



THE ELECTORAL COURT OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN ELECTORAL COURT OF SOUTH AFRICA

From: The Registrar, Electoral Court

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Arise Afrika Arise (AAAR) v Electoral Commission of South Africa (008/2023 EC) [2024] ZAEC 01 (16 January 2024)

Today the Electoral Court (EC) dismissed an application with costs.

The applicant, Arise Afrika Arise (abbreviated AAAR), brought an application to the EC seeking the following relief: (a) to review and set aside the respondent's decision of 2 August 2023 in terms of which the respondent, the Independent Electoral Commission (Commission), dismissed the applicant's appeal against the decision of the Deputy Chief Electoral Officer to refuse to register the applicant as a political party in terms of s 15 of the Electoral Commission Act 51 of 1996 (the Act); (b) to condone the delay in bringing the review application; and (c) additional declaratory relief.

The applicant, brought the application in terms of s 20(1)(a) and (b) of the Act which gives the EC powers to review any decision of the respondent, the Commission. The application was late and should have been brought within 3 days after 2 August 2023, hence Arise Afrika Arise filed an application for condonation of the late filing of the review application.

Regarding the merits, on or about 23 May 2023, Arise Afrika Arise applied for registration as a political party in terms of s 15 of the Act. The application was considered by the Deputy Chief Electoral Officer: Electoral Operations. On 22 June 2022, he rejected the application on two grounds, first, that the signatures of the registered voters on the deed of foundation showed patterns of discrepancies which, in his view, indicated that the signatures were made by a person or persons other than the voter in contravention of regulation 3(1)(a)(i) of the Regulations for the Registration of Political Parties, 2004, promulgated under the Act. This regulation requires that the deed of foundation of a party seeking national registration – such as Arise Afrika Arise – must be signed by 1000 registered voters. Secondly, the Deputy Chief Electoral Officer found, in terms of s 16, that the name 'Arise Afrika Arise' was almost similar to that of an existing party namely Arise South Africa (ASA) and that it was likely to confuse or deceive the voters.

Aggrieved by the rejection decision, Arise Afrika Arise lodged an appeal with the respondent, contending that the Deputy Chief Electoral Officer erred in finding that its name resembles that of another registered party and that it was likely to confuse or deceive the voters. In its grounds of appeal, Arise Afrika Arise did not challenge the respondent's finding that the signatures of registered voters on the deed of foundation were fraudulent and that the names of some of the registered voters on the deed

of foundation were duplicated. Arise Afrika Arise contended that the decision to reject its registration application on the basis that its proposed name was similar to that of ASA was unfair and inconsistent with the respondent's previous actions in registering the other political parties with similar names. The applicant accused the respondent of being inconsistent in the manner in which it applied the regulations regulating the registration of political parties, averring that the respondent's decision to refuse its registration demonstrated glaring acts of corruption, mala fides, and abuse of power. On 2 August 2023, the respondent dismissed Arise Afrika Arise's appeal and confirmed the Deputy Chief Electoral Officer's decision (appeal decision). It reasoned that the registration of the name 'Arise Afrika Arise' was likely to deceive or confuse voters in circumstances where there is 'an increasing phenomenon of registered parties'.

Still not satisfied with the respondent's appeal decision, the applicant brought the present application on 15 August 2023 seeking the review and setting aside of the respondent's decision. Arise Afrika Arise anchors its review on the Promotion of Administrative Justice Act 3 of 2000 (PAJA). It submitted that the respondent's refusal to register it as a political party is arbitrary, unreasonable and unlawful and amounts to a failure to exercise its powers in accordance with the principles of administrative justice. It denied that the name Arise Afrika Arise was substantially similar to that of ASA.

Before the EC, two issues arise for determination, namely whether the delay in instituting the review application should be overlooked, and the other is whether the respondent's refusal to register the applicant is unlawful and irrational.

In answering the first issue, the EC held that notwithstanding Arise Afrika Arise's failure to give full explanation for the delay, the interests of justice warrant that the EC grant condonation and that it would not be in the interests of justice to refuse condonation in circumstances where the delay, though not fully explained, is short and the right sought to be asserted is a political right to which every citizen of this country is entitled under the Constitution. Additionally, on this point, the EC held that the respondent has not been prejudiced by the delay and that the applicant's members would be more prejudiced than the respondent if condonation were to be refused.

On the issue of the refusal to register the applicant, the EC was of the view that on a comparison of the two names, it can properly be said that there is a reasonable likelihood of confusion if both are to be used together on the ballot paper as the emphasis in both names is on the two words 'Arise' and 'Afrika'. Consequently, an undecided voter may cast their vote for Arise Afrika Arise when in fact their intention was to vote for Arise South Africa or may put their mark next to Arise South Africa when their intention was to cast their vote for Arise Afrika Arise. On this point, the EC held that the respondent was therefore entitled to refuse to register it.

On the point of the signatures, the EC held that the signatures provided by Arise Afrika Arise were not signatures of registered voters, stating that several voters were repeated twice, but with two different signatures. It held that it was clear from the evidence that Arise Afrika Arise could not have met the threshold of 1000 qualified voters and that the respondent was therefore justified in rejecting the application which does not comply with the Act.

In the result, the EC dismissed the application with costs.

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