

SOUTH AFRICA / JUDGMENT

Selebogo and Others v African National Congress and Others (Reasons) (UM 161/2022) [2023] ZANWHC 170 (9 February 2023)

[2023] ZANWHC 170

COURT

North West High Court, Mafikeng

BEFORE

Petersen

CASE / FILE NUMBER

UM 161/2022

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IN THE HIGH COURT HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAFIKENG

CASE NO: UM 161/2022

Reportable: NO

Circulate to Judges:

NO

Circulate to Magistrates:

NO

Circulate to Regional Magistrates: NO

In the matter between:

MOSADIWATSHIPI SELEBOGO

First Applicant

REMONEILWE GOMOLEMO

Second Applicant

ZUKISWA VESI

Third Applicant

MQIKELA GABRIEL

Fourth Applicant

TSETSE BOITUMELO

Fifth Applicant

LETLHOGONOLO MOLOKO

Sixth Applicant

JAN DITSHEGO

Seventh Applicant

and

AFRICAN NATIONAL CONGRESS

First Respondent

ANC: NATIONAL EXECUTIVE COMMITTEE Second Respondent

ANC: ELECTORAL COMMITTEE

Third Respondent

ANC: SECRETARY-GENERAL

Fourth Respondent

NONO MALOI

Fifth Respondent

LAZZY MOKGOSI

Sixth Respondent

LOUIS DIREMELO

Seventh Respondent

VIOLA MOTSUMI

Eighth Respondent

SELLO MONOTH LEHARI

Ninth Respondent

PROVINCIAL CONFERENCE OF

NORTH WEST PROVINCE

Tenth Respondent

REASONS

PETERSEN J

Litigation history

[1] In an application initially launched on 25 August 2022, by the first to fifth applicants (“the applicants”), they sought relief in the following terms:

1. THAT the Honourable Court condone the non-compliance with the Rules relating to form, service and filing of applications, and that this application be dispensed with on an urgent basis as provided for in terms of Rule 6(12) of the Uniform Rules of Court.
2. That, to the extent necessary, the Honourable Court grant the Applicants condonation in terms of Rule 27(3) of the Uniform Rules of Court for non-compliance with Rule 41A of the Uniform Rules of Court.
3. That the Honourable Court direct the Respondents to authorise the Applicants to attend the upcoming conference of the North-West Provincial Conference scheduled for 27-28 August 2022, and to take such measures as may be necessary to give effect to the attendance of the Applicants as voting delegates.
4. That the Honourable Court issue a Rule Nisi, calling upon the Respondents and/or any other interested parties, to show cause why the Rule Nisi should not be made final, in the following terms:
 - 4.1 That the decisions of the ANC North West Provincial Conference of 12-14 August be declared null and void, on account of irregularities and non-compliance with provisions of the enabling Constitution.
 - 4.2 That the election of the Fifth to Ninth Respondents as office bearers, and members of the Provincial Executive Committee for the North West Province be declared null and void.
5. That pending the finalisation of the hearing and/or confirmation of the Rule Nisi, that the Fifth, Sixth, Seventh, Eighth, and Ninth Respondents be interdicted and restrained from performing any functions or exercising powers associate with their positions on the Provincial Executive Committee of the ANC North West Province.
6. That the Honourable Court direct the Respondents opposing the application to pay the costs of the application on the scale as between Attorney and Client.
7. That the Applicants be granted such further and/or alternative relief the Honourable Court may deem appropriate.”

[2] The first, second, fourth and fifth respondents (“the respondents”) opposed the application. On 25 August 2022, the application was struck from the urgent roll for lack of urgency, with costs. The applicants’ consequently caused a letter to be forwarded to the Judge President in which they sought a preferential date for the hearing of the application. In that letter, the

applicants', at the time, identified that the only relief being sought, was the relief set out in prayer 4 of the Notice of Motion. However, in arguments presented before me, the relief sought in prayers 2 and 5 of the Notice of Motion were canvassed.

- [3] The application was subsequently set down on 27 October 2022, on a preferential basis, on direction of the Judge President. On 27 October 2022, the sixth and seventh applicants ("the intervening parties") launched an application to intervene in the main application. The Judge President granted the intervention application in the following terms:

"1. The 1st and 2nd intervening parties are granted leave to intervene and are joined as the 6th and 7th applicants respectively.

2. The 1st and 2nd intervening parties are ordered to pay the costs occasioned by the intervention application on the scale as between attorney and client. Such costs to include the costs consequent upon the employment of two counsel (Senior and Junior) where applicable.
3. The matter is postponed to a date to be arranged with the Office of the Registrar in conjunction with the Office of the Judge President."

