



**THE ELECTORAL COURT OF SOUTH AFRICA  
BLOEMFONTEIN**

**Not Reportable**

CASE NO: 0033/24EC

In the matter between:

**RAMOTSWABODI JOHANNES  
SESING**

Applicant

And

**ELECTORAL COMMISSION OF SOUTH AFRICA**

First Respondent

**INDEPENDENT COMMUNICATIONS AUTHORITY OF  
SOUTH AFRICA**

Second Respondent

**SOUTH AFRICAN BROADCASTING CORPORATION**

Third Respondent

**Neutral Citation:** *Ramotswabodi Johannes Sasing v Electoral Commission of South Africa and Others* (0033/2024EC) [2024] ZAEC 28 (29 October 2024)

**Coram:** Modiba J, Steyn AJ, Professor Phooko (Additional Member)

**Heard:** Decided in chambers on the papers

**Delivered:** 29 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 29 October 2024.

**Summary:** Application to compel Electoral Commission to keep open process of allocation of seats in the Free State Legislature – allocation of seat to applicant in the Free State Legislature – delay in confirmation of the independent candidate's eligibility to contest provincial election unconstitutional – review of Electoral Commission's processes to guarantee timely confirmation of independent candidates' eligibility to contest election – Independent Communications Authority of South Africa to investigate independent candidates slots to receive fair and equitable access to media platforms – relief sought moot and not competent – application dismissed.

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## ORDER

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1. The application is dismissed with no orders as to costs.

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## JUDGMENT

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**Professor Phooko (Modiba J, and Steyn AJ concurring):**

### Introduction

[1] This application concerns the outcome of the national and provincial elections that was announced on 2 June 2024. However, it was only instituted almost two weeks post the election results. The delay of instituting the application is excessive.

[2] The applicant was the only independent candidate who participated in the national and provincial elections that were held on 29 May 2024. He stood for election to the Free State Provincial Legislature. The election results were announced on 2 June 2024. After the announcement of the election results, the applicant learnt that

he had failed to secure a seat in the Free State Provincial Legislature because he obtained few votes.

[3] On 14 June 2024, the applicant instituted this urgent application seeking a web of relief as per the notice of motion. The relief sought is as follows:

1. That this application be dealt with as a matter of urgency and that any non-compliance regarding service and process be condoned.
2. The 1st Respondent, the Independent Electoral Commission (IEC), keep the process open for declaring the final allocation of seats in the Free State legislature, pending the finalization of this application.
3. That it be declared that the IEC's delayed confirmation of the Independent Candidate's eligibility and the late election date announcement were unconstitutional and violated Sections 19(3), 24, 35, 46, 55, 61, and 62 of the Electoral Act.
4. That the Honourable Court order the IEC to review and amend its processes to guarantee timely confirmation of independent candidates' eligibility in future elections, in alignment with Sections 24, 35, 46, 55, 61, and 62 of the Electoral Act.
5. That the Honourable Court order the IEC and ICASA to investigate the allocation process for Public Electoral Broadcasts (PEBs) to ensure independent candidates receive fair and equitable access to all key media platforms.
6. That the Honourable Court direct the IEC to allocate a seat in the Free State legislature specifically to the Independent Candidate, Ramotswabodi Johannes Sesing, outside the standard formula, acknowledging the exceptional circumstances and the violation of the Independent Candidate's constitutional rights.
7. That service of this application and further process in terms thereof, as set out below, be declared proper service of this application:
  - 7.1 This application and any further processes of the court made in terms hereof can be brought to the attention of the Respondents by way of email or WhatsApp communication.
  - 7.2 The Applicant will send an electronic copy of this application (and any further processes of the court) via WhatsApp and/or email to each of the Respondents at the email address and phone number reflected in the notice of motion.

8. The Applicant is afforded further and/or alternative relief as deemed fit by the above Honourable Electoral Court.<sup>1</sup>

[4] The Commission opposes the relief sought by the applicant.

### **Issues**

[5] The issues to be determined by this Court are whether this matter should be heard as one of urgency, whether the late filing of the applicant's application should be condoned, if so whether this Court has power to grant the relief sought by the applicant in prayer 5, and whether the non-joinder of the President renders the application defective.

### **Submission of the parties**

[6] The applicant submitted that the election date was proclaimed on 20 February 2024, but independent candidates were only confirmed on 10 April 2024. According to the applicant, this resulted in an inadequate timeframe which limited his ability to effectively communicate with voters and present his candidacy. Consequently, the applicant avers that this undermined the principles of free and fair elections as outlined in s 19(3) of the Constitution.

