



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

Not reportable

Case no: 0037/2024EC

In the matter between

RONALD FEBRUARIE

APPLICANT

and

JOHAN ANDREW PHILLIPS

FIRST RESPONDENT

CHUMISA MOOI

SECOND RESPONDENT

SYLVIA MOOI

THIRD RESPONDENT

SOLLY BIBI

FOURTH RESPONDENT

RICARDO BOOYSE

FIFTH RESPONDENT

RALPH STEENKAMP

SIXTH RESPONDENT

LESLEY NEL

SEVENTH RESPONDENT

DIMON JANTJIES

EIGHTH RESPONDENT

MARISHIA NIMMERHOUDT

NINTH RESPONDENT

MANDISI NEELS

TENTH RESPONDENT

MARIA LOTTERING

ELEVENTH RESPONDENT

GERALDINE DE WEE

TWELFTH RESPONDENT

JOHANNES VAN SCHALKWYK

THIRTEENTH RESPONDENT

GEORGE PLAAITJIES

FOURTEENTH RESPONDENT

DANNY JONAS

FIFTEENTH RESPONDENT

PIET OLYN

SIXTEENTH RESPONDENT

SIYATHEMBA COMMUNITY MOVEMENT

SEVENTEENTH RESPONDENT

INDEPENDENT ELECTORAL COMMISSION

EIGHTEENTH RESPONDENT

Neutral citation: *R Februarie v A Phillips and Others* (0037/2024EC) [2024]
ZAEC 25 (24 October 2024)

Coram: ZONDI DP, MHLAMBI AJ and PROFESSOR PHOOKO (Additional Member)

Heard: Decided on the papers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for hand-down is deemed to be 11h00 on 24 October 2024.

Summary: Section 20(2A) of the Electoral Commission Act 51 of 1996 – application by a member of a political party for declaratory and interdictory relief – opposing factions of a party embroiled in a dispute about the membership, leadership, constitution, and founding instruments of a registered party – Court's jurisdiction engaged – applicant seeks orders setting aside structures and appointments of the first decision-maker to be replaced by systems introduced by a new body in terms of the registered party's constitution.

ORDER

The application is dismissed with no order as to costs.

JUDGMENT

Mhlambi AJ (Zondi DP and Professor Phooko concurring):

Introduction

[1] This application is more of a grievance or a disguised appeal, masquerading as an urgent application, seeking, amongst others, various declaratory orders based on the seventeenth respondent's constitution that governs the relationship between its members. On 22 February 2024, under case number 003/2023 EC, this Court dismissed, with no order as to costs, the applicants' application based, in essence, on the exact cause of action as the present one.¹

[2] The applicant approached this Court in terms of s 20(2A) of the Electoral Commission Act 51 of 1996,² seeking the following relief:

'1. That this application be dealt with as a matter of urgency in terms of section 20(1)(b) of the Electoral Commission Act and that any noncompliance regarding service and process be condoned.

2. That it be declared the self-imposed extension of the term of the first district management structure is unconstitutional and does not authorized the 1st - 8th Respondents to act of behave of the 9th Respondent (*sic*).

3. That it be declared that the indefinite suspension of the establishment of the Siyathemba Municipal Movement's constitutional structures is a limitation of the Applicant's and members of the 17th Respondent's right in terms of Section 19(1)(b)

¹ *Februarie and Others v Phillips and Others* (009/2023EC) [2024] ZAEC 2 (22 February 2024).

² Section 20(2A) provides that '[t]he Electoral Court may hear and determine any dispute relating to membership, leadership, Constitution or founding instruments of a registered party.'

of the Constitution is invalid.

4. That it be declared the 1st - 8th Respondents' conduct in refusal and indefinite suspension of the establishment of the constitutional structures of the Siyathemba Municipal Movement are inconsistent with Section 19(1)(b) of the Constitution of South Africa.