- [4] The application ultimately served before me on 02 December 2022. The second applicant at this stage had filed a notice of withdrawal from the application. The applicants for purposes of the present application therefore excludes the second applicant. A belated application was brought on 02 December 2022 for the admission of an amicus curiae. After hearing oral submissions of counsel and having heads of argument, I reserved judgment and indicated to the parties that I proposed handing down my order on 06 December 2022, with reasons to follow in due course. On 06 December 2022, I handed down the following orders:

"1. In the respect of the application by the amicus curiae:

- (i) The application is dismissed with no order as to costs.
2. In respect of the application by the 1st and 3rd to 5th applicants and the 6th and 7th applicants:
 - (i) The application is dismissed with costs, including the costs of two counsel, where so employed.
 - (ii) Reasons will follow in due course."

- [5] The reasons for my orders now follow.

The parties

- [6] The applicants are members of the African National Congress (ANC) who are branch members, in good standing. The respondents are the ANC, its National Executive Committee, Secretary General and the North West Provincial Executive Committee. The citation of the Provincial Conference of the North West Province as the tenth respondent is inexplicable.

Background

- [7] The North West Provincial Conference (“the Conference”) was held over the weekend of 12 to 14 August 2022. The applicants were aggrieved by their exclusion from participating at the Conference, which they allege was unlawful. At the time they launched the urgent application on 25 August 2022, they feared exclusion from participating at the second session of the Conference scheduled for the weekend of 27 to 28 August 2022.
- [8] The applicants align themselves with the founding affidavit of the first applicant through confirmatory affidavits. In the founding affidavit the following background is provided to the relief sought. On 05 June 2022, the first applicant, was nominated and designated by her branch at a Branch General Meeting, as one of four (4) delegates

to attend the Provincial Conference on behalf of the branch. On 12 August 2022, the applicants as members of the ANC in the North West Province attended the Conference, as provided in Rule 17.3 of the ANC’s Constitution. It is, however, prudent to have regard to Rule 17 as a whole, which deals with Provincial Conferences as follows:

“7 PROVINCIAL CONFERENCE

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

17.2 The Provincial Conference shall:

17.2.1 Be held at least once every 4 (four) years and more often if requested by at least one third of all Branches in good standing in the Province. ANC Constitution 14.

17.2.2 Be composed of:

(i) Voting delegates as follows:

17.2.2.1 At least 90% (ninety per cent) of the delegates at the Conference

shall be from Branches, elected at properly constituted Branch General Meetings. The number of delegates per Branch shall be in

proportion to their paid up membership, provided that each Branch in good standing shall be entitled to at least 1 (one) delegate.

17.2.2.2 All members of the Provincial Executive Committee shall attend ex-officio as full participants in and as delegates to the Conference.

17.2.2.3 The remainder of the voting delegates at the Conference shall be from among members of the RECs, the ANC Veterans' League, the ANC Youth League and the ANC Women's League, as allocated by the PEC.

(ii) Non voting delegates

17.2.2.4 The PEC may invite individuals, who have made a special contribution to the struggle or who have special skills or experience, to attend the Conference. In addition, the PEC shall permit representation as non-voting delegates to structures, which do not have the minimum requirement to form a Branch.

Provincial Conference shall:

17.2.2.5 Appoint a Conference Preparatory Committee which shall circulate Conference information in advance, determine the procedure for the selection of delegates and indicate how the provincial membership can ensure that their concerns are on the agenda;

17.2.2.6 Determine its own procedures in accordance with democratic principles and practices;

17.2.2.7 Vote on key questions by secret ballot if at least one third of the delegates at the Provincial Conference demand it; and

17.2.2.8 Vote for the election of the PEC by secret ballot. Each voting delegate shall vote once in each ballot.

17.3 The Provincial Conference shall:

17.3.1 Promote and implement the decisions and policies of the National Conference, the National General Council, the NEC and the NWC;

17.3.2 Receive and consider reports by the Provincial Executive Committee, which shall include the Chairperson's address, the Secretary's report, which shall include a report on the work and activities of the ANC Veterans' League, the ANC Women's League and the ANC Youth League in the Province, and the Treasurer's report;

17.3.3 Elect the Provincial Chairperson, Deputy Chairperson, Secretary, Deputy Secretary, Treasurer and the 30 (thirty) additional members of the Provincial Executive Committee, who will hold office for four (4) years. (The Provincial Secretary shall be a full-time functionary of the Organisation);

17.3.4 Carry out and develop the policies and programmes of the ANC in the Province;

17.3.5 Have the right and power to review, ratify, confirm, alter or rescind any decision taken by any of the constituent structures or officials of the ANC in the Province; and

17.3.6 Have the power to elect or appoint any commission or committee and assign specific tasks and duties to such commission or committee.

