideological, religious, political, economic, labour, social, culture, recreational and similar purposes.*

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<sup>8</sup> Lesao Lehohla v NEC of LCD – 1997 -98 LLR 104 at 116.

- (2) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any law to the extent that the law in question makes provision –*
- (a) *in the interests of defence, public safety, public order, public morality or public health;*
- (b) *for the purpose of protecting the rights and freedoms of other persons; or*
- (3) *A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by subsection (1) to a greater extent that is necessary in a practical sense in a democratic society in the interests of any of the matters specified in subsection (2) (a) or for any of the purposes specified in subsection (2) (b) or (c).” (my underline)*

These freedoms are however not absolute; they may be attenuated by law only to the extent that “*it is necessary in a practical sense in a democratic society.*” This involves a value judgment based on a deep sense of justice and fairness.

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### “Peaceful Assembly”

[15] In my view, “*Assembly*” includes meetings, *pitsos*, congresses, *liboka*, conventions, marches, demonstrations or processions (*mekoloko*) over any matter be it national, political, ideological,

economic labour, social, cultural, recreational. It is in the human nature to gather, to associate, to assemble or congregate in order to communicate with another, to enjoy or to commiserate.

[16] In order to be lawful, the assembly must be “*peaceful*” and “*without arms*”. An assembly of person carrying arms and manifesting placards of battle is *per se* and *ab initio* unlawful. An assembly should not have its proposed destinations any of the places declared protected areas by law, or to disturb the rights of others.

[17] The purposes of an assembly may be myriad and may be intended to achieve a multitude of goals that better the interests of persons involved. At an assembly, opinions are expressed, wishes and aspirations of the people are ventilated. It is a form of communication and of social intercourse. On the other hand, people whose rights to peaceful assembly and of association are suppressed often resort to unorthodox acts such as civil unrest or rebellion or subversion. In the Lesotho of old, chiefs regularly convened pitsos for their people who in turn freely expressed their views – “*...mo-oa-khotla ha a tsekisoe....*” and “*...moro khotla ha o okoloe mafura ...*” the sayings went.

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***Public Meetings and Processions Act No.14 of 2010***

[18] **Public Meetings and Processions Act No.14 of 2010** is indeed an important piece of legislation because its provisions have a direct

impact on the exercise of freedoms guaranteed under *section 15* and *16* of the **Constitution of Lesotho**. It is also a necessary law because it is intended to regulate and to control the holding of public meetings and processions in Lesotho. It is a law which passes muster under the Constitution to the extent that it makes restrictive provision in the interests of defence, public safety, public order etc. as envisaged under *section 15 (2)* of the Constitution. Any such law should however be interpreted so as not to abridge the freedom to peaceful assembly to a greater extent than is necessary in a practical sense in a democratic society in the interest of matters envisaged under section 15 (2) (a), (b) and (c) of the Constitution. This is a value judgment. A value judgment necessarily involves a fine balancing of interests – namely, the fundamental freedom of a people to peaceful assembly on one hand and the right of the public to safety order and tranquility on the other. The law must protect rights and freedoms of other persons to have access to public streets, roads and highways, to the parks and other public places without undue hindrance or obstruction.

*The Police (powers of)*

- [19] In terms of the provisions of the **Public Meetings and Processions Act** the police are the repository of an immense power in that the persons who intend to hold a peaceful assembly or procession must give a written notice of such intention “*to an officer in command of the police in the area whose public meeting or procession is intended*

*to be held at least seven days before holding the public meeting or procession”.*<sup>9</sup>

This power must be exercised in accordance with circumstantial and procedural prerequisites prescribed by the empowering legislation.

[20] It is the public character of the meeting, assembly or procession that necessitates the involvement of police to regulate and control the holding of such public meetings or processions. Time, direction and duration of the public meeting or procession are of critical essence, because the rights of other persons may be affected in the process.

