



**THE ELECTORAL COURT OF SOUTH AFRICA
(BLOEMFONTEIN)**

Not Reportable

Case No: 0013/26EC

In the matter between:

AFRICAN NATIONAL CONGRESS

APPELLANT

and

ELECTORAL COMMISSION OF SOUTH AFRICA

RESPONDENT

Neutral Citation: *African National Congress v Electoral Commission of South Africa*
(0013/26EC) ZAEC 08 (14 October 2026)

Coram: Steyn, Shongwe and Yacoob AJJ

Heard: 8 October 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives *via* email, by publication on the website of the Supreme Court of Appeal and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 14 October 2026.

Summary: Electoral law – Local government elections – Objection in terms of s 15(2) of the Electoral Act 73 of 1998 (the Act) – Notices lack adequate identification – Interpretation of s 15(2) of the Act – Awareness of the objection being lodged of paramount importance.

ORDER

On appeal from: The Electoral Commission of South Africa:

1. The appeal is dismissed.
 2. There is no costs order.
 3. Reasons for the order will follow.
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JUDGMENT

Steyn AJ (Shongwe and Yacoob AJJ concurring):

Introduction

[1] On 8 October 2026, this Court heard the appeal and, given that the Municipal Elections for local government are imminent, namely on 4 November 2026, it gave the order it did so to avoid delaying the appeal. What follows are the reasons for the said order.

[2] This appeal concerns a decision of the Electoral Commission of South Africa (the Commission) to dismiss the objection lodged by the appellant, the African National Congress (the ANC). On 11 September, the Commission informed the ANC that it failed to comply with the legal requirement of s 15(2) of the Electoral Act 73 of 1998 (the Act) and dismissed its objection. On 17 September 2026, the Chairperson of the Electoral Court, Zondi DP, granted the ANC leave to appeal against the Commission's decision. The leave was granted in terms of s 20(2)(b) of the Electoral Commission Act 51 of 1996.

[3] This appeal turns on a crisp issue: whether the ANC, being the objector, had complied with s 15(2) of the Act.

Factual background

[4] The ANC lodged an objection on 17 August 2026, relating to the voter's roll covering the Sedibeng district and its constituent municipalities: Emfuleni Local Municipality, Midvaal Local Municipality, and Lesedi Local Municipality. The objection was lodged in terms of s 15 of the Act. On 24 August 2026, the Commission informed the ANC that it had not provided adequate evidence that it had served the objection on the individual or individuals to whom it was directed, as required in terms of s 15(2) of the Act. In essence, the Commission claimed that the ANC failed to show that it served the objection on the affected voters as required by law. Pursuant to the Commission's decision, the ANC informed the Commission in writing on 27 August 2026 that it had provided proof of service, which it emailed to the Commission on 18 August 2026. The Commission responded to the ANC's correspondence and remained steadfast in its decision that the party had failed to comply with s 15(2) of the Act. What followed was an application for leave to appeal dated 16 September 2026. The application for leave to appeal concerned the Commission's decision, in which it found that the requirement under s 15(2) of the Act had not been adhered to. As stated earlier, leave was granted to the ANC to appeal the decision of the Commission. The appeal is opposed by the Commission.

Legal framework

[5] I shall now turn to the relevant provision and its interpretation. Section 15 of the Act provides as follows:

'15. Objections to voters' roll

(1) In relation to any segment of the voters' roll or a provisionally compiled voters' roll, any person may object to the Commission in the prescribed manner to:

- (a) the exclusion of any person's name from that segment;
- (b) the inclusion of any person's name in that segment; or
- (c) the correctness of any person's registration details in that segment.

(2) *A person who objects to the exclusion or inclusion of the name of another person, or to the correctness of that person's registration details, must serve notice of the objection on that person.*

(3) The Commission must decide an objection and, except for an objection in relation to a provisionally compiled voters' roll, by not later than 14 days after the objection was made, notify the following persons of the decision:

- (a) The person who made the objection;

- (b) the chief electoral officer; and
- (c) in the case of an objection against the exclusion or inclusion of the name, or the correctness of the registration details, of a person other than the objector, that other person.' (Emphasis added.)

