



THE ELECTORAL COURT OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 008/26EC

In the matter between:

OPERATION DUDULA

SIBONGILE MASEKO

THOLAKELE PRETTY NKWANYANA

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

and

THE ELECTORAL COMMISSION

OF SOUTH AFRICA

THE CHIEF ELECTORAL OFFICER

FIRST RESPONDENT

SECOND RESPONDENT

Neutral citation: *Operation Dudula and Others v The Electoral Commission of South Africa and Another* (008/26EC) [2026] ZAEC 07 (02 October 2026)

Coram: ZONDI DP and Adams J and Yacoob AJ

Heard: 15 September 2026

Delivered: 15 September 2026 *ex tempore* and the written judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 09h00 on 02 October 2026.

Summary: Section 11 of the Local Government: Municipal Electoral Act 27 of 2000 – failure to comply with Election Timetable for the 2026 Municipal elections – failure to comply with the Election Timetable due to applicant's own unpreparedness – Application dismissed.

ORDER

1. The application is dismissed.
 2. There is no order as to costs.
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JUDGMENT

Zondi DP (Adams J and Yacoob AJ (concurring)):

Introduction

[1] The first applicant, Operation Dudula, a political party registered in terms of s 15 of the Electoral Commission Act 51 of 1996, intended to participate in, and contest, the upcoming municipal elections scheduled for 4 November 2026. Section 11 of the Local Government: Municipal Electoral Act 27 of 2000 (the Act) provides for an election timetable. It requires the Electoral Commission (the Commission) when an election has been called, to compile a timetable for the election and publish it in the Government Gazette. The Commission may amend the timetable in only two instances, namely if the Commission considers it necessary for a free and fair election or the voting is postponed. Any act required to be performed in terms of the Act must be performed by no later than a date and time stated in the election timetable.

[2] The election timetable for the 2026 municipal elections was published on 7 August 2026¹ and in terms thereof the cut-off date for the submission of party lists and nominations of ward candidates was 28 August 2026 at 17h00 hours. The applicant could not complete the submission of party lists and ward candidates' nominations by the cut-off time and its request for the extension was turned down by the Commission on the ground that the Act does not allow it to grant such a request.

¹ Local Government: Municipal Electoral Act 27 of 2000: 2026 Local Government election timetable, GenN 4086, GG 55163, 7 August 2026.

[3] Aggrieved by the Commission's decision, the applicant brought an urgent application for the review and setting aside of the Commission's decision. It sought the following relief:

'4. Reviewing and setting aside the decision of the First and Second Respondents, refusing the First Applicant an opportunity to complete the submission of its party lists and ward candidate nominations for the local government elections to be held on 4 November 2026.

5. Directing, that the First and Second Respondents shall, within twelve (12) hours of service of this order upon them, restore to the First Applicant's registered Online Party Administrator full access to the Online Candidate Nomination System in respect of the First Applicant, and shall maintain that access for a continuous period of forty eight (48) hours, so as to enable the First Applicant to complete the submission of:

5.1 its party lists for the Polokwane Local Municipality, the eThekweni Metropolitan Municipality and the City of Cape Town Metropolitan Municipality; and

5.2 its ward candidate nominations in the City of Tshwane Metropolitan Municipality and the City of Johannesburg Metropolitan Municipality which the First Respondent's records reflect as not having been submitted by the First Applicant as at 17h00 on 28 August 2026.

6. Alternatively to prayer 5 above, and in the event that the Online Candidate Nomination System cannot be reopened, directing the First and Second Respondents to accept the party lists and ward candidate nominations referred to in prayer 5, on the same condition, when delivered by hand at the offices of the Commission's local representatives designated for the municipalities concerned in Government Notice 4085 published in Government Gazette 55154 of 6 August 2026, at any time within forty eight (48) hours of service of this order upon them.

7. Condoning the late submission of the party lists and ward candidate nominations referred to in prayer 5 and directing that they shall be deemed to have been submitted before 17h00 on 28 August 2026.'

[4] The Commission opposed the application and in addition to opposing the matter on the merits, it also raised a point in limine. The Commission argued that: the applicant failed to join affected parties; it failed to complete the outstanding nomination by the statutory deadline; Election House was not the relevant local submission office; no lawful power existed to grant an individual exemption or condonation; no reviewable decision of the Commission is clearly identifiable; and finally, that deeming unsubmitted nominations timeously submitted would be inconsistent with the statutory scheme.

