



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

**Not Reportable
Case No: 0019/26EC**

In the matter between:

LLALA PETER PHOSHOKO

APPLICANT

and

ELECTORAL COMMISSION OF SOUTH AFRICA

RESPONDENT

Neutral Citation: *Phoshoko v Electoral Commission of South Africa* (0019/26EC)
[2026] ZAEC 10 (22 October 2026)

Coram: Steyn, Yacoob and Mangcu-Lockwood AJJ

Heard: In chambers

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 11h00 on 22 October 2026.

Summary: Electoral law – local government elections – Electoral Commission to inform candidates within a reasonable time of non-compliance – inconsistency of legislation with Constitution cannot be determined without proper ventilation – candidates to bear burden of own tardiness.

ORDER

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

YACOOB AJ (STEYN and MANGCU-LOCKWOOD AJJ concurring):

Introduction

[1] The applicant in this matter (Mr Phoshoko) hoped and intended to stand as an independent candidate for Ward 33, Polokwane, in the local government elections to be held on 04 November 2026. He contends that he was duly nominated, and that the respondent, the Electoral Commission (the Commission), which is tasked with running the elections, took a decision on 17 September 2026 not to certify him as an independent candidate.

[2] Mr Phoshoko seeks to have the Commission's purported decision not to certify him reviewed and set aside, and an order that he be included on the list of candidates participating in the election.

[3] Having read the papers and the written argument filed on behalf of both parties, this Court has determined that it is expedient and in the interests of justice to determine the matter in chambers without an oral hearing, in accordance with its powers in terms of Rule 2 read with Rule 11 of this Court's Rules. The parties were informed of this possibility in paragraph 5 of the directives issued on 23 September 2026.

Factual Background

[4] The date for the local government elections was proclaimed on 07 August 2026,¹ and the election timetable provided for in s 11 of the Local Government: Municipal Electoral Act, 27 of 2000 (the MEA) was gazetted on the same day.² In terms of the election timetable, nominations, together with supporting documentation and prescribed deposits, had to be submitted by 28 August 2026 at 17h00.³ The timetable also provided for the availability of a provisional voters' roll on 11 August 2026, and the publication of the final voters' roll by 26 August 2026.

[5] According to Mr Phoshoko, he had been approached by his community earlier in 2026 to stand for election as an independent candidate in his ward, but the community then decided to nominate someone else. That person decided to stand as a party candidate, and Mr Phoshoko was then approached on 27 August 2026, the day before the deadline for submitting nominations, to make himself available as an independent candidate, which he agreed to do.

[6] Mr Phoshoko alleges that he then began to gather the 50 signatures required to support his nomination, and, in this process, only required that nominators present their ID number and "promise" that they are registered to vote in the ward. No other verification was undertaken. Mr Phoshoko then submitted his nomination with its attachments, including 53 signatures in support, before 17h00 on 28 August 2026. He alleges that he had no time to verify the nominators' registration status, but does not explain why.

[7] The Commission then published the lists of candidates contesting the elections, on 16 September 2026, as required by the election timetable. Mr Phoshoko discovered that his name was not on the list for Ward 33 and, on enquiry with the Commission, was informed on 17 September 2026 that he was disqualified because his list of 50 signatures had not been submitted.

¹ 'Calling and setting a date for local government elections, GN 7799, GG 55162, 7 August 2026.'

² '2026 Local government election timetable, GN 4086, GG 55163, 7 August 2026.'

³ Paragraph 5 read with para 1 of the timetable.

[8] Mr Phoshoko contends that the requirement of the MEA that independent candidates should have to submit 50 signatures is unfair because many political parties get less than 50 votes in a ward and are still allowed to contest elections. Excluding the problematic signatures, he still has 40 signatures in support, while some political parties received as little as one vote in the previous local government elections, but are still able to contest the elections. He submits that this is irrational and unconstitutional. His exclusion therefore cannot be upheld.

[9] Mr Phoshoko also takes issue with the Commission not having advised him, until he enquired why he was not on the published list, that some of the people who had signed in support of his nomination were not registered in his ward. He then instituted this application on 22 September 2026, three days after receiving the notice of disqualification on 17 September 2026, which he contends complies with Rule 6 of this Court's Rules.

[10] The Commission clarifies that Mr Phoshoko's nomination was submitted physically at 15h48 on 28 August 2026, and that an acknowledgment of receipt was issued. According to the Commission, 13 of the signatures in support of his nomination were of people who did not appear on the segment of the voters' roll for Ward 33. Four were registered in other municipalities, one was not registered at all, and eight of the identity numbers were invalid. Mr Phoshoko's nomination was therefore only accompanied by 40 signatures. He was therefore disqualified from standing as a candidate by operation of law, because he did not comply with the requirements.

