



**THE ELECTORAL COURT OF SOUTH AFRICA
BLOEMOFNTEIN**

Reportable

Case no: 007/2026EC

In the matter between:

AFRICAN NATIONAL CONGRESS

APPLICANT

and

ELECTORAL COMMISSION OF

SOUTH AFRICA

RESPONDENT

DEMOCRATIC ALLIANCE

INTERVENING PARTY

Neutral citation: *African National Congress v Electoral Commission of South Africa and Another* (007/26EC) [2026] ZAEC 05 (23 September 2026)

Coram: MODIBA J, MANGCU-LOCKWOOD AJ, and PROFESSOR PHOOKO (ADDITIONAL MEMBER)

Heard: 15 SEPTEMBER 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and by released to SAFLII. The date and time for hand-down of the order

was 11h00 on 16 September 2026. The date and time for hand-down of the reasons is deemed to be 11h00 on 23 September 2026.

Summary: Electoral law – Local government elections – Electronic nomination of candidates through Electoral Commission Online Candidate Nomination System (OCNS) – interpretation of s 14 and s 17 of the Local Government: Municipal Electoral Act 27 of 2000, read with regulations 4(3) and 11(2) of the Municipal Electoral Regulations, 2000 – whether uploading candidate information and supporting documents, without clicking “submit as final”, constitutes a valid submission of nominations – whether the Electoral Commission made an appealable decision under s 20(2)(a) of the Electoral Commission Act 51 of 1996 – Electoral Commission's determination that nominations for which “submit as final” was not clicked were invalid held to involve the interpretation of electoral legislation and, therefore, to constitute an appealable decision – Proper interpretation of the statutory and regulatory framework requiring the electronic submission of nominations in the prescribed manner – “Submit as final” functionality forming part of the prescribed electronic nomination process – uploaded nominations remaining provisional until final submission – failure to click “submit as final” before the statutory timeline constituting non-compliance with mandatory nomination requirements – Electoral requirements designed to promote certainty and the equal treatment of participants requiring compliance with the prescribed nomination process. Distinction drawn between participation-enhancing approach in *African Christian Democratic Party v Electoral Commission* and subsequent jurisprudence emphasising certainty, equality of treatment and strict compliance with electoral requirements – Consequence of non-compliance following by operation of law – Electoral Commission correctly excluding the affected candidates from the certified candidate lists – appeal dismissed – Democratic Alliance granted leave to intervene – African Transformation Movement's intervention application held not to be properly before

the Court owing to non-compliance with court directives, inordinate delay and absence of an application for condonation – no order as to costs, in accordance with the principles applicable to electoral litigation.

ORDER

On appeal from: The Electoral Commission of South Africa

1 The Democratic Alliance is granted leave to intervene as a party in these proceedings.

2 The African National Congress's appeal is dismissed.

3 It is declared that the African Transformation Movement's application for leave to intervene was not properly before the Court, having been brought inordinately late, contrary to this Court's directives issued on 9 September 2026, and in the absence of any application for condonation for its late filing.

4 There is no order as to costs.

JUDGMENT

Modiba J (Mangcu-Lockwood AJ, and Professor Phooko (additional member) (concurring):

Introduction

[1] This appeal concerns the legal effect of a political party uploading candidate information to the Electoral Commission of South Africa's (Electoral Commission) Online Candidate Nomination System (OCNS) without clicking the system's "submit as final" function. The central question is whether, in those circumstances, the party complied with the statutory and regulatory requirements governing nominations for local government elections.

[2] Although the dispute arises from a single step in an electronic nomination process, it raises broader questions concerning the interpretation and application of electoral legislation. It requires the Court to consider how the electoral framework balances electoral participation and enfranchisement, on the one hand, with certainty, fairness and equal treatment in the administration of elections, on the other. The appeal also engages the Electoral Commission's constitutional mandate to manage elections that are free and fair and raises the significance to be attached to allegations concerning the reliability and integrity of electoral systems where those allegations are disputed on the evidence. It further requires consideration of the weight to be given to a party's prior acceptance of, and compliance with, the electoral framework when that party subsequently impugns that framework after being found not to have complied with it.

[3] The African National Congress (ANC) seeks leave to appeal and the upholding of the appeal against the Electoral Commission's decision that certain party lists and ward candidate nominations were not validly submitted before the statutory deadline. It also seeks a declarator that, properly interpreted, s 14 and s 17 of the Local Government: Municipal Electoral Act 27 of 2000 (Municipal Electoral Act or the Act), read with regulations 4(3) and regulation 11(2) of the Municipal Electoral Regulations, 2000 (the Regulations), deem those nominations to have been lawfully and validly submitted before the prescribed timeline. Lastly, the ANC seeks a mandatory order directing the Electoral Commission to treat the nominations as validly submitted and to include them in the certified candidate lists for the local government elections scheduled for 4 November 2026.

[4] The Electoral Commission opposes both the application for leave to appeal and the appeal. The Democratic Alliance (DA) seeks leave to intervene and, if granted, opposes the relief sought by the ANC. The African Transformation Movement (ATM) also sought leave to intervene. For reasons set out later in this judgment, its application was found not to be properly before this Court.

Background facts and the parties' contentions

[5] The background facts are common cause. The ANC is a registered political party seeking to participate in the November 2026 local government elections. It elected to submit party lists and ward nominations electronically through the OCNS. Before the 17h00 timeline on 28 August 2026, it completed all electronic nomination forms, uploaded all required supporting documentation and paid the required deposits. The only step not completed was clicking the OCNS "submit as final" function.