5. That it be ordered that the proposed elective committee be established to implement the election of the ward, municipal and the district management structure within 90 days.

6. That it be ordered that the SGB bank account; 8928923829 held with First National Bank be reactivated for proper financial administration and management of the finances to be contribute for the establishment of the constitution structures.

7. That it be ordered that the first DM, 10th Respondent and the 16th Respondent prepare the financial of the respective bank accounts 62912169720 and 62937520452 held with First National Bank, to be presented at the annual general meeting.

8. That service of this application and further process in terms thereof, as said out below, be declared proper service of this application

8.1 This application and any further processes of court made in terms hereof can be brought to the attention of the Respondents by way of email or WhatsApp communication.

8.2. The Applicants will send an electronic copy of this application (and any further processes of court) via WhatsApp and/or email to each of the Respondents at the number reflected in the notice of motion;

9. The Applicant is afforded further and/or alternative relief as deemed fit by the above honourable court.'

[3] Only the first, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth respondents oppose the application.

The parties

[4] The applicant and the first to sixteenth respondents are members of the seventeenth respondent, Siyathemba Community Movement or Siyathemba Gemeenskapsbeweging (SGB), a community-based organisation. The applicant is a

Ward 2 councillor, and the tenth to sixteenth respondents are candidate ward councillors of the Siyathemba Municipality. The first respondent is a member of the First District Management Structure of the SGB and also serves as a PR councillor of the Siyathemba Municipality. The eighteenth respondent is the National Commissioner of the Independent Electoral Commission of South Africa.

Factual background

[5] On 7 March 2024, the applicant, as the elected councillor and coordinator of Ward 2 in Siyathemba Municipality, addressed a letter to the first respondent and referred to the judgment that this Court handed down on 22 February 2024. According to him, the Court concluded that the District Management Structure ('the DMS'), expired in June 2023. This structure had failed to convene Ward assemblies, and nine months had lapsed since members' rights had been activated in accordance with clause 7.1 of the SGB constitution.³ This was a clear violation of the SGB members' rights to participate in their political organisation and, as such, a violation of their constitutional rights in s 19(1)(b) of the Constitution. The applicants were given seven days to communicate a schedule to convene the wards, failing which the Court would be approached urgently for the necessary relief.

[6] The secretary of the SGB, or the seventeenth respondent, brought to the applicant's attention that the current executive committee was not an interim structure, and that this Court had ruled that the executive committee would continue in their current positions until the next election. The SGB has been financially drained by the numerous court battles since 2021, and no resources were available to hold a conference. The applicant's request enjoyed the necessary attention, and the committee set a deadline of 30 June 2024 for the meeting.

[7] On 10 June 2024, the applicant made known his dissatisfaction in a letter to the respondents that he had not yet received communication relating to the Ward assemblies. The applicant's term had expired and about twelve months had gone by. The organisation's constitution did not make provision for the current structure to

³ The SGB is the Siyathemba Community Movement and clause 7.1 provides that members of the SGB in the ward/town appoint a Convener and 4 additional members in their own ranks.

continue acting as the legitimate DMS. It was a clear violation of the SGB members' right to participate in their political organisation and, as such, a violation of their constitutional right. Unless a comprehensive plan to convene the Ward assemblies was presented within seven days, the court would be approached urgently to uphold the members' rights.

[8] In reply, the SGB secretary informed the applicant that the conference was postponed indefinitely because fraudulent activities had been detected at First National Bank Limited (FNB). The bank account signatures were changed without the Executive Committee's resolution authorising such activities. Consequently, donations or funds could not be deposited into the seventeenth respondent's account. The applicant was furnished with a screen drop of fraudulent activity showing the applicant signing documents as the seventeenth respondent's chairperson, without the executive committee's written resolution.

