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and to have the ballots cast and election recounted.

During the hearing on Monday and Tuesday, both SWAPO Party and the Electoral Commission of Namibia, ECN, raised a number of technical legal points on which the case should be thrown out of court. SWAPO Party's lead counsel, Ishmael Semanya, SC, also questioned why the applicants had not cited as respondents in the case the 54 people who were on the list of SWAPO Party as its candidates for the National Assembly, even though they were declared winners and had therefore a direct interest in the case.

Semanya ripped through the applicants' arguments like a razor, arguing that it was not just enough for the parties challenging the elections to tell the court that "irregularities" occurred here and there. They were supposed to show the court that such "irregularities" had such an impact on the election which had resulted in some people having been unduly elected as candidates to the National Assembly. This, said Semanya, was missing, but was crucial for the court to apply its mind properly.

Semanya did not also spare the manner in which the Presidential Election challenge was brought before Court, saying that it was not properly before court because the requirements of the Electoral Act were not



Judge President Petrus Damaseb, right, and High Court Judge Collins Parker delivering their judgment in the High Court on Thursday. Photo by Levi Uptala

complied with. The Act states that an applicant should pay security for legal costs. This was not complied with. The National Assembly Election challenge was also filed late, and the High Court Registrar should not have accepted this.

The Act also states that the security shall be for an amount determined by the registrar of the court and shall be furnished in money or by recognizance to the satisfaction of the registrar. If that provision was complied with, the case shall be deemed to be at issue. If there is no such compliance, no further proceedings shall be had on the application.

Both SWAPO Party and the ECN had also challenged the applicants challenging the Presidential election in the "amplified notice of motion," and presented evidence that the challenge to the Presidential

election was brought beyond the 30-day period. They also argued that the failure by the applicants to provide security for the Presidential Election challenge made it a "nullity" in terms of the Act.

"No further proceedings shall be had on an election application in respect of which security has not been paid," agreed the judges. "The applicants' reply that the security issue had become moot because none of the respondents had since opposed it is, therefore, bad in law.

"The challenge against the Presidential poll launched by the applicants on 14 January 2010 therefore stands to be struck from the roll with costs. Having so decided, it becomes unnecessary for me to consider the issue whether this Court has inherent jurisdiction to extend the 30-day time period for

the filing of the challenge to the Presidential Election on the basis stated by the applicants."

On the election application challenging the outcome of the National Assembly which was launched after the 16h00 deadline, both SWAPO Party and the ECN pointed out that the application was a "nullity" because it was presented to Court irregularly.

On this point, Judge Parker agreed, saying that it was a "nullity" because it ought to have been filed at 15h00, "unless there were 'exceptional circumstances' for its acceptance by the Registrar after the period stipulated in the Rules of Court." No

effort was made to satisfy the Court that "exceptional circumstance" existed.

"Mr (Reinhard) Totemeyer, (representing the applicants) made this look like some trivial matter that can be overlooked 'in the interest of justice'," remarked Judge President Damaseb. "With the greatest respect, he is wrong. Rules exist to promote predictability and certainty.

"The public expect their enforcement and 'justice' demands that the law is complied with. It is not that the applicants had no other recourse: the Court or a judge could have been approached to come to their assistance."

During the arguments, Totemeyer SC, admitted that there was no formal application before Court seeking "condonation" for the admitted late lodgment of the election application. He argued that the applicants' position was that no "condonation" was required as they complied with rule 3. Only if the Court were to find that they did not so comply that he, in the alternative and from the Bar, would seek such "condonation." Totemeyer, quoted several cases, some from South Africa, in which he tried to say that it was the "version of the applicants" which should prevail.

"Mr Totemeyer is plainly

wrong," said Judge President Damaseb. "None of these cases are authority for this proposition. The two South African cases ... do not at all deal the issue of how to resolve factual disputes when it comes to determining applications to strike, and points in limine."

Judge President Damaseb added that the applicants made out no good case why they were not able to file the papers on time. He said that it was apparent that their failure to come to court on time was that they wished to see "too much information" and were overwhelmed by the information they obtained in the process.

"To grant condonation in those circumstances would not advance the general public interest as it has the potential for encouraging 'fishing expeditions' before challenging election results. This is the basis on which I exercise my discretion against granting condonation as sought 'in the alternative' and from the Bar," remarked the Judge President.