[6] On 1 September 2026, the Electoral Commission announced that candidates captured but not submitted as final would not be regarded as candidates for the election. The Electoral Commission subsequently refused the ANC's request to reconsider its stance.

[7] The ANC initially attributed its failure to complete the nomination process to technical difficulties encountered shortly before the deadline, including being logged out of the OCNS. The Electoral Commission denied those allegations and furnished detailed evidence in support of its denial.

[8] Faced with that evidence, and mindful of the *Plascon-Evans* rule governing motion proceedings, the ANC largely abandoned its reliance on system

malfunction in its replying affidavit and heads of argument. Instead, it advanced what was principally a legal argument: that, notwithstanding its failure to click the “submit as final” function, it had done all that was required to effect a valid nomination under the applicable electoral framework.

[9] The Electoral Commission opposes the application principally on three grounds. It contends that no appealable decision was made; that the OCNS functioned properly and did not prevent submission; that electronic submission requires final submission through the prescribed process; and that the ANC failed to complete that process before the deadline.

[10] The Electoral Commission alleges that the OCNS had been available since June 2026 and that political parties were extensively trained on its operation; that the ANC's long-standing Online Portal Administrator attended training sessions; that the OCNS repeatedly alerted users to the need to perform a final submission through training materials, dashboard notifications, and automated emails; and that the ANC successfully completed final submissions for municipalities throughout the rest of the country, demonstrating knowledge of the process and the final submission requirement.

[11] According to the Electoral Commission, the OCNS remained fully operational throughout the nomination period. The System records disclose no material or system-wide malfunction, and other political parties, as well as the ANC itself in respect of other municipalities, successfully completed their nominations before the prescribed timeline.

[12] On the application of the *Plascon-Evans* rule, the dispute must therefore be approached on the basis that the ANC captured and uploaded the relevant candidate information for the six municipalities concerned but did not click “submit as final” before the prescribed timeline.

The Democratic Alliance’s application to intervene.

[13] The DA seeks leave to intervene in the ANC's appeal proceedings, either as a respondent or as an intervening party. It further seeks the dismissal of the ANC's appeal and, in relation to the intervention application, an order for costs against any party opposing its intervention.

[14] The DA contends that it has a direct and substantial interest in these proceedings. It is contesting the elections in the six municipalities affected by the ANC's nominations dispute. It seeks intervene to protect the integrity and fairness of the electoral process. It contends that the relief sought would affect its rights and interests, as well as those of its candidates, supporters, and the voting public, as it would permit ANC candidates to appear on the ballots in those municipalities. It submits that the ANC should not be permitted to participate in the elections because it failed to comply with the statutory nomination requirements.

[15] The ANC, by contrast, maintains that the dispute concerns only the proper interpretation of the statutory meaning of ‘submission’, that the DA possesses no legally protectable interest in that interpretive dispute, and that its intervention would merely duplicate the Electoral Commission's opposition while disrupting the expeditious resolution of the appeal.

[16] I am satisfied that the DA has demonstrated a direct and substantial interest in the outcome of these proceedings. The ANC seeks relief which, if granted, would result in the inclusion of ANC candidates on the ballot in six municipalities in which the DA is also contesting the forthcoming local government elections. The DA accordingly has a substantial interest in the outcome of the dispute and in the question whether the ANC has complied with the statutory and regulatory requirements governing the submission of candidate nominations.

[17] I am also not persuaded that the overlap between the DA's submissions and those of the Electoral Commission, without more, provides a basis to refuse intervention. The DA seeks to protect its own asserted rights and interests, and not merely to advance the Electoral Commission's case. Nor am I satisfied that its admission would occasion prejudice sufficient to outweigh its right to participate in proceedings that may directly affect its interests.

[18] The DA's contention that the relief sought by the ANC may affect the fairness and integrity of the electoral process in those municipalities cannot be dismissed as merely abstract or political. The order ultimately granted in the appeal may have a direct impact on the fairness of the electoral contest in which the DA and its candidates are participating. In those circumstances, the DA has established a sufficient legal interest to justify its admission as a party.

[19] Accordingly, the DA has made out a proper case for intervention and should be admitted as a party to these proceedings. It is therefore admitted as the second respondent in the ANC's application for leave to appeal and appeal.

Leave to appeal

[20] Leave to appeal ought to be granted. The parties dispute whether any appealable decision had been made. That question is itself inextricably intertwined with the merits of the appeal and could not appropriately have been determined in isolation by the Chairperson at the leave stage. As this judgment ultimately finds, the Electoral Commission did make a decision concerning the legal effect of the ANC's actions on the OCNS, thereby engaging this Court's appellate jurisdiction. The appeal further raises a novel and important question concerning the legal significance of the “submit as final” function within the electronic nomination system and its relationship to the statutory and regulatory framework governing electoral nominations. Determining that issue will provide important guidance to political parties, the Electoral Commission and the courts in administering future elections.

Issues for determination

[21] At its core, the ANC's case rests substantially on statutory interpretation. The central legal question is whether, on a proper interpretation of s 14 and s 17 of the Municipal Electoral Act and regulations 4(3) and 11(2), electronic ‘submission’ requires only the completion and uploading of the prescribed forms and documents, or whether it additionally requires clicking the OCNS “submit as final” function.

[22] Thus, the matter ultimately turns on the following principal questions:

- a. whether there is an appealable decision;
- b. Whether ‘submission’ under the Act and regulations require only no more than the completion and uploading of nomination information, or whether it additionally requires clicking of the “submit as final” function.