[9] The first respondent, who filed an unsworn affidavit, opposed the application. In his answering affidavit, the applicant stated that the first respondent's evidence was not in the correct affidavit form and should not be considered in determining the outcome of the matter. The tenth to the sixteenth respondents deposed to answering affidavits, which were explanatory and a submission that they abided by the Court's order. All aligned themselves with the applicant's submissions that the members' constitutional rights had been violated and that the proposed election committee could resolve this violation through a fair, just and transparent administration.

[10] The tenth respondent stated, in his answering affidavit, that it was the collective members' decision to implement the provisions of the constitution which allowed them to manage a bank account within the wards or at municipal level. This prompted the opening of a bank account wherein he was appointed as a signatory. He also accepted the responsibility to present that report and whatever investigation to determine if his involvement and the creation of the account was a contravention for which he must be disciplined.

Merits

[11] The applicant is disgruntled with the judgment delivered on 22 February 2024. He stated in his founding affidavit that the seventeenth respondent's constitution provides that the first DMS's term was for two years, which was confirmed by the judgment of this Court. The first DMS's responsibility was to ensure that the Ward, Municipal, and election of the second DMS was finalised before the end of its term. The applicant disagreed that the constitution provides that the first DMS was authorised to continue '*until the next election*' or until the second DMS was elected without reference to the constitution.

[12] According to him, that interpretation of the judgment is the primary reason that the first DMS intentionally delayed and now elected to '*indefinitely*' postpone constituting the SGB constitutional structures. This interpretation conveniently allows it to determine its term, any period until it decides to hold elections. This is a complete contradiction and violation of the SGB constitution. The applicant disagrees with this Court's finding that the first DMS' term and authority could continue until the next election, and that the Court had the jurisdiction to make a finding contrary to the provisions of the SGB's constitution. The first DMS had already exceeded its term by twelve months and could not be considered as the constitutionally authorised structure of the organisation.

[13] No provision authorised the extension of the first DMS or its acting on behalf of the SGB. The Court should, therefore, declare that it is not authorised to continue acting as the organisation's highest decision-making body. Relying on *Ramakatsa and Others v Magashule and Others*,⁴ the applicant contended that establishing a constitutional structure would enable members to participate and exercise their constitutional rights. This right may be limited only in terms of a law of general application, to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom.

[14] He contended that this Court's judgment never justified why its interpretation found the limitation, placed by the founding meeting, to have met the requirements of s 36(1) of the Constitution or how it considered all relevant factors. The limitation

⁴ *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013(2) BCLR 202 (CC).

of the applicant's and other members' rights in s 19(1)(b) of the Constitution, and the indefinite 'suspension' by the first DMS, was an intentional and direct violation of the right and should be declared to be inconsistent with the Constitution, and therefore invalid.

[15] The applicant does not accept and abide by this Court's judgment. Instead of engaging the DMS and taking steps based on the seventeenth respondent's constitution, he launched this application, which is inappropriate. This Court held that the DMS' term (the one installed at the meeting on 27 June 2021) was for two years, whereafter the DMS would be constituted as per clause 5.2, which is two members each from each municipal area. The DMS was not interim, as the applicant alleged.⁵ After two years, the DMS was empowered to arrange, manage, and administer the process by which the second DMS and its members were to be constituted. The first DMS must implement the said structure, not by and at the instance of the Wards.

[16] This is the fifth application in which the parties have been embroiled in a dispute for the leadership of the seventeenth respondent. In all the applications, save for slightly different relief, the cause of action is the same. In all four previous applications, three⁶ before this Court and one before the Northern Cape High Court,⁷ the courts found against the applicant and his associates and dismissed the applications. In the latter case, the summary expulsion of the first respondent and his associates as members of the SCM and its DMS, was declared unlawful, invalid, void, and of no force and effect.

[17] Even though the application is not urgent, it should be treated as such. Evidently, the applicant wants to usurp the current administration's power, despite the court's findings. This is evident from the orders that he seeks. Prayer 2, though inelegantly stated, suggests that the first to eighth respondents should not be authorised to act on behalf of the other nine respondents. Prayers two, three, four,

⁵ Paragraph 11 of the judgment.