[7] The applicant further contended that the allocation of seats is governed by a specific formula as per ss 61 & 62 of the Electoral Act 73 of 1998. According to the applicant, *"this formula must be applied equitably however considering the exceptional circumstances in this case, the formula should not be applied"*.

[8] The applicant further contended that the ICASA denied him equitable access to media platforms and that this significantly hampered "his ability to communicate with voters". The applicant averred that the denial of access to media constituted a violation of his rights under the Electoral Act and the Constitution. In particular, the applicant submitted that he was discriminated against as an independent candidate because of his political opinion.

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<sup>1</sup> Applicant's notice of motion.

[9] The applicant also seeks the review of the Commission's processes to guarantee timely confirmation of independent candidates' eligibility in future elections.

[10] The applicant also argued that the Commission discriminated against him when it disallowed his request to use his nickname "JJ" on the ballot paper whereas other political parties were allowed to use abbreviations. According to the applicant, this violated transparency and equal opportunities for all candidates. The basis for this is that the applicant is well known by his nickname "JJ". Consequently, voters were unable to identify him from the ballot paper.

[11] The Commission opposes the relief sought by the applicant on various grounds including that the application is brought almost four months late, there is no application for condonation, the President has not been joined as a party responsible for the proclamation of the Election Timetable, the Commission has no jurisdiction to preside over broadcasting related issues, and that the relief sought is moot.

### **Urgency/condonation**

[12] There is no application for condonation. It is important for the purposes of this case to mention the following: the Election Timetable was proclaimed on 20 February 2024. The national and provincial elections took place on 29 May 2024. For unknown reasons, the applicant only brought this application on 14 June 2024. In my view, this is self-created urgency especially in that there is no explanation for the delay.

[13] Rule 6(1) of this Court's rules require a party who is entitled to and wants to take a decision of the Commission on review to do so within three days after the decision has been made. Furthermore, Rule 10 provides that 'failure to comply with the prescribed time limits or directives of the Court will, by this mere fact thereof, result in a party being barred, unless the Court, on good cause shown, directs otherwise'.

[14] It must be noted that no good cause whatsoever has been shown by the applicant about why this application was brought on 14 June 2024 when the Election Timetable was proclaimed on 20 February 2024. The application is late and should have in my view been accompanied by a “condonation application to explain the reasons for the delay so as to enable the Court to consider whether or not it should in the exercise its discretion overlooks the delay which in my view is unreasonable”. What the applicant seeks is to reverse everything that has occurred in his favour without providing this Court with any explanation for the delay.

[15] The elections have come and gone. Therefore, any relief that is related to the Election Timetable, fair and equitable access to all key media or keeping the process open for declaring the final allocation of seats in the Free State Legislature has become moot. This renders the relief in prayers 2 and 5 moot. The applicant’s case as pleaded has unfortunately become moot and he has not established why the matter remains urgent.<sup>2</sup>

### **Non-joinder**

[16] The law requires that any party who has a direct and substantial interest in the subject matter must be joined in the proceedings to safeguard their interests.<sup>3</sup> It is apparent from the papers that the applicant also seeks relief against the President as he proclaims the election date. The genesis of the applicant’s complaint is the alleged limited time leading to actual elections given to candidates to contest elections. However, the party against whom the relief is sought has not been joined in these proceedings. This goes against the rules of natural justice and the right to be heard.<sup>4</sup> The non-joinder renders the application in so far as it relates to the President defective.

### **Jurisdiction**

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<sup>2</sup> *Khumalo v Electoral Commission of South Africa and Others* (0025/2024 EC) [2024] ZAEK 20 at para 44.

<sup>3</sup> *Bowring NO v Vrededorp Properties CC and Another* 2007 (5) SA 391 (SCA) para at 21.

<sup>4</sup> *Administrator Transvaal, and Others v Theletsane and Others* 1991 (2) SA 192 (A) at 206 A.

[17] The applicant raises several complaints about the ICASA and the South African Broadcasting Corporation (SABC) regarding their alleged failure to provide him with a media platform as an independent candidate to sell his manifesto to prospective voters. However, a simple reading of s 20(1) of the Electoral Commission's Act 51 of 1996 is clear in that the jurisdiction of this Court is limited to electoral disputes or infringements of the Electoral Code as per section 90 of the Electoral Act. Therefore, the complaints related to ICASA and SABC fall outside the scope of this Court.