- c. If the latter is required, whether the ANC failed to comply with a mandatory electoral requirement before the prescribed timeline and;
- d. If so, what legal consequences flow from the ANC's non-compliance.

[23] In determining these questions, I am guided by the applicable regulatory framework. I set out below.

Regulatory framework

[24] The relevant legal framework is found in the Constitution, the Municipal Electoral Act, the Regulations, the Electoral Commission Act 51 of 1996, and, to the extent relevant, the Electronic Communications and Transactions Act 25 of 2002 (ECTA). Section 19 of the Constitution guarantees every citizen the right to make political choices, to participate in the activities of a political party, to stand for public office and, if elected, to hold office. It also guarantees the right to free, fair and regular elections. The Electoral Act was enacted to give effect to these constitutional rights.

[25] The Electoral Commission is established under s 181(1)(f) of the Constitution. Section 190(1) requires it to manage elections in accordance with national legislation and to ensure that they are free and fair. In discharging this constitutional mandate, the Electoral Commission must administer the electoral process in a manner that promotes the constitutional values of universal adult suffrage, a multiparty system of democratic government and political participation.

[26] Section 13 of the Municipal Electoral Act provides that only registered political parties may contest municipal elections. A party may do so by submitting a

party list, nominating ward candidates, or both. To participate in an election, a party must comply with the nomination requirements prescribed in the Act.

[27] Section 14 governs elections by way of party lists. Section 14(1) provides that a party may contest an election by means of a party list only if, by the date stated in the election timetable, it has submitted the prescribed documents and paid the prescribed deposit. Section 14(1A) further provides that the required documents must be submitted either:

‘(a) by hand to the office of the Electoral Commission's local representatives; or (b) electronically to the chief electoral officer in the prescribed manner.’

[28] Section 17 establishes substantially similar requirements for ward candidates. A ward candidate may contest an election only if nominated on the prescribed form and that form is submitted by the deadline prescribed in the election timetable. Section 17(1A) likewise provides for submission either by hand or electronically in the prescribed manner. The Act thus creates two alternative methods of submission but leaves the manner of electronic submission to be prescribed by regulations.

[29] Section 11(3) of the Municipal Electoral Act provides that any act required in terms of the Act or Regulations must be performed by no later than the date and time stated in the election timetable. Item 1 of Schedule 3 to the Act provides that, any act required to be performed by a specified date, must be completed before 17h00 on that date.

[30] In the present election, the deadline for submission of candidate nominations and party lists was 17h00 on 28 August 2026. It was peremptory and

applied equally to manual and electronic submissions. The regulations prescribe how electronic nominations are to be submitted. The relevant part of regulation 1 defines the ‘CNS system’, presently the OCNS, as:

‘a secure online business application located on the official website, to be used for the electronic submission of the information and documents contemplated in sections 14(1A)(b) and 17(1A)(b).’

[31] Regulation 4(3) governs the electronic submission of party lists and provides:

‘If a party elects to submit the information and documents contemplated in section 14(1)(a) electronically as contemplated in section 14(1A)(b), it must do so by—

- (a) completing the electronic forms available for that purpose on the OCNS system; and
- (b) uploading the annexures referred to in the said electronic forms onto the CNS system.’

[32] Regulation 11(2) contains an equivalent provision in respect of ward candidate nominations and requires such nominations to be submitted by completing the electronic forms available on the OCNS system. The interpretation of these provisions lies at the heart of the present dispute.

[33] The ANC contends that the Regulations exhaustively prescribe the requirements for electronic submission and require no more than completion of the electronic forms and uploading of the prescribed documents. The Electoral Commission, by contrast, contends that completion of the forms includes the additional step of clicking “submit as final” within the OCNS.

[34] Section 20 (2) (a) of the Electoral Commission Act confers appellate jurisdiction on this Court and provides that:

‘The Electoral Court may hear and determine an appeal against any decision of the Electoral Commission only insofar as such decision relates to the interpretation of any law or any other matter for which an appeal is provided by law.’

[35] Whether the Electoral Commission's determination that the ANC had not submitted candidates for the affected municipalities constitutes an appealable decision within the meaning of section 20 (2) (a) is the question to which I now turn.

Appealability of the Electoral Commission's conduct

[36] The Electoral Commission and the DA raise a preliminary objection to the appeal's competency. They contend that no appealable decision lies before this Court because the exclusion of the ANC's affected candidates followed automatically by operation of law once the ANC failed to comply with the requirements governing the submission of nominations. In support of this contention, reliance is placed principally on *African Congress for Transformation v Electoral Commission of South Africa*¹ where the Constitutional Court stated as follows:

‘Where a party fails to comply with the Election Timetable, or any other election regulation, that party will be excluded from the election. That follows by operation of law.’²

[37] Further support for this conclusion is found in *National Freedom Party v Electoral Commission and Another*.³ There, the Electoral Court held that the

¹ *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa and Others; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* (CCT 106/24; CCT 113/24; CCT 114/24) [2024] ZACC 7; 2024 (8) BCLR 987 (CC) (20 May 2024) (*African Congress for Transformation*).

² *Ibid* fn 1 para 83.

³ *National Freedom Party v Electoral Commission and Another* (006/2016 EC) [2016] ZAEC 4 (*National Freedom Party*) paras 17-19.

election timetable, once published, has the force of subordinate legislation and is binding on all participants. The Court emphasised that neither it nor the Electoral Commission possesses a general power to condone non-compliance with the statutory electoral framework. It further held that the time limits prescribed by the election timetable are mandatory and that a party's failure to comply with them places it outside the electoral contest by operation of law. The consequence of non-compliance therefore arises from the legislative scheme itself, rather than from any discretionary determination by the Commission.

