

SOUTH AFRICA / JUDGMENT

Medupe and Others v African National Congress and Others (003/2024) [2025] ZASCA 22 (20 March 2025)

[2025] ZASCA 22

COURT

Supreme Court of Appeal

BEFORE

Meyer, Matojane, Kgoele, Smith, Bloem

CASE / FILE NUMBER

003/2024

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FLYNOTES:

ADMINISTRATIVE – Voluntary association – Constitution – Interpretation
of rule 12.2.4 of ANC constitution – Contention that committee impermissibly convened conference after its term of office had expired – Impossible to call conference before expiration of period due to pandemic – Considered as force majeure – Rule 12.2.4 provides for such unprecedented force majeure – Had authority to extend committee's term under exceptional circumstances like pandemic – Constitutionally justified – Appeal dismissed.
THE
SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no:003/2024

In the matter between:

LEBOGANG MEDUPE FIRST

APPELLANT

SELLO MOLEFE

SECOND APPELLANT

ITUMELENG MOSWANE

THIRD APPELLANT

and

AFRICAN NATIONAL CONGRESS

FIRST RESPONDENT

NONO MALOYI

SECOND RESPONDENT

LAZZY MOKGOSI

THIRD RESPONDENT

LOUIS DIREMELO

FOURTH RESPONDENT

VIOLA MOTSUMI

FIFTH RESPONDENT

SELLO LEHARI

SIXTH RESPONDENT

SUZAN DANTJIE

SEVENTH RESPONDENT

MOTLALEPULA ROSHO

EIGHTH RESPONDENT

WENDY NELSON

NINTH RESPONDENT

KENETSWE MOSENOGI

TENTH RESPONDENT

BETTY KEGAKILWE

ELEVENTH RESPONDENT

TEBOGO MODISE

TWELFTH RESPONDENT

SALIVA MOLAPISI

THIRTEENTH RESPONDENT

STELLA MONDLANA

FOURTEENTH RESPONDENT

SIPHO DIAL

FIFTEENTH RESPONDENT

MPHO KHUNOU

SIXTEENTH RESPONDENT

GRACE MOIPOLAI

SEVENTEENTH RESPONDENT

HENDRICK BOTHA

EIGHTEENTH RESPONDENT

JOSTINA MKHIZE

NINETEENTH RESPONDENT

ELIZABETH MOKUA

TWENTIETH RESPONDENT

TEBOGO MOTASE

TWENTY-FIRST RESPONDENT

NKOTSOE NKETU

TWENTY-SECOND RESPONDENT

VICTORIA MAKHAULA

TWENTY-THIRD RESPONDENT

NOMVULYISELO SOMPA

TWENTY-FOURTH RESPONDENT

DESBO MOHONO

TWENTY-FIFTH RESPONDENT

PERLITIA CHWENE

TWENTY-SIXTH RESPONDENT

MARIA MONNANA

TWENTY-SEVENTH RESPONDENT

NTHABISENG SHUPING

TWENTY-EIGHTH RESPONDENT

LENAH MIGA

TWENTY-NINTH RESPONDENT

MORUTSE MOLEFE

THIRTIETH RESPONDENT

TUMELO MARUPONG THIRTY-FIRST

RESPONDENT

GEORGE MANYIKE

THIRTY-SECOND RESPONDENT

BOIPELO MAREKO

THIRTY-THIRD RESPONDENT

GRACE MASILO

THIRTY-FOURTH RESPONDENT

CEASER MOGATUSI

THIRTY-FIFTH RESPONDENT

PRISCILLA WILLIAMS

THIRTY-SIXTH RESPONDENT

Neutral citation: Medupe & Others v African National Congress & Others (003/2024) [2025] ZASCA 22 (20 March 2025)

Coram: MEYER, MATOJANE, KGOELE and SMITH JJA and BLOEM AJA

Heard: 26 February 2025

Delivered: 20 March 2025

Summary: Administrative law – constitution of a voluntary association – interpretation of rule 12.2.4 of the African National Congress constitution – the constitution the rules and regulations issued in terms thereof, constitute an agreement between

members and the voluntary association – to be interpreted in accordance with principles applicable to the construction of

contracts – legal principles restated.