"We told them that they had no case," said SWAPO Party Secretary for Youth League, Cde Elijah Ngurare, upon hearing that the case had been dismissed with costs. "This is a great day for SWAPO Party. What will they do next? We have been vindicated."

wanted to become effective lawmakers. As lawmakers representing all Namibians in the National Assembly, the President said, they should lead by example.

"You are expected to be the standard-bearers in terms of self-respect, integrity, dignity, discipline and respect for others," he said. "That should be your exemplary character wherever you are, within the Chamber, in the communities within the country as well as outside our Land of the Brave.

"This is the only way that lawmakers can maintain the credibility, dignity and trust of our lawmaking institution among the general public. I would like to urge all of you to follow these proceedings attentively and to internalize all the information that will be given to you during this induction workshop.

"Above all, you are expected to carry out your mandate of ensuring that the legislative frameworks are in place to facilitate the implementation of the SWAPO Party Election Manifesto and the wider national development agenda, which the SWAPO Party has put in place for our country."

The President also urged MPs to ensure that outdated laws were repealed and scrapped from the country's statutes, adding that Namibians in general and SWAPO Party in particular expected only the best from them, and a high quality of debate in the chamber at all times.

"Your time in Parliament
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He also claimed that the article meant that he "was an opportunist with no steadfast principles and low morals" and that he was a "cheat and dishonourable person who deceives others" and that he "supported apartheid" as a former puppet.

Zoom In was based on his decision to resign from CoD, which he announced himself in the second week of May last year. The article chronicled Katjuongua's political career and mentioned some of the political parties he had formed or joined or run down.

It said that the National Pa-

triotic Front, NPF, which saw Katjuongua serving as its lone Member of the National Assembly, could not survive during the 1994 National Assembly and Presidential elections and Katjuongua lost his only seat in the House.

Having lost in the 1994 National Assembly and Presidential elections, Katjuongua went on to form another party, the Democratic Coalition of Namibia, DCN, which he dragged into the 1999 National Assembly and Presidential elections.

DCN did poorly in those elections and Katjuongua's political future looked bleak. He later joined CoD from which he resigned last year. In their bitter exchanges with CoD President Ben Ulenga, he ac-

cused Katjuongua of being "opportunistic, running from one party to another."

Katjuongua did not take this allegation lying down, hitting back that it was a "blooming lie." He said he had never deserted SWANU. "I have never deserted or defected from my political origins - SWANU," he said in a letter to Ulenga. CoD is the first party from which I am resigning."

Zoom In hammered Katjuongua on that one. "By implication this means that he (Katjuongua) was both SWANU and CoD - a political cheat..." read part of Zoom In. Katjuongua did not take that lightly and it is one of the reasons he is suing SWAPO Party and Namibia Today.

"There is no case here," said one Windhoek lawyer. "Katjuongua admitted himself that he never resigned from SWANU. It means that when he joined CoD, he was both SWANU and CoD. How can one belong to two political parties at the same time?"

Before independence, Katjuongua served in the former South African colonial arrangement in Namibia, the so-called "government of national unity" in which he served as "minister" of housing.



President Hifikepunye Pohamba

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member that the 2009 SWAPO Party Election Manifesto was a contract between the Namibian people and the SWAPO Party, and should therefore ensure that the legislative programmes reflected aspects of the Manifesto.

"There are some MPs who, once elected into the National Assembly, talk and say things as if they are not members of SWAPO Party," said President Pohamba. "They talk as if they were not brought there by the Party. When you are in Parliament, you are there on the SWAPO Party ticket. SWAPO Party has the right to recall you."

During the workshop, MPs would discuss issues such as the role of the Speaker, the introductions of bills and mo-

tions, major principles of the constitution, domestic and foreign policy, the MPs relations with SWAPO Party and its government, social consciousness about gender and other related societal issues, the implementation of the 2009 SWAPO Party Election Manifesto and the expectations of the Party wings.

"Wings such as SWAPO Party Youth League, SPYL, Women's Council, Elders' Council, have expectations. Workers, too, have their expectations. If you fail them, they will wait until the next Congress, until the next Electoral Convention. When they react the way they do, do not shed crocodile tears," said the President.

The President urged them to learn and acquaint themselves with different aspects of parliamentary democracy and the law-making process, if they

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Tel: 061-276370/78/79/80
Fax: 061-276381**

Cell: 081 124 2749

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