

SOUTH AFRICA / JUDGMENT

Mlambo and Others v African National Congress and Others (2021/42288) [2021] ZAGPJHC 491 (22 September 2021) [2021] ZAGPJHC 491

COURT

South Gauteng High Court, Johannesburg

BEFORE

Weiner

CASE / FILE NUMBER

2021/42288

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2021/42288

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED.

YES

DATE:

22 September 2021

In

the matter between:

DORA
MLAMBO
1st Applicant
nokuthula
xaba
2nd Applicant
phumla
mgidlana
3rd Applicant
thabisa
makapaka
4th Applicant
ponthso
motloung
5th Applicant
anna
mnguni
6th Applicant
sesana
mthethwa
7th Applicant
dimakatso
sebilane
8th Applicant
LORRAINE
MAHLOSANE
9th Applicant
THANDI
MAKGOBOLA
10th Applicant
MARIA
MOKOENA
11th Applicant
CIKIZWA
KALI
12th Applicant
PHUMEZA
NGCUKA
13th Applicant
DINAH
KHOZA
14th Applicant
BOMIKAZI
SOBALISA
15th Applicant
JEMINA
NQALA
16th Applicant
PETUNIA
MSOMI
17th Applicant

NTOMBI
MEGKWE
18th Applicant
PASCALINA
MADODA
19th Applicant
GLADYS
NGWANE
20th Applicant
ZOLEKA
NGOZI
21st Applicant
SIHLE
GREEN
22nd Applicant
NOBOMI
WHITEY
23rd Applicant
GLADYS
NGOZO
24th Applicant
FIKILE
SOBOPHA
25th Applicant
PATRICIA
MABUZA
26th Applicant
ANDISWA
RONDO
27th Applicant
THULI
TWANA
28th Applicant
CELIWE
NKOSI
29th Applicant
ZOLEKA
NJOBLOANE
30th Applicant
BANYANA
KHUTHAMO
31st Applicant
and
AFRICAN
NATIONAL CONGRESS
1st Respondent
AFRICAN
NATIONAL CONGRESS
WOMEN'S
LEAGUE, GAUTENG
2nd Respondent

PROVINCIAL
EXECUTIVE COMMITTEE, GAUTENG
3rd Respondent
INDEPENDENT
ELECTORAL COMMISSION
4th Respondent

JUDGMENT

EX TEMPORE

WEINER J

Introduction

- [1] The applicants sought, as a matter of urgency, relief against the respondents – in effect, directing that the Ekurhuleni ANC Women’s League 7th Regional Conference be declared irregular, unlawful, unconstitutional, and in breach of the ANC Constitution; and, that the decisions and resolutions taken be declared null and void; further, that the Conference be reconvened in a lawful manner in order for free and fair elections take place.
- [2] The application was issued on 3 September 2021; the respondents were required by the applicant to file an answering affidavit by Wednesday, 8 September 2021. They were given just two-court days, and a weekend, to answer the application. The applicants were then to file their replying affidavit by 9 September
2021. After this, heads of argument were to be exchanged.
- [3] The third respondent is the only respondent who is opposing this matter. It served its notice of intention to oppose and answering affidavit two days later than was set out in the notice of motion, on 10 September, and the applicant then filed its replying affidavit on 13 September. No heads of argument were filed in this matter; the applicants filed a practice note at 11h30 on the morning of the hearing.
- [4] The issue that was first raised by the third respondent is that the urgency in this matter has been self-created. The applicants stated that they had to wait for all internal processes to be dealt with. I will deal briefly with the chronology of events.
- (a) On 14 June 2021, the 29th applicant, Celiwe Nkosi, lodged a dispute by letter with the Provincial Secretary of the third respondent.[1] The applicants’ letter was delivered on the 15 June 2021.
- (b) The applicants received a reply from the Provincial Secretary, later on 15 June 2021. Such letter, the third respondent contended, dealt with the complaints of the applicants in full, addressing all the issues raised. In particular, the applicants’ allegations that there were branches which sent delegates to the Conference while they have failed audits was dealt

with. It was specifically stated that the third respondent had received an audit report, which would be made available to the applicants on request, which confirmed that proper branch general meetings had taken place in the relevant wards.