ORDER

On appeal from: North West Division of the High Court, Mahikeng (Djaje DJP, sitting as court of first instance):

The appeal is dismissed with costs, including the costs of two counsel where so employed.

Smith JA (Meyer, Matojane, Kgoele JJA and Bloem AJA concurring):

Introduction

- [1] This appeal concerns a dispute between the African National Congress (the ANC) and the appellants regarding the lawfulness of the North West ANC's Provincial Conference, which was held from 12 to 14 August 2022. The appellants contended that the Interim Provincial Committee (the IPC) impermissibly convened the conference after its term of office had expired and that the ANC's National Executive Committee (the NEC) violated the ANC constitution by assuming control of the conference, thereby usurping the powers and functions of the Provincial Executive Committee (the PEC). The interpretation of the ANC's constitution is central to the resolution of that dispute.
- [2] The appellants are members of the ANC, North West Province. The ANC is the first respondent. The second to thirty-sixth respondents were elected as members of the PEC (the second to sixth respondents as office bearers) at the impugned Provincial Conference.
- [3] On 25 August 2022, the appellants brought an urgent application in the North West Division of the High Court, Mahikeng (the high court), for an order, inter alia: declaring unlawful the Provincial Conference and the ANC's decision 'to usurp' the powers and functions of the PEC at the Provincial Conference; and compelling the ANC to appoint an IPC in the place of the disbanded PEC.
- [4] The appellants contended that the term of office of the IPC, which was appointed by the NEC of the ANC in August 2019 following the dissolution of the PEC, expired in April 2020 by virtue of rule 12.2.4 of the ANC's constitution. That rule provides, inter alia, that '[t]he election of a PEC, which has been dissolved, shall be called within 9 (nine months) from date of dissolution'. The appellants asserted that, reasonably interpreted, the rule has the effect that the IPC's term of office automatically terminated upon the expiry of the nine-month period.

- [5] In respect of the alleged usurpation by the NEC of the powers and functions of the PEC, the appellants contended that the ANC constitution does not authorise the NEC to convene or interfere in the holding of a Provincial Conference. The Provincial Conference was therefore convened and conducted unlawfully and in violation of the ANC's constitution, so they contended.
- [6] In its judgment delivered on 23 May 2023, the high court (per Djae DJP) found that: the nine-month period could not be adhered to because of the national lock-down, pursuant to the declaration of a national state of disaster in terms of the Disaster Management Act 57 of 2002; the law did not allow a lacuna to exist in the provincial leadership structures for reasons expounded in *Pilane and Another v Pheto and Others* (Pilane);[1] the NEC had extended the IPC's tenure on various occasions; and the NEC, as the 'highest organ of the ANC had to take all steps necessary to ensure the fulfilment of the ANC's objectives.' The high court consequently dismissed the application with costs, including the costs of two counsel, where so employed. The appellants appeal against that order with the leave of this Court.

Factual

background

- [7] The following material facts are common cause. Following a decision by the NEC in August 2018 to dissolve the PEC for the North West Province, a Provincial Task Team was appointed on 20 September 2018. The disbanded PEC thereafter launched proceedings in the Gauteng Division of the High Court, Johannesburg, challenging the NEC's decisions to dissolve it and to appoint the Provincial Task Team. The high court found in their favour and on 5 February 2019, granted an order declaring unlawful and setting aside the NEC's decisions.
- [8] After protracted internal appeal processes, the NEC eventually appointed the IPC in August 2019. As stated earlier, the appellants contend that the tenure of the IPC terminated on 29 April 2022, after the expiry of the nine-month period mentioned in rule 12.2.4. The rule reads as follows:

'12.2 Without prejudice to the generality of its powers, the NEC shall:

...

12.2.4 Ensure that the Provincial, Regional and Branch structures of the ANC and the Leagues function democratically and effectively. (The NEC may suspend or dissolve a PEC where necessary.) The suspension of a PEC shall not exceed a period of 3 (three) months. The election of a PEC, which has been dissolved, shall be called within 9 (nine months) from date of dissolution. The NEC must appoint an interim structure during the period of suspension or the dissolution of the PEC to fulfil the functions of the PEC.'

