



**THE ELECTORAL COURT OF SOUTH AFRICA
BLOEMFONTEIN**

Not Reportable

Case No: 0026/2024EC and
0026A/2024EC

In the matter between:

THE GIVING FOUNDATION NPC

Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA

Respondent

And in the matter between:

THE GIVING FOUNDATION NPC

Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA

First Respondent

JUDICIAL SERVICES COMMISSION

Second Respondent

POLITICAL LIAISON COMMITTEE

Third Respondent

Neutral Citation: *The Giving Foundation NPC v Electoral Commission of South Africa and Others* (0026/24EC and 0026A/24EC) [2024] ZAEC 27 (28 October 2024)

Coram: Zondi DP, Adams and Yacoob AJJ, and Professors Ntlama-Makhanya and Phooko (additional members)

Heard: Decided in chambers on the papers

Delivered: 28 October 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 28 October 2024.

Summary: Application for leave to appeal – procedural lapse of court not fatal and not leading to ground for appeal – no likelihood that another court may find differently – application dismissed.

ORDER

1. The application for leave to appeal is dismissed.
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JUDGMENT

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

[1] The Giving Foundation NPC (“the Foundation”) seeks leave to appeal the judgment of this court dismissing its second and third applications to set aside the Proclamation of the National and Provincial Elections on 23 February 2024 (“the Proclamation”).¹

[2] The grounds on which leave was sought are that the court’s directive in which the applicant was directed to file a replying affidavit failed to specify a date for the filing of that affidavit, although it did specify a date for the filing of written argument, and that the court ought not to have heard the matter on the papers.

[3] There is no merit in the second ground. It is the ordinary practice in this court to deal with matters on paper. These applications were the second and third applications brought by the same applicant for substantially the same relief. A hearing was held for the first application, and the applicant declined to appear at that hearing. There is no basis on which the court ought to have made a decision to hold an oral hearing in this iteration of the applicant’s attempt.

[4] The first ground caused a little more consideration on our part. Certainly, it is a fault in the directive of this court that a date for the filing of applicant’s replying affidavit was not specified. However, it was clear that that had to be done on or before the date specified for the filing of the applicant’s written argument. If it was not clear, the

¹ Proclamation Notice 158 of 2024, Government Gazette No 50166 of 23 February 2024.

applicant could, and ought, to have sought clarification from the court's secretary. He did not. Further, he failed to file any written argument or communicate with the court in any way at all after the directive was issued. In those circumstances, it was appropriate for the court to make a decision, as it was not open to the applicant to simply ignore the directive and not make any submissions to the court.

[5] In any event, considering the basis of the decision for which leave to appeal is sought, it is unlikely that a replying affidavit would have been able to make a difference in the specific circumstances of this case. None of the grounds relied upon would result in another court making a different decision.

[6] For these reasons, I make the following order:

The application for leave to appeal is dismissed.

S YACOOB

Acting Judge of the Electoral Court

Bloemfontein

APPEARANCES

For the applicant: Y Yame (In person)

For the first respondent: M de Beer

Instructed by: Harris Nupen Molebatsi Inc, Randburg