

SOUTH AFRICA / JUDGMENT

Februarie and Others v Phillips and Others (009/2023EC) [2024] ZAEC 2 (22 February 2024)

[2024] ZAEC 2

COURT

Electoral Court

BEFORE

Zondi JA, Shongwe AJ, Adams AJ, Professor
Phooko

CASE / FILE NUMBER

009/2023EC

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THE ELECTORAL
COURT OF SOUTH AFRICA
BLOEMFONTEIN
Not
Reportable
Case
no: 009/2023EC

In the matter between:

RONALD JOHN FEBRUARIE
FIRST
APPLICANT
MANDISI
NEELS SECOND
APPLICANT
MARIA
LOTTERING THIRD
APPLICANT
GERALDINE DE
WEE FOURTH
APPLICANT
GEORGE
PLAATJIES FIFTH
APPLICANT
DANNY
JONAS SIXTH
APPLICANT
PIET

OLYN SEVENTH
APPLICANT
JACOBUS SPECIAL
NOKAYI EIGHTH
APPLICANT
WAYNE LUBBE
NINTH
APPLICANT
ANDREW NEL
TENTH
APPLICANT
GHONNI
BOOYSEN ELEVENTH
APPLICANT
HELOISE
HURST TWELTH
APPLICANT
LU-WHELIN BUNET
VASS
THIRTEENTH APPLICANT
PETRUS
LOTTERING
FOURTEENTH APPLICANT
MAUREEN VAN
STADEN FIFTEENTH
APPLICANT
CAROLINE
BONN SIXTEENTH
APPLICANT
SANDRA
RIET
SEVENTEENTH APPLICANT
COLLIN
BOSTANDER EIGHTEENTH
APPLICANT
HELNITA
SPIES NINENTEETH
APPLICANT
HENDRIKA
LOTTERING TWENTIETH
APPLICANT
FRANK
ANDREAS TWENTY
FIRST APPLICANT
IDA
GAINSFORD TWENTY
SECOND APPLICANT
MARTHA
KOCK TWENTY
THIRD APPLICANT
DELPHIA

VISAGIE TWENTY
FOURTH APPLICANT
EGGIE
SWARTS TWENTY
FIFTH APPLICANT
STEPHANIE
SWARTS TWENTY
SIXTH APPLICANT
MARINDA
WEBB TWENTY
SEVENTH APPLICANT
ELMARIE
BOTHA TWENTY
EIGHTH APPLICANT
CIZELLE VAN
STADEN TWENTY
NINTH APPLICANT
LYNETTE
GEORGE
THIRTIETH APPLICANT
STEFANIS
MADJIET THIRTY
FIRST APPLICANT
EBEN
FARAO THIRTY
SECOND APPLICANT
JULIAN
THYS THIRTY
THIRD APPLICANT
MIETA DE
BRUIN THIRTY
FOURTH APPLICANT
FREDERICK DE
BRUIN
THIRTY FIFTH APPLICANT
HANNIE
GEORGE THIRTY
SIXTH APPLICANT
DOROTHY HINORIA
BLOCK THIRTY
SEVENTH APPLICANT
CHRISTOPHER
SOMANZI THIRTY
EIGHTH APPLICANT
NOMBONGO ROGEDINE
BOTHA THIRTY
NINTH APPLICANT
MAGRARET JOYCE
PHILLIPS FOURTIETH
APPLICANT
JACK