[11] The Commission asserts that it is not obliged to inform candidates of their disqualification when they do not provide sufficient signatures. At the same time, it accepts that, in accordance with the principles set out by this Court in *Johnson and Others v Electoral Commission and Others (Johnson)*,⁴ it bears the duty to assist potential candidates to ensure that they are not disqualified solely due to defective nominations. However, it contends that by submitting his nomination so close to the deadline, Mr Phoshoko put himself in the position that his non-compliance could not be remedied by any assistance from the Commission.

⁴ *Johnson and Others v Electoral Commission and Others* [2013] ZAEC 2; 2014 (1) SA 71 (EC).

[12] It contends that it cannot condone non-compliance with the election timetable, and that the requirement that an independent candidate's nomination be supported by 50 signatures is consistent with the Constitution.

Procedural Issues

[13] In the directives issued by this Court on 23 September 2026, the Commission was directed to file its answering affidavit by 11h00 on Friday, 25 September 2026; Mr Phoshoko to file a replying affidavit by 16h00 on the same day, and both parties to file heads of argument by Monday, 28 September 2026 - Mr Phoshoko by 11h00 and the Commission by 16h00.

[14] The Commission filed its answering affidavit only on 29 September 2026, the day after heads were to have been filed. It seeks condonation for its lateness. The reasons it gives for the lateness are as follows.

[15] The directives sent by email did not reach either the Commission's legal department or its representatives on the day they were issued. It is unclear when the application itself came to the Commission's attention. The application was served using the same email address that was used for the directives, and the Commission filed a notice to oppose as a result of that service. The Commission submits that the delay was short and that there would be no prejudice to Mr Phoshoko if condonation is granted.

[16] Mr Phoshoko did not file a replying affidavit. Instead, he wrote a letter to the Court in which he asserted that the directives of the Court still stood, and that even if there had been no directives, the answering affidavit was late in terms of the Rules of this Court. He also filed his heads of argument on the day identified in the directives, before the answering affidavit was filed, despite having received a notice to oppose from the Commission.

[17] Had Mr Phoshoko been represented, the likely step following the filing of the answering affidavit would have been the filing of a replying affidavit within a reasonable time, and the delivery of supplementary heads of argument, despite this Court's failure

to issue a further directive. Unfortunately, Mr Phoshoko took the view that the directives were binding and did not provide any response.

[18] Once this Court began actively considering this matter, a further directive was issued on 15 October 2026, offering Mr Phoshoko the opportunity to file a replying affidavit and supplementary heads of argument. Mr Phoshoko declined that opportunity on the basis that further delay would be more prejudicial to him than proceeding without a reply, since special voting is scheduled to start on 2 November 2026.

[19] In these circumstances, admission of the answering affidavit could prejudice Mr Phoshoko. However, there is no real dispute of fact, and the answering affidavit clarifies rather than disputes the version put up by Mr Phoshoko. In addition, the bulk of it contains legal submissions, which the Court would in any event have been familiar with.

[20] On balance it is in the interests of justice to grant the condonation sought by the Commission. It should be noted that, had the answering affidavit raised any real dispute of fact, the position might have been different.

Legal Framework

[21] In terms of s 17(1) of the MEA, a person may stand as a ward candidate if they are nominated on a prescribed form that is submitted by the date and time stipulated in the election timetable. Section 17(2) requires that an independent ward candidate's nomination must have attached to it a prescribed form with the signatures of at least 50 registered voters whose names appear on the voter's roll for the ward being contested. It must also be accompanied by the required deposit, an undertaking and declaration by the candidate, and a photograph of the candidate. The nomination must be accepted if those requirements are complied with, and if the candidate is a registered voter, appears on that municipality's segment of the voter's roll, and is ordinarily resident in that municipality.

[22] In *Johnson*, this Court considered the failure of a Commission official 'to assist [independent] candidates to ensure that their documents were in order so that they

qualify as candidates’,⁵ in a by-election. The Court found that the Commission had a duty to assist independent candidates, which included verifying that the people who had signed in support of their nominations were all registered voters in the ward, and that it should permit documents to be submitted well before the cut-off date, so that any non-compliance could be remedied before that date.⁶ In that matter, the applicants had attended the Commission’s offices 19 days before the cut-off date (and before the final voters’ roll had become available) for the submission of nominations ‘to ensure that they were not “caught off-guard at the proverbial eleventh hour due to some discrepancy or deficiency” ...’.⁷ They were not informed of the fact that the signatures in support of their nominations were problematic in one way or another until it was too late for them to remedy the defects in their nominations.

