



**THE ELECTORAL COURT OF SOUTH AFRICA
BLOEMFONTEIN**

Not Reportable

CASE NO: 0040/2024EC

In the matter between:

**INDEPENDENT SOUTH AFRICAN NATIONAL CIVIC
ASSOCIATION**

First Applicant

BAKOENA STEPHEN RAMOSIE

Second Applicant

And

ZUKILE LUYENGE

First Respondent

THE ELECTORAL COMMISSION OF SOUTH AFRICA

Second Respondent

Neutral Citation: *ISANCO and Bakoena Stephen Ramosie v Zukile Luyenge and Others* (0040/2024EC) [2025] ZAEC 05 (03 December 2025)

Coram: MODIBA J, STEYN J, AND PROFESSOR PHOOKO (Additional Member)

Heard: Decided on the papers in chambers

Delivered: 03 December 2025 – 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
December 2025.

Summary: Civil procedure - whether the leadership dispute between the parties is *res judicata* – the dispute between the same parties in respect of the same relief has been determined by two separate divisions of the high court – the requirements of *res judicata* are met – application dismissed – first respondent's application for leave to file a supplementary opposing affidavit is refused – each party to bear their own costs.

ORDER

1. The first respondent's application for leave to file a supplementary affidavit is refused with no order as to costs.
 2. The application is dismissed with no order as to costs.
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JUDGMENT

Professor Phooko (Modiba J and Steyn AJ concurring):

Introduction

[1] The second applicant seeks an order declaring that he is the duly elected, legitimate, and lawful leader of ISANCO, as well as other ancillary relief. The first respondent opposes the application. The second respondent, the Independent Electoral Commission (the Commission), abides the Court's decision. It is common cause that the Free State and Eastern Cape Divisions of the High Court have determined the leadership dispute between the parties. This prompted this Court, *mero motu*, to enquire whether the leadership dispute between the parties is not *res judicata*. The Court issued directives to the parties to file supplementary heads of argument, addressing this issue. The parties duly complied with the directive. We are grateful to the parties for their assistance. This judgment addresses the crisp *res judicata* issue, which this Court considers dispositive of the application.

Background

[2] The Independent South African National Civic Association (ISANCO) was registered with the Commission on 26 January 2021. ISANCO respectively registered Dr Luyenge as a party leader and Mr Ramosie as the party's contact person.

[3] On or about 29 November 2021, a leadership dispute arose between Mr Ramosie and Dr Luyenge for the presidency of the ISANCO. Both claimed to be

leaders of ISANCO. In trying to get the Commission to update its records, on 27 July 2023, Mr Ramosie sought and obtained an order (per Reinders J) from the Free State Division of the High Court directing the Commission to update its records by removing Dr Luyenge and replacing him as the leader and the contact person of ISANCO.¹ ISANCO, through Dr Luyenge, who purported to be the rightful leader of the party, unsuccessfully sought to rescind the order of Reinders J. On 5 February 2024 Molitsoane J declined to rescind the order of Reinders J on the basis that Dr Luyenge has, *inter alia*, not challenged his expulsion from ISANCO. On 8 February 2024 ISANCO, through Dr Luyenge, filed an application for leave to appeal against Molitsoane J's order. However, 'this application has not been prosecuted and in terms of the Uniform Rules of Court is deemed to have lapsed'.

[4] On 26 February 2024 the Commission updated its records by removing Dr Luyenge and replacing him with Mr Ramosie as per Reinders J's order.² According to the Commission, the effect of the judgment of Molitsoane J is that the decision of Reinders J delivered on 27 July 2023 'remains extant and is so to be effected by the Commission as directed therein'.³ Unsatisfied with the decision of the Commission, on 7 March 2024 ISANCO successfully lodged an urgent application in the Eastern Cape Division of the High Court, Mthatha, for the review and setting aside of the Commission's decision. There, Rusi J, *inter alia*, ruled that the Commission's decision removing the first respondent's name from the applicant's party list, which it communicated in its letter dated 26 February 2024, is reviewed and set aside. Rusi J also directed the Commission to amend its records by reinstating the first respondent's name as the leader and contact person of ISANCO with immediate effect. This decision has not been implemented by the Commission on the grounds that it has been appealed by the second applicant.

[5] As a result of the conflicting orders of the High Court referred to above, which respectively determine the first applicant and the first respondent to be the leaders of ISANCO, both parties contend that their leadership dispute remains unresolved.

¹ Case No: 3583/2023.

² Ibid para 6.

³ Ibid para 6.