[38] The ANC contends, on the other hand, that the Electoral Commission was required to determine whether the information captured and uploaded onto the OCNS constituted a valid 'submission' for purposes of s 14 and s 17 of the Municipal Electoral Act and the regulations. According to the ANC, the Electoral Commission interpreted the governing statutory and regulatory provisions to require clicking the "submit as final" function and, acting on that interpretation, determined that the affected nominations had not been submitted. The ANC argues that such determination constitutes a decision relating to the interpretation of a law and is therefore appealable under s 20(2)(a) of the Electoral Commission Act.

[39] It is legally settled that the Electoral Commission enjoys no discretion to condone non-compliance with statutory requirements. The authorities are clear that electoral deadlines serve important constitutional purposes of fairness, certainty and the orderly administration of elections. Once a legal requirement is not met, neither the Electoral Commission nor this Court may simply excuse the non-compliance.⁴

⁴ *Liberal Party v Electoral Commission (Liberal Party)* (CCT 10/04) [2004] ZACC 1; 2004 (8) BCLR 810 (CC) (5 April 2004) at paras 21-25; *Electoral Commission of the Republic of South Africa v Inkatha Freedom Party* CCT

[40] However, the Electoral Commission's objection overlooks the anterior question that lies at the heart of the present dispute. The parties do not differ about what occurred factually. It is common cause that the ANC uploaded the relevant nomination information and supporting documentation onto the OCNS before the deadline. It is equally common cause that the ANC did not click “submit as final” in respect of the affected municipalities. The dispute concerns the legal significance of those undisputed facts.

[41] The Electoral Commission's case is that, as a matter of law, a nomination is not submitted unless the “submit as final” step has been completed. The ANC's case is that completion of the prescribed electronic forms and uploading of the required documents constitute submission and that the additional system-generated step lacks legislative foundation. The determination of that dispute necessarily requires an interpretation of the Municipal Electoral Act and the Regulations.

[42] The Electoral Commission was required to adopt one of those competing interpretations. It did so when it concluded that candidates whose details had been captured and uploaded, but not marked as ‘submitted as final’, had not been submitted for purposes of the Act and could therefore not participate in the election. The Electoral Commission thereafter communicated that conclusion publicly and in writing to the ANC.

33/11) [2011] ZACC 16; 2011 (9) BCLR 943 (CC) (10 May 2011) (*Inkatha Freedom Party*) at paras 52-57; and *African Congress for Transformation* paras 83 and 112.

[43] It is therefore unnecessary to characterize the Electoral Commission's conduct as an exercise of discretion. Section 20(2)(a) extends this Court's appellate jurisdiction to decisions of the Electoral Commission 'insofar as such decision relates to the interpretation of any law'. The question is thus not whether the Electoral Commission had discretion to overlook non-compliance, but whether it reached and applied an interpretation of the applicable electoral statutory framework. In this matter, it plainly did.

[44] This conclusion is consistent with the Constitutional Court's treatment of similar disputes in *African Christian Democratic Party v Electoral Commission*.⁵ There, the dispute likewise concerned whether the applicant party had complied with statutory requirements regulating electoral participation. The Constitutional Court held that the Electoral Commission had erred in law in concluding that the party had failed to comply with the relevant provisions of the Municipal Electoral Act and set aside the Electoral Commission's determination.⁶

[45] The Electoral Commission's reliance on the expression 'operation of law' does not assist it. Whether exclusion followed by operation of law depends entirely on the correctness of the Electoral Commission's interpretation of the requirements for electronic submission. If the Electoral Commission's interpretation is correct, exclusion indeed follows automatically. If its interpretation is wrong, exclusion does not follow. The proposition that the consequence arose by operation of law therefore presupposes an answer to the very interpretive question that the ANC seeks to challenge in this appeal.

⁵ *African Christian Democratic Party and Others v Electoral Commission* CCT 10/06 [2006] ZACC 1; 2006(3) SA 305 (CC); 2006(5) BCLR 579 (CC) (24 February 2006) (*African Christian Democratic Party*).

⁶ *African Christian Democratic Party* fn. 5 paras 11, 32-35.

[46] And, contrary to what was submitted on the Electoral Commission's behalf, the ANC did not raise this question for the first time in these proceedings. It did so in its letter to the Electoral Commission dated 2 September 2026, where it called on the Commission to:

'20.5 explain the technical and legal effect of the "submit as final" function, and identify what information or act, additional to the uploaded data, is conveyed by that function.'

[47] The Electoral Commission replied to the ANC in writing on 4 September 2026, stating that:

'11. For purposes of compliance with the requirement to electronically submit the necessary information and documents on the OCNS, a distinction must be drawn between: 11.1 uploading documents or other information to the OCNS; 11.2 capturing or saving candidate information on the OCNS; and 11.3 finally submitting the relevant nomination information through the prescribed process.

12. The OCNS permits parties to upload, capture, save, review, amend and, where necessary, replace candidate information before making a final submission. The capturing or temporary storage of information is not a final submission. It is an administrative and navigational feature of the OCNS system. It enables parties to prepare their nominations progressively. Critically, uploading, capturing or saving does not itself constitute the electronic submission of a nomination in terms of the Act and Regulations.

13. The final submission step performs that distinct and necessary function.

13.1 It is what constitutes the electronic submission of a nomination in terms of the Act and Regulations.

13.2 It communicates the party's final and unequivocal decision to electronically lodge the nomination with the Electoral Commission.

13.3 It also distinguishes electronic submissions by a party, from information that remains incomplete, provisional or subject to change.