LOUW FOURTY
FIRST APPLICANT
FALICITY
MALGAS FOURTY
SECOND APPLICANT
EVELINE
GEORGE FOURTY
THIRD APPLICANT
ELIZABETH
KORTMAN FOURTY
FOURTH APPLICANT
CYNTHIA
COETZEE FOURTY
FIFTH APPLICANT
CINDY
LINKS FOURTY
SIXTH APPLICANT
JAN
LUDICK FOURTY
SEVENTH APPLICANT
KATRIENA
BITTERBOS
FOURTY EIGHTH APPLICANT
MADELIEN
BITTERBOS
FOURTY NINTH APPLICANT
MAGRIETA
WITBOOI
FIFTIETH APPLICANT
MANEULLE
MAARMAN
FIFTY FIRST APPLICANT
MELVIN
ZIMAANDIE
FIFTY SECOND APPLICANT
CHAMILLA
GUEST
FIFTY THIRD APPLICANT
BERNADETTE
ADAMS
FIFTY FOURTH APPLICANT
GEORGE VAN
WYK
FIFTY FIFTH APPLICANT
LEVONIA
LUDICK
FIFTY SIXTH APPLICANT
POPPIE
ROOS
FIFTY SEVENTH APPLICANT
VICTORIA

LOTTERING
FIFTY EIGHTH
APPLICANT
RIKUS
ADAMS
FIFTY NINTH APPLICANT
VUYISWA VICTORIA
MOHLAWUDI
SIXTIETH
APPLICANT
MARTIN DAVID
GRASVOET
SIXTY
FIRST APPLICANT
and
JOHAN ANDREW
PHILLIPS
FIRST RESPONDENT
CHUMISA
MOOI SECOND
RESPONDENT
SYLVIA
MOOI THIRD
RESPONDENT
SOLLY
BIBI FOURTH
RESPONDENT
RICARDO
BOOYSE
FIFTH RESONDENT
RALPH
STEENKAMP
SIXTH RESPONDENT
LESLEY
NEL
SEVENTH RESPONDENT
DIMON JANTJIES
EIGHTH RESPONDENT
INDEPENDENT ELECTORAL
COMMISSION
NINTH
RESPONDENT
Neutral
Citation: Ronald Februarie and Others v Andrew Phillips
and Others (009/2023EC) [2024] ZAEC 02 (22 February 2024)

Coram: Zondi JA, Shongwe AJ, Adams AJ and Professor
Phooko (Additional Member)

Heard: 19 January 2024 – virtually

Delivered:	22 February 2024 – 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 22 February 2024.
Summary:	Section 20(2A) of the Electoral Commission Act 51 of 1996 – application by members of political party for declaratory and interdictory relief – ‘dispute [between opposing factions] relating to membership, leadership, Constitution or founding instruments of a registered party’ – Court’s jurisdiction engaged. Interpretation of Constitution of political party – applicants seek orders setting aside structures and appointments of first decision-maker – to be replaced by systems introduced by new bodies in terms of Constitution. Point in limine – non-joinder of political party – upheld – party has a direct and substantial interest in the subject-matter of the litigation. Merits – a textual and a contextual purposive interpretation of party’s Constitution – first highest decision-making body elected and installed by the founders of party – agreement on two-year term of office and structure of governance – enforceable as between members – application dismissed with no order as to costs. ORDER The applicants’ application is dismissed, with no order as to costs.

JUDGMENT

Adams AJ (Zondi JA and Shongwe AJ and Professor Phooko concurring):

- [1] The litigation between the parties in this opposed application has had a long and a tedious history and this is at least the fourth time that the dispute between them serves before a court. The first applicant (Mr Februarie) and the first respondent (Mr Phillips) are the main dramatis personae in the fray, which, as the cliché goes, is for the soul of Siyathemba Community Movement (SCM), a registered political party in the Pixley ka Seme District Municipality in the Northern Cape Province. Messrs Februarie and Phillips are the leaders of opposing

factions in SCM and both of them claim to be its lawfully and constitutionally elected leader, instituted in terms of the Constitution of the said organisation. They are both members of the SCM, as well as duly elected Councillors of the Siyathemba Local Municipality (SLM), with Mr Phillips as the sitting mayor and Mr Februarie as the duly elected Councillor for Ward 2 in the SLM.

