

**IN THE ELECTORAL COURT OF SOUTH AFRICA
HELD AT BLOEMFONTEIN**

Not Reportable

Case number: 002/2023 EC

In the matter between:

SITEMBISO DALKANYO SICENGU

APPLICANT

and

KHAYAKAZI MAGUDUMANE

FIRST RESPONDENT

INDEPENDENT ELECTORAL COMMISSION

SECOND RESPONDENT

Neutral Citation: *Sitembiso Dalkanyo Sicengu v Khayakazi Magudumane and Another* (002/2023 EC) [2023] ZAEC 02 (8 June 2023)

Coram: Zondi JA, Shongwe AJ, Modiba J, and Professor Ntlama-Makhanya and Professor Phooko (Additional Members)

Heard: 11 May 2023

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 09:45 am on 8 June 2023.

Summary: The Electoral Court does not have jurisdiction to grant an interim interdict relating to a matter falling outside the provisions of s 20 of the Electoral Commission Act, 1996.

ORDER

In the result the application is dismissed with no order as to costs.

JUDGMENT

Zondi JA (Shongwe AJ, Modiba J, and Professor Ntlama-Makhanya and Professor Phooko (Additional Members) concurring):

[1] On 10 May 2023 the applicant, Mr Sitembiso Dalkanyo Sicengu brought an urgent application in this Court seeking an order interdicting and restraining the first respondent, Ms Khayakazi Magudumane, (Ms Magudumane) an employee of the second respondent, the Independent Electoral Commission (Commission) from ‘disparaging his name’ by stating that he was dismissed from the African National Congress (ANC). He has also applied for an order condoning the late bringing of this application.

[2] The applicant was on the payroll of the Municipal Council and a branch chairperson of the African National Congress (ANC) for ward 19 at Mbashe Municipality, a sub-region of the Amathole region. In June 2020 the ANC advised the municipal manager that the applicant’s membership of the Municipal Council had been terminated in terms of s 27(1)(f)(i) of the Local Government: Municipal Structures Act, 1998 (Structures Act). The municipal manager duly advised the Independent Electoral Commission (Commission) and the Member of the Executive Committee for Cooperative Governance and Traditional Affairs (MEC), Eastern Cape Province of this fact. In terms of s 25(4) of the Structures Act the MEC after consulting the Commission called and set a date for a by-election for the applicant’s replacement. The applicant unsuccessfully sought an interdict restraining the declaration of the vacancy and the conduct of the by-election. The by-election was held on 6 November 2020 and the replacement elected, whose term of office expired in August 2022.

[3] The application must fail as the order sought is beyond the jurisdiction of this Court. The jurisdiction of this Court is circumscribed by s 20 of the Electoral Commission Act, 1996 (the Act) which provides in the relevant part:

‘(1) (a) The Electoral Court may review any decision of the Commission relating to an electoral matter.

(b) ...

(2) (a) the Electoral Court may hear and determine any appeal against a decision of the 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.

(b) ...

(c) ...

(2A) The Electoral Court may hear and determine any disputes relating to the membership, leadership, constitution of the founding instruments of a registered party.’

[4] The applicant does not seek the review of a decision of the Commission relating to an electoral matter. Neither the Commission nor Ms Magudumane has made any reviewable decisions relating to an electoral matter. Additionally, the order sought by the applicant does not relate to an electoral matter as contemplated by s 20(1)(a) of the Act. While the genesis of this application is a dispute relating to the applicant’s membership of the ANC, the relief sought falls outside this Court’s jurisdiction in terms of s 20(2A) of the Act as it does not relate to the membership, leadership, constitution or founding instruments of a registered party. Thus, the application also does not engage this Court’s jurisdiction in terms of s 20(2A).

[5] Having found that this court lacks jurisdiction over the application, the merits of the underlying dispute are irrelevant as this ruling is dispositive of the application in this court.

The order

[6] In the result the application is dismissed with no order as to costs.

D H ZONDI
CHAIRPERSON OF THE
ELECTORAL COURT

APPEARANCES

For the first applicant:

In person

Sitembiso Dalkanyo Sicengu

For the first and second respondents:

Moeti Kanyane Attorneys, Centurion