



**THE ELECTORAL COURT OF SOUTH AFRICA
JUDGMENT**

Not Reportable

Case no: 004/2025 EC

In the matter between:

NDABENE ELIAS NTLEBI

Applicant

and

**ELECTORAL COMMISSION OF SOUTH AFRICA,
FREE STATE PROVINCIAL OFFICE**

First Respondent

**AFRICAN NATIONAL CONGRESS,
FREE STATE PROVINCIAL OFFICE**

Second Respondent

MEC: COGTA FREE STATE

Third Respondent

MUNICIPAL MANANGER: NALA LOCAL MUNICIPALITY

Fourth Respondent

AMOS GOLIATH

Fifth Respondent

COUNCIL: NALA LOCAL MUNICIPALITY

Sixth Respondent

Neutral citation: *Ndabene Elias Ntlebi v Electoral Commission of South Africa, Free State Provincial Office and Others* (Case no 004/2025 EC)
[2025] ZASCA 04 (19 September 2025)

Coram: ZONDI DP and STEYN AJ and PROFESSOR NTLAMA-MAKHANYA and PROFESSOR PHOOKO (Additional members)

Heard: Decided on the papers in chambers

Delivered: These reasons were 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 11h00 on 19 September 2025

Summary: Review in terms of s 20 of the Electoral Commission Act 51 of 1996 read with rules 6 and 10 of the Electoral Court Rules – No case made out for urgency.

Judgment

Steyn AJA (Zondi DP, Professor Ntlama-Makhanya and Professor Phooko concurring):

Introduction

[1] On 5 September 2025 this Court issued the following order:

‘1.1 The application is struck from the roll.

1.2 Reasons for this decision will be furnished later.’

What follows hereinafter are the reasons for the order.

Parties

[2] The applicant, Ndabene Elias Ntlebi (Mr Ntlebi), was a ward councillor at the Nala Local Municipality (the municipality). The first respondent is the Electoral Commission of South Africa, Free State Office (the IEC Free State), the second respondent is the African National Congress Free State Provincial Office (ANC), the third respondent is the MEC of the Department of Co-operative Governance and Traditional Affairs, Free State (COGTA), the fourth respondent is the municipal manager: Nala Local Municipality (the municipality) and the fifth respondent is Amos Goliath (Mr Goliath).

[3] On 7 July 2025 the applicant sought the following relief of this Court:

‘PART A

1. That this matter be heard as one of urgency and the ordinary rules relating to timeframes and service in terms of the Rules of this court are dispensed with;
2. Interdicting and/or staying the by-elections scheduled for 10 September 2025;
3. That order 2 above shall operate as interim relief pending the final determination of the review application launched in Part B below;
4. That the Applicant be granted leave to approach the above Honourable Court at a later stage, on the same papers duly amplified, for an Order in terms of Part B of this application;

5. That the second, and fifth respondents be ordered to pay the costs of this application;
6. Such further and/or alternative relief.

PART B

1. Reviewing and setting aside the declaration of Councillor vacancy in ward 7 at Nala Local Municipality in relation to the applicant;
2. Reviewing and setting aside the decision of the First Respondent to accept, and act in accordance with, such declaration;
3. Reviewing and setting aside the decision of the First Respondent to schedule a by-election in relation to such declaration;
4. Reviewing and setting aside the by-election scheduled for 10 September 2025;
5. That the Second, and Fifth Respondents be ordered to pay the costs of this application;
6. Such further and/or alternative relief.'

The entire application has been opposed by the second, third and fifth respondents. The first respondent informed the registrar that it will abide by the decision of this Court.

Facts

[4] The facts of the case are briefly as follows: Mr Ntlebi was the ward councillor, at the sixth respondent Nala Local Municipality in Bothaville (the municipality). He was deployed by the ANC to represent them. The ANC Free State Provincial Disciplinary Committee (ANC PDC) subjected Mr Ntlebi to a disciplinary hearing on 9 June 2025. At this hearing it was established that Mr Ntlebi's membership had expired in February 2025. Accordingly, the ANC PDC ruled that it no longer had jurisdiction over him since he was no longer its member in terms of rule 4.17 of the constitution of the ANC.

[5] Mr Ntlebi was charged with various counts before the ANC PDC of contraventions of the constitution of his party, the ANC. On 9 June 2025 a hearing was convened by the ANC PDC, but since Mr Ntlebi ceased to be a member of the ANC, the Committee was of the view that they lacked the necessary jurisdiction to hear the disciplinary matter. Mr Ntlebi was informed, in writing, that he had ceased to be a member of the ANC, moreover it was the ANC that informed the municipal manager in writing that he is no longer a member of the party and that he could no longer represent the party.

[6] Pursuant to the proceedings that served before the ANC PDC, Mr Ntlebi paid his membership fees. Despite this late payment he was, on 17 June 2025 informed of the decision that he is no longer a member of the ANC. The ANC then advised the Municipal Manager of the municipality to request the IEC Free State to declare a vacancy and make preparations for the By-elections in Ward 7.