17.4 A member elected to the PEC shall resign from any position held in a lower structure in the ANC.”

[9] The applicants’ contend that despite being authorised to attend the Conference, they were precluded from participation at the Conference by the officials attending to the accreditation of delegates. As a result, they contend, that they were unlawfully deprived an opportunity to attend the Conference contrary to Rule 17.3 of the ANC’s Constitution.

[10] The basis of the applicants’ complaint is found at paragraphs

[12] to [14] of the founding affidavit:

“12. I am disenfranchised, and I say so for the following reasons:

12.1 First, I have been unlawfully denied the right conferred in Section 19(1)(b), including the right in Section 19(1)(c), and Section 19(3)(b) of the Constitution.

12.2 Second, I was unlawfully discriminated as I was deprived full enjoyment of the (sic) my rights under Section 19(1)(b), including the right in Section 19(1)(c), and Section 19(3)(b) of the Constitution, contrary to my right to equality provided for in Section 9(2) of the Constitution.

12.3 Third, I was discriminated against on the grounds of my conscience and belief (of a political nature) contrary to my right to equality provided for in Section 9(4) read with Section 9(5) of the Constitution.

13. Whilst I am the individual personally disenfranchised as aforesaid, I submit that the constituency which has nominated and designated me to attend conference on their behalf has also been disenfranchised.

14. As a result, I personally as an individual and in terms of Section 38(a) of the Constitution, and further, in a representative capacity

in terms of Section 38(c) read with Section 38(d), approach the Honourable Court for just and equitable relief in terms of Section

1(c) read with Section 172(1) of the Constitution.”

(my emphasis)

[11] The intervening parties make out their case on the alleged unlawfulness of the Conference at paragraphs 42 to 67 of the affidavit in support of the application for intervention. For purposes of this judgment, only the allegations in respect of the Conference on 14-15 August 2022, is dealt with in accordance with the relief sought in the Notice of Motion:

“The gravitas of the unlawfulness of the conference is the illegality which occasioned a petition raising a plethora of objections and disputes by the petitioners who were present and participating at conference. The Petitioners have accordingly deposed to the confirmatory affidavits marked as Annexure “LM4”, as mentioned above.

On or about the 14th of August 2022 a petition was lodged with the ANC National Executive Committee concerning allegations of fraud and other procedural

irregularities that took place during the Provincial Conference which compromised the legitimacy and integrity of the Provincial conference and its outcomes. Annexed hereto is a copy of said the petition marked as annexure “LM5”.

This petition was ignored and the substantive disputes raised in it, most of which warranted the suspension or halting of conference proceedings, hitherto, remain unresolved. This is a clear violation of Section 19 of the Constitution of South Africa, Clause 5 of the Constitution of the ANC and the ANC’s Conference Guidelines. I attach hereto a copy of the ANC Guidelines marked as annexure “LM6”.

Leading up to the Provincial conference, all disputes raised concerning matters that arose when ANC branches convened Branch Biannual General Meetings “BBGM” ought to have been resolved by the National Dispute Resolution Committee “NDRC” through its issuing of outcomes of disputes before Provincial Conference. This is in accordance with the Constitution of the ANC and the Conference Guidelines.

On or about the 10th to the 12th of August 2022 branches whose outcomes concerned reruns of BGMs, could not convene BGMs because the outcomes from the NDRC did not provide directions and/or guidelines about time frames within which these BGMs ought to be held, considering the imminent dates set for Provincial Conference. The outcomes referred to are extensively referred to in the Applicants’ Founding papers.

This is because in the normal course of business and in accordance with the ANC Guidelines each Branch Executive Committee “BEC” must set a date whence the BGM is held, such date must be at least seven days prior to the BGM as per Clause 2 of the ANC Conference Guidelines.

It is clear from the date when the outcomes were received from the NDRC that the branches which outcomes required reruns of BGMs could not possibly schedule such BGMs within the prescribed timeframes in accordance with the ANC Constitution and the Guidelines.

Consequently, several branches were unlawfully excluded from participation, campaigning, nominating, and voting in the Provincial Conference, thereby unlawfully disenfranchising them contrary to Section 19 of the South African Constitution and Clause 5 of the ANC Constitution.