[6] Section 1 of the Act, defines what is meant by the word 'serve' as 'to send by registered post, electronic mail, telegram, telex, telefax or to delivery by hand;'. Importantly, s 15(2) of the Act provides that a person objecting to the inclusion of another person's name on the voters' roll '*must serve notice of the objection on that person.*' (My emphasis). The ANC has argued before us that it had substantially given notice to the registered voter, in its objection notice, and that what the Commission is reading into the provision, incorrectly so it was argued, that personal service is required, which is not needed in terms of the provision. Despite the wording of the provision, the ANC contended that the Commission is following an approach that borders on a literal interpretation of the words used, and this was never intended by the legislature. I shall return to the legislature's intention later in this judgment and whether it ought to form part of the interpretation enquiry.

[7] The Commission argued, on the other hand, that what is required is that the notice be served on the correct person, and that it not be a general notice. This it submitted is an important procedural requirement, since the objection lodged may result in that very person being removed from the voter's roll and deprived of his/her right to vote. Moreover, as argued, procedural fairness requires that affected voters be informed of the objection and given an opportunity to respond before their democratic voting rights are taken away. It was further contended by the Commission that s 15 of the Act serves an important role, in that it protects the constitutional right of each voter to vote.

[8] The Commission further identified several defects in the ANC's notices that were delivered to various addresses. They are, among others:

- (a) The notices were addressed to properties, occupiers or owners, rather than identified voters;
- (b) The notices failed to identify the specific voter, whose registration was challenged;

- (c) Ex facie the submitted notices, it was not possible to determine whether the recipient of the notice was the voter concerned or not;
- (d) In many instances, the notices reflect the following:
 - (i) nobody was present;
 - (ii) access was refused;
 - (iii) the property could not be located; or
 - (iv) the premises were commercial, agricultural or public properties.
- (e) Single notices were at times used in instances where multiple voters were registered at the same address;
- (f) The evidence presented was insufficient and did not reveal or stipulate that the affected voter actually became aware of the objection.

[9] It is these defects in the notices that informed the decision taken by the Commission that there had not been proper notice given to the voter concerned. Accordingly, the Commission concluded that the ANC, as the objector, had not complied with s 15(2) of the Act and informed the ANC of its decision on 11 September 2026.

Interpretation

[10] The principles applying to interpretation are trite. The Supreme Court of Appeal (SCA) has repeatedly endorsed the principles of interpretation as stated in *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)*.¹ As to the meaning of words in the context that it is used, Wallis JA stated in *Endumeni*:

‘[T]he present state of the law can be expressed as follows. *Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production.* Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not

¹ *Natal Joint Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) (*Endumeni*).

subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The “inevitable point of departure is the language of the provision itself”, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.¹² (Footnotes omitted, emphasis added.)

[11] This brings me to the submission on behalf of the ANC that consideration should be given to the intention of the legislature. The SCA does not endorse this approach. Wallis JA regards the legislative intent as unrealistic and misleading.³ The Court in rationalising this conclusion stated as follows:

‘Unlike the trial judge I have deliberately avoided using the conventional description of this process as one of ascertaining the intention of the legislature or the draftsman, nor would I use its counterpart in a contractual setting, “the intention of the contracting parties”, because these expressions are misnomers, insofar as they convey or are understood to convey that interpretation involves an enquiry into the mind of the legislature or the contracting parties. *The reason is that the enquiry is restricted to ascertaining the meaning of the language of the provision itself.* Despite their use by generations of lawyers to describe the task of interpretation it is doubtful whether they are helpful. Many judges and academics have pointed out that there is no basis upon which to discern the meaning that the members of Parliament or other legislative body attributed to a particular legislative provision in a situation or context of which they may only dimly, if at all, have been aware. Taking parliament by way of example, legislation is drafted by *legal advisers in a ministry, redrafted by the parliamentary draftsmen, subjected to public debate in committee, where it may be revised and amended, and then passed by a legislative body, many of whose members have little close acquaintance with its terms and are motivated only by their or their party’s stance on the broad principles in the legislation.* In those circumstances to speak of an intention of parliament is entirely artificial. The most that can be said is that, in a broad sense, legislation in a democracy is taken to be a reflection of the views of the electorate expressed through their representatives, although the fact, that democratically elected legislatures sometimes pass legislation that is not supported by or unpopular with the majority of the electorate, tends to diminish the force of

² *Endumeni* para 18.