[21] The police officer to whom notice is made has power under law to “*grant*” or “*refuse*” permission to the holding such public meeting or procession and “*...shall within two days from the application the date of receipt of notify the applicant of his decision...*”.<sup>10</sup> In case of refusal, exceptional and compelling circumstances of reasonably suspected threat or harm to peace, public safety, public security and public order must be shown to exist. This power, of course, must always be exercised reasonably and fairly, and where permission is refused reasons be given. This means the freedom of peaceful assembly should be facilitated by police unless there are exceptional or compelling reasons justifying refusal.

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<sup>9</sup> Section 3 (1).

<sup>10</sup> Section 4 (1) (a) and (b).

[22] The law casts a special duty and *onus* on the police to examine all the surrounding circumstances closely, objectively and dispassionately in determining whether to grant or refuse permission. For example, *in casu* peace or public safety can be assured by a strong police presence at such public meeting or procession or by providing other means for crowd control or by changing the direction, the venue or the destination or by removing offending placards or signs or discouraging vocal slogans likely to precipitate public violence. Circumstances of each case will of course differ.

[23] The role of the police in a democratic society is always crucial; this role is always a protective and a facilitative one<sup>11</sup>. It uses reasonable means to bring about order and compliance with the law. Police units adequately trained in crowd control should be specially patrolled and heavy artillery should be deployed only when and if the situation is likely to get out of control. Public warnings and other precautionary measures should be used.

### ***Cancellation of Permission***

[24] Cancellation of permission is governed by *section 5* of the Act. Cancellation will be lawful only if -

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<sup>11</sup> *Section 4 of the Police Service Act 1998* reads in part: “...*the police service .... shall be deployed in and throughout Lesotho to uphold the law, to preserve peace, to protect life and property, to detect and prevent crime to apprehend offenders, bring offenders to justice ...*” – The Police Motto is “*Lepolesa Mothusi Motsoalle*” (*Police – Helper – Friend*).

- (a) the officer has reasonable grounds to believe that the intended public meeting or procession involves a real potential for causing threat or harm to public peace, public safety, public security of public order; and
- (b) under the *audi alteram partem* principle, the officer, shall have given a hearing to the person who made the application, if the officer decides to cancel the permission.

[25] It is not here necessary to determine whether the sections in the Act empowering the police to refuse or cancel permission are themselves constitutional. Indeed the Constitution itself provides that a law can be made “*in the interests of defence public safety, public order or public morality*” provided that such abridging is necessary in a practical sense in a democratic society. This necessarily involves a value judgment and balancing of pivotal interests in society.

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### ***Constitutionality of limitations***

[26] The Constitution of Lesotho contains a Bill of Rights which has limitations. Lesotho is no exception in this regard as many countries<sup>12</sup> have democratic constitutions with limitation clauses. Human rights and freedoms are like powers not absolute. It is the enforcement of a

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<sup>12</sup> See section 36 of the Constitution of the Republic of South Africa (1996) and the Botswana Constitution Bill of Rights.

statutory limitation by the state question. This has to be determined upon a case-by-case approach i.e. whether in a given case the refusal to grant permission was reasonable bearing in mind that state authorities must be seen to be acting in a way that advances and enhances these freedoms; these freedoms must also be exercised with full sense of responsibility.

- [27] Lesotho is a free country in the global village and it is by no means a police state but is a democratic Kingdom in which the Constitution is the supreme law of the realm. The supremacy of the Constitution with an entrenched Bill of Rights casts a sacred duty on the High Court to interpret all relevant provisions of the Constitution benevolently and purposively. The limiting provisions of the *Public Meetings and Processions Act 2010* must necessarily be given a restrictive interpretation<sup>13</sup>. This is the internationally acceptable method of interpretation in our jurisdiction and indeed in the Commonwealth and elsewhere. Law enforcement agencies such as the army, police and security forces must always act within the parameters of law and do so with proper restraint and reasonableness. Riots or commotion, if they occur, have to be stopped or prevented for the sake of general tranquility so as to protect lives persons and property of others. This should be achieved without unnecessary use of brutal or excessive force.

