



## THE ELECTORAL COURT OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE ELECTORAL COURT OF SOUTH AFRICA

**From:** The Registrar, Electoral Court of South Africa

**Date:** 06 May 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Electoral Court of South Africa***

*Arise SA v The Electoral Commission of South Africa; Independent South African National Civic Organization v The Electoral Commission of South Africa (014/2024EC & 020/2024EC) [2024] ZAEC 08 (06 May 2024)*

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On Wednesday, 17 April 2024, the Electoral Court of South Africa, Bloemfontein, granted orders dismissing applications by Arise South Africa (ASA) and Independent South African National Civic Organisation (ISANCO) respectively. The applications were for orders in effect to compel the Electoral Commission of South Africa (Commission) to place the applicants – both registered unrepresented political parties – back on the list of political parties that would be contesting some of the upcoming national and provincial elections scheduled for 29 May 2024. The Commission opposed the application by ASA on the basis that it was disqualified from contesting the elections for seats in the National Assembly as it had failed to nominate candidates for at least one region for the National Assembly. As regards ISANCO, the Commission contended that it was disqualified from contesting the elections for seats in the National Assembly and some of the provinces as it had simply not submitted the signatures and details of a sufficient number of supporters required to qualify it to contest those elections.

In the ASA application, the question to be considered by the Electoral Court was whether or not factually ASA had submitted – by 17h00 on 8 March 2024 – their list of nominated candidates for seats in each of the National Assembly regions they intended contesting. In the ISANCO application, the issue was simply whether factually that party had submitted lists with sufficient numbers of supporters which would have entitled it to contest the elections for the Mpumalanga Region of the National Assembly and for the legislatures of the following provinces: Free State and Mpumalanga. The orders of 17 April 2024 answered these questions in the negative and found, in effect, that these two parties had been disqualified by operation of law from contesting the elections in question.

Today the court handed down a combined judgment in these two applications, giving reasons for its aforesaid orders.

In the ASA judgment, the Court reiterated that, in order for a political party to contest the elections for the National Assembly, s 27(1), read with item 3(2) of Schedule 1A to the Electoral Act, requires it to submit by the deadline in the electoral timetable a national list of candidates and a regional list or lists of candidates for each region that the party wishes to contest (in at least one region). It was noted that ASA alleged that it submitted regional lists of nominated candidates, but it however failed to provide any evidence, whether in the form of documents confirming submission of the regional lists or, for that matter, the lists themselves and/or supporting documentations (such as the forms signed by the nominated candidates), in support of such averment. The Court found the allegation by ASA that they did in fact submit the lists was bald and unsubstantiated.

On the flipside of the coin, the Court found that the Commission conclusively demonstrated that as a matter-of-fact ASA did not submit the regional candidates lists. That being the case, so the Court found, ASA was disqualified from contesting the elections for seats in the National Assembly. The point is simply that a party would only qualify to be on the National Assembly ballot if it has submitted at least

one regional list of candidates. The Court found that the Commission did not merely deny that ASA submitted those candidate lists but produced positive evidence. This included an audit trail extract from its *Online Candidate Nomination System* (OCNS), coupled with evidence of the fact that no emails were sent to ASA, confirming that submissions had been received from ASA, as would have been the case had it submitted regional lists.

The Court accordingly found that, on the probabilities, having regard to all of the evidence before it, the ASA failed to submit a regional list of candidates as alleged by it. If it did, it would no doubt at the very least have produced the list and the supporting documentation. The ineluctable conclusion to be drawn from ASA's failure to produce the said documentation, so the Court concluded, is that they don't have it. It follows that ASA did not submit its regional list of candidates, which, in turn, means that it is disqualified from contesting the elections for seats in the National Assembly.

The Court also found that the Commission was not under any obligation to notify ASA of the fact that it (ASA) failed to qualify to contest the elections for seats in the National Assembly. In that regard, the Court found that ASA's reliance on s 28 of the Electoral Act is misplaced. That section does not require of the Commission to afford a political party an opportunity to rectify its failure or omission to submit a list of candidates. Section 28 only applies to those parties which had submitted lists in the prescribed form and in compliance with the provisions of s 27(1) and s 27(2)(cB), read with item 3(2) of the Schedule 1A to the Electoral Act. A party that fails to submit candidate lists before the deadline in the electoral timetable, so the Court found, never becomes eligible to contest the election.

It was for all of these reasons that the ASA's application was dismissed.

In the ISANCO matter, the Court confirmed that, according to s 27(2)(cB) of the Electoral Act, an unrepresented political party's candidate lists must be accompanied by a prescribed form bearing the details and signatures of voter supporters amounting to at least 15% of the quota for a seat in the preceding election. These quotas have been published and are incorporated into the *Regulations concerning the Submission of List of Candidates, 2004*, as Table 1 (to contest seats for the National Assembly) and Table 2 (to contest seats for the Provincial Legislatures).

The Court accepted the case of the Commission that, save for the Eastern Cape provincial election, ISANCO failed to submit the required number of voter signatures to contest the elections for the Mpumalanga region and the provinces by the deadline in the electoral timetable. This the Commission had set out extensively – as a table reflecting the percentage of signatures submitted for the elections that the party intended contesting – in the Commission's answering affidavit. On the version of the Commission, ISANCO merely failed to upload sufficient signatures to meet the requirement. Therefore, so the Court held, ISANCO is ineligible to contest the elections for the National Assembly and the Free State and Mpumalanga provincial legislatures due to its failure to submit the requisite voter supporter signatures.

The factual dispute between ISANCO and the Commission was therefore decided by the Court in favour of the Commission. The Court accepted the Commission's very plausible explanation that its figures are generated by the OCNS and that the quotas are to be met not by numbers submitted, but by the number of 'verified' voter supporters, which means that the lists of names and signatures must be those of registered voters in a particular region, for example. The OCNS processes the lists of supporters and will, in real time, verify the identity number of a supporter and whether he or she is a registered voter and whether he or she is eligible to be a voter supporter. If so, such a voter supporter would be counted towards the requisite quota. If not, the details of such a person would be disregarded. This process resulted in the figures contained in the tables in the Commission's answering affidavit, which demonstrated conclusively, so the Court found, that ISANCO did not meet the quotas prescribed in terms of s 27(2)(cB).

In sum, the Court found that the version of the Commission is more probable than the bald and unsubstantiated averment by ISANCO that the right number of voter supporters were submitted to the Commission. The Commission's version, in addition to being supported by the details and particulars relating to exact figures, the Court also found to have a ring of truth to it.

In the result, the Court refused the relief sought by ASA and ISANCO in their two separate applications and dismissed both applications.