13.4 Without the final submission step being performed, there is no electronic submission of a nomination in terms of the Act and Regulations.

14. Thus, uploading, capturing or saving a document in the OCNS, does not constitute an electronically submitted nomination in terms of the Act and Regulations.

15. The Electoral Commission cannot in law recognise information that had been uploaded and captured on the OCNS, which is *per se* incomplete, where the final submission step was not completed before the deadline.'

[48] Accordingly, while the ultimate consequence of non-compliance may follow by operation of law, the present dispute concerns the Electoral Commission's determination of what the law required in the first place. That determination relates directly to the interpretation of the Municipal Electoral Act and the Regulations and is in essence what the Electoral Commission conveyed to the ANC in the letter quoted above. It therefore falls within the ambit of s 20(2)(a) of the Electoral Commission Act.

[49] Accordingly, the Electoral Commission's preliminary objection must fail. The appeal is properly before this Court.

The Relevance of the Electronic Communications and Transactions Act 25 of 2002

[50] The ANC relies on various provisions of the ECTA, particularly s 19(2) and s 23(b), in support of its contention that the nomination information was submitted once it had been uploaded onto the OCNS and had become retrievable by the Electoral Commission. It argues that s 19(2) is of particular importance, as it provides that statutory references to terms such as 'submit', 'lodge' or 'deliver' must be interpreted so as to include equivalent actions performed in relation to a data message.

[51] It also relies on s 23(b) of the ECTA, which provides that a data message is regarded as received when it enters an information system designated by the addressee and is capable of being retrieved and processed by that addressee. The ANC contends that these provisions support its argument that nomination information was submitted once it had been uploaded onto the OCNS and became retrievable by the Electoral Commission.

[52] The Electoral Commission disputes the relevance of the ECTA and contends that the question is not whether the Electoral Commission received the information, but whether the nomination process prescribed by the Municipal Electoral Act, the Regulations, and the OCNS was completed before the deadline.

[53] In my view, ECTA provides limited assistance in resolving this dispute. It is legislation of general application regulating electronic communications and transactions. It establishes, amongst other things, when data messages are regarded as sent and received and provides for the legal recognition of certain electronic acts. However, it does not regulate the nomination of candidates for local government elections. That subject matter is specifically governed by the Municipal Electoral Act and the Regulations promulgated thereunder.

[54] That is not to say that ECTA is irrelevant. As recognised in *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others*,⁷ legislation dealing with related subject matter may form part of the wider interpretive context and should, where possible, be read harmoniously with the statute under

⁷ *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others* 2020 (2) SA 325 (CC) para 38.

consideration. ECTA may therefore assist in understanding the legal consequences ordinarily attached to electronic communications and data messages.

[55] The present dispute, however, does not concern when a data message is deemed to have been received by the Electoral Commission. Nor does it concern the legal validity of electronic communications generally. The question is whether the ANC complied with the statutory requirements prescribed for the valid electronic nomination of candidates. Section 14(1A)(b) and s 17(1A)(b) of the Municipal Electoral Act permit electronic nomination only ‘in the prescribed manner’. The Regulations prescribe that manner, and the Electoral Commission gives effect to it through the OCNS.

[56] Accordingly, while ECTA forms part of the broader statutory context, it cannot displace or override the specific requirements governing electoral nominations. That much is supported by s 4(5) of ECTA which provides that ‘the ECTA does not limit the operation of any law that expressly authorizes, prohibits or regulates the use of data messages, including any requirement by or under a law for any information or document to be transmitted by a specified method’. Even if the ANC is correct that the nomination information entered the Electoral Commission's information system and became capable of retrieval before the deadline, that would not answer the anterior question whether the electoral nomination process prescribed by the Municipal Electoral Act and the Regulations had been completed.

[57] In this respect, the principle that statutes should be read harmoniously does not require the general provisions of ECTA to supersede the specific provisions governing electoral nominations. Properly construed, the two statutes operate in parallel spheres. ECTA regulates the legal recognition and receipt of electronic

communications generally, whereas the Municipal Electoral Act and Regulations prescribe the steps necessary for a valid electoral nomination. The dispute therefore falls to be resolved primarily within the framework of the electoral legislation itself.

[58] Accordingly, ECTA does not determine whether the ANC's nominations were validly submitted for purposes of the electoral scheme. That question depends on whether the ANC complied with the requirements prescribed by the Municipal Electoral Act, the Regulations and the OCNS before the prescribed deadline.

Interpretation of ‘submitted’ in s 14 and s 17 of the Municipal Electoral Act

[59] The starting point is the interpretative framework articulated in *University of Johannesburg v Auckland Park Theological Seminary and Another*⁸, namely that interpretation entails attributing meaning to statutory language by simultaneously considering text, context and purpose. The exercise is holistic. Courts must not consider text or purpose in isolation and must avoid both an unduly literal approach and one that ignores the language the legislature actually used. Equally important, courts may not read words into a statutory scheme that are not reasonably supported by its text and context.

[60] In the electoral context, *African Christian Democratic Party*⁹ postulates that electoral legislation should, where reasonably possible, be interpreted in a manner that promotes enfranchisement rather than disenfranchisement and participation rather than exclusion. However, the Constitutional Court emphasized that the exercise remains one of interpretation. The principle of enfranchisement

⁸ *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) (*Auckland Park Theological Seminary*) paras 64-69.

⁹ *African Christian Democratic Party* paras 23-25.

does not license a court to disregard the statutory scheme or to excuse non-compliance with requirements that the legislation, properly construed, imposes. The question remains whether what was done constituted compliance with the statutory provisions viewed in the light of their purpose.