[23] The Constitutional Court in *Electoral Commission v Inkatha Freedom Party*,⁸ found that provisions set out in election legislation and regulations preserved the integrity of the electoral process so that the Commission did not have to make *ad hoc* decisions about condoning non-compliance, but instead treated all candidates and parties equally.⁹

[24] In *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa*,¹⁰ the Constitutional Court extended this principle to the strict adherence to the election timetable, holding that the Commission had no power to condone non-compliance with the timetable, and for the same reasons.¹¹

[25] Naturally there needs to be a balance between undue rigidity and sufficient compliance to ensure the integrity of the electoral process. That balance appears to have been struck in *Johnson*, by requiring the Commission to assist independent

⁵ Ibid para 35.

⁶ Ibid paras 38-40.

⁷ Ibid para 11.

⁸ *Electoral Commission v Inkatha Freedom Party* [2011] ZACC 16; 2011 (9) BCLR 943 (CC).

⁹ Ibid para 55.

¹⁰ *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* [2024] ZACC 7; 2024 (8) BCLR 987 (CC).

¹¹ Ibid para 82.

candidates and allow them to remedy deficiencies in good time, so that they are not left with non-compliant nominations after the deadline.

[26] In *One Movement South Africa NPC v President of the Republic of South Africa and Others (One Movement SA)*,¹² dealing with independent candidates in the national and provincial elections, the Constitutional Court found that imposing on independent candidates a signature requirement based on a percentage of votes that had been required for a seat in the previous election in the relevant region was overly onerous, and set aside that requirement. It retained the requirement that the independent candidate support his or her nomination with 1000 signatures of voters registered in the relevant segment of the voters' roll. The Commission submits that the Constitutional Court in *One Movement SA* found that the 1000 signature requirement was consistent with the Constitution as it ensured that frivolous nominations were excluded. In *One Movement SA* the Court accepted without deciding that this was the purpose of the restriction and that it was legitimate,¹³ and found that the percentage requirement was too onerous. It did not consider whether having any signature requirement at all was constitutional because that aspect of the requirement was not challenged. Only the percentage requirement was challenged.

[27] It is, unfortunately, not open to Mr Phoshoko to challenge the signature requirement at this point in time. He has not joined the necessary organs of state, nor issued the necessary notice inviting *amici curiae* participation. The issue whether the signature requirement is consistent with the Constitution requires careful consideration and a full response from the relevant Minister. The question whether the requirement infringes a constitutional right and whether it passes the justification analysis must properly be dealt with, and it cannot be dealt with in the short time left before the elections at issue.¹⁴ There is nothing to prevent the challenge being pursued, whether by Mr Phoshoko, or anyone else, at any time, as it will affect future elections.

¹² *One Movement South Africa NPC v President of the Republic of South Africa and Others* [2023] ZACC 42; 2024 (2) SA 148 (CC).

¹³ *Ibid* paras 305-312.

¹⁴ See in support of this proposition *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2020] ZACC 11; 2019 (9) BCLR 1104 (CC); 2020 (6) SA 257 (CC) paras 9-13.

The issues raised in this case

[28] For the reasons I have set out above, it is not appropriate, at this time, for this Court to determine the constitutionality of the requirement that an independent candidate must accompany their nomination with the signatures of 50 voters registered to vote in the ward that they intend to contest.

[29] Mr Phoshoko's reliance on the fact that he has the signatures of 40 voters registered to vote in the ward he intended to contest implies that the Commission ought to have condoned his non-compliance, or accepted the nomination as substantially compliant. However, the Commission has no power to deviate from a requirement contained in a statute. This has been confirmed by the Constitutional Court numerous times, including in the cases to which I have already referred.

[30] The real questions raised in this case are whether a person who does not take any steps to ensure that the signatures annexed to his nomination are of people registered to vote in the relevant ward, and who submits his papers physically to the Commission at the last minute, is entitled (a) to require the same kind of assistance as someone who submits a nomination a few days or even a few hours before the deadline, (b) to be informed expeditiously that the signatures are insufficient or non-compliant, and (c) to be afforded the opportunity to remedy the deficiency even though the deadline has passed. Mr Phoshoko does not seek the opportunity to remedy the deficiency in his nomination as part of the relief he seeks. He does, however, suggest that this ought to have been provided to him, and that the failure to do so was inconsistent with the Commission's duties.

[31] It is Mr Phoshoko's own version that he was aware of the local government elections from the beginning of the year, and of the possibility that he might be nominated as an independent candidate. He was aware also of the election timetable, and of the requirements that had to be fulfilled. In these circumstances, it is difficult to accept his version that he had no way of verifying whether the people who signed in support of his nomination were voters registered in his ward.