The basis for the application

[5] The decisions which the applicant seeks to have reviewed and set aside are the following:

- a. The decision taken by the officials of the Commission at the Election House on the morning of 28 August 2026 to refuse to receive the applicant's party lists and ward candidates nominations by hand;
- b. The decision of the Commission and the second respondent, the Chief Electoral Officer, conveyed to the applicant's attorneys of record by the Commission's attorneys, Barnard Inc, on 1 September 2026, refusing the applicant any opportunity to complete the submission of party lists and ward candidates nominations.

[6] What gave rise to the dispute is the following:

On Friday, 28 August 2026 at 17h00, when the deadline for submissions passed, the applicant was locked out of the Online Candidate Nomination System before completing the submissions. This was after it was refused permission to submit the nominations and party lists manually at the Commission's head office at Election House. On 31 August 2026, the applicant's attorneys addressed a letter of demand to the Commission and their attorneys, requesting a short concession and calling for a response within 12 hours.

[7] On Tuesday 1 September 2026, the Commission's attorneys, in response to the applicant's demand, addressed a letter in which they stated, among others, the following:

- '4. Second, as to the attempts of your client to make a manual submission of its candidate list at the Electoral Commission's national office in Centurion. There is no provision for the submission of candidate nomination lists at the national office of our client. Your client is, or should be, aware of this fact.
5. Manual submissions of candidate nomination lists must be made at the relevant offices of the Commission's local representatives. You are referred to sections 14(1A) and 17(1A)(a) of the Municipal Electoral Act in this regard.
6. Further, on 6 August 2026 our client published a list of such designated local representatives at whose offices manual submissions could be done. See the enclosed document in this regard.
7. Then, pertaining to your paragraphs 5 and 6 and the assertions made therein. Your client is mistaken. Your client and/or yourself accessed and rely upon the incorrect manual.

The National and Provincial Elections manual or guide does not apply to these elections at hand, but rather the Local Government Elections manual or guide. Your reliance on the wrong manual or guide, lies with your client and not ours.

8. The published timetable for the elections clearly indicates the deadline date and time being on 28 August 2026, at 17:00. See, for your convenience, the enclosed timetable.

9. Our client is constrained from amending deadlines in the elections timetable and must not be placed in a situation where it has to make ad hoc decisions about political parties and candidates who have not complied with the statutory provisions. The elections timetable is a regulatory mechanism that has the force of law to ensure free and fair elections. It cannot and should not be changed at the whim of an individual or party, as this would be detrimental to its preparations for the Local Government Elections. There is no legal basis to grant the request. As such, your client's demand is refused.'

The applicant's reason for the delay in submitting the applicant's party lists

[8] For some time up until 27 August 2026, the applicant had been plagued by leadership disputes. The person recorded on the Commission's register as its leader and registered as its Online Party Administrator for the online candidate system was Mr Solomon Kekana, who had been suspended and expelled from the applicant. The Online Candidate Nomination System permits only one Online Party Administrator per registered party. The consequence was that after the expulsion of Mr Kekana the applicant had no means whatsoever of accessing the system in which its candidates had to be captured.

[9] On 29 May 2026, the applicant approached the Commission to have its register rectified so as to reflect the correct position. The Commission refused to accede to the applicant's request without a court order. In consequence, on 21 August 2026, the applicant brought an application to this Court to have Mr Kekana removed as the party online administrator. The order was granted on 27 August 2026, and the Commission complied with it immediately and amended its register accordingly. The applicant's complaint is that it had insufficient time to access the Commission's system in which its candidates had to be captured.

[10] The applicant alleged that its representatives attended Election House on 28 of August 2026 and sought to have its documents submitted manually and the Commission refused to accept its manual submission. However, an official of the

Commission, Mrs Henning and Mr Daryl from the Commission's legal department informed them that manual submissions were not allowed in that office.

[11] The applicant further alleged that they were not informed that hand delivery of local government candidate documentation was available at the offices of the Commission's local representatives designated in the government notice. It asserted that it only established afterwards that hand delivery in terms of ss 14(1A)(a)² and 17(1A)(a)³ of the Act requires physical lodgement at the designated office for each municipality concerned. It further contends that it would not have been able to succeed with hand delivery as they are contesting the elections nationwide.