- [9] The ANC asserted that it was impossible for the IPC to call a Provincial Conference before the expiration of the nine months period because of the declaration of a national state of disaster in March 2020, following the outbreak of the Covid-19 pandemic. The NEC considered the Covid-19 pandemic as force majeure and, consequently, indefinitely postponed all provincial and regional conferences as well as bi-annual branch meetings.
- [10] Instead of dissolving the IPC, the NEC adopted various resolutions during the period July 2020 to May 2022, purporting to extend the mandate of the IPC. Between 31 July 2020 and 2 August 2020, the NEC resolved to ratify a recommendation from the ANC's Secretary-General to extend the mandate of the IPC for a further three months. It also resolved that the IPC's mandate should be extended indefinitely in line with the decision of the previous NEC.
- [11] In February 2022, the ANC's National Working Committee (the NWC) resolved to extend until 31 May 2022, the period within which the Provincial Conference was to be held. That resolution was endorsed by the NEC in March 2022.
- [12] On 16 May 2022, national officials recommended to the NWC that the period within which the election of the PEC must be held should be extended to August 2022, subject to the submission of monthly progress reports. The NEC, on 4 July 2022, noted this report and 'supported' the proposal for the extension.
- [13] The IPC thereafter issued a notice calling a Provincial Conference to be held from 12 to 14 August 2022. On 13 August 2022, the appellants, being of the view that the IPC's term of office had terminated upon the expiry of the nine-month period and that they therefore did not have authority to conduct elections, launched urgent proceedings in the high court challenging the entitlement of the IPC to exercise voting rights at the Provincial Conference. The high court (per Snyman J) granted an order declaring that 'the first respondent [the IPC did] not have voting powers in the ANC Provincial Conference'.
- [14] The ANC resolved not to appeal against that judgment and instead of appointing another IPC, the Secretary-General at the time, Mr Paul Mashatile (Mr Mashatile), issued a statement to the effect that the Provincial Conference would proceed under the direction and leadership of NEC deployees. It is common cause that the Provincial Conference was postponed for two weeks, whereafter it proceeded as planned and elections were held where a new PEC was elected. As mentioned, the appellants then launched the application (which is the subject of this appeal) challenging the validity of those elections and the resolutions adopted at the impugned Provincial Conference.

Legal principles

- [15] The appeal raises two issues:
- (a) whether the IPC had authority to call the Provincial Conference when it did. Implicit in this issue is the proper construction of rule 12.2.4 of the ANC constitution; and

- (b) whether the NEC was empowered by the ANC constitution to take control of the elections at the Provincial Conference. This issue also implicates various rules of the ANC constitution.
- [16] Since both these issues involve the interpretation of the ANC constitution, it is prudent, at this point, to give an overview of our law regarding the construction of the constitutions of voluntary associations.
- [17] It is established law that the constitution of a voluntary association, together with all the regulations or guidelines promulgated in terms thereof, constitute the agreement between the association's members.[2] The constitution must, therefore, be interpreted in accordance with the canons of interpretation applicable to contracts.[3]
- [18] In *Ramakatsa and Others v Magashule and Others*,^[4] the Constitutional Court, in interpreting certain rules in the ANC's constitution, held that while political parties may not adopt constitutions which are inconsistent with s 19 of the Constitution,^[5] that section 'does not spell out how members of a political party should exercise the right to participate in the activities of their party. For good reason this is left to political parties themselves to regulate. These activities are internal matters of each political party. Therefore, it is these parties which are best placed to determine how members would participate in internal activities. The constitutions of political parties are the instruments which facilitate and regulate participation by members in the activities of a political party.'^[6]
- [19] While recognising the important role of political parties in the country's democratic processes, the Constitutional Court nevertheless emphasised that, '[t]he ANC's constitution together with the audit guidelines and any other rules collectively constitute the terms of the agreement entered into by its members. Thus, the relationship between the party and its members is contractual. It is taken to be a unique contract.'^[7]
- [20] The relevant rules of the ANC constitution must, therefore, be construed based on the principles enunciated in *Natal Joint Municipal Pension Fund v Endumeni Municipality* (Endumeni).^[8] They must thus be given meaning and business-like efficacy by having regard 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'.^[9] The starting point being the language used, 'read in context and having regard to the purpose of the provision and the background

to the preparation and production of the document'.^[10]