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<sup>13</sup> *Maxwell – Interpretation of Statutes 251; Devenish – Interpretation of Statutes 163.*

[28] I am of the view that in exercising their powers under *section 4* of the ***Public Meetings and Processions Act***, the police should generally always be inclined to grant permission to the hold meeting or procession unless there are shown to exist circumstances that are exceptional and compelling that threat or harm to peace, public safety public security or public order is likely to occur.

[29] The fact that police officer who considers the notice personally disagrees with the purpose for the public meeting or procession should never be a ground for refusal. Neither should the political sensitivity of the cause be a good ground for refusal although that could be a factor for “*beefing up*” of police presence and security precautions.

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[30] In reality, labour and other socio-economic issues affect the livelihood of many people directly and sometimes touch on very survival of these people.<sup>14</sup> Such delicate issues must always be addressed by the stakeholders in a dispassionate manner, realistically and without prejudice or favour. Whereas the socio-economic rights which are provided for under the Constitution of Lesotho are “*not enforceable*” in the courts of law,<sup>15</sup> these issues should be addressed “*out of court*” through bargaining, agreements, negotiation, mediation, reconciliation or arbitration and other lawful measures. Democracy essentially involves exercise of these rights and freedoms within the parameters

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<sup>14</sup> Wages of textile factory workers may be a matter of great concern as it touches on the socio economic rights of many of their dependants..

<sup>15</sup> Section 25 of the Constitution.

of the law. All these issues must be addressed in a peaceful manner at all times with full knowledge that many international instruments recognize the universality and indivisibility of political and civil rights and of core socio-economic rights of a people.

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[31] Both the *Police Service Act No.7 of 1998*<sup>16</sup> and the *National Security Service Act No.11 of 1998*<sup>17</sup> each provide that their officers should effectively disaffiliate themselves from all political parties or trade unions. *Impartiality* and *neutrality* are valuable assets to all law enforcement agencies which always should rely upon the trust and confidence of the public. This will enable them to handle matters which are labour and trade union often very sensitive matters which need to be tackled with tactful diplomacy, fairness and firmness. A culture of common understanding, empathy and mutual tolerance needs to be cultivated in order to create a climate conducive to amicable negotiations and solutions to industrial and other socio-economic problems or other disputes in the country.

[32] A police officer who considers a Notice presented in terms of *Section 3* of the *Public Meetings and Processions Act* must always balance the fundamental freedom of peaceful assembly under *Section 15* with the public interest to safety, public order and security along with other exceptional or compelling circumstances that may constitute a

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<sup>16</sup> Section 66 of the Act.

<sup>17</sup> Section 25 of the Act.

reasonably suspected threat to peace, public safety and public order. It indeed is a *quasi judicial* decision to make, and one which must be reached without bias but with all fairness.

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*Rights and Freedoms (meaning and scope of)*

- [33] No fine analytical distinction needs to be made between a “**right**” and a “**freedom**”, suffice it to say that in a democracy, a fundamental freedom of peaceful assembly just means entitlement to assemble peacefully with other persons. The highest form of this right of assembly or gathering is the “*National Assembly of Parliament of Lesotho.*” This human freedom of assembly has very important civil and political aspects<sup>18</sup> of great social or economic implications. Assembly of people is a form or method of social communication or of intercourse amongst such people meant to facilitate or to address issues or to express opinions over common problems. “*Peaceful assembly*”, like “*freedom of press*” and “*freedom of association*” provides a civilized channel of communication which should always be kept open and be actively facilitated unless there exist cogent reasons justifying its restriction or gagging.

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<sup>18</sup> Political parties in Lesotho owe their very existence and sustenance to the freedoms of expression, of association and of peaceful assembly! So do the churches and other voluntary associations!

