

SOUTH AFRICA / JUDGMENT

Cape Party v Electoral Commission and Another (1/09) [2009] ZAEC 3 (26 March 2009) [2009] ZAEC 3

COURT

Electoral Court

BEFORE

Mthiyane JA, Pillay, Masipa JJ, S. Moodley, S. Abro

CASE / FILE NUMBER

1/09

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CASE NO: 1/09

IN THE ELECTORAL COURT OF SOUTH AFRICA

HELD AT BLOEMFONTEIN

In the matter between:

THE CAPE PARTY..... Appellant

and

THE ELECTORAL COMMISSION.....First Respondent

CONGRESS OF THE PEOPLE ("COPE")Second Respondent

CORAM: Mthiyane JA; Pillay and Masipa JJ; Ms S. Moodley and Ms S. Abro (Members)

SUMMARY; Appeal against decision to reject objections to abbreviated name - resemblance - Section 16(1)(b) of the Electoral Commission Act No 51 of 1996-to be interpreted holistically and within the context of the Act and purpose of elections - voter defined -reasonable voter and reasonably informed voter - design of ballot paper safeguards against voters mistaking identity of particular party or confusing parties.

In deciding this matter, it is essential to examine whether the voter would be deceived and/or confused when exercising his or her right to vote.

The Electoral Act No 73 of 1998 sets out, inter alia, procedures for voter registration, (Chapter 2) and actual voting procedure (Section 38). Section 39 also makes provisions for the assistance of a voter who requires assistance to exercise the right to vote at the voting station.

These are procedures which illustrate that a voter is a person who is registered to exercise a right to vote. They, though not difficult to follow, require some measure of understanding of the prescribed procedures and what it entails.

Essential in the procedure is that a voter who can read will proceed to a voting booth and mark the ballot paper as he or she wants to. Where a voter cannot read, section 39 makes provision for him or her to be assisted to exercise a right to vote.

Furthermore, the ballot paper, almost now by tradition, contains a picture of the face' of every party next to its name and logo. Most, if not all, citizens know that the faces and logos thereon are associated with and represent the respective political parties involved in the elections.

It consequently becomes clear that the ballot paper, such as it is, is a product of wide consideration of South African history, the backgrounds of citizens in general and has been designed to generally avoid any of its voting public from being deceived or confused in exercising the right to vote when marking the ballot paper.

The ballot paper has clearly been designed for use of voters of most, if not all, backgrounds whether formally literate or not.

Objectively, it follows therefore, that the registered voter as envisaged in Section 16 (l)(b) of the Act is the reasonable voter, who is reasonably informed of the political landscape prevailing at the material time.

Specifically, such a reasonable voter is one who would firstly be sufficiently literate to identify the party of choice by name in order give proper effect to the right to vote. The reasonable voter, reasonably informed would know the difference between 'CAPE' and 'COPE' because the literate voter will see the difference between the names or abbreviated names for that matter.

If a person is not sufficiently literate or unable to read, the reasonable voter will have reference to the 'face of the party' which would clearly assist him or her to identify the party of choice. It seems to me that there can be no confusion as to the identifying of the party from the 'face' thereof save perhaps in the case of two members of an identical multi-birth group of siblings serving as the face of different parties. This is not the position in this case.

Thirdly, if the voter is still uncertain, the respective logo's clearly serve as marks of different identities.

The Appellant's logo can be described as follows:-

"An elliptical outline with broadened sides tapering towards the narrower poles, containing a map which resembles the western hemisphere of South Africa wherein appears the word CAPE written in bold capital letters which is underlined by two stars on either side of an anchor. (It is not clear whether the said map includes portions of other provinces or not)".

The Second Appellants' logo can be described as follows:-

"A cross within a four pronged star inside two broad lined circles with the word 'COPE' appearing under that in bold and with the full name Congress of the People thereunder in smaller letters."

I might add that in the application papers before us, the logos are depicted in photo static copies in black and white and therefore the different colour choices of the Appellant and Second Respondent are not apparent to me. I assume the colours would also have a role in distinguishing the Appellant from the Second Respondent.

Clearly the respective logos also serve as differentials and cannot be confused.

In order to illustrate the potential for confusion, the Appellant has referred to two instances as examples of 'COPE' being deliberately

used in place of the word 'CAPE'.

Firstly it referred to an instance in which the Second Respondent distributed what is known as bumper stickers wherein the word 'COPE TOWN' appeared.

The second instance is a cartoon which referred to the 'COPE of Good Hope'.

In both instances it is clear that the play on the word 'COPE' was contextually too far removed from the name of the Appellant. The bumper sticker was obviously a play on CAPE TOWN, while the cartoon was a play on the Cape of Good Hope.

Both Cape Town and the Cape of Good Hope are long standing names of a city and geographical phenomenon respectively. They are too remote from the notion which the Appellant suggests as examples of potential to offend the rights to the use of the abbreviated name of CAPE.

Consequently the purpose of Section 16(l)(b) of the Act has been complied with and from the foregoing, it cannot be said voters will be deceived or confused at the polls or that the potential for that to occur exists.

In the circumstances, the Appellant has not shown the decision of the First Respondent to uphold the CEO's decision to be incorrect. In the result, the appeal is dismissed.

R PILLAY

JUDGE OF THE HIGH COURT

MTHIYANE JA CONCURRED

MASIPA J CONCURRED

Ms S MOODLEY CONCURRED

Ms S ABRO CONCURRED

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