- [2] The second to sixty second applicants are all also members of the SCM and some of them were councillor candidates in different wards in the SLM during the November 2021 Local Government elections. The seventh applicant (Mr Olyn), who requires a special mention for reasons which will become clearer later on in the judgment, is the only SCM District Councillor in the Pixley Ka Sema District Municipality. There are six Wards in the three towns in the SLM. In the founding papers, it is claimed by the applicants that they have been elected to and currently serve on the structures of the SCM in terms of its Constitution.
- [3] Mr Phillips and Mr Olyn are the signatories to the Constitution of the SCM, which was signed by them on 26 June 2021 and they, together with a number of other persons, are regarded as the founding members of the SCM. The second respondent (Ms Mooi), who is also a member of the SCM, serves as a Proportional Representative ('PR') Councillor in the SLM. The third to the eighth respondents are all also members of the SCM, and, according to Mr Februarie, are part of the faction headed by Mr Phillips.
- [4] The ninth respondent is the Independent Electoral Commission of South Africa, which indicated that it will not participate in the litigation in this application and that it will abide the decision of this court.
- [5] The applicants brought the present application purportedly in terms of section 20(2A)[1] of the Electoral Commission Act,[2] in which they seek the following relief: -
 - '1. Declaring that the relationship between the Siyathemba Community Movement ("the SGB") and its members is governed by the movement's Constitution.
 - 2. Declaring that the Constitution of the SGB is binding on all members of the movement.
 - 3. Declaring that the Constitution of the SGB entrenches and defines the right of members to participate in the activities of the movement in terms of Section 19(1)(b) of the Constitution of South Africa and any deliberate attempt to prevent such being a violation of the basic Constitutional right of the members.
 - 4. Declaring that any dispute or legal uncertainty between members of the movement is only resolved in terms of the Constitution of the SGB.
 - 5. Declaring that the ward structures elected as provided for by the Constitution of the SGB are legitimate and their decisions are binding on all members.
 - 6. Declaring that the purported DM structure under the control of the first respondent is unconstitutional and illegal, and decisions taken by them are of no effect.

6.1 Interdicting all members of the purported DM structure from continuing to make themselves out as a legal Constitutional structure with powers assigned to them by a resolution of the general assemblies.

7. Declaring that the operation of the first respondent and the

purported District Management structure is illegal, that their actions had and remain ultra vires the Constitution of SGB and their

decisions are invalid.

8. ...'

[6] Mr Phillips and the other seven respondents oppose the application on the basis that it is in fact the applicants who are acting unlawfully and in contravention of the provisions of the Constitution of the SCM. They have also raised the point in limine of non-joinder and contend that the SCM, which has a direct substantial interest in the subject matter of the application, has not been cited as a respondent in circumstances where it should have been joined. For this reason alone, the respondents argue, the application should be dismissed.

[7] The question to be considered is simply whether, if regard is had to the Constitution of the SCM, the applicants have made out a case for the relief sought by them. Additionally, this court needs to decide whether the non-joinder legal point raised by the respondents is good in law. These issues are to be decided against the backdrop as set out in the paragraphs which follow.

[8] The SCM was founded, and its Constitution formally adopted at a meeting held at the Broadwaters Resort on Sunday, 27 June 2021. At this meeting, a 'District Management' structure (DM), as contemplated by the Constitution as the highest decision-making body of the SCM between general meetings, was elected. The so-called DM consisted of thirteen members, with Mr Phillips as the Chairperson and Mr Olyn as the Secretary General. The other office bearers of the DM were as follows: the second respondent (Ms Chumisa Mooi) – as Deputy Chairperson; one Pamela – as Deputy Secretary General; the third respondent (Ms Sylvia Mooi) – as Treasurer; and eight other 'additional members'. The relevant provisions of the Constitution read as follows:

'Clause 5: District Management (DM)

5.1. The First District Management consists of the signatories of this Constitution as elected at the founding meeting [during] March 2021.

5.2. The District Management (DM) will be represented by 2 members each from each Municipal area, preferably one male and one female representative.