The continuation of conference whilst delegates have not been accredited and are denied access contributes to two fundamental constitutional rights contravention because, delegates who were still not accredited as at the evening of the 13th of August 2022, were denied of their constitutional right to fully participate, campaign, vote and elect in Provincial Conference. This is clearly a breach of fundamental rights entitled in terms of the ANC Constitution as per Rule 5.1 of the ANC Constitution and Section 19 of the Constitution.

Delegates who were still not accredited at the time of nominations, were denied of their right to nominate, and be nominated to available positions and if elected, to hold office. This is clearly in contravention of Rule 5.1.4 of the ANC Constitution and Section 19 of the Constitution.

The delay and late delivery of outcomes by the NDRC, was a clear ambush as a result prejudicial to the affected Branches in that members could not participate in Provincial Conference to fulfil their political interest and/ or assigned political mandate.

On or about the 12th of August 2022 the registration process for Provincial Conference commenced and was only concluded on the 13th of August

2022. In accordance with the Provincial Conference agenda, in sequence, key agenda points were set out in order for certain

processes which were paramount to the verification of delegates' credentials be finalised prior to the nomination, voting and election taking place. I attach hereto the Provincial Conference Agenda marked as annexure "LM7".

Despite the set agenda albeit not adopted, the Provincial Conference deviated from it and, in the process, compromised key chronological processes necessary in verifying the credentials of delegates who were entitled to vote.

In fact, it is common cause that during the registration process of delegates at the Provincial Conference concurrently, the Chairperson Mr Malusi Gigaba "Chairperson" imposed the "adoption" of the Credentials Report even as the registration process was yet to be finalized. This point is properly articulated in the petition.

It is further common cause that the Credential Report was not adopted in accordance with the Guidelines because delegates in Provincial Conference failed to reach consensus concerning the adoption of the Credential Report. This point is also crystalised adequately in the petition.

Two delegates participating in Provincial conference raised issues concerning procedural irregularities leading up to the rejection of the Credential Report. The concerns raised amongst others, were that fraudulent delegation tags were discovered, and yet despite such caution, the Chairperson imposed the "adoption" of Credentials Report. We draw this honourable court's attention

to a video recording marked as "LM8", which I am advised our legal team will implore this Honourable Court to consider.

Furthermore, in accordance with the Guidelines Clause 10.4 stipulates that it is incumbent upon the Provincial Executive Committee “PEC” to put measures in place to ensure the safety and integrity of conference and its delegates to conference provided such measures do not interfere with the rights and responsibilities of delegates.

In support of the aforesaid, Provincial Conference failed to adopt the Agenda, an integral process which guides the chronological flow of Conference and curtails processes and procedures that ought to be followed during Provincial Conference. Despite such provision, there was no such adoption.

On or about the 14th of August 2022 Provincial Conference began to nominate candidates for the top five positions in the PEC and some was concluded around 06:20 am. At this point, it is common cause that the Provincial Conference Agenda was not adopted, and that the imposition of the Credentials Report had just occurred, all this taking place, despite, the registration process not being finalised.

Delegates were still permitted into Provincial Conference post “adoption” of the Credential Report. Not only does this militate against but in fact, it is a direct assault on the provisions of the ANC Constitution and the ANC Conference Guideline.

Consequently, I am advised that the provisions of Section 19 of the Constitution remain relevant because even as the ANC regulates its own processes and procedures, it is incumbent upon the organisation to adhere, facilitate and regulate participation by its members in the activities of the political party. How much more, Provincial Conference wherein delegates are voted and elected to assume public office and delegates to the National Conference are determined.

Worst still, the Chairperson of the session and the Head of Organising Committee admitted openly that even as the Credentials Report encapsulated mistakes and glaring inaccuracies, these would be at a later stage, corrected during conference through an addendum to be presented at plenary. To date such corrective and/or amendments have not taken place.

The branches and members of the ANC, whose dispute outcomes were to re-run BGMS, were denied of their right to fully prepare and participate in Provincial Conference, Without any reruns of the BGMS as directed by the NDRC between the 10th to 12th of August 2022 a contravention of Rule 5.1 of the ANC Constitution and Section 19 of the Constitution wherein a duty to elect delegates was unlawfully implemented during the Provincial Conference.

During Provincial Conference even as purported nominations process was closed, it was discovered that about 40 accreditations were fraudulently issued to several delegates to participate, elect, and vote In Provincial conference. Annexed hereto is a video clip, I am advised my legal representatives will implore this Honourable Court to consider the said video which is marked as Annexure “LM9”.

It is important to note that these fraudulent accreditations were discovered after nominations were closed. A clear indicator that Provincial Conference credentials were being tampered with, to influence the voting outcomes.

