



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: 26 March 2024

Status: Immediate

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African National Congress v Electoral Commission of South Africa and Others (001/2024EC) [2024] ZAEC 03 (26 March 2024)

The applicant, the African National Congress (the ANC) applied, on an urgent basis, for a judicial review and a setting aside of the decision, on 7 September 2023, by the Deputy Chief Electoral Officer (the DCEO) of the first respondent (the Electoral Commission), duly delegated by the second respondent, the Chief Electoral Officer of the Electoral Commission of South Africa (the CEO), to register uMkhonto Wesizwe Political Party (MK) as a political party (the impugned decision).

Today the Electoral Court (EC) dismissed an application with no order as to costs.

Although the ANC did not seek an order against MK, it appropriately cited MK in the proceedings. The order the ANC sought had a substantial bearing on MK's interests, specifically the right of its founders and members to make political choices in terms of s 19 of the Constitution. This right included the right to form a political party. The application was opposed by the Electoral Commission and MK.

The ANC sought to invoke this Court's review jurisdiction in terms of s 20(1) of the Electoral Commission Act. It acknowledged that it failed to bring the application within the prescribed period of three days after the impugned decision was made. It was for that reason that it sought condonation for its delay in bringing the application. The ANC's case was that the DCEO acted unlawfully and outside the bounds of the law, in that it registered MK, as there was no application before him for such registration.

The respondents have raised several points *in limine* before the EC. They both oppose the urgency and condonation relief which the ANC seeks. They also contended that this Court lacks jurisdiction over the matter. Both respondents also opposed the application on the merits, essentially contending that the application falls to be dismissed because, when he made the impugned decision, there was a proper application for the registration of MK as a political party before the DCEO and the impugned decision was lawfully made in terms of s 15(1).

Although the EC held that the respondents' points *in limine* are dispositive of the application, it nevertheless traversed the merits of the matter as the merits are relevant for determining whether the ANC's delay in bringing the application ought to be condoned in the interests of justice.

On 1 June 2023, MK lodged with the DCEO, its application for registration as a political party. On 9 June 2023, MK caused a s 15(4A) notice of its application to register as a political party to be published in the Government Gazette. It published a corrected section 15(4A) notice on 30 June 2023 after the

Electoral Commission alerted it to defects in the 1 June 2023 notice. No objections were made in response to these notices.

In a letter dated 4 August 2023, transmitted to MK by email on 8 August 2023, the DCEO advised MK that he rejected its application for registration as a political party because the signatures of its purported supporters on the deed of foundation showed patterns of discrepancies which indicate that the signatures were made by a person other than a voter. The DCEO further advised MK that it was not precluded from submitting a fresh application that complies with all the applicable requirements. MK supplemented its application by remedying the defects identified by the DCEO and resubmitted it on 30 August 2023. The DCEO reconsidered the application, found that it met all the applicable statutory and regulatory requirements, and registered MK as a political party on 7 September 2023.

On 11 September 2023, the ANC learnt that MK was registered as a political party when it saw on social media a letter by the Electoral Commission to that effect. On 20 September 2023, the ANC lodged an appeal with the Electoral Commission against the DCEO's decision to register MK as a political party on the basis that MK's registered name and its distinguishing mark or symbol resemble the name and the distinguishing mark or symbol of the ANC to such an extent that it may deceive or confuse voters, as envisaged by s 16(1)(b). On 24 November 2023, the Electoral Commission dismissed the ANC's appeal on the basis that it had failed to object, as required by s 15(4B) of the Electoral Commission Act, to the registration of MK within fourteen days from publication of MK's notice in terms section 15(4A) notice.

The legal issues for determination before the EC were crystallised as follows:

- (a) whether the ANC's delay in bringing the application should be condoned;
- (b) whether this Court has jurisdiction over the relief the ANC seeks;
- (c) whether the ANC pre-empted the impugned decision;
- (d) whether there was no proper application for registration of MK when the impugned decision was made and for that reason, when he made the impugned decision, the DCEO acted beyond the scope of his powers as set out in s 15(1).

In addressing these issues, the EC reasoned that the ANC's explanation for bringing the application late was irrational because the explanation did not come close to justifying its delay in bringing the application late. It was not impugning the decision the DCEO made on 4 August 2023, and it was therefore irrelevant that it only became aware of this letter hi 4 August 2023 letter in January 2024. The EC further pointed out that the ANC's contention that it only became aware of the DCEO's 4 August 2023 letter to MK in January 2024 also does not justify the delay as it concedes that it should have been more diligent in accessing MK's registration application file at the Electoral Commission.

With regards to jurisdiction, the EC held that when the ANC failed to object to MK's application for registration, it became non-suited as the Electoral Commission Act does not make provision for a third party to register an interest in the registration of a political party at a later stage or by way of these proceedings as attempted by the ANC. It is for that reason that s 16(2)(b) only afforded parties who objected, the right to impugn the CEO's decision to register a political party as early as possible in the registration process. The EC, therefore, lacked jurisdiction to review the DCEO's 7 September 2023 decision and only had jurisdiction to review the Electoral Commission's 24 November 2023 decision. it elected not to review the latter decision.

As regards whether the CEO acted lawfully and in compliance with the peremptory procedural requirements for the registration of a political party, the EC held that the requirements for the registration of MK, in terms of s 15 of the Electoral Commission Act read with the regulations and annexures thereto, properly interpreted, were met. The EC arrived at the above conclusion after having given due consideration to the language used by the section in the light of: (a) the ordinary rules of grammar and syntax; (b) the context in which the provision appears; (c) the apparent purpose to which it is directed, and (d) the material known to those responsible for its production. The EC held that the submission by

ANC that, because the section makes no reference to 'supplementation', an application cannot be supplemented, holds no water and is an artificial approach as nowhere in s 15 or the regulations was the manner in which the application is to be submitted, prescribed.

In the result, the EC dismissed the application with no order as to costs.

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