[61] Applying these principles, I am persuaded that the Electoral Commission's interpretation is to be preferred. The Municipal Electoral Act requires electronic nominations to be submitted 'in the prescribed manner'. The Act itself does not prescribe that manner. It leaves that task to the Electoral Commission through the Regulations. The Regulations in turn require parties to complete the nomination forms.

[62] The Electoral Commission established the OCNS to manage the electronic nomination process. Parties who opt to submit their nomination lists electronically are required to use the OCNS. Properly understood in context, completing nomination forms on the OCNS cannot be divorced from the functionality of the system through which the forms are submitted.

[63] The OCNS is not merely a repository for data. It distinguishes between information that had been captured and information that had been finally submitted. Until "submit as final" is clicked, nominations remain provisional, capable of amendment, replacement or withdrawal. Only the clicking of that function communicated to the Electoral Commission that the party had finalised its nominations and intended them to be treated as its official nominations.

[64] It follows that the "submit as final" function is not merely an internal administrative convenience. It is the mechanism through which a party completes

the prescribed electronic nomination process. The Act required submission in the prescribed manner; the prescribed manner incorporated the OCNS functionality; and the OCNS required final submission before nominations acquired legal effect. Failure to click "submit as final" therefore constitutes a failure to comply with the statutory nomination requirements.

[65] This conclusion is reinforced by the principle that when interpreting text, ‘a sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or *undermines the apparent purpose of the document*.’¹⁰ (Emphasis added). If the ANC's interpretation were correct, there would be no meaningful distinction between uploading candidate information and submitting nominations. The final submission stage, despite its prominence in the system and its repeated communication to political parties, would serve no practical or legal purpose whatsoever. Such an interpretation would be difficult to reconcile with the structure and design of the OCNS and with the Electoral Commission's statutory mandate to manage elections through detailed and practical regulatory mechanisms.

[66] I accept that the consequence of this interpretation is disenfranchisement rather than enfranchisement, exclusion rather than participation. However, that consequence does not render the interpretation incorrect. As the Constitutional Court explained in the minority judgment in *African Christian Democratic Party*, the imperative of participation operates only within the bounds of the proper interpretation of the statutory framework.¹¹ Once the framework is correctly interpreted, courts are not at liberty to disregard its requirements in the name of enfranchisement. To do so would be to transform a principle of interpretation into a

¹⁰ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

¹¹ *Ibid* fn 9.

power of condonation. Neither the Electoral Commission nor this Court enjoys such a power.

[67] The ANC relies heavily on the majority judgment in *African Christian Democratic Party* as authority for a participation-enhancing interpretation of electoral legislation. However, that decision is distinguishable from the present matter both factually and jurisprudentially.

[68] In *African Christian Democratic Party*, the Constitutional Court considered the meaning and operation of the statutory requirement for the payment of a deposit. The issue was whether a credit held by the Electoral Commission on behalf of the applicant party could satisfy the prescribed deposit requirement. A related question was whether strict compliance with the procedure for furnishing proof of payment was required where the Commission had already received the deposit in the form of the credit it held for the applicant party, by the prescribed deadline.

[69] The majority held that, properly interpreted, the legislation did not require strict compliance with the procedure for furnishing proof of payment where the Electoral Commission had in fact received the deposit by the prescribed deadline. The Court's conclusion therefore rested on its interpretation of the statutory scheme and its assessment that the requirement's substantive purpose had been fulfilled.

[70] The present matter is materially different. There is no dispute that the OCNS expressly distinguishes between information that had merely been captured and information that has been finally submitted. Nor is there any uncertainty about

the objective fact that the ANC did not complete the final submission step for the affected municipalities.

[71] The question is not whether the statutory purpose of a completed submission was achieved by equivalent conduct. Rather, it is whether conduct that stopped short of the final stage prescribed by the system constituted submission at all. Once the relevant provisions are interpreted to incorporate the “submit as final” functionality as part of the prescribed electronic process, the ANC cannot be said to have achieved substantial compliance with the requirement. It simply did not perform the act that converted a provisional nomination into a completed one.

[72] This conclusion is reinforced by the function served by final submission within the electoral framework. The distinction between a provisional list and a final list is neither artificial nor insignificant. Candidate nominations are ordinarily preceded by internal party deliberations, consultations, approvals and revisions, and may be altered, supplemented or withdrawn before a final decision is made. It is therefore necessary to identify when a political party communicates its definitive and authoritative choice of candidates to the Electoral Commission.

[73] As the Electoral Commission explained in its letter of 4 September 2026, the final submission step serves that purpose precisely: it communicates the party's ‘final and unequivocal decision’ to lodge the nomination and distinguishes nominations that remain provisional or subject to change from those that are finally submitted. A final submission thus confirms that the candidates appearing on the list are those whom the party has duly nominated for inclusion in the electoral process, including the compilation of candidate lists and, ultimately, the ballot. Its purpose is not merely administrative convenience. It promotes certainty, transparency and the

orderly administration of elections, while safeguarding the political rights protected by s 19 of the Constitution by ensuring that only duly authorised and finalised nominations enter the electoral process.

[74] The ANC's contention that all nominations uploaded and captured on the system at the cut-off time should automatically be regarded as final is therefore untenable. It would require the Electoral Commission to infer retrospectively a party's final intention from information that, by design, remained capable of amendment, replacement, or withdrawal before final submission or acceptance of incomplete nomination forms. It would also blur the distinction between provisional and final nominations, create uncertainty as to which candidates a party ultimately intended to field, and compel the Electoral Commission to make *ex post facto* judgments concerning the status of nominations.