- (c) On 19 June 2021, the applicants sent an amended notice of dispute to the Secretary General (the SG) of the ANC Women's League (the ANCWL), copying in the Provincial Secretary, requesting that the Conference and all its resolutions and outcomes be declared null and void, and that another conference be held.
- (d) Despite the offer for the audit report to be made available, the applicants chose not to request the audit report, and in their replying affidavit have stated that they do not need it. Instead, they sent the amended notice of dispute.
- (e) The applicants consulted attorneys on 5 and 7 July 2021, stating that there had been no reply to their amended notice of dispute. The third respondent contended that by 19 June 2021, the issues had already been addressed, because the amended notice of dispute dealt with some of the issues already set out in their first notice of dispute, and accepted that some of the other issues did not need to be dealt with further.
- (f) Some three weeks later, on 27 July 2021, the third respondent's attorneys wrote a letter to the erstwhile attorneys of the applicants, making the applicants' attorneys aware that they were acting on behalf of the Provincial Secretary. In that letter, the attorneys of the applicants were requested to provide supporting documents to back up their allegations that the Conference was held unlawfully.
- (g) In response, the applicants' attorneys in a letter dated 30 July 2021, set out that they undertook to provide the supporting documents. To date, they have not been provided.
- (h) Such supporting documents were not provided. In a letter from the third respondent's attorneys dated 17 August 2021, it was stated that: 'Kindly be informed that our offices await supporting documents in order to comprehensively respond to your client's points of contention.' The letter goes on to say that—

'We hereby instruct you to desist from making follow-ups and engaging with the mother body, national WL [Women's League] as we are on record to deal with the intricacies of the dispute at this level, being at provincial level, it is irregularly unprocedural to engage two structures at the same time, unless it is an appeal after attempts to resolve the issues at this level has failed.'

- [5] It is noteworthy that the applicants did not disclose this to the Court in the founding affidavit. The third respondent states that they are still open to address the concerns of the applicants, if the supporting documents are provided.
- [6] The applicants relied on the fact that the Constitutional Court only confirmed the election date in the order of 3 September 2021,[2] and thus this matter is urgent. But they cannot now plead urgency based on the order. The applicants have known that the elections

would be held on 27 October since 21 April 2021, when same was announced by the President of the Republic.

- [7] The third respondent contended that the urgency has been self-created; the disputes, according to the third respondent, were settled internally by 15 June 2021. Since then, the information which the third respondent requested has not been provided, for it to deal more comprehensively with the matter. The application was issued on 3 September 2021, and sent to the Provincial Secretary's email on 4 September 2021 when she was attending a funeral. She only became aware of the application on 5 September 2021, and she had to consult with members of the third respondent before she could instruct attorneys. She held a consultation on 7 and 8 September 2021. The deadline for delivering the affidavit by 17h00 on 8 September 2021 could not be met, and an indulgence of two days was requested.
- [8] Although the applicants refused such indulgence, they did suggest that the affidavit be filed by 14 September 2021, the applicants to reply by 15 September 2021 and the matter to be heard on 16 September 2021.
- [9] As stated above, in the Notice of Motion, the respondents were given approximately two court days (four calendar days) to submit their answering affidavit. The applicants were to deliver their reply on 9 September, a day later. In terms of the Practice Manual of this Court, all papers need to be filed on the Thursday preceding the hearing of the urgent application. They must be paginated and all affidavits, including the replying affidavit, must be filed by that day. In addition, heads of argument are required, which have not been filed in this matter, due to the fact that the truncated time periods and the filing of the affidavits did not allow for same.
- [10] In my view, the applicants have failed to make out a case that this matter is that urgent that it needs to be heard in the course of this week, when the rules of the Practice Manual were not complied with in regard to the filing of papers; they gave the respondents insufficient time to properly deal with the matter; they could have brought this matter as one of semi-urgency; but they waited from 15 June 2021 until 3 September 2021 to launch the application, with no justifiable explanation for the delay. Thus, the urgency has been self-created.

ORDER

- [11] For those reasons, the matter is struck off the roll for lack of urgency, with costs.

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JUDGE OF THE HIGH COURT

This revised judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 22 September 2021.

Date of hearing:

14 September 2021

Judgment

ex tempore:

14 September 2021

Date of revised judgment:

22 September 2021

Appearances:

Counsel for the applicants:

Adv. M Ramaili

Attorney for applicants:

Avela Nontso Attorneys Inc

Counsel for the 3rd respondent:

NK Mathipa

Attorney for the 3rd respondent:

Nkadimeng Attorneys

[1] Letters were addressed to the SG and copied to the Provincial Secretary of the ANCWL.

[2] The reasons for the order were delivered on 18 September 2021. See *Electoral Commission v Minister of Cooperative Governance and Traditional Affairs and Others* [2021] ZACC 29.

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