5.3. The DB elects between itself the Chairman, Deputy Chairman, Secretary, Deputy Secretary and Treasurer, the other members will be known as Executive Committee members.

5.4. The term of the First DM is two years, after that the Board will be elected 3 annually.

5.5. The office of a board member expires if:

5.5.1. he / she resigns.

5.5.2. he / she is fired through a disciplinary process, in that the individual has brought the body into disrepute.

5.6. If the office of a member of the Management is terminated or vacated, the Management will have the power to co-opt another member.

5.7. The DM can also co-opt an additional member at any time for special, short-term functions or projects.

5.8. By virtue of resolutions at General Assemblies, the DB has the powers and powers necessary to carry out the objectives of the SGB.

5.9. The DM also has the responsibility to formulate policies, submit them to members for approval and implementation.

5.10. The Management may at any time delegate its powers and powers to one or more of its members or a special sub-committee and may also make use of professional services, of persons and / or legal persons who are not members of the SGB.

Clause 6: Municipal Management (MM)

6.1. Wards / Town Conveners + 1 additional member of each ward / town forms the Municipal Management (MM).

6.2. The MM chooses between themselves a Municipal Convener (MC) and Deputy Municipal Convener (DMC), which represents the Movement at District Level.

6.3. The terms of the MM are the same as described in 5.4.

6.4. The duties and responsibilities of the MB are the same as referred to in Clause

6.5. Purchases can take place, the same as in the case of DM.

Clause 7: Wards / Town Management

7.1. Members of SGB in the ward / town appoint a Convener + 4 Additional members in their own ranks.

7.2. The Ward / Town Convener (WC / TC) + 1 additional member represents the Ward / Town in the MM.

7.3. The terms of the WS / DS are the same as described in 5.4.

7.4. The duties and responsibilities of the WC / TC are the same as referred to in Clause 5.

7.5. Purchases can take place, the same as in the case of the DM.

Clause 8: Annual General Meetings (AGM):

8.1. An AGM will be held annually to approve reports and analyze the progress and challenges of the year in question, and then submit an annual plan for approval.

8.2. The only elections that can take place are only the positions that are possibly vacant, and or co-opted members that need to be confirmed or replaced.

8.3. The reports for inspection for approval are those of the Chairman, Secretary and Treasurer.

8.4. The other reports for approval are those of the Municipal Conveners.

8.5. A quorum for the AGM will be 50% + 1, of each municipal area (10 per municipal area), in this case 31 members.

8.6. The form of attendance can be physical presence at a pre-arranged venue or via any other form (Zoom / Teams).

8.7. Should a quorum not be present at an AGM, such meeting will be adjourned until a date at least 7 days after the appointed time. Notice of such adjournment shall be given to all members not less than 5 days before the date of the adjourned meeting. The number of members present at the adjourned meeting will be considered a legitimate quorum.

8.8. A decision regarding a proposal or motion at a meeting will be determined by a majority of votes. Each member will have one vote while the Chairman will also have a casting vote.

8.9. Voting will take place by hand, while voting will take place if the Chairperson so arranges, or at least requested by % of the members present.

8.10. Proper minutes will be kept at each AGM and an attendance list will be completed.

8.11. The Minutes will be signed by the Chairperson and will be available for inspection.

8.12. AGMs are limited to the DB with submissions from the MB.

Clause 9: Meetings

9.1. The following rules regarding meetings at the various levels will apply:

9.1.1. DM – One (1) meeting per term will take place.

9.1.2. MM – One (1) meeting 2 will take place monthly.

9.1.3. DM / TM – One (1) meeting per month will take place.

9.1. Other and or Special Meetings may be convened by the Chairperson at any time if 50% + 1 MS directs such request.

9.2. Such a request must be accompanied by an agenda with the necessary discussion points.

9.3. If the Chairperson fails to convene the Special Meeting as requested, the meeting may continue in his / her absence.'