³ *Ibid* para 21.

this point. The same difficulty attends upon the search for the intention of contracting parties, whose contractual purposes have been filtered through the language hammered out in negotiations between legal advisers, in the light of instructions from clients as to their aims and financial advice from accountants or tax advisers, or are embodied in standard form agreements and imposed as the terms on which the more powerful contracting party will conclude an agreement.⁴ (Footnotes omitted, emphasis added.)

[12] The Electoral Act, like any other Act, must be interpreted to give effect to constitutional rights and principles. Section 2 of the Act expressly requires interpretations that promote constitutional guarantees. The definition of 'serve' in s 1 of the Act has to be read with s 15(2) of the Act since the objection notice is aimed at informing the voter concerned that his/her right to vote is challenged. Seen in this context s 15(2) supports the constitutional right to vote as per s 19⁵ of the Constitution by ensuring that a voter's registration is not adversely affected by an objection without being informed of the intended disenfranchising process and be given an opportunity to contest it. The wording of s 15(2) makes it clear that it is compulsory and must be followed. The ANC had characterised the issue as a requirement that personal service is required by the Commission. I see it differently. What is required is that every affected voter have the opportunity to become aware of the objection that is lodged. The objection directly impacts their rights, and hence they should be informed. There are many ways of informing a person, as long as it can be shown that the person is aware of the objection being lodged. This interpretation is consistent with the constitutional rights provided for in s 19 and with the functions of the Commission as defined in s 190 of the Constitution.

⁴ *Endumeni* para 20.

⁵ Section 19 of the Constitution reads: '19. Political rights

(1) Every citizen is free to make political choices, which includes the right-

- (a) to form a political party;
- (b) to participate in the activities of, or recruit members for, a political party; and
- (c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

(3) Every adult citizen has the right-

- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
- (b) to stand for public office and, if elected, to hold office.'

[13] The language used in s 15(2) of the Act, analysed in its context and with its constitutional purpose in mind, leads to an interpretation aimed at promoting electoral fairness and protecting every citizen's right to vote. Read in the context of the nature of the complaints provided for in s 15(1), the emphasis is on "the person" whose registration is the subject of the complaint.

[14] The issue is therefore not whether the objections enabled the Commission to consider the objection, as was argued before us, but rather whether the voter ("the person") became aware of the objection. To style a document as proof of service does not automatically result in it being duly served. The notices on which the ANC rely do not identify who the person is whose registration is being objected to, and therefore that person cannot be expected to know that it is their registration that is the subject of the complaint. This interpretation is a sensible interpretation, and does not border on absurdity, as counsel for the ANC, submitted in their heads of argument.

[15] The reliance of the ANC on the various modes of service permitted in terms of the Uniform Rules of Court, and authorities dealing with the issue, do not assist it, because none of those authorities deal with the question of who the notice is addressed to.

[16] In my view, such effective service is essential to ensure that the voter is aware of the fact that his/her registration is being challenged, that the voter is aware of the nature of the challenge and that the voter can make representations regarding his/her right before any decision is taken that might affect his/her right to vote. To hold otherwise would result in condoning an unfair process and ignoring the rules of natural justice.

[17] The notices relied on by the ANC fell short of what is required by s 15(2) of the Act and it most certainly do not pass the threshold of effective service. For these reasons, the appeal could not succeed and was dismissed. The Commission did not seek a costs order against the ANC. Given the facts of this matter, a costs order is not warranted. Accordingly, no costs order was granted.

EJS STEYN
Acting Judge of the Electoral Court

Appearances

Counsel for the appellant	:	M Ramaili SC and T Mhlanga
Instructed by	:	MJ Mofephe Attorneys Nkaiseng Attorneys, Vanderbijlpark
Counsel for the respondent	:	N Bawa SC and M de Beer
Instructed by	:	DMO Attorneys, Bryanston