### **Merits**

[18] About the independent candidates being confirmed late on 10 April 2024, the applicant is incorrect. The first respondent has correctly pointed out that independent candidates became eligible to participate in the elections as far back as June 2023, pursuant to the Electoral Amendment Act 1 of 2023. Consequently, it cannot be reasonably true in that the applicant only knew on 26 March 2024 that he can contest the elections as an independent candidate. To the contrary, the applicant first registered to stand for election on 5 March 2024 and all the required information was uploaded before 17:00 on 8 March 2024, including making the payment requisite deposit. Therefore, he could not have known on 26 March 2024, yet he registered on 5 March 2024.

[19] About the allocation of seats, the applicant seeks this Court to direct the Commission to allocate him a seat in the Free State Legislature even though he failed to secure votes that would have secured him a seat through the election process. The allocation of seats formula is governed by s 105(2)<sup>5</sup> of the Constitution read with item 3(1) of Schedule 3 to the Electoral Act. For unknown reasons, the applicant incorrectly states that the allocation of seats is governed by ss 61 & 62 of the Electoral Act. This argument is misplaced. If the applicant was not happy with the formula for allocation of seats, he ought to have challenged this prior to the elections. This renders the relief in prayer 6 moot.

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<sup>5</sup> The proviso says "A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation".

[20] Without providing any factors or stating exceptional circumstances, the applicant asks for the deviation from the formula for the allocation of seats. The relief sought by the applicant is tantamount to elevating this Court to a law-making body that will change the formula for the allocation of seats. This would undermine a legislated formula for the allocation of seats without a reason. This is undesirable in a constitutional democracy. This contention must be also rejected.

[21] Concerning the violation of applicant's rights, the applicant has made several allegations about the violation of his electoral rights. However, he has not established before this Court how ss 19(3) 24, 35, 46, 51, 61 and 62 of the Electoral Act. have been violated or implicated in his case. Furthermore, the applicant has not shown how the conduct of the respondents has prevented him from exercising his political rights. Rather, the applicant makes various unsubstantiated claims. In my view no proper case has been made for the relief sought.

[22] Regarding the use of applicant's nickname "JJ" on the ballot paper, the ballot paper was circulated to all parties and independent candidates, well before the elections. I understand that on 4 April 2024, the applicant asked the first respondent to accommodate him to use his nickname "JJ". However, the first respondent's official informed him that the ballot paper will contain names as per his identity document. If the applicant was aggrieved by the decision of the Commission, he ought to have challenged it on review within three days. However, the applicant did not do so or bring an application to impugn the ballot paper. This is a belated application.

[23] With regards to the review of the Commission's processes to guarantee timely confirmation of independent candidates' eligibility in future elections, I do not understand the crux of the applicant's complaint. Independent candidates were eligible to participate in the elections as far back as June 2023 if they comply with the registration requirements as set out by the Commission. In addition, the applicant registered to stand for election within the time frames that were set for political parties and independent candidates. Furthermore, the applicant has not demonstrated how the current electoral processes, time frames, and confirmation of independent candidates violated ss 24, 35, 46, 55, 61, and 62 of the Electoral Act. In *Ferreira v*



*Levin NO & others; Vryenhoek v Powell NO & Others* it was held that the courts “deals with situations or problems that have already ripened or crystallised, and not with prospective or hypothetical ones”.<sup>6</sup> In light of the above, I am of the view that the relief sought in prayer 4 is not ripe for adjudication at this stage.

[24] Having read all the papers filed, and considered the facts including the applicable law, in my view, the applicant has not made out a case for the relief sought. For these reasons I conclude that the application be dismissed.

### **Costs**

[25] As a general rule, costs orders are not imposed upon a losing party in electoral matters unless such party’s conduct has been vexatious, frivolous or abusive of the court processes.<sup>7</sup> Although the application was brought out of time and not properly prepared, I am mindful that the applicant is unrepresented. However, this should not be a licence to embark on litigation without proper legal advice. In the circumstances I am not inclined to make any order as to costs.

### **Order**

[26] In the result, the following order is made:

1. The application is dismissed with no order as to costs.

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<sup>6</sup> 1996 (1) SA 984 (CC) para 199.

<sup>7</sup> *Arise Afrika Arise (AAAR) v Electoral Commission of South Africa* (008/2023 EC) [2024] ZAEC 1 at para 31.

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PROFESSOR MR PHOOKO  
Additional Member of the Electoral Court

I concur,

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L MODIBA  
Judge of the Electoral Court

I concur,

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E STEYN  
Acting Judge of the Electoral Court

## APPEARANCES

For the applicant:

In person

For the first respondent:

M Tsele

Instructed by:

DMO Attorneys, Bloemfontein