



**THE ELECTORAL COURT OF SOUTH AFRICA
BLOEMFONTEIN**

Not Reportable

Case No: 0029/2024EC

In the matter between:

NORTHERN CAPE COMMUNITIES MOVEMENT

Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA

First Respondent

AFRICAN NATIONAL CONGRESS

Second Respondent

DEMOCRATIC ALLIANCE

Third Respondent

ECONOMIC FREEDOM FIGHTERS

Fourth Respondent

PATRIOTIC ALLIANCE

Fifth Respondent

VRYHEIDS FRONT PLUS

Sixth Respondent

ALL OTHER PARTY

Seventh Respondent

Neutral Citation: *Northern Cape Communities Movement v Electoral Commission of South Africa and Other* (0029/24EC) [2024] ZAEC 22 (03 July 2024)

Coram: Zondi JA Steyn and Yacoob AJJ and Professors Ntlama-Makhanya and Phooko (additional members)

Heard: Decided in chambers on the papers

Delivered: 03 July 2024 – 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 11:00 on 03 July 2024.

Summary: Application in terms of s 55(5) of Electoral Act, 73 of 1998 - to declare

unconstitutional allocation formula in Schedule 1A of the Electoral Act, 73 of 1998 – jurisdiction – not relief falling within s 55 or otherwise within this court's jurisdiction – application dismissed.

ORDER

1. The application is dismissed.
-

JUDGMENT

Yacoob AJ (Zondi JA and Steyn AJ and Professors Ntlama-Makhanya and Phooko concurring):

INTRODUCTION

[1] The Northern Cape Communities Movement (“the applicant”) brings this application in terms of s 55(5) of the Electoral Act, 73 of 1998 (“the Act”). In its notice of motion, it seeks the following substantive relief on an urgent basis:

- a. the interdict of the allocation of seats pending the finalisation of the application;
- b. a declaration that the allocation formula in terms of Schedule 1A of the Act is illegal, unfair and unconstitutional;
- c. a declaration that the application of the formula be suspended with immediate effect;
- d. an order that seats be allocated on “a straight forward percentage based formula”, and
- e. the extension of the period within which the result of the election must be determined and declared, to allow for the finalisation of the application.

[2] The first respondent is the Electoral Commission (“the Commission”), and the second to fifth respondents are four named political parties. The seventh respondent purports to be “all other political parties”, which the applicant has apparently served by means of social media. Only the Commission has responded to the application, and taking into account the manner in which we deal with the matter, no prejudice results

to any party resulting from the irregular service on the so-called seventh respondent. The applicant is represented in person by Mr R Februarie.

ANALYSIS OF THE COMPLAINT

[3] Section 55 of the Act provides for objections material to the final results of an election to be made to the Commission, specifically dealing with voting and counting processes. Section 55(5) provides for appeals to be made to this court against the Commission's decision on that objection. The applicant submitted his complaint to the Commission, and was advised that in the Commission's view the complaint did not fall within s 55. He therefore approaches this court.

[4] The applicant's complaint is not based on any allegation that there was any voting or counting anomaly, which is what s 55 processes are intended to address. Taking a broader view and giving the applicant the benefit of the doubt, the applicant also does not complain that the Commission misapplied any statute or regulation. He complains that the substance of Schedule 1A of the Act is unconstitutional. Obviously the interdictory relief cannot be granted as the application was brought too late, on the same day as the results were declared. The remainder of the application is incompetent before this court for the following reasons:

- a. Schedule 1A was amended in 2023 and has been in effect since June 2023. However, the manner of calculating proportional allocation of seats was not changed in 2023. The matter is therefore not urgent.
- b. Schedule 1A is not conduct of the Commission. It is legislation passed by the legislature. The application is not one contemplated by s 55(5) of the Act.

[5] Based on the founding affidavit alone, it is clear that the complaint is incompetent and should be dismissed. However, the Commission has filed an answering affidavit and the applicant a reply, and both parties have filed written legal argument, all of which must be considered.

[6] The Commission points out that the interdictory relief is moot and raises three other points in *limine*:

- a. This court does not have jurisdiction to determine the validity of an Act of Parliament.
- b. The Minister of Home Affairs, who is the member of the executive responsible for the Electoral Act, and Parliament have not been joined.
- c. The application should be dismissed for lack of urgency.

[7] The latter two points simply have to be stated for their merit to be appreciated. In addition, the Commission deals with the “merits” of the complaint by showing how the allocation of seats in the Northern Cape Provincial Legislature was calculated, but there is no factual dispute in that regard and no need to deal with that issue. As far as this court’s power to determine the validity of an Act of Parliament is concerned, the Commission rightly points out that there is no need for that issue to be considered in this case, and we do not do so.

[8] The applicant’s replying affidavit does not deal with the legal flaws in the application but only the merits. He persists in the contention that he wishes the court to declare invalid the irregularities “introduced” by Schedule 1A despite the fact that the method encapsulated in Schedule 1A has always been part of South Africa’s democratic process.

[9] Oddly, in his written legal submissions, the applicant asserts that the Commission is misguided in believing that the applicant is challenging the legality of Schedule 1A of the Act. This is odd because that is precisely what the applicant seeks in prayer 3 of his notice of motion. In addition, if this assertion amounts to an abandonment of that relief, as suggested by the Commission in its legal submissions, it leaves no basis at all on which the allocation of seats, which it is common cause has been carried out in accordance with Schedule 1A, can be challenged.

[10] As pointed out by the Commission, the Constitutional Court has more than once confirmed that the electoral system as crystallised in Schedule 1A, is consistent with the Constitution. In particular, the allocation system was most recently considered in *Independent Candidate Association South Africa NPC v President of the Republic*

of South Africa and Others,¹ and the allegations by the applicant that the allocation system used amount to vote rigging and electoral fraud are irresponsible and harmful.

[11] The application stands to be dismissed as it is not properly a complaint in terms of s 55 of the Act, and the complaint is one over which this Court does not have jurisdiction.

CONCLUSION

[12] It is not the practice in this court to grant costs orders. The Commission however seeks costs against the applicant on the basis of what it terms its “reckless allegations of vote tampering and electoral fraud, without any basis whatsoever.”

[13] It is the case that the applicant’s allegations are conclusions based on a woeful misunderstanding of the legal and factual position. In addition, the applicant has approached this court on a case which has absolutely no merit because of that lack of understanding. On the other hand, it is clear from his papers that the applicant is a citizen who cares deeply about the processes of our constitutional democracy, and that he has brought this application in good faith. In my view it would be appropriate to place the applicant and its representative on terms, to be aware that this court and the Commission ought not to be flooded with poorly considered applications, and that future applications may well draw down more severe sanctions.

[14] For these reasons, the application is dismissed

S YACOOB

Acting Judge of the Electoral Court
Bloemfontein

¹ 2024 (2) SA 104 (CC).

APPEARANCES

For the applicant: RJ Februarie (in person)

For the first respondent: J Bleazard and M de Beer

Instructed by: Moeti Kanyane Incorporated