



**THE ELECTORAL COURT OF SOUTH AFRICA,
BLOEMFONTEIN**

Not Reportable

CASE NO: 0010/26EC

In the matter between:

DR FRANCK NAIDOO

Applicant

and

S NKOMO

REGIONAL ASSISTANT MANAGER

MUNICIPAL ELECTORAL OFFICE

ETHEKWINI

First Respondent

ELECTORAL COMMISSION OF SOUTH AFRICA

Second Respondent

Neutral Citation: *Dr Franck Naidoo v Nkomo and Electoral Commission of SA Others* (0010/26EC) [2026] ZAEC 09 (21 October 2026)

Coram: ADAMS J, YACOOB AJ, PROFESSOR PHOOKO (Additional Member)

Heard: 30 September 2026

Delivered: 30 September 2026 *ex tempore* and 21 October 2026 – written 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 11h00 on 21 October 2026.

Summary: Non-compliance with the provisions of section 17(2)(a) of the Local Government: Municipal Electoral Act 27 of 2000 which requires the nomination to be accompanied by a prescribed form bearing the signatures of at least 50 voters in Ward 26 – non-compliance with the Municipal Electoral Regulations, 2000 requiring the identity number of each supporter to be included in the form – applicant only has 43 verifiable voters – fell short of required threshold – application dismissed – no order as to costs.

ORDER

- (1) The application is dismissed.
 - (2) Each party to pay its own costs.
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JUDGMENT

Professor Phooko (Adams J and Yacoob AJ concurring):

Introduction

[1] The applicant is Dr Franck Naidoo, a resident of Ward 26 in the eThekweni Metropolitan Municipality. The first respondent is S Nkomo, who is the Regional Assistant Manager, Municipal Electoral Office, at eThekweni. The second respondent is the Electoral Commission of South Africa, a body tasked with the election management in South Africa. The first and the second respondents are referred to collectively as 'the Commission'.

[2] The applicant, determined to represent his constituency, sought nomination to stand for office as an independent candidate for Ward 26 in the upcoming local government elections scheduled to take place on 4 November 2026. The candidate nomination process opened on 7 August and closed on 28 August 2026 at 17:00.

[3] To be eligible to stand as an independent candidate, the applicant had to comply with the provisions of s 17(2)(a) of the Local Government: Municipal Electoral Act 27 of 2000 (the Act), which requires the nomination to be accompanied by a prescribed form bearing the signatures of at least 50 voters, whose names appear on the segment of the voters' roll for any voting district in the ward. Additionally, the applicant had to comply with the Municipal Electoral Regulations, 2000 (the Regulations), which *inter alia* requires the identity number of each supporter to be included in the form.

[4] To comply with the aforesaid required 50 voters' threshold and the relevant Regulation requiring identity numbers, the applicant gathered signatures from his constituency and personally submitted his nomination, including the prescribed form with 58 signatures, to the Commission's eThekweni offices on 28 August 2026 around 16h00. There, the identity numbers of the nominators were captured into the Commission's system for verification against the certified voters' roll in Ward 26. During the verification process, it transpired that certain identity numbers were incorrect, and some belonged to people either not registered to vote or registered outside Ward 26. Consequently, the Commission was able to verify only 43 voters registered within Ward 26. On 31 August 2026, the Commission informed the applicant that his nomination was invalid as it failed to comply with the minimum number of voters as required by the Act and therefore, he could not stand for election as an independent candidate.

[5] Aggrieved by the decision of the Commission, the applicant approached this Court seeking a review and setting aside of the decision of the Commission, a declaration to the effect that he has complied with s 17(2)(a) of the Act and that the Commission should accept corrected identity numbers and include him as a candidate. The Commission opposes the relief sought by the applicant.

The issue for determination

[6] The issue for determination is whether the applicant complied with the requirements of s 17(2)(a) of the Act and the Regulations. If not, whether the Commission should enable him to amplify his nomination to allow him to stand for office as an independent candidate for Ward 26.

Submission of the parties

[7] It must be mentioned from the onset that the applicant conceded in his pleadings that some of the identity numbers that he had submitted were indeed incorrect. Even during the oral hearing, the applicant admitted that some of the identity numbers that he had submitted were incorrect. The applicant, *inter alia*, attributes the difficulty associated with obtaining identity numbers to voters' reluctance to give him their identity numbers and bases this on the Protection of

Personal Information Act 4 of 2013 (POPIA). The applicant also contended that the signatures of some of the nominators ought to have been accepted because they must be on the voters' roll as they had voted during the first election. The applicant further argued that the corrected identity numbers ought to be accepted by the Commission because he was not changing anything but merely correcting digits or data that were submitted on time to the Commission. According to the applicant, once he is permitted to correct the defect, he will be able to comply with the requisite 50-voter threshold. The Commission's submissions were brief and largely based on the applicant's concessions that he did not have the required number of 50 voters to support his nomination. As a result, the Commission submitted that he failed to comply with the mandatory statutory requirement before the cut-off date and therefore his application ought to be dismissed. Regarding the new arguments raised by the applicant regarding the displacement of identity numbers on the supporter's form because of POPIA, the Commission submitted that this was not the pleaded case.