[7] At this juncture it is necessary to note that the municipality was placed under administration and therefore COGTA was tasked to forward the request to the IEC Free State to declare a By-election. In response to the request, IEC Free State in June 2025 published a draft time table for the Ward 7 By-election.

[8] The vacancy in Ward 7 was triggered by the fact that Mr Ntlebi was no longer a member of the ANC and that he could no longer represent the party. Mr Ntlebi did not challenge the ruling of the ANC PDC who held that he had ceased to be a member, instead he decided to launch an urgent application in this Court on 7 July 2025 to review the conduct of the IEC Free State.

[9] Mr Ntlebi invokes this Court's jurisdiction by placing reliance on s 20(1)(a) of the Electoral Commission Act 51 of 1996, which provides:

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

(b) Any such review shall be conducted on an urgent basis and be disposed of as expeditiously as possible.’

[10] In *Independent South African National Civic Organisation v Ramosie and Another* this Court held:

‘In term of s 20(1) of the *Electoral Commission Act* the Electoral Court may review any decision of the Commission relating to an electoral matter and it requires the Electoral Court to conduct any such review on an urgent basis and to dispose it as expeditiously as possible. The section does not stipulate the period within which the review must be brought. This is dealt with in *rule 6 (1) of the Rules of this Court*. It provides that any party who is entitled to and wants to take a decision of the Commission on review must lodge a comprehensive written submission with the secretary *within three days after the decision has been made*. In terms of *rule 10* failure to comply with the prescribed time limits or directives of this Court will, by the mere fact thereof,

result in a party being barred, unless the court, on good cause shown, directs otherwise.’¹
(Emphasis added.)

[11] I shall now turn to the reasons submitted by Mr Ntlebi for not bringing the application within the prescribed time limit. Evidently, he was informed on 17 May 2025 that he had ceased to be a member of the ANC. Whether he received a reminder or not is an issue involving the internal practices of his own political party. Any challenge to his membership or not should have involved the party that made that decision. His complaint is against the treatment he received from the ANC and not so much the conduct of the IEC Free State which followed upon the request of the party that had initially deployed him.

[12] In my view not only should Mr Ntlebi have challenged his eligibility as a member of good standing with his own political party, he should also have done so expeditiously.

[13] It is important to refer to the content of the letter that was sent by the ANC provincial office to Mr Ntlebi on 17 June 2025. It leaves no doubt about Mr Ntlebi’s position. This is what is stated:

‘1. The above matter has reference.

2. This correspondence serves to confirm that Cde. Elias Ntlebi has ceased to be a member of the ANC and cannot thereof continue to represent the ANC as a deployed ANC councillor.

3. We confirm that his disciplinary hearing was held on the 9th of June 2025 under case number 09/06/2025. A copy of the outcome of the said disciplinary hearing is hereto attached for your easy reference.

4. We confirm that the said Mr. E. Ntlebi has been informed accordingly.

5. Kindly proceed with the necessary process of declaring a vacancy so that he can be replaced as a matter of urgency.

6. We trust that you will find this in order and should you have any queries, please do not hesitate to contact writer thereof.’

¹ *Independent South African National Civic Organisation v Ramosie and Another* (0019/24 EC) [2024] ZAEC 18 (14 May 2024) para 17.

[14] No explanation was proffered by Mr Ntlebi to justify the delay as to what happened from 17 June 2025 to 7 July 2025 when he instituted the application against the first to sixth respondents in this Court. He had failed to comply with the rules of this Court and did not make out any case to condone his non-compliance. Accordingly, the order issued was justified given the said reasons. On the day that he was informed of the fact that his membership had ceased, that is the moment that the clock started running for him.

[15] There is one more thing that should be emphasised and that is the issue that Mr Ntlebi was no longer a member of the ANC. In my view he lacked the necessary locus standi to apply for the relief that was pertinently sought by him in Part A and Part B of the notice of motion. Since this Court decided the matter on urgency, it is not necessary to analyse the merits and demerits of his application. An analysis of the merits would not be in the interests of justice it would merely serve as preventative measure to avoid any fruitless applications in the future.

Costs

[16] As a general rule, cost orders are not imposed upon a losing party in electoral matters. The rule is however not inflexible where there are strong reasons justifying such a departure. I have come to the conclusion that a costs order is not warranted and accordingly I had not ordered any costs.

[17] These are the reasons for the order issued on 5 September 2025, as set out in paragraph [1] above.

E J S STEYN
ACTING JUDGE OF THE ELECTORAL COURT

Written submissions:

For the applicant:	Z Feni Qhali Attorneys Inc., Johannesburg, Makubalo Attorneys, Bloemfontein
For the first respondent:	No written submissions
For the second respondent:	M Lepaku Modimolle SMO Seobe Attorneys Inc., Bloemfontein
For the 3rd and 5th respondent:	S S Jonase State Attorney, Bloemfontein.