It is instructive to mention that a startling admission was made during conference that those branches which were ordered to re-run, formed part of the Provincial Conference despite regulated and oversight processes taking place to verify the credibility of delegates. This point was substantially canvassed in the Applicants' papers.

In summarily, there is no doubt whatsoever, that the Respondents violated the Applicants' and intervening parties' rights. This has no doubt resulted in the tainted Provincial Conference outcomes and such procedural improprieties which place the African National Congress into disrepute, a situation which this Honourable Court should not countenance considering the veracity of the implications for the imminent ANC National Conference scheduled to take place in December 2022."

[12] When regard is had to the basis on which the relief is predicated, it would be prudent to have regard to Rule 41A of the Uniform Rules of Court, the relevant Rules of the ANC Constitution on internal remedies and authorities in respect of sections 19(1)(b), 19(1)(c), 19(3)(b) and section 38(a), (c) and (d) of the Constitution of the Republic of South Africa, 1996.

Rule 41A

[13] When the application was initially enrolled as an urgent application on 25 August 2022, the applicants sought condonation in terms of Rule 27(3) of the Uniform Rules of Court for non-compliance with Rule 41A of the Uniform Rules of Court.

[14] The status of the aforesaid relief, save for urgency, is that post the application being struck from the roll for lack of urgency on 25 August 2022, the matter moved to the opposed roll. It follows axiomatically that following the order striking the application from the urgent roll, the relief sought in terms of Rule 27(3) for non-compliance with Rule 41A, was not granted. It was accordingly incumbent on the applicants to comply with the peremptory provisions of Rule 41A once the application was struck from the roll. It is clear that from 25 August 2022 until the application was on roll on 27 October 2022, the applicants failed to comply with Rule 41A.

[15] In respect of the condonation sought in terms of Rule 27(3) as part of the urgent relief sought on 25 August 2022, it is noteworthy that the applicants resolved on 17 August 2022 to launch the urgent application and in fact drafted their papers on 18 August 2022. The tenets of Rule 41A which is directed at alternative dispute resolution (mediation), in the context of the present application, is linked to the issue of internal remedies. The issue of internal remedies, in turn, is linked to the rights asserted by the applicants in terms of the Constitution.

The relevant Rules of the ANC Constitution

- [16] In considering the Rules in the ANC Constitution relevant to internal disputes, it is apposite to have regard to what is stated at paragraph 91 of the founding affidavit, under the question of urgency:

“An exhaust of the internal remedy does not arise in relation to my entitlement to attend conference, and at any rate, such remedy cannot be meaningfully employed and finalised in time to enable my attendance, and that of the fellow Applicants, on 26-27 August 2022.”

- [17] Before turning to the ANC’s internal dispute resolution mechanism, it is prudent to deal with the right to membership of the ANC and the consequences that flow from that right. Rule 4 of the ANC Constitution provides (relevant to the present application) that:

“Rule 4 MEMBERSHIP

4.1 Membership of the ANC shall be open to all South Africans above the age of 18 years, irrespective of race, colour and creed, who accept its principles, policies and programmes and who are prepared to abide by its Constitution and rules.”

- [18] The ANC is a political party akin to a voluntary association. The relationship between a political party, such as the ANC, and its members is underscored in *Matlholwa v Mahuma*[1] as follows:

“As was correctly emphasized by the court below, a political party is a voluntary association founded on the basis of mutual agreement. Like any other voluntary association, the relationship between a political party and its members is a contractual one, the terms of the contract being contained in the constitution of the party...”

- [19] There can be no debate that the applicants as members of the ANC are contractually bound to the terms of their contract (membership) with the ANC. When this is applied to what the first applicant states at paragraph 91 of the founding affidavit, the following is evident. The applicants’ assertion that the failure to exhaust the internal remedy does not arise in relation to his entitlement to attend the Provincial conference, is misplaced. The assertion loses sight of the fact that the applicants’ on their own account were nominated and designated by their branches at Branch General Meetings, to attend the Provincial Conference on behalf of their branches. The applicants’ entitlement and I may add mandate to attend the Provincial Conference, therefore derives from the nomination and designation by their branches. Therefore, whilst the applicants’ brought the application in their personal capacities as members of the ANC, their mandate and “right of entitlement” derives not from their membership of the ANC as individuals, but in their representative capacities of their respective branches. This distinction is very important when one has regard to the internal remedy provided in the ANC Constitution, as will be demonstrated below. Further, it will be demonstrated that the position of the applicants’ in the present application is distinguishable from the applicants’ in *Ramakatsa and Others v Magashule and Others*[2].

