



## THE ELECTORAL COURT OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE ELECTORAL COURT

**From:** The Secretary, Electoral Court

**Date:** 24 June 2025

**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***

*Umkhonto WeSizwe Party v Electoral Commission of South Africa and Others* (0039/2024) [2025]  
ZAEC3 (24 June 2025)

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On 26 May 2025, the Electoral Court (EC) granted an order dismissing an application to compel compliance with the Umkhonto Wesizwe Party's (the MK Party) notice in terms of rule 35(12) of the Uniform Rules of Court (the rule 35(12) notice). Today, the EC handed down the reasons for the order.

MK Party sought to compel the Electoral Commission of South Africa (the Commission) and its Chief Electoral Officer, Mr Simon Mamabolo (Mr Mamabolo) to comply with its rule 35(12) notice delivered on 25 November 2024 calling on the Commission to make available to it several evidentiary material relating to the National and Provincial Elections held in May 2024 (NPE2024) (the application to compel).

This dispute has its genesis in MK Party's application against the Commission and Mr Mamabolo for an order declaring that the NPE2024 were not free and fair as required by s 19(3) of the Constitution of the Republic of South Africa, 1996, as well as an order reviewing and setting aside the election results (the main application). On Friday, 31 May 2024 from 06h00 to 09h00, the leaderboards at the Commission's National Results Operations Centre (NROC) and online results dashboards crashed and displayed elections results for all political parties as zero (the downtime period). This event mainly grounds the MK Party's challenge to the NPE2024 results in the main application. It impugns the integrity of the election vote capturing and reporting system, as well as the Commission's decision to upgrade the system at the peak of vote counting - several hours before the counting would conclude. It also alleges various irregularities in the vote capturing and reporting and questions the Commission's competency to manage elections. The Commission opposes the main application and denies all these allegations.

Subsequent to the Commission filing its answering affidavit in the main application, the MK Party delivered the rule 35(12) notice. It claimed that the Commission's failure to provide it with critical data hinders its ability to challenge the election results' fairness. The Commission argued that it had furnished the MK Party with all the requested documents and recordings which exist and were capable of being produced. It provided some of the information via a WeTransfer link and VPN access to its virtual National Results Operation Centre (NROC). The MK Party contended that since it was unable to access the information in the decompressed format in which it was provided and the Commission closed VPN accounts in July 2024, the Commission has failed to comply with its rule 35(12) notice.

Therefore, the issue before the EC was whether the Commission complied with the MK Party's rule 35(12) notice. The EC held that the Commission had complied with the MK Party's request when it furnished MK Party with a WeTransfer link and opened VPN accounts giving its officials access to its virtual NROC. The WeTransfer link and VPN accounts are still active. The EC further held that the

MK Party's failure to pursue alternative options which on its own version it had to access the information in a decompressed format undermined its claims of non-compliance.

In the event the EC found in its favour, amongst several remedies, the MK Party had sought in the alternative, access to computer algorithms for the Commission's NPE2024 results system. The EC denied this request because the MK Party failed to establish non-compliance with its rule 35(12) notice. The EC also held that even if the MK Party had made out a case for non-compliance, since the computer algorithms were not referred to in the Commission's answering affidavit and not requested in the MK Party's rule 35(12) notice, it was not entitled to such a remedy.

MK Party has since applied for leave to appeal the EC's order dismissing its application to compel, resulting in the main application which was enrolled for hearing on 3 June 2025 being postponed indefinitely as requested by the MK Party and agreed to by the Commission. The Electoral Court is yet to determine the MK Party's application for leave to appeal.

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