
SOUTH AFRICA / JUDGMENT

Baartman and Others v Roodtman and Others (12226/07) [2008] ZAWCHC 220 (2 July 2008) [2008] ZAWCHC 220

COURT

Western Cape High Court, Cape Town

BEFORE

Desai, Le Grange

CASE / FILE NUMBER

12226/07

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 12226/07

DATE: 2 JULY 2008

In the matter between:

ANNEKE BAARTMAN 1st Applicant

MICHAEL SINKI MOTSOANE 2nd Applicant

GERALD VAN WYK 3rd Applicant

WILLEM KAROOLS 4th Applicant

CHRISTINA DARMEN 5th Applicant

ANTHONY DAIZANA 6th Applicant

versus

PETRUS ROODTMAN 1st Respondent

THE INDEPENDENT CIVICS ORGANISATION OF

SOUTH AFRICA 2nd Respondent

THE INDEPENDENT ELECTORAL

COMMISSION N.O. 3rd Respondent

THE MUNICIPAL MANAGER, BEAUFORT WEST

LOCAL MUNICIPALITY N.O. 4th Respondent

THE BEAUFORT WEST LOCAL

MUNICIPALITY N.O. 5th

Respondent

THE MUNICIPAL MANAGER, CENTRAL KAROO

DISTRICT MUNICIPALITY N.O. 6th Respondent

DESAI,J

The applicants seek leave to appeal the dismissal of their application. The matter has a long and convoluted history. It initially came before me during the floor-crossing window period. At that stage there appeared to be a live controversy which required an urgent resolution. However the applicants elected not to pursue the matter pending the finalisation of a related application with regard to the leadership of ICOSA. It seems that the applicants must now live with the consequences of that strategic choice.

The applicants also attempted to cross to another party, but this endeavour failed when the IEC declined to process their floor-crossing forms. Although the floor-crossing period had closed the applicants then sought to re-activate - as Mr Borgstrom puts it - this matter. As noted elsewhere we were only required to give a ruling on 23 December 2007. This was done. The reasons were to follow

at a later stage. This aspect had been agreed upon by the parties On 19 March 2008 by-elections were held in respect of the seats

previously held by certain of the applicants. A bid by the applicants to stop these elections, both In this court and in the Supreme Court of Appeal, failed.

The current position is as follows. The seats formerly held by the first, second and sixth applicants - the proportional seats - have been filled by the [EC from ICOSA's party list. The third, fourth and fifth applicants occupied their seats as Ward Councillors. These seats were filled when the by-elections were held. It accordingly appears impossible to reinstate the applicants as councillors as the seats previously held by them have now all been filled with other people.

The applicants quite clearly intended to leave ICOSA during the floor-crossing period. The tactics employed by them were directed at doing whatever was necessary to re-claim their seats during the floor-crossing period, so that they could immediately leave the party. The application was premised on the matter being heard during the floor-crossing period and did not cater for the retroactive

recognition of their right to cross the floor.

During the course of argument in the principal matter applicants' counsel for the first time presented a draft order including relief

retroactively permitting the applicants to cross the floor. He appreciated at that stage that this case would only present a live

issue if the applicants could be replaced into the seats formerly held by them and then were permitted to cross the floor to another

party.

The decisions appointing the new councillors have not been challenged by the applicants and there are no vacancies to which the applicants can be reinstated. The applicants³ attempted floor-crossing failed and the IEC considered and rejected their floor-crossing forms. That decision was not reviewed, and the IEC, again as Mr Bdrgrstrom puts it, is functus officio. It was simply not open to this Court to reopen the window period for the applicants This would be contrary to the relevant provisions of the constitution.

No new matter is raised in the grounds of appeal. The arguments advanced therein, and also orally by Mr Osborne, have been dealt with at length in the reasons already furnished. It seems that the relief sought is entirely moot as no effective relief can be granted on appeal.

For the reasons set out in the principal judgment I am of the view that there are no reasonable prospects of another Court coming to any different conclusion with regard to the merits of the application. In the result the APPLICATION FOR LEAVE TO APPEAL IS DISMISSED WITH COSTS.

DESAI, J

I concur

LE GRANGE, J

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