- [34] An Act of Parliament such as the **Public Meetings and Processions Act 2010** is an important one indeed; it is also a “*necessary*” piece of legislation in Lesotho as in any other democratic country which treasures observance of the rule of law and good governance under the Constitution.
- [35] Whereas the freedom to hold meetings and processions is a fundamental one. it is not an absolute; it is a freedom one that needs clear qualification and circumscription by law in the interest of protecting freedoms of others and in the interests of peace, order and security. Indeed our Constitution permits this limitation “*to the extent that is necessary in a practical sense in a democratic society.*” This qualification necessarily involves “*a value judgment*” and a deep sense of fairness. In peace time, the rights and freedoms must be enjoyed by the citizenry as much as possible without let or hindrance than at times of crisis or of emergency or of civil unrest. Circumstances or conditions regarding time, place and purpose of the exercise of the freedom and , if any, the compelling or exceptional conditions, should be taken into consideration before the freedom or right is attenuated or restricted by refusing permission to hold a public meeting or procession.
- [36] The democratic culture of a country, and indeed the country’s civilization, can be gauged by the manner in which its government treats the citizenry and the extent to which expression of dissenting or critical opinion is tolerated and its concerns addressed meaningfully. The Basotho have always said“...*Bohlale ha bo ahe ntloana-*

*‘ngoe...’, “...mo-oa khotla ha a tsekisoe...” “...moro-khotla ha o okoloe mafura...”*. These sayings truly express the tolerant accommodation and management of dissenting opinion. These sayings should hold true and good even today because they form “*strings that hold society together!*”

- [37] In the exercise of police or ministerial powers under the law, the internationally accepted standards norms and practices should always be borne in mind by all the responsible stakeholders e.g. by the state officials who exercise these powers, and in this instance, the Police and the Minister responsible for public safety and public order. The participants in the public meetings or processions, too, must always exercise their freedoms in a responsible manner with restraint and civility. It is the erratic or arbitrary abuse or misuse of power or discretion or the abuse of the very freedom that violates other people’s rights that calls for the intervention of the courts.

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***Exceptional Circumstances – (what are)***

- [38] Defining or explaining “*exceptional circumstances*” is never free from difficulty; indeed most judges and jurists take the attitude that it is hardly possible and it is certainly undesirable to define an “*exceptional circumstance*”. It is generally accepted that “*something*

*out of the ordinary and of unusual nature is contemplated*".<sup>19</sup> Each case will however turn on its own facts. Whereas the role of police is defined under the **Police Service Act of 1998** as being "*to preserve peace, protect life and property, to detect and prevent crime and to apprehend and bring offenders to justice ...*", this power must always be exercised subject to the fundamental provisions of the Constitution especially the Chapter II Bill of Rights. *Onus* of showing existence of compelling or exceptional circumstances is on the police<sup>20</sup> and the existence should be viewed objectively; but as already stated, the police should always be inclined to grant permission and to refuse it only where exceptional or compelling circumstances prejudicial or peace, order and security exist.

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### **Conclusion**

[39] Happily, as already stated, gallantry took over and **Mr Letsie** and **Mr Sekati** for the respondents and **Mr Molati** for the applicants reached an amicable agreement that **(a)** this application which had certainly been overtaken by effluxion of time and was thus academic, be removed from the roll; **(b)** applicants should make an urgent notice to police to the effect that the procession be held on Monday 22<sup>nd</sup> August 2011 and **(c)** that the police should determine the notice in accordance with the provisions of the law.

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<sup>19</sup> **Prins v Castens** – 1953 (4) SA 107 at 111 per **Watermeyer**; **Estate Docrat vs Isaacs** 1956 (2) SA 35 at 38 per **Holmes J.** See also **Criminal Procedure and Evidence (Amendment) Act No.10 of 2002 section 109 A (1).**

<sup>20</sup> **Estate Docrat** (*supra*) at 36; **Silber v Ozen Wholesalers** 1954 (2) SA 345 at 352.

[40] The police very wisely granted their permission as they were empowered so to do under law and, the Court is informed, a very peaceful procession was duly held on Monday 22<sup>nd</sup> August 2011 and all was well.

**S.N. PEETE**

**JUDGE**

For Applicants : **Mr Molati**

For Respondents : **Mr Letsie and Mr Sekati**

Copy to: **Attorney General**

**Commissioner of Police**