- [9] I have extensively cited these provisions from the Constitution of SCM as it and its proper interpretation play an integral part in the applicants' case in this application. These extracts also encapsulate the structure and the governance scheme envisaged by the founders of SCM. On a proper interpretation of these provisions, the ineluctable conclusion to be reached is that the DM body was to be the highest decision-making body of the organisation in between general meetings. The first DM elected and installed by the general membership at the founding meeting on 27 June 2021, was to be responsible for the management of the SCM for at least two years.
- [10] The foregoing conclusion I reach on the basis of a textual and a contextual interpretation of the cited provisions of the SCM's Constitution. Clause 5.4 unequivocally states that 'the term of the first DM is two years . . .'. The selection of the members of the DM as provided for in clause 5.2, in my interpretation, only takes effect from the period after the first DM had completed its two-year term of office. As regards context, it is common cause that the upcoming local government elections had been scheduled for 1 November 2021 and the founding members of SCM had resolved to contest these elections in at least the Pixley ka Sema District Municipality. For that purpose, the first DM was tasked with registering the organisation as a political party and thereafter attending to the logistics of their participation in the said elections, which axiomatically would have included the finalisation of the Councillor candidature list of the parties and the appointment of members to the different legislative bodies to which they became entitled. These appointments would then take up their positions after the elections and continue in those positions until the next elections, unless lawfully 'recalled' by a valid resolution of the party before then.
- [11] In sum, the foregoing conclusion I reach after having given due consideration to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed, and the material known to those responsible for its production (*Natal Joint Municipal Pension Fund v Endumeni Municipality*).^[3] The important point about these provisions is that the term of 'the first District Management' structure – the one installed at the meeting of 27 June 2021 – was for two years, whereafter the DM would be constituted as per clause 5.2, that being two members each from each municipal area. Nowhere in the Constitution is any reference made to the first DM structure being an 'interim structure' as alleged by the applicants. I revert to this aspect of the matter shortly.
- [12] On 1 November 2021, the SCM participated in the local government elections, resulting in it being elected to the following legislative bodies: (a) The Siyathemba Municipal Council – one Ward (Ward 2) and three PR seats; (b) Thembelihle Municipal Council – one PR seat; (c) The Pixley Ka Sema District Council – one direct seat. These positions were filled by the first DM in accordance with their list of candidates shortly after the elections. Mr Phillips, as the leader of the SCM, would have been at the top of this list, making him eligible for the appointment as mayor of any of the Local Municipalities. It is probably this appointment of Mr Phillips as the mayor of the Siyathemba Local Municipality which lies at the heart of the

fight between him and Mr Februarie.