Urgency / Condonation

[8] Rule 6(1) of the Electoral Court Rules requires a party who is entitled to and wants to take a decision of the Commission on review to do so within three days after the decision has been made. Furthermore, Rule 10 provides that 'failure to comply with the prescribed time limits or directives of the Court will, by this mere fact thereof, result in a party being barred, unless the Court, on good cause shown, directs otherwise'. This application was brought approximately seven days outside the permissible time. The applicant attributes the delay to the incorrect seven-day review period stated by the Commission in its letter of 31 August 2026 and reference to the incorrect statute. The Commission acknowledges the error of reference to the review timeframes and incorrect legislation but denies that it caused the delay. In my view, the delay was only a few days and does not prejudice the Commission. In any event, the Commission does not oppose the application for condonation and wants the matter to be determined on merits.

[9] The applicant asks this Court to determine the application on an urgent basis. While the Commission does not oppose the matter being heard on an urgent basis,

it is of the view that urgency is self-created. Electoral disputes are in their nature inherently urgent and ‘demand urgent and expeditious resolution in the public interest’.¹ Accordingly, the matter is one of urgency.

The law

[10] Section 17(1) of the Act provides that ‘a person may contest an election as a ward candidate only if that person is nominated on a prescribed form and that form is submitted to the office of the Commission’s local representative by not later than a date stated in the timetable for the election’. The timetable for the upcoming elections required nominations together with the relevant supporting documentation to be submitted to the Commission by 28 August 2026 before 17h00. Further, s 17(2)(a) requires independent ward candidates to have at least 50 voters whose names appear on the segment of the voters’ roll for any voting district in that specific ward. The prescribed form requires identity numbers to be provided so that the registration of the nominators on the correct segment of the voters’ roll can be verified. The above provisions are peremptory and require compliance.

[11] In *Nyaku v The Electoral Commission of South Africa-Chief Electoral Officer (Nyaku)*², this Court found that:

‘... The forms which had to contain voters’ names, their signatures and identification numbers were only submitted, according to him, on 22 September 2021. This was in clear breach of s 17(2)(a) of the Act which required various documents, including a prescribed form with the signatures of at least 50 voters whose names appear on the municipality’s segment of the voters’ roll for any voting district in the contested ward, to be submitted by not later than the cut-off date of 21 September 2021. The effect hereof is that the applicant’s nomination was invalid for failure to comply with the provisions of s 17 of the Act’. (Emphasis added).

[12] The facts in *Nyaku* are to a large extent similar to the facts in the present case in that the applicant did not have the minimum number of 50 required voter supporters in his ward due to the incorrect identity numbers submitted by himself to the

¹ *African National Congress v Electoral Commission of South Africa and Another* [2026] ZAC 5 para 93.

² *Nyaku v The Electoral Commission of South Africa-Chief Electoral Officer and Others* [2021] ZAC 2 para 10.

Commission. The Act, in particular s 17, does not permit ‘the rectification of a failure to lodge the form with at least 50 signatures as required by s 17(2)(a) timeously, after the deadline for the candidate nominations’.³ It follows that the applicant’s disqualification cannot be faulted as it was the result of the applicant’s failure to comply with the Act and the Regulations.⁴

[13] In so far as the other issues are concerned, including the contention that the requirement is unreasonable because of the inaccessibility of identity numbers from voters because of POPIA, this Court is of the view that this matter is not properly before it and there has been no direct challenge whatsoever to the Act or Regulations.

[14] In all the circumstances, the applicant’s application falls to be dismissed.

Costs

[15] The award of costs is a matter which is within the discretion of the Court, which must be exercised judicially by considering all the relevant factors. This Court is slow to impose cost orders against a losing party in electoral matters unless such party’s conduct dictates otherwise.⁵ In any event, the Commission does not seek costs against the applicant.

[16] Each party should therefore bear its/his own costs.

Order

[17] In the result and for these reasons, the following order is granted:

- (1) The application is dismissed.
- (2) Each party to pay its own costs.

³ Ibid para 7.

⁴ *Liberal Party v The Electoral Commission and Others* [2004] ZACC 1; 2004 (8) BCLR 810 (CC) para 30.

⁵ *Arise Afrika Arise (AAAR) v Electoral Commission of South Africa* [2024] ZAEC 1 para 31.

PROFESSOR M R PHOOKO
ADDITIONAL MEMBER OF THE ELECTORAL COURT
Bloemfontein

Appearances

For the Applicant:

In person

For the First and Second Respondents: Micheal Tsele

Instructed by:

Diale Mogashoa Attorneys, Pretoria