[75] Such an approach would undermine the certainty, fairness and equal treatment that electoral timelines and nomination requirements are intended to secure. Rather than promoting electoral participation, it would introduce uncertainty into the nomination process and compromise the integrity of the electoral system itself. Thus, once the prescribed process distinguishes between provisional and final nominations, the Electoral Commission cannot lawfully treat provisional nominations as final merely because they remained on the system when the deadline expired.

[76] Moreover, *African Christian Democratic Party* must be understood against the backdrop of a substantial body of electoral jurisprudence emphasising the need for strict compliance with electoral requirements and timelines. This was the principal concern articulated in the minority judgment of Skweyiya J, who

cautioned that the integrity, certainty and fairness of elections depend on the consistent application of the rules to all participants and that courts should be slow to excuse non-compliance with peremptory electoral requirements. Those concerns have subsequently found expression in later decisions of the Constitutional Court and this Court.

[77] Thus, in *Inkatha Freedom Party*¹², the Constitutional Court stressed that electoral fairness requires certainty, predictability and equal treatment of contestants. In *Liberal Party*¹³, the Court emphasised that compliance with electoral deadlines serves important democratic purposes and that courts are generally not at liberty to relax legislatively prescribed requirements.

[78] More recently, in *African Congress for Transformation*,¹⁴ the requirements results in exclusion ‘by operation of law’ and that neither the Electoral Commission nor the courts possess a general power to condone such non-compliance. The present matter falls comfortably within that line of authority.

[79] The requirement to click the ‘final submit’ was communicated in advance, repeatedly highlighted by the Electoral Commission, uniformly applied to all political parties and, significantly, successfully complied with by the ANC itself in relation to its remaining nominations. Therefore, upholding the requirement does not elevate form above substance. Rather, it gives effect to the principle that electoral rules, once lawfully prescribed, must be applied equally and consistently to all

¹² Ibid *Fn.* 1 and 2.

¹³ See *Fn* 4 above.

¹⁴ See *Fn.* 4.

contestants. That approach promotes not only certainty and fairness, but also public confidence in the integrity of the electoral process.

[80] Properly understood, therefore, this case does not require a departure from the principle of enfranchisement recognised in *African Christian Democratic Party*. It requires the reconciliation of that principle with the equally important constitutional imperatives of legality, certainty and equal treatment. On the facts of this case, those latter considerations strongly favour the enforcement of compliance with the prescribed nomination process.

[81] As argued on behalf of the Electoral Commission, the ANC did not challenge the validity of the statutory and regulatory framework governing electronic nominations, including the requirement that candidate lists be submitted as final. It was aware of that requirement and, save for the six municipalities in issue, complied with it throughout the country. Its conduct shows it understood that final submission formed part of the nomination process. Having participated in the electoral process on that basis, its belated challenge to the electronic submission requirements is legally untenable.

[82] A prescribed regulatory framework is legally binding and enforceable, and participants must operate within it.¹⁵ To excuse non-compliance in respect of the remaining municipalities would create precisely the type of unequal treatment and post hoc relaxation of requirements that the electoral jurisprudence cautions against.

¹⁵ *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency and Others* 2014 (1) SA 604 (CC) (*AllPay*) para 38.

[83] The integrity of the OCNS is another important consideration. The ANC initially sought to attribute its predicament to alleged failures of the system. Yet the Electoral Commission placed extensive objective evidence before the Court demonstrating that the system remained operational and that submissions continued to be processed until the prescribed timeline expired. On the papers, those allegations were ultimately abandoned and were not seriously pursued. The Electoral Commission's version of how the system functioned prevails.

[84] In those circumstances, it would be inimical to the public interest and to confidence in the management of elections to permit unsubstantiated allegations to cast doubt on the reliability of a system used nationwide to facilitate nominations. Electoral management institutions depend on public confidence in the integrity of their processes. Where allegations impugning those processes are made without evidential foundation and ultimately abandoned, the Court should deprecate such conduct and decline to attach any weight to the allegations. Conversely, where the evidence establishes that the system functioned as intended, the Court should affirm its integrity, as this Court does in the present matter.

[85] Regard must also be had to the institutional role of the Electoral Commission. The Constitution entrusts the Electoral Commission with the active and detailed management of elections. That mandate necessarily includes designing and implementing practical systems through which statutory requirements are operationalised. Unless shown to be unlawful, irrational or inconsistent with the empowering legislation, those systems deserve judicial respect. It would undermine both the Electoral Commission's constitutional authority and the orderly conduct of elections if duly communicated regulatory requirements could be ignored after the event merely because compliance with them proved inconvenient. The rule of law

requires not only that the Electoral Commission act within its powers, but also that political parties respect the regulatory framework lawfully established to govern elections.

[86] There is a further consideration. Political parties seeking to contest elections bear a special responsibility to comply with the legal framework governing participation in those elections. If elected, their candidates assume public office and exercise public power as organs of state. Their authority is derived solely from law and must at all times be exercised within its confines. Compliance with electoral requirements at the threshold of public office is therefore not a matter of mere procedural formality. It demonstrates fidelity to the rule of law by those who seek a mandate to govern and promotes public confidence that such fidelity will endure once public power is entrusted to them.

[87] Equally, compliance affirms the legitimacy of the offices to which candidates aspire, ensuring that public authority is exercised on a lawful, credible and constitutionally compliant foundation. The legitimacy of democratic governance depends not only on participation in elections but also on compliance with the legal framework that regulates them.