[20] Appendix 4 to the ANC Constitution (“Appendix 4”) sets of the jurisdiction of the National Dispute Resolution Committee (“NDRC”) and the appeal jurisdiction of the the National Dispute Resolution Committee Appeal Committee, in the event of a party being aggrieved by a decision of the NDRC. Appendix 4 provides for very circumscribed issues of dispute. Appendix 4, in particular, provides (relevant to the present application) as follows:

“Appendix 4

National Dispute Resolution Committee

1. Name

National Dispute Resolution Committee (“NDRC”) and the NDRC Appeal Committee.

2. Terms of reference

The jurisdiction and terms of reference of the NDRC shall be:

2.1 Parties who may declare a dispute

2.1.1 Any branch, sub-region or zonal structure (referred to as “the complainant”) which is aggrieved or directly affected by the functioning of the ANC or any of its structures may declare a dispute with the ANC in the manner prescribed in these rules.

2.2 Definition of a dispute

2.2.1 A dispute shall mean:

...

2.2.1.2 The failure or refusal to recognise a member, duly elected by his/her branch, to represent it as a delegate at any properly constituted Conference of the ANC; and

...”

2.3 Hearing of dispute

2.3.1 The NDRC, if satisfied, shall have the power to resolve a dispute on the information before it without the necessity to convene a formal hearing.

2.3.2 Should the NDRC decide to convene a formal hearing to resolve the dispute, the relevant parties shall be informed of the date and venue for the hearing.

2.4 Powers of the NDRC

2.4.1 The NDRC shall make its best endeavours to resolve the dispute.

2.4.2 At the conclusion of the hearing the NDRC shall file a written report with the Secretary General.

2.5 Implementation of a NDRC decision

2.5.1 A decision of the NDRC shall be implemented by the Secretary General.

2.6 Right of appeal and procedure

2.6.1 Any party (complainant or ANC structure) to the dispute shall have the right to appeal against or apply to review a decision of the NDRC Appeal Committee within 5 (five) days from the date of decision of the NDRC.

2.6.2 The opposing party shall the right to file a cross appeal within 3 (three) days from date on which the original appeal was lodged.

2.6.3 These time limits may be dispensed with in the case of urgent proceedings.

2.6.4 Appeals and cross appeals shall be lodged with the Office of the Secretary General.

2.7 Decision

2.7.1 A decision of the NDRC Appeal Committee shall be binding on the parties and neither party shall have any further recourse to a court

of law or structure or office of the ANC.”

[21] The applicants’ have approached this Court with very strong reliance on their personal or individual rights as members of the ANC pursuant to the Rules of the ANC Constitution on membership and section 19 of the Constitution. Secondary to the applicants’ asserting their personal rights, they state that they do so on the basis that their constituencies (the branches) nominated and designated them to attend the Conference on their behalf.

[22] Having specific regard to Appendix 4, in the context of the facts of the present application, it is clear that no provision is made for members of the ANC, in their individual capacities, to declare a dispute with the ANC. Whilst that does not detract from their rights in terms of the ANC Constitution and section 19 of the Constitution, the peculiar facts of this matter cannot be lost sight of. In the context of the present application, the right to declare a dispute with the ANC, as formulated in the complaint of the applicants, is in terms of Appendix 4, a right accorded only to any branch, sub-region

or zonal structure of the ANC. To this end when regard is had to what a dispute means, the complaint of the applicants falls squarely

within the definition of a dispute in Appendix 4, which includes “The failure or refusal to recognise a member, duly elected by his/her branch, to represent it as a delegate at any properly constituted

Conference of the ANC.”