[12] The applicant pointed out that it is only after being refused hand delivery that it requested assistance with completing online submissions. Ms Thato Monthle, an official of the Commission took them through the process of online submission. The applicant claimed that this process of teaching took approximately two hours. At this point they left Election House and travelled to their attorneys' offices in Arcadia Pretoria in order to complete the online submission.

[13] On 28 August 2026 the system logged them out at 17h00 whilst the submission was still in progress. Thus, they had not been able to complete the submission of its party lists for the Polokwane Local Municipality, the eThekweni Metropolitan Municipality and the City of Cape Town Metropolitan Municipality and certain of its ward candidate nominations in the City of Tshwane Metropolitan Municipality and the City of Johannesburg Metropolitan Municipality. The applicant did not disclose how many submissions it had in fact been able to complete in the available time.

² The section provides:

14 Requirements for parties contesting election by way of party lists

...

(1A) A party must submit the documents referred to in subsection (1)-

(a) by hand to the office of the Commission's local representatives; or ...'.

³ The section provides:

'17 Requirements for ward candidates to contest election

...

(1A) The prescribed nomination form must be submitted-

(a) by hand to the office of the Commission's local representatives; or ...'.

[14] The applicant submitted that s 11(2)(a) of the Act provides that the Commission may, by notice in the Government Gazette, amend the election timetable if it considers it necessary for a free and fair election. It therefore argued that the Commission is not constrained from amending deadlines in the election timetable as the Act expressly confers that power upon the Commission.

[15] In response the Commission averred that the Election House is its national office and is not the office of any local representative and the statutory framework does not provide for centralised physical submissions of party lists and ward nominations relating to the municipalities in different parts of the country. The applicant's officials were informed to submit their documents manually at the designated address or by making electronic submission. The power given to the Commission to amend the election timetable is for general amendments, not concessions for particular parties or individuals.

Applicant's submissions

[16] It was submitted by the applicant that the Commission's refusal of 1 September 2026 was irrational and unlawful because it treated the deadline as a complete answer to every circumstance including circumstances comprising this court's own order of 27 August 2026 and the Commission's administration of access it was ordered to restore.

[17] It was further argued that the decision gave no discernible weight to the purpose of the order of this Court, namely to place the applicant in a position to submit; the fact that access was registered only in the early hours of the deadline day and functional from 13h00; total absence of fault on the applicant's part and the short time the timetable itself left for certification. It was accordingly submitted that a decision maker who treats a rule as foreclosing all consideration, does not act rationally in relation to the purpose of the power.

Commission's submissions

[18] The Commission argued that any order reopening nominations, extending the nomination period or allowing one political party to submit nominations after expiry of the deadline may materially affect the position of other parties and candidates that

complied with the timetable. The statutory process requires the Commission, by 16 September 2026, to compile the list of registered political parties entitled to contest the election, certify the party lists, and compile and certify for each contested ward the list of candidates contesting that ward. The relief sought may affect the parties entitled to contest, the certified lists ballot finalisation, the treatment of compliant contestants and subsequent steps in the election timetable.

[19] Section 11(1) of the Act requires the Commission, after an election has been called, to compile an election timetable in accordance with Schedule 3 and publish it in the Government Gazette. Section 11(2)(a) of the Act provides that the Commission may amend the timetable by notice in the Government Gazette if it considers an amendment necessary for a free and fair election. Such an amendment will operate generally, and the Act confers no power to exempt one party from a deadline that continues to bind all other parties.

[20] The issue is whether the Commission's decision not to allow the applicant to make manual submissions at the national office and its refusal to grant the applicant an extension to complete the outstanding submissions, was irrational and unlawful.

Analysis

[21] The applicant's review application should fail. Section 14(1) of the Act permits a party to contest an election only if it has timeously submitted the required documents. Section 14(1A) of the Act prescribes the manner. The documents must be submitted '*... by hand to the office of the Commission's local representatives; or ... electronically to the chief electoral officer in the prescribed manner*'. Section 17(1A) makes identical provision for ward nominations. (My emphasis.)

[22] Election House is the national office. It is not the office of any local representative, and the designated offices had been gazetted, expressly in terms of ss 14(1A)(a) and 17(1A)(a) of the Act.