[6] This prompted the second applicant to launch this application in terms of s 20 (2A) of the Electoral Commissions Act 51 of 1996, which empowers the court to “hear and determine any dispute relating to membership, leadership, constitution or founding instruments of a registered party”. He seeks the following relief:

1. ‘Declaring that Dr Ramosie is the legitimate leader of ISANCO and its contact person.
2. Directing that oral evidence be heard for the determination of the declaration sought in paragraph 1 above.
3. Directing the Electoral Commission to keep the current party status reflecting Dr Ramosie as party leader and contact person or in the alternative to amend its records to reflect Dr. Ramosie as the leader and contact person of ISANCO.
4. There is no order as to costs.
5. Further and/or alternative relief.’

[7] The relief is opposed by Dr Luyenge. He has also filed a conditional counter application seeking an order an order *inter alia*, declaring him ‘a legitimate leader’ of ISANCO.

Issues to be determined

[8] The issues in this application are the following:

- (i) whether this court can raise the issue of *res judicata mero motu*;
- (ii) whether the requirements of the doctrine are met; and
- (iii) whether this Court should condone the late filing of the supplementary affidavit deposed to by the first respondent.

Leave to file a supplementary opposing affidavit

[9] Rule (6)(5)(e) of the Uniform Rules of Court gives a court the discretion to allow the filing of a further affidavit. Such discretion is to be exercised judicially by considering all relevant factors,⁴ including a satisfactory explanation as to why this

⁴ *Afric Oil (Pty) Ltd v Ramadaan Investments CC* 2004 (1) SA 35 (N) at 38H-39A.

was not included in earlier affidavits⁵, prejudice to any of the parties⁶, materiality of the evidence, and costs.⁷

[10] On 31 October 2025, the first respondent filed a notice of motion that sought to introduce a supplementary affidavit dealing with a report from the Legal Practice Council (LPC) about the conduct of an attorney, Mr T Adam, insofar as it relates to his alleged misrepresentation of Collett AJ's judgment.

[11] About the timing of the application for leave to file a further affidavit, the first respondent was proactive and acted as soon as the report from the LPC became available. Consequently, the explanation proffered for the delay is understandable as the report only became available after the respondent had filed their papers. However, a further reading of the first respondent's application does not show engagement with other factors to be considered for leave to file a supplementary affidavit. For example, the issue of balance of prejudice and costs has not been addressed save to state that the second applicant will bear the costs if he chooses to oppose the application. Regarding the materiality of the report to this application, the first respondent has gone at length and tried to explain the relevance of the report in these current proceedings. However, I fail to understand the purpose that it seeks to serve and achieve because the matter is not final and ongoing before the LPC. Additionally, it does not assist the first respondent's case in so far as addressing the *res judicata* principle as directed to do so by this Court. Therefore, the requirements relating to materiality of the evidence, balance of prejudice and costs have in my view not been met. Accordingly, the application for leave to file a further affidavit is refused, and it will not be considered with the rest of the papers filed.

⁵ Ibid at 39A. See also *Transvaal Racing Club v Jockey Club of South Africa* 1958 (3) SA 599 (W) at 604A-E.

⁶ *Ecolab (Pty) Limited v Mabra Construction (Pty) Limited* [2023] ZAGPPHC 114; 2023 JDR 0526 (GP) para 17.

⁷ *Garnett-Adams Properties (Pty) Ltd v Thomas* [2024] ZAGPJHC 534 para 23.

Res judicata

[12] It is now settled that a court may *mero motu* raise the *res judicata* principle. In *Molaudzi v S*,⁸ the Constitutional Court invited written submissions from the parties to address it “on whether the Court was precluded from entertaining the matter on the basis that it was *res judicata*”⁹.

[13] *Res judicata* is a legal doctrine that prevents a litigant from embarking on endless litigation about the same issues that involve the same parties.¹⁰ *Res judicata* also aims at preserving legal certainty on issues that have already been decided upon by the courts.¹¹ *Res judicata* requires that a judgment must be given effect to, even if it is erroneous.¹² The requirements for *res judicata* as set out in *Prinsloo NO and Others v Goldex 15 (Pty) Ltd and Another*,¹³ are that the dispute that is already been determined elsewhere, involves the same parties, is based on the same cause of action, and concerns the same relief.

[14] *Res judicata* may in certain exceptional circumstances be relaxed if the interest of justice so permits.¹⁴ It is therefore evident that *res judicata* is not an absolute rule and each case will be determined based on its merits.

[15] Against the legal principles, I now proceed to consider the written submissions of the parties.