[88] For all these reasons, I conclude that the "submit as final" requirement formed part of the prescribed manner of electronic nomination, that compliance with it was legally required, and that the failure to click that button before the prescribed timeline resulted in non-compliance with the nomination requirements. The consequence, harsh though it may be, follows not from any discretionary decision of the Electoral Commission but from the consistent application of a regulatory

framework that all parties, including the ANC itself in respect of its remaining nominations, understood and largely complied with.

[89] In the circumstances, the interests of electoral certainty, equal treatment, regulatory integrity and the conduct of free and fair elections outweigh the competing consideration of enfranchisement and participation. The latter cannot justify a departure from the requirements that, properly construed, govern the nomination process.

[90] Having concluded that clicking the "submit as final" function formed part of the prescribed manner of electronic submission and that the ANC failed to complete that step before the expiry of the statutory deadline, it follows that the affected nominations were not validly submitted for purposes of s 14 and s 17 of the Municipal Electoral Act and the Regulations. The legal consequence of that non-compliance is not a matter of discretion. It follows by operation of the legislative scheme itself.

[91] As the Constitutional Court has repeatedly emphasised, neither the Electoral Commission nor the courts possess a general power to condone non-compliance with peremptory electoral requirements or deadlines. The Electoral Commission therefore correctly determined that the ANC's affected candidates had not been validly nominated and could not lawfully be included in the certified candidate lists for the forthcoming elections. Its determination of the legal effect of the ANC's non-compliance was accordingly correct. The appeal must therefore fail.

The ATM's application for leave to intervene

[92] The ATM had sought to intervene by way of a letter dated 8 September 2026. The Court issued directives regulating the process to be followed. ATM neither responded to the Court's correspondence nor complied with those directives. Instead, it filed its intervention application only on 14 September 2026, the day before the hearing, without any explanation for the delay and without seeking condonation for its failure to comply with the Court's directions. In those circumstances, the application was procedurally irregular and inordinately late.

[93] Electoral disputes demand urgent and expeditious resolution in the public interest. By the time ATM filed its application, the existing parties, including the DA, had already exchanged affidavits and filed their heads of argument in accordance with the Court's timetable. Entertaining the application at that late stage would have disrupted the orderly determination of the main appeal, necessitated further procedural directions, and delayed the finalisation of a matter governed by strict electoral timeframes. The Court therefore determined that it was neither appropriate nor in the interests of efficiently resolving the dispute to entertain the application.

Costs

[94] The general principle is that costs should not lightly be awarded in electoral disputes, particularly where parties approach the Court to obtain clarity regarding the meaning and application of electoral legislation. Such matters frequently implicate constitutional rights to political participation, the proper conduct of elections, and the powers and responsibilities of the Electoral Commission. The public interest is ordinarily best served by ensuring that bona fide

disputes concerning the electoral framework may be ventilated without the chilling effect of adverse costs orders.

[95] The Electoral Commission and the DA submitted that a costs order is warranted because the ANC initially sought to attribute its non-compliance to alleged shortcomings in the OCNS, allegations which were not substantiated on the papers and which were ultimately not persisted in. They further pointed to the fact that the ANC's case evolved during the course of the proceedings, shifting from an asserted system malfunction to a principally interpretive challenge concerning the meaning of "submission" under the Municipal Electoral Act and the Regulations.

[96] There is force in those criticisms. Litigants, particularly those seeking to impugn the integrity or reliability of electoral systems, bear a responsibility to do so on a proper evidential foundation. The Court has found no basis for the allegations directed at the OCNS and accepted the Electoral Commission's evidence that the system functioned as intended. Nor can the shift in emphasis in the ANC's case be ignored.

[97] Nevertheless, I am not persuaded that these considerations justify a departure from the usual approach in electoral matters. The central question raised by the ANC, namely whether completing and uploading nomination information on the OCNS without clicking the "submit as final" function constituted "submission" for purposes of the Municipal Electoral Act and Regulations is a novel and genuinely triable question of law.

[98] It concerns the interpretation of recently implemented electronic nomination procedures and required judicial determination. The issue is one of

broader public importance and the judgment provides clarity regarding the legal requirements governing electronic nominations in future elections.

[99] In these circumstances, notwithstanding the ANC's unsuccessful challenge and the criticisms that may properly be levelled at aspects of its conduct, I am satisfied that the interests of justice are best served by adhering to the established principle that costs should not ordinarily be awarded in electoral litigation. Each party should therefore bear its own costs.

[100] The order set out below, which this Court made on 16 September 2026, is premised on the reasons set out in this judgment.

Order

1 The Democratic Alliance is granted leave to intervene as a party in these proceedings.

2 The African National Congress's appeal is dismissed.

3 It is declared that the African Transformation Movement's application for leave to intervene was not properly before the Court, having been brought inordinately late, contrary to this Court's directives issued on 9 September 2026, and in the absence of any application for condonation for its late filing.

4 There is no order as to costs.

MODIBA J

JUDGE OF THE ELECTORAL COURT

Appearances

For the applicant: D Berger SC, L Morison SC, S Sikhwari SC, X Stylianou SC, B Winks and S Mahlangu

Instructed by: SM Patel Attorneys Inc, Polokwane
Peyper & Botha Attorneys, Bloemfontein

For the respondent: T Motau SC and M de Beer

Instructed by: Bowman Gilfillan Inc, Sandton

For the intervening

party: M Bishop and E Cohen

Instructed by: Minde Schapiro & Smith I Inc, Bellville
Symington & De Kok Attorneys, Bloemfontein.