⁶ *Siyathemba Community Movement v The IEC and Others* (005/22EC) [2022] ZAEC 7 (22 April 2022); *Februarie and Another v Electoral Commission of South Africa and Another* (003/2023 EC) [2023] ZAEC 3 (1 August 2023); *Februarie and Others v Phillips and Others* (009/2023 EC) [2024] ZAEC 2 (22 February 2024).

⁷ *Phillips and Others v Olyn and Others* (148/2022) [2023] ZANCHC 21 (26 May 2023)

and five can be grouped in light of the judgment of 22 February 2024. Every citizen is free to make political choices, which includes the right to form a political party and to participate in the activities of or recruit members for a political party.⁸ This Court has pronounced that the applicants who wanted to unseat the respondents from their SCM positions should not be entitled to relief.

[18] The applicant stated that the SGB's initial bank account was opened on 24 August 2021 and was closed on 2 February 2022, due to inactivity. On 24 February 2022, the applicant, tenth, and sixteenth respondents opened a new account at the same bank and became the signatories. The DM complained to the bank, and the three respondents were relieved of their powers as signatories. The applicant proposes, in this application, that the tenth and sixteenth respondents, as previous primary signatories to the account, should be ordered to prepare proper financial statements to be presented at the annual general meeting.

[19] On 25 August 2023, the FNB Prieska Branch Manager froze the organisation's account as certain people, according to the tenth respondent, challenged the authority of the signatories on the account. On 28 August 2023, the tenth respondent addressed a letter in response to the bank's request for evidence relating to the seventeenth respondent's bank account. The tenth respondent found it very concerning that the bank responded to rumours without obtaining a court order. This encouraged the respondents to take the matter to a platform that would determine whether the decision by the bank, to freeze the account, was legal or not.

[20] It is then evident that as of 28 August 2023, the applicant and his associates had taken it upon themselves to perform the activities of the DMS. The delay in holding the annual conference for the finalisation of the second DMS is largely due to the misconduct of the applicant and his associates. The applicant is resolute and unswerving in his misconduct and wants this Court to sanction it. It is also strange that relief is sought against FNB to reactivate the bank account, but FNB has not been joined in these proceedings. Prayers 6 and 7 are without substance and should be dismissed.

⁸ Section 19 of the Constitution.

Costs

[21] The granting of costs is within the discretion of a court. The discretion should be judicially exercised, considering all relevant circumstances.⁹ In determining a costs award, the starting point is the nature of the issues, the character of the litigation, and the litigants' conduct in pursuit of it.¹⁰ The primary consideration in constitutional litigation is how a cost order would hinder or promote the advancement of constitutional justice.¹¹ The applicant's challenge is based on s 19 of the Constitution. He wanted the DMS to act in tune with the Constitution and this Court's decision to expedite the holding of the conference. In these circumstances, a cost order against the applicant would, in my view, not be appropriate.

Conclusion

[22] The applicant's application is without merit and stands to be dismissed for the reasons set out above. The general principle in this Court is that an unsuccessful party should not be ordered to pay costs. The matter is disposed of on the papers and there is no reason to depart from the general principle.

[23] As a result, the following order issues:

The application is dismissed with no order as to costs.

J J MHLAMBI
ACTING JUDGE OF THE ELECTORAL
COURT

⁹ *Biowatch Trust v Registrar, Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) para 21 (*Biowatch*), quoting *Affordable Medicines Trust and Others v Minister of Health and Another* [2005] ZACC 3; 2005 (6) BCLR 529 (CC); 2006 (3) SA 247 (CC) para 138.

¹⁰ *Biowatch* paras 16 and 20.

¹¹ *Biowatch* para 16.

Heads prepared by:

For applicant: Ronald Februarie