- [23] It must be underscored that the applicants' derived their right to attend the Conference from their respective branches. It follows that the relief sought by the applicants, is in fact a complaint which falls squarely within the right accorded to their respective branches. Inexplicably, there is no evidence that the applicants approached their branches and received a mandate from their branches to launch this application. The ineluctable deduction for the absence of such an explanation may be for the reason that the effect of a decision of the Appeal Committee is spelt out in peremptory terms in that it precludes any further recourse to a court of law or structure or office of the ANC.
- [24] If the branches who are vested with the right to declare a dispute with the ANC were approached by the applicants, the need for the applicants to approach this Court on urgency, would in all probability have been vitiated. I am edified in this view by the fact that the internal dispute resolution mechanism of the ANC in Appendix 4, provides for a process of urgent resolution of disputes analogous to Rule 6(12) of the Uniform Rules of Court, with the rider that once a decision is given by the Appeal Committee, it would signal the end of the matter. It is common cause that the ANC's Appeal Committee was present at the Conference.
- [25] The intervening parties in their founding affidavit seek to take up the cudgels for the applicants in respect of the allegation of illegality of the Conference. To this end they state, contrary to the allegations contained in the founding affidavit of the applicants, that there is a lacuna and malady in the factual matrix because there is no factual account of the eye witnesses who were present and participating at both legs of the Conference. This they state is because the applicants' were precluded from attending the first and second leg of the Conference. They assert that they were present at the Conference and are able to give an account of the improprieties and illegalities of the Conference whose outcomes, decisions and resolutions which they and the applicants seek to set aside.
- [26] The nub of the intervening parties case is that they lodged a petition with the ANC National Executive Committee on 14 August 2022 concerning allegations of fraud and other procedural irregularities that took place during the Conference which compromised the legitimacy and integrity of the Conference and its outcomes. The petition they state was ignored and the substantive issues raised in it, most of which warranted the suspension or halting of conference proceedings, remained unresolved.
- [27] In joining cause with the applicants, the intervening parties in their narrative of fraud and other procedural irregularities, allege, inter alia, that many branches were denied access to the Conference and that voting results were falsified. A difficulty for the applicants is that none of the branches that were allegedly denied access to the Conference have joined issue with the applicants nor separately approached this Court. It has not been gainsaid by the applicants that Mr Mduduzi Manana led a Committee at the Conference to deal with all disputes raised, which disputes are said to have been resolved. All these issues the intervening parties contend were addressed to the ANC National Executive Committee by way of petition. The applicants all state assertively that they are fully acquainted

with all facets of the workings of the ANC, which includes the ANC Constitution.

[28] On a careful reading of the ANC Constitution, no provision is made for an internal remedy by way of petition. The internal remedies are spelt out clearly in the ANC Constitution. It is therefore not surprising that the petitioning parties were met with silence from the ANC National Executive Committee. Notwithstanding the fact that a petition process is not countenanced by the ANC Constitution, the evidence demonstrates that the concerns raised in the petition are concerns that were addressed at the Conference on 14-15 August 2022.

[29] The allegation by the intervening parties that the applicants were not present at both legs of the Conference, on its own strikes a fatal blow to the case for those applicants, as it purports to suggest emphatically that they are not in a position to say anything about what transpired at both legs of the Conference. If that is the case, the applicants are not entitled to the relief they seek on their papers, without the evidence of the intervening parties who seek essentially to present a case for the applicants.

[30] The internal remedies of the ANC is a process which undoubtedly is not as costly as resorting to litigation in court. In *Koyabe and Others v Minister of Home Affairs and Others*[3], the Constitutional Court emphasized the importance of exhausting internal remedies as opposed to litigation as follows:

“[35] Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before aggrieved parties resort to litigation. Although our courts play a pivotal role in providing litigants access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid.”

[31] In my view, the application for the reasons stated above, stood to be dismissed on the applicants’ failure to exhaust their internal remedies. I, however, believe it prudent to deal with the applicants’ assertion that they could approach this Court as individual members of the ANC and the relief sought at prayers 4 and 5 of the Notion of Motion.

The provisions of section 19(1)(b), 19(1)(c) and 19(3)(b) of the Constitution

[32] The relevant provisions of section 19 of the Constitution of the Republic of South Africa relied on by the applicants, provides that:

“Political rights

19.

(1) Every citizen is free to make political choices, which includes the right—

...;

(b) to participate in the activities of, or recruit members for, a political party;

(c) to campaign for a political party or cause...

- (3) Every adult citizen has the right—
- (b) to stand for public office and, if elected, to hold office.”

[33] No issue can be taken with the rights relied on in terms of the Constitution of the Republic of South Africa. In fact, the ANC Constitution echoes these rights. These rights, however, can only come into play once internal remedies have been exhausted.

[34] The parties have all referred to Ramakatsa to assert aspects of their respective cases. As in Ramakatsa, the applicants also assert their claim on section 38 of the Constitution of the Republic of South Africa. However, the present

application is distinguishable from Ramakatsa. Unlike Ramakatsa where the applicants claimed to act in their own interest and also on behalf of and in the interests of the class of persons who are members of the ANC as well as in the public interest and went as far as attaching documents containing 2250 signatures of members of the ANC and 2520 voting citizens of the Republic of South Africa, resident in the Free State, the applicants in the present application simply make the bold assertion that they are acting in the interests of their branches. I re-iterate what was said above regarding the internal remedy in Appendix 4 which was open not to the applicants but the branches.