Interpretation of rule 12.2.4

The appellants' contentions

[21] As mentioned, the appellants contended that the peremptory injunction in rule 12.2.4 for the election of a dissolved PEC to be called within nine months from the date of dissolution, means that upon expiry of that period, being 29 April 2022, the IPC's term of office had lapsed automatically. For this submission they, inter alia, relied on the ex tempore judgment of Snyman J, in which she held that 'the word shall implies that there is no discretion that could be exercised and that the provisions, as applied in the constitution should be followed'.

[22] They also criticised the high court for its reliance on Pilane for the finding that there can never be 'a lacuna where the term of office of a council has expired, to avoid lack of good governance'. They contended that the judgment is

distinguishable in various respects.

[23] Regarding the various resolutions adopted by the NEC, purporting to extend the IPC's term of office, the appellants submitted that:

- (a) the first resolution, adopted in March 2022, purported to extend the IPC's term of office until 31 May 2022. The IPC did, however, not call the Provincial Conference by the end of May 2022. Its term of office would therefore, in any event, have expired automatically on 1 April 2022; and
- (b) the resolution adopted during July 2022 did not purport to extend the IPC's term of office but only 'the period within which the election of the North West PEC must be held'. There was, therefore, in effect, no valid resolution of the NEC extending the IPC's term of office to the end of August 2022. Consequently, when the IPC gave the notice of the Provincial Conference to be held in August 2022, its term of office had already expired, and the notice was thus invalid and of no force or effect.

The respondents' contentions

[24] The respondents contended that on a correct interpretation of rule 12.2.4, the IPC remained in office and retained their authority despite the expiration of the nine months within which elections for a new PEC should have been held. For this submission, they relied on the principle enunciated in *Ex Parte United Party Club*,^[11] that even in the face of an obligation in the constitution of a voluntary association requiring office bearers to retire, it does not necessarily mean that if they do not retire, they are no longer in office and lose their authority.

[25] They submitted that it is significant that while the rule specifies a mandatory obligation for the IPC to call the elections within nine months, it does not stipulate what the consequence of an overshoot would be. The consequences contended for by the appellants are absurd and impractical. They would leave the provincial structure rudderless and would undermine good governance. Since the consequence of a failure to call the elections within nine months is nowhere specified in the rule, it is a matter for interpretation based on the above-mentioned canons of construction, so they argued.

The NEC's role at the Provincial Conference

[26] The appellants condemned the NEC's decision to take over the conduct of the elections Provincial Conference in the strongest terms, calling it variously a 'hostile takeover' and 'usurpation' of the PEC's constitutional powers. This argument was founded on the provisions of rule 17.1 of the ANC constitution, which reads as follows:

'17.1 Subject to the decisions of the National Conference and National General Council, and the overall guidance of the NEC, the Provincial Conference shall be the highest organ of the ANC in each province.'

[27] The appellants contended that it is clear from the language used in this rule that the PEC is 'the rightful structure authorized to constitute and run the affairs of a Provincial Conference'. Furthermore, the ANC constitution, in particular rules 17.2.2.5 to 17.2.2.8, unequivocally confer on the Provincial Conference the power, inter alia, to appoint the preparatory committee which must circulate Conference material in advance; determine the procedure for the election of delegates; determine its own procedures in accordance with democratic principles and practices; vote on key questions by secret ballot if demanded by a least two-thirds of the delegates; and vote for the election of the PEC by secret ballot.

[28] At best for the NEC, it is empowered in terms of rule 10.7 of the guidelines issued in terms of the ANC constitution to 'deploy NEC members to support and observe Regional and Provincial Conferences'. However, the role of these NEC deployees is limited to support and observer status only.