[32] The election timetable itself makes provision for the availability of the voters' roll. In addition, Mr Phoshoko makes it clear that he is an involved and informed citizen,

and that not only he, but the people who prevailed upon him to stand as a candidate were aware of the requirements for nomination well before the decision was taken to substitute him for the previous potential candidate. That they were aware of all this, but not of how to check whether someone's ID number was correct and whether that person was registered to vote in the correct ward, is stretching the bounds of belief too far.

[33] It is my view that, by leaving things to the last minute, and not taking ordinary steps to verify the identity and registration status of the persons supporting his nomination, including those steps made known to registered voters as part of the general voter education campaign that took place in the run-up to the proclamation of the elections, Mr Phoshoko has placed himself in the position in which he finds himself. Had he approached the Commission with his documents in good time, he would have been assisted to verify the correctness of the documents. Had he used any of the many voter registration verification methods available, he would have been able to verify their eligibility for himself. Had he used the Commission's online system, this too would have helped him verify that the people supporting his nomination were eligible to do so. He did none of these things.

[34] The next question is whether the Commission was obliged to notify Mr Phoshoko any earlier than it did that his nomination suffered from deficiencies. It seems clear, in accordance with the principles confirmed in *Johnson*, that, had the nomination been submitted earlier, the Commission would have been obliged to inform Mr Phoshoko of the deficiencies and afford him the opportunity to correct them.

[35] The argument of the Commission appears to be that it had no obligation to inform Mr Phoshoko because the deadline had already passed and he would not, in any event, be able to remedy the defects. This position is inconsistent with the facilitative approach required of the Commission, and with its obligation to treat both candidates and voters with proper dignity. Mr Phoshoko and his supporters were unaware of the defects between 28 August and 17 September 2026. They conducted themselves as if Mr Phoshoko was a candidate for nearly three weeks. Discovering only after three weeks that he had not fulfilled the requirements is embarrassing, and in my view has the potential to undermine public confidence in the electoral system.

Although the MEA does not require the Commission to inform people that they did not qualify, it is clearly the appropriate thing to do, within reasonable bounds. The Commission has an obligation, consistent with the principles set out in *Johnson*, to inform a candidate within a reasonable time that they did not qualify. I do not venture, at this stage, to define what a reasonable time may be, because the Commission must determine that in the context of its operations.

[36] The final issue is whether Mr Phoshoko ought to have had the opportunity to remedy the defects, despite the deadline having passed when the defects were discovered. Mr Phoshoko's contention that he ought to have had that opportunity appears to be based on para 6 of the election timetable, which is the only provision that permits the submission of information after the cut-off date for submissions on 28 August. The title of para 6 is 'Cut-off date to request and submit copy of identity document and signed acceptance of nomination'. Paragraph 6(2) is applicable to ward candidates and provides that:

(2)(a) The Commission may request the registered party or person nominating a candidate in terms of section 17 to submit the information in section 17(2A)(a) or (b) by 04 September 2026.

(b) If the nominating party or person been requested (*sic*) by the Commission to submit the information in section 17(2A) (a) or (b), that party or person must submit the requested information to the Commission by 07 September 2026.'

[37] The paragraph obviously applies to both party nominated and independent candidates. If it did not, there would only be a need to refer to a party nominating a candidate. The information in s 17(2A)(a) and (b) of the MEA is only information relating to the candidate. It is the signed acceptance of nomination and a copy of the candidate's identity card or relevant page of the identity document. Nothing else is permitted to be remedied after the cut-off date. Mr Phoshoko's contention that he should be permitted to remedy a defective application after the cut-off date therefore holds no water.

Conclusion

[38] Mr Phoshoko sought the review and set aside of the Commission's decision. The authorities make it clear that Mr Phoshoko's failure to comply with the statutory

requirements before the cut-off date meant he was not placed on the list of candidates by operation of law, rather than as a result of a decision of the Commission.

[39] It was nevertheless appropriate to consider whether Mr Phoshoko's nomination ought to have been regarded as valid and compliant, and Mr Phoshoko placed on the list of candidates. On the basis of the law as it currently stands, the answer is in the negative.

[40] Although I have found that the Commission has a duty to inform candidates within a reasonable time that their nominations were unsuccessful, even if such notification occurs after the deadline, I do not consider that it is appropriate to make a substantive order as it would not change the result for Mr Phoshoko.

[41] The practice in this Court is not to grant costs orders, and there is no basis to deviate from that practice in this case.

[42] The following order is made:

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

S YACOOB
ACTING JUDGE OF THE ELECTORAL COURT

Appearances

Counsel for the appellant: In person

Instructed by :

Counsel for the respondent: J Brickhill and J Hunter-Parsonage

Instructed by : Herold Gie Attorneys, Cape Town