[23] Section 14(1A)(b) provides for submission electronically, to the Chief Electoral Officer, in the prescribed manner, that is, through the secure online Candidate

Nominations System defined in the Regulations.⁴ Handing paper to officials at the building in which the Chief Electoral Officer's office is situated satisfies neither paragraph (a) nor paragraph (b).

[24] The point has in any event been decided by the Constitutional Court in *Electoral Commission v Inkatha Freedom Party (IFP)*.⁵ IFP, prevented by circumstance from delivering its Umzumbe documentation to the local office in time, asked to submit it at the Commission's Durban office. The Commission refused. The Electoral Court set the refusal aside. The Constitutional Court reversed that decision.

[25] The Court examined the purpose of the provisions and concluded, per Ngcobo CJ for a unanimous Court:

'For all these reasons, we conclude that there is a central and significant legislative purpose in requiring that election documentation be submitted at the local offices of the Commission. The submission of documentation at a place other than the "office of the Commission's local representative" does not, therefore, constitute compliance with the provisions of sections 14(1) and 17(1) and (2) of the Act. It follows that the Commission was fully justified in refusing to allow the IFP to submit its election documentation for Umzumbe Municipality at its Durban office.'⁶

[26] The importance of complying with election timetable was underscored by the Constitutional Court in *African Congress for Transformation v Electoral Commission*⁷:

'[82] Like all organs of state, in accordance with the doctrine of legality, the Commission has only those powers granted to it by the law, that is, the Constitution and legislation, be it principal (Acts) or subsidiary legislation (Regulations, etc). Rigid adherence to these instruments by both the Commission and all parties is required so that there is fairness to all parties and to ensure that the Commission can properly arrange a free and fair and smooth-running election.

⁴ Municipal Electoral Regulations, GN R848, GG 21498, 22 August 2000.

⁵ *Electoral Commission v Inkatha Freedom Party* [2011] ZACC16; 2011 JDR 0421 (CC); 2011 (9) BCLR 943 (CC).

⁶ *Ibid* para 53.

⁷ *African Congress for Transformation v Electoral Commission* [2024] ZACC 7; 2024 (8) BCLR 987 (CC) at paras 82 and 83.

Absent rigid adherence the efficiency and fairness requirements will be undermined. That requires deadlines, like those contained in the Election Timetable to be strictly adhered to. Fairness to compliant parties would be subverted if parties who fail to comply with a regulation are nonetheless permitted to contest an election. The Commission does not have the power in law to condone non-compliance with the Electoral Act, the Regulations and the Election Timetable. This rigidity is tempered by the provisions of section 20(2) of the Electoral Act, which grant the Commission the power to amend the Election Timetable. That power is to be exercised only if it considers the amendment necessary for a free and fair election or if the voting day is postponed in terms of section 21.

[83] 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. The Commission is bound by the provisions of the Electoral Act and the Electoral Commission Act and it has no power to condone non-compliance. This Court has emphasised that “the Commission must not be placed in a situation where it has to make ad hoc decisions about political parties and candidates who have not complied with the Act”. The second judgment criticises the Commission for what it calls the Commission’s inflexible stance in refusing to consider amending the timetable. That criticism is unfounded. I need say no more than to reiterate that there is unequivocal authority of this Court that the Commission has no power to amend the timetable, save where it is necessary to ensure a free and fair election or the voting day is postponed.’

[27] The applicant is the author of its own misfortune. It allowed its leadership dispute to paralyse its functioning and waited until it was too late to resolve its internal squabbles. In the meantime, no attempt was made by the applicant’s officials to familiarise themselves with the relevant legislative provisions regulating the applicant’s participation in the upcoming municipal elections. The mere fact that the applicant’s officials only received training on the use of the Commission’s electronic system on the last day of submission of the required documentation says much about the applicant’s level of preparedness for the upcoming elections. The papers show that it failed to act with due expedition after it had obtained access in terms of the order of this Court.

[28] In the result the application must be dismissed.

[29] Order:

1. The application is dismissed.
2. There is no order as to costs.

DH ZONDI

CHAIRPERSON OF THE ELECTORAL COURT

Appearances

For applicant: M Snyman SC with M Augustinos and K Maponya

Instructed by: MJ Mashao Attorneys, Pretoria

For respondent: M Tsele

Instructed by: Barnard Incorporated, Pretoria.