[29] The decision of Mr Mashatile or the NEC to take over the powers and functions of the PEC at the Provincial Conference, under the direction and leadership of the NEC deployees, was therefore not sanctioned by the ANC constitution and is accordingly unlawful. Although the ANC is a voluntary association, courts have recognised that the exercise of internal power by political parties may have far-reaching consequences for our constitutional democracy.[12] Insofar as the conduct of the NEC is found to conflict with the Constitution, this Court is obliged to set it aside in terms of s 172(1)(a) of the Constitution. That section provides that 'when deciding a matter within its power, a court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency.' The consequences of the NEC's unlawful conduct, namely the election of a PEC and other officials and committees, are also accordingly invalid, of no force or effect, and fall to be set aside.

[30] The respondents joined issue with this interpretation of the ANC constitution and submitted that rule 12.2 places an obligation on the NEC to ensure the democratic functioning of the provincial structures. That rule must be read with rule 12.2.20 which empowers the NEC to, '[t]ake all steps necessary or warranted for the due fulfillment of the aims and objectives of the ANC and the due performance of its duties'.

- [31] They argued that the NEC, having been confronted with Strydom J's order declaring that the IPC did not have power to exercise voting rights at the conference, was obligated – in the exercise of its constitutional mandate – to take whatever steps may be necessary to facilitate the holding of the elections. They submitted that the appellants' stance that the NEC should have appointed another IPC to hold the elections is illogical. Another IPC would not have been an elected structure. There is accordingly no difference between the NEC holding the elections and it appointing another IPC for that purpose. On a common sense and purposive interpretation of the ANC constitution, there can be little doubt that the NEC was obligated to intervene to ensure that the Provincial Conference took place, so the respondents argued.

Analysis

and discussion

- [32] Counsel for the ANC compellingly submitted that on a reasonable consideration of the language used in rule 12.2.4, an IPC's term of office is linked to 'the period of the suspension or the dissolution of the PEC' and not to the nine-month period in which elections for the new PEC must be called. On this interpretation, an IPC's term of office would not terminate upon the expiry of the nine-month period but would endure until the election of a new PEC. It seems, to me, that this must logically be so since circumstances beyond the control of either the IPC or the NEC may arise making it impossible to call elections within the nine-month period. The Covid-19 pandemic was such a circumstance. It is common cause that the ANC was forced to postpone all conferences after the outbreak of the Covid-19 pandemic which compelled the declaration of a national state of disaster on 15 March 2020. This event was unprecedented in the history of humankind and resulted in severe restrictions being placed on the movement of people, gatherings and conduct of businesses, unless they were performing an essential service.
- [33] In my view, rule 12.2.4 provides for such an unprecedented force majeure, by imposing on the NEC the duty to appoint an interim structure 'during the period of the suspension or the dissolution of the PEC'. It is ineluctable that that period starts on the day of the suspension or dissolution of the PEC and endures until the election of a new PEC. On this construction, an IPC's term of office would continue regardless of whether it had been able to call for the election of a new PEC within nine months. This construction also accords with the principle enunciated in *Ex Parte United Party Club*.^[13] Contrary to the appellants' contentions, that judgment is still good law and has been followed in several cases.^[14]
- [34] There are other compelling reasons why this construction must be preferred above that contended for by the appellants. On a plain reading of its text, rule 12.2.4 confers powers and obligations on the NEC to '[e]nsure that the [p]rovincial, [r]egional and [b]ranch structures of the ANC and the [l]eagues function democratically and effectively'. There can consequently be little doubt that the overall context of the rule is the preservation of good governance, prevention of chaos, and promotion of democracy in the provincial structures.

- [35] It would be incongruous to interpret the rule as meaning that an overshoot of the nine-month period, even for good reason (such as the Covid-19 lock-down), would result in the expiration of the interim structure's term of office. That such an interpretation would have serious consequences for good governance in the provinces is self-evident. In any event, that construction is simply not consonant with either the text, context or purpose of the rule.
- [36] I therefore find that, on a reasonable interpretation of rule 12.2.4, the IPC was still in office until 13 August 2022 (when Strydom J's order was granted) and it was thus constitutionally empowered to call the Provincial Conference. The issue as to whether the various resolutions adopted by the NEC had the effect of extending the IPC's term of office is therefore rendered inconsequential, regardless of whether the NEC was of the view that there was a need for those extensions.
- [37] The finding that the IPC remained in office until Strydom J declared it ineligible to exercise voting powers at the Provincial Conference, considerably weakens the appellants' argument that the NEC's involvement in the Provincial Conference violated the ANC constitution. The logical consequence of that finding is that the Provincial Conference had been convened properly. Faced with Strydom J's order, the NEC was constitutionally obligated – in the absence of either an appointed or elected provincial structure – to take whatever steps may have been necessary to ensure that the elections proceeded. In my view, it matters not that they elected to do so through their own deployees, instead of appointing another IPC. This is so because in terms of rule 12.2.20, the NEC has wide-ranging powers to ensure 'the due fulfilment of the aims and objectives

of the ANC and the due performance of its duties'.