- [13] After the elections – during the period from about 7 to 20 November 2021 – Mr Februarie and his faction took it upon themselves to arrange and convene meetings of the members of the SCM at Ward level, which meetings purported to nominate and elect members to the Municipal Management (MM) structures as envisaged by clause 6 (supra). The MM's in turn were to constitute the members of the DM as envisaged by clause 5.2. This they did on the understanding and on the basis of their interpretation of the relevant provisions of the Constitution, in particular clause 5, that the DM installed by the founding meeting of 27 June 2021 would only be an 'interim structure', whose term was to endure only until immediately after the local government elections on 1 November 2021. In this process the first DM was completely sidelined and their role, as informed by the Constitution of SCM, was completely ignored by the applicants.
- [14] The approach adopted by the applicants and their faction was misguided. Their interpretation of the relevant provisions of the Constitution was wrong and belied by the express wording of clause 5.4. In convening Siyathemba Ward meetings on 7, 10, 11, 12 and 19 November 2021 and establishing Ward / Town structures in other Local Municipalities in the district, Mr Februarie and his faction were themselves acting in contravention of the SCM Constitution, which had granted to the first DM the power to govern the SCM for at least two years after the meeting of 27 June 2021, therefore until June 2023. Thereafter, the DM was empowered to arrange, manage and administer the process in terms of which the second DM and its membership were to be constituted.
- [15] It follows that the meetings of 20 and 21 November 2021, convened by Mr Februarie and his cohorts, were also unlawful and non-compliant with the SCM Constitution. At this meeting, a new DM was purportedly constituted, and Mr Februarie was elected as SCM's mayoral candidate for the SLM. I find that these meetings and the resolutions passed there, as well as the decisions taken pursuant thereto, were unlawful, invalid and of no force and effect. The same applies to the subsequent meetings held by this faction and the decisions taken and the resolutions passed at all such meetings. In particular, as was found by the Northern Cape Division of the High Court in Kimberley (the High Court) – under case number: 148/2023, in a case brought by Mr Phillips and his associates, their summary expulsion as members of SCM and its DM structure was unlawful, invalid, void and of no force and effect.
- [16] Moreover, and as was also held by the High Court in its judgment handed down on 26 May 2023, I hold that the applicants, under the leadership of Mr Februarie, are not authorised, if regard is had to the SCM's Constitution, to conduct disciplinary proceedings purportedly on its behalf or, for that matter, to act in any manner on behalf of SCM.
- [17] On the same day, that being Sunday, 21 November 2021, the first DM, sans Mr Olyn, who had indicated to Mr Februarie earlier that day that he was resigning his position as Secretary and as a member of the DM, also had a meeting, which confirmed the election results and the deployment of appointees as PR Councillors, a Ward Councillor and a District Municipal

Councillor. I find this meeting to be the only meeting that complied with the SCM Constitution. For all of the reasons alluded to supra, I respectfully find myself in agreement with the resolution passed at the said meeting to the effect that this structure was, at the relevant time, the 'only legal and legitimate structure' and that 'any mandate issued by [it] should be accepted by all councillors and members'.

- [18] The applicants place much store by the fact that, according to them, the general membership of SCM has endorsed them and the structures put in place by them in the meetings of 20 and 21 November 2021 and of 4 December
2021. So, for example, they aver that, at the first meeting of 20 November 2021 – styled 'SCM Municipal Management Meeting' – all of the Wards in the Siyathemba Municipality District were well represented, and these representatives were duly elected by the respective Wards in accordance with the prescripts of the SCM Constitution. According to the attendance register relating to the 20 November 2021 meeting, there were twenty-five attendees at the meeting, representing Wards 1 (six delegates), 2 (five delegates), 3 (two delegates), 5 (five delegates) and 6 (six delegates). These delegates, in turn, had been deployed by meetings at Ward level, which at face value were representative of the membership in that ward. For example, at the Ward 5 meeting on 11 November 2021, there were seventy-seven members present, at the Ward 6 meeting fifty-three members attended, at the Ward 1 meeting on 17 November 2021, there were 138 members present, and there were sixty-six members in attendance at the Ward 2 meeting on 19 November 2021.
- [19] The point made by the applicants is that the actions taken by them and the structures which they had installed were underpinned by democratic processes and were in accordance with the dictates and prescripts of their Constitution. At first blush, there appears to be some merit in this contention by the applicants. However, as I have already indicated, this argument loses sight of the provisions of the Constitution of SCM, which, properly interpreted, envisages an interim structure and a scheme applicable during the first two years of its existence. This was the agreement reached between the founding members, which was and is binding on all members, both existing and prospective.
- [20] The case advanced by the applicants in this application presently before us is at odds with that interpretation of the Constitution. The organisational structure advocated for by the applicants in casu is one which would have applied going forward and only after the initial two-year period of the minimum term of office of the first DM. The said structure is required to be implemented by the first DM and not by and at the instance of the Wards.
- [21] For all of these reasons, I conclude that the relief sought by the applicants should be refused. In particular, on the basis of my foregoing factual findings and legal conclusions, the application for the relief applied for as per paras 5, 6, 6.1 and 7 of their notice of motion, falls to be dismissed. As for the declaratory orders prayed for by the applicants in paras 1, 2, 3 and 4 of the notice of motion, if those orders are granted, the court order would merely be stating the obvious. In other words, the court is required to make orders that in effect say

what goes without saying. Declaratory orders in those circumstances cannot and should not be granted. As was held in *City of Johannesburg v South African Local Authorities Pension Fund*,^[4] it is undesirable for courts to be issuing declaratory orders in a vacuum.