Submissions of the parties

[16] The second applicant mainly submitted that he is the rightful leader, the first respondent was expelled, and it is in the interest of justice for the court to determine the ongoing leadership dispute because there are upcoming elections and there is a

⁸ *Molaudzi v S* ZACC 20; 2015 (8) BCLR 904 (CC); 2015 (2) SACR 341 (CC).

⁹ *Ibid* para 11.

¹⁰ *Ibid* para 14. See also *President of the Republic of South Africa and Others v Prince Mbonisi Bhekithemba ka Bhhekuzulu and Others* ZASCA 143; 2025 JDR 4337 (SCA) para 77.

¹¹ *Ibid* para 16.

¹² *Ibid* para 14.

¹³ *Prinsloo NO and Others v Goldex 15 (Pty) Ltd and Another* [2012] ZASCA 28; 2014 (5) SA 297 para 23.

¹⁴ *Op cit* fn 9 para 32.

need for finality on the issue. Although he admits that two courts have already determined the leadership dispute, he failed to address the *res judicata* issue.

[17] The first respondent submitted that this Court should adopt a flexible approach and ‘relax’ the application of the *res judicata* principle. He contended that during oral argument, his counsel will demonstrate that when adopting a flexibility approach to the principle, it will find that the leadership dispute between the parties is not *res judicata*. Notably, he too failed to address this Court on the specific issue raised, notwithstanding that he too conceded that the matter has been dealt with by other courts. Yet he requested this Court to exercise what he submits is its exclusive jurisdiction over the leadership dispute.

Evaluation of the submissions

[18] A simple glance of the parties’ pleadings reveals that they are relitigating the leadership dispute they brought before the two separate divisions of the High Courts in respect of which there are two extant judgments rendered by those courts. They both made an impassioned plea for this Court to consider the application and to hear oral evidence but have not provided a clear basis on which they contend that the leadership issue is not *res judicata*.

[19] Although the first respondent acknowledges that the leadership issue is subject to two conflicting decisions of the High Court, he expressed an intention to persuade this Court during oral argument why this Court should relax the *res judicata* principle. Regrettably, he provides no substantiation as to why this matter requires this Court to adopt a flexible approach. In other words, he has failed to substantially comply with the Court’s directive.

[20] In my view Zono AJ in *E.M v Minister of Home Affairs and Others*¹⁵ correctly observed that:

‘ . . . a litigant must be barred from approaching a court other than the one where the order was granted, when that court order has not been set aside, is simple that such conduct is tantamount to *forum shopping*. Approaching another court when validity of the court order in

¹⁵ *E.M v Minister of Home Affairs and Others* [2024] ZAECMHC 65.

the Magistrates Court [High Courts] is not impugned and there is no intention of impugning it leads to an ineluctable conclusion that the litigant is engaged in a *forum shopping*, which conduct is unacceptable. The court is approached to grant a contradictory order in the face of a valid binding orders, which conduct is undesirable as it adversely affects legal certainty.¹⁶

[21] In light of the above, this Court would be slow to adjudicate over matters that have already been decided by other courts to avoid legal uncertainty.

[22] The inescapable fact is that the judgments of Reinders and Rusi JJ stand. In *President of the Republic of South Africa and Others v Prince Mbonisi Bhekithemba ka Bhhekuzulu and Others*,¹⁷ Zondi DP unequivocally highlighted that ‘the doctrine of *res judicata* is based on the irrebuttable presumption that a final judgment on a claim submitted to a competent court is correct’. Therefore, the judgments of Reinders and Rusi JJ, which determined the leadership dispute between the parties, remain extant until set aside by a competent court. Therefore, the requirements of *res judicata*—in that the current dispute involves the same parties, the same cause of action, and the same relief is sought as was the case before the high courts—are met. This renders the leadership dispute between the parties *res judicata*.

Costs

[23] Cost orders are generally not imposed upon a losing party in electoral matters unless such party’s conduct has been vexatious, frivolous, or abusive of the court processes.¹⁸ This threshold is not met in this matter.

Order

[24] I make the following order:

1. The application and counter application are dismissed.
2. Each party is ordered to bear its own costs.

¹⁶ Ibid para 56

¹⁷ Op cit fn 10 para 76.

¹⁸ *Arise Afrika Arise (AAAR) v Electoral Commission of South Africa* (008/2023 EC) [2024] ZAEC 1 para 31.

PROFESSOR R PHOOKO
Additional Member of the Electoral Court

Written submissions:

For the first and second applicants:

A.J. Kleingeld
Kleingeld Attorneys, Bloemfontein

For the first respondent:

F. Mango

Instructed by:

Madokwe Incorporated

For the second respondent:

No written submissions