- [38] The purpose of this rule, which is often replicated in the constitutions of voluntary associations, is to empower the highest structure of an association to intervene in its best interest when the need arises because of unforeseen events. In this case, those unforeseen circumstances were the declaration of a national state of disaster and Strydom J's order. In deciding to proceed with the elections, the NEC was doing no more than what the ANC constitution enjoined it to do. Apart from the assertions that the conference had not been properly convened and that the NEC's conduct amounted to 'a hostile takeover' of the Provincial Conference, there is no suggestion that anything untoward happened at the conference. The high court thus correctly found that the NEC's actions did not violate the ANC's constitution.
- [39] The appeal must, therefore, fail. In my view, there is no reason why costs should not follow the result.

Order

- [40] In the result, I make the following order:

The appeal is dismissed with costs, including the costs of two counsel where so employed.

J E SMITH

JUDGE OF APPEAL

Appearances

For the appellants: A D Stein SC with A S L van Wyk Instructed by Zisiwe Attorneys, Mahikeng Webbers Attorneys, Bloemfontein For the first respondent: L J Morison SC Instructed by: Ntanga Nkuhlu Inc, Honeydew Peyper & Botha Attorneys Inc., Bloemfontein For the second and third respondents: W R Mokhare SC with N Ntingane (Drafted heads of argument) Instructed by: SM Vakalisa Attorneys, Midrand Maduba Attorneys, Bloemfontein For the fourth to sixth respondents: A Sawma SC with M Salukazana S Pearl Ndaba Attorneys, Pretoria Muller Gonsior Attorneys, Bloemfontein.

[1] Pilane and Another v Pheto and Others (582/2011)

[2011] ZANWHC 63 (30 September 2011) para 18.

[2] Turner v Jockey Club of South Africa 1974

(3) SA 633 (A) at 645C; Natal Rugby Union v Gould [1998] ZASCA 62; 1999

(1) SA 432 (SCA); [1998] 4 All SA 258 (A) at 440F-G.

[3] National African Federated Chamber of Commerce and Industry and Others v Mkhize and Others [2014] ZASCA 177; [2015] 1 All SA 393 (SCA) para 21.

[4] Ramakatsa and Others v Magashule and Others [2012] ZACC 31; 2013 (2) BCLR 202 (CC).

[5] Section 19 of the Constitution reads as follows: ‘Every citizen is free to make political choices, which includes the right – (a) to form a political party; (b) to participate in the activities of, or recruit members, for a political party; and (c) to campaign for a political party or cause.’

[5] Section 19 of the Constitution reads as follows:

‘Every citizen is free to make political choices, which includes the right – (a) to form a political party; (b) to participate in the activities of, or recruit members, for a political party; and (c) to campaign for a political party or cause.’

[6] Ibid para 73.

[7] Ibid para 79.

[8] Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

[9] Ibid.

[10] Ibid.

[11] Ex Parte United Party Club 1930 WLD 277.

[12] Ramakatsa and Others v Magashule and Others [2012] ZACC 31; 2013 (2) BCLR 202 (CC); My Vote Counts NPC v Speaker of the National Assembly and Others

[2015] ZACC 31; 2016 (1) SA 132 (CC); 2015 (12) BCLR 1407 (CC) para 32.

[13] Ex parte United Party Club 1930 WLD 277.

[14] Padayichie v Pavadai N.O. and Another 1994

(1) SA 662 (W) at 672F-G; Congress of the People and Another v Shilowa and Others (6779/2011) [2013 ZAGPJHC 250 (18 October 2013)].

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Prepared on 10 October 2026 · Esheria