Further, the applicants’ make it plain that the application in the main was about their personal interests as members of the ANC.

[35] The application further stood to be dismissed on this ground as well.

The relief sought in prayers 4 and 5 of the Notice of Motion

[36] In the letter addressed to the Judge President, following the application being struck from the roll on 25 August 2022, the applicants identified the relief sought as set out in prayer 4 of the Notice of Motion. In addition to prayer 4, prayer 5 is repeated for ease of reference:

4. That the Honourable Court issue a Rule Nisi, calling upon the Respondents and/or any other interested parties, to show cause why the Rule Nisi should not be made final, in the following terms:

4.1 That the decisions of the ANC North West Provincial Conference of 12-14 August be declared null and void, on account of irregularities and non-compliance with provisions of the enabling Constitution.

4.2 That the election of the Fifth to Ninth Respondents as office bearers, and members of the Provincial Executive Committee for the North West Province be declared null and void.

5. That pending the finalisation of the hearing and/or confirmation of the Rule Nisi, that the Fifth, Sixth, Seventh, Eighth, and Ninth Respondents be interdicted and restrained from performing any functions or exercising powers associate with their positions on the Provincial Executive Committee of the ANC North West Province.”

- [37] The relief sought in prayers 4 and 5 of the Notice of Motion was confined to the decisions taken at the Provincial Conference from 14-15 August 2022. The intervening parties sought to extend the relief to the second part of the conference held on 26-27 August 2022, in circumstances when they were constrained to the Notice of Motion. As stated above, the intervening parties in their evidence exclude the applicants from being present at the Conference on 14-15 August 2022. It is in their petition that they take issue with the conduct of the Conference during this weekend.
- [38] The complaints by the intervening parties can be allayed with reference to what transpired consequent to the discovery of the fraudulent tags of certain members who attempted to attend the Conference. This I hasten to add should also address why the amicus curiae was not admitted by this Court.
- [39] The evidence demonstrates that after an intense debate on the issue of the credentials of certain delegates, after the removal of some 40 fraudulent tags, the registration process was restarted. Once delegates with tags containing special security features were successfully identified and registered, they were re-admitted to the Conference. The complaint by the interveners and the applicants, on this score was therefore resolved.
- [40] The Credentials Report was debated and consequently adopted. Once accreditation was completed, the Accreditation Report was adopted by the Conference.
- [41] Once the Electoral Commission had approved the nomination of candidates and a further round of nominations from the floor, and a further presentation of credentials to the plenary, the plenary session adopted the credentials as a final reflection of the delegates entitled to vote at the Conference.
- [42] All the concerns raised by the intervening parties relevant to the 14-15 August 2022, were addressed by the Conference, through adoption by the Conference.
- [43] The relief sought in prayers 4 and 5 accordingly also stood to be dismissed.

Costs

- [44] Costs follow suit. There was no basis to order otherwise.

Order

- [45] In conclusion and in following the sequence of a judgment in the ordinary course, I repeat the orders handed down on 06 December 2022:

(iii) The application is dismissed with costs, including the costs of two counsel, where so employed.”

AH PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For 1st, 3rd to 5th Applicants: ADV M MANALA Instructed by: GMI ATTORNEYS c/o Van Rooyen Tlhapi Wessels Inc. 9 Proctor Avenue Golf View MAHIKENG For 6th to 7th Applicants: ADV PJ NGANDWE with ADV K LEFALADI Instructed by: CHIMWALA ATTORNEYS c/o Mothusi Marumo Attorneys Suit No.5 Gryphon House Cnr Warren & Martin Street MAHIKENG For 1st to 5th Respondents : ADV W MOKHARI SC Instructed by: KRISH NAIDOO ATTORNEYS c/o TMK Attorneys Inc. 11 Shippard Street Riviera Park MAHIKENG For 6th to 9th Respondents : ADV MOKONE with ADV PEACH Instructed by: SM VAKALISA INC c/o TMK Attorneys Inc. 11 Shippard Street Riviera Park MAHIKENG Date of Hearing: 17 November 2022 Date of Judgment: 30 January 2023 Date of Hearing: 02 December 2022 Date of Order: 06 December 2022 Date of Reasons: 09 February 2023

[1] Matlholwa v Mahuma

[2009] 3 All SA 238 (SCA) at paragraph [8].

[2] Ramakatsa and Others v Magashule and Others 2013 (2) BCLR 202 (CC).

[3] Koyabe and Others v Minister of Home Affairs and Others 2010 (4) SA 327 (CC) at paragraph [35].

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