[22] Moreover, as was held by the Supreme Court of Appeal in *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*,^[5] an applicant for a declaratory order is required to satisfy the Court that he/she is interested in an 'existing, future or contingent right or obligation'. If so satisfied, the Court is then obliged to exercise its discretion and decide whether it should refuse or grant the order, following an examination of all relevant factors. In my view, the court's discretion should be exercised against granting the declaratory orders for the simple reason that the applicants are not entitled to the relief pertinent to their cause of action aimed at unseating the respondents from their positions in the SCM. The applicants' application should therefore fail.

[23] There is another reason why the application should fail, which, on its own, is dispositive of the matter and that relates to the non-joinder legal point raised by the respondents in their answering affidavit.

[24] As indicated above, SCM is a registered political party and sits on the Council of the Siyathemba Local Municipality. It is registered with the Independent Electoral Commission of South Africa. The relief applied for by the applicants in this application seeks to change the leadership structure of the SCM. By all accounts, the relief prayed for herein will affect and is of interest to SCM and its other members, who have not been cited in these proceedings.

[25] Accordingly, there is, in my view, merit in the point in limine raised by the respondents. In *Absa Bank Ltd v Naude N O and Others*^[6] (Absa Bank) it was held as follows: -

'The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject-matter of the

litigation which may prejudice the party that has not been joined. In *Gordon v Department of Health, KwaZulu-Natal* it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interests of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined. That is the position here.'^[7]

[26] Applying the ratio in *Absa Bank*, there can be little doubt that SCM and its other members ought to have been joined in these proceedings. They clearly have a direct and a substantial interest in the subject-matter of the litigation herein. The relief sought by the applicants cannot possibly be sustained without causing prejudice to SCM. It is so, as submitted by the respondents, that the applicants seek relief directed at removing all the registered leaders of the SCM. The applicants seek to do so without joining the SCM and all of its members, who are affected by the decisions made by the SCM. On this basis alone, the applicants' application should be dismissed.

Costs

[27] The award of costs is a matter which is within the discretion of the court considering the issue of costs. This discretion must be exercised judicially having regard to all the relevant considerations. One such consideration is the principle that in general in this Court an unsuccessful party ought not to be ordered to pay costs. But this is not an inflexible rule, and it can be departed from where there are strong reasons justifying such departure such as in instances where the litigation is frivolous or vexatious.

[28] I can think of no reason why the foregoing general rule should be departed from. Moreover, during the hearing of the opposed application on 19 January 2024, none of the parties were legally represented, which means that at least as regards the costs relating to the hearing of the application, none of the parties are entitled to a costs order in his/her/their favour.

Order

[29] In the result, the following order is made:

The applicants' application is dismissed with no order as to costs.

L R ADAMS

Acting Judge of the Electoral Court

Bloemfontein

APPEARANCES

For appellant: R J Februarie (in Person)

For Respondents: A Phillips (in Person)

[1] Section 20(2A) provides that: 'The Electoral Court may hear and determine any dispute relating to membership, leadership,

Constitution or founding instruments of a registered party.'

[2] Electoral Commission Act 51 of 1996.

[3] Natal Joint Municipal Pension Fund v Endumeni Municipality

[2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 18;

[4] City of Johannesburg v South African Local Authorities Pension Fund

[2015] ZASCA 4 at para 8.

[5] Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd 2005 (6) SA 205 (SCA).

[6] Absa Bank Ltd v Naude N O and Others

[2015] ZASCA 97; 2016 (6) SA 540 (SCA).

[7] Ibid para 10.

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