

SOUTH AFRICA / JUDGMENT

African Alliance v Electoral Commission (006/11 IEC) [2011] ZAEC 5 (13 May 2011)

[2011] ZAEC 5

COURT

Electoral Court

BEFORE

Pillay, Mthiyane, Masipa

CASE / FILE NUMBER

006/11 IEC

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ELECTORAL
COURT,
BLOEMFONTEIN
CASE
NO:006/11
IEC
DATE:13/05/2011

In the matter between:

AFRICAN
ALLIANCE.....Applicant
and
THE
ELECTORAL
COMMISSION.....Respondent

SUMMARY

Election law – Municipal elections – s 14 of Local
Government: Municipal Electoral Act 27 of 2000 – Application
to compel respondent to accept documents – Submission of
necessary documents to the local representative's
office –
Documents submitted to incorrect office of respondent – Alleged
ignorance of process – Respondent not
obliged to assist
contesting political party other than upon request, providing
information given to all parties – Maintaining
integrity of
respondent and election process of utmost importance in free and fair
elections – Strict adherence to provision
of Act –
Application dismissed.

JUDGMENT

PILLAY, J

- [1] The applicant brings this application to this court as a matter of urgency. The relief it seeks includes an order compelling the respondent to issue a registration certificate as a contesting party in the forthcoming local government elections and to accept its list of candidates for the upcoming local government elections scheduled for 18 May 2011 (“the elections”).
- [2] The applicant applied for registration as a political party on 24 November 2010 in preparation to contest the elections. The application was defective in that certain legal requirements had not been complied with. This caused various delays as remedial actions to comply with those shortcomings turned out to be time consuming. Most, if not all, of these shortcomings were of the applicant’s own making. So, to were the delays in implementing remedies to the application for registration as a political party.
- [3] On 7 March 2011, the applicant received facsimile correspondence, dated 5 March 2011, informing it that its registration as a political party had been approved, subject to a thirty-day period during which objections thereto could be made. Despite the chairperson of the applicant party suggesting that because the thirty-day period eclipsed the cut-off date set for the submission of inter alia, candidate lists and deposits, he concedes that officials of the respondent indicated to him that his party should submit its necessary documents accordingly. Consequently, to the extent that the applicant relies thereon to demand in effect, an extension of time to submit these documents, it was clearly not prejudiced by the thirty-day period which eclipsed the cut-off date and therefore it cannot benefit thereby.
- [4] It is common cause that the chairperson of the applicant attempted to submit the list of candidates to the respondent’s

Belville office as he thought he could submit them at any of the respondent’s offices. He arrived there at 16h53 and on

attempting to submit this, he was told that he was at the wrong office and that these document(s) should in fact be submitted at the Tygervally office of the respondent (as the contesting political parties had been informed).

- [5] The chairperson of the applicant seems to have made all manner of attempts to obtain relief compelling the respondent to accept the document(s) in question. (It is uncertain whether the chairperson of the applicant attempted to submit all necessary documents at the material time.) This included an application to the Western Cape High Court on 26 April 2011. It did not succeed in any of its efforts and finally it came to this court. The aforementioned delays and the various futile attempts certainly raises questions as to the urgency of this application. It is however not necessary to determine urgency in light of the decision arrived at.

- [6] Much of the applicant's affidavits and further submissions requested by this court, entails assertions that the respondent did not inform it of procedures and dates by which the initial preparatory steps for the elections had to take place. It holds the respondent responsible for its predicament because it had not advised its officials. For example, on the 8 March 2011, all the parties were invited to a workshop where, by all accounts, crucial information was given to the competing political parties and when discussions took place. The applicant was not invited to this. The reason for this is quite clear – it was not, at the time, a registered political party. It was unknown to the respondent and would thus not have received an invitation to the workshop.
- [7] By its own admission, the applicant heard of the procedure to be followed and the established time frames from other people. As its officials stated, they had “no clue” as to the procedures to be followed.
- [8] Section 14 and 17 of the Local Government: Municipal Electoral Act 27 of 2000 (‘the Act’) governs the procedures as to which documents need to be submitted and to which office they should be submitted.
- [9] As alluded to, it is common cause that the applicant sought to submit documents at the incorrect office. It was correctly refused. Section 14 (1) of the act prescribes that the documents must be submitted at a particular office of the respondent. This provision is peremptory.
- [10] In response to the assertions made by the applicant, it was contended on behalf of the respondent that it carried no duty to offer assistance to a particular party. In any event, officials of the respondent would not know that the party required assistance.
- [11] In my view, without a request for information which is given to all parties, particular attention to a party might result in a risk to the integrity of the respondent. By the very nature of managing elections, it is important that it remains independent with its integrity intact. In protecting its integrity, the respondent would maintain the necessary integrity of the whole electoral process upon which the notion of a free and fair election depends. (See: Electoral Commission of the republic of South Africa V Inkatha Freedom Party (CCT 33/11) [2011] ZACC 16 (10 May 2011) at para [55]).
- [12] Furthermore, the respondent could not make an exception in the face of compelling legislation. The respondent cannot be held

responsible for the ignorance of the applicant's officials in regard to the procedures required to be complied with in order to enter the contestations of elections. If it had no clue, it should have taken the trouble of investigating and ascertaining the necessary information once its officials had heard about it from others.

[13] The applicant did not submit documents at the proper offices of the respondent. Their reason for not doing so are not well founded and it will therefore find itself unable to contest the forthcoming elections. This inability to contest the forthcoming elections arises solely from its failure to comply with the mandatory provisions (See: *Liberal Party v The Electoral Commission and Others* [2004] ZACC 1; 2004 (8) BCLR 810 (CC) at 818 para [30]). The application therefore falls to fail.

[15] In the result, the application is dismissed.

PILLAY J

JUDGE OF THE ELECTORAL COURT

CONCURRED:

MTHIYANE JA

MASIPA J

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