

SOUTH AFRICA / JUDGMENT

Suid-Kaap Saamstaan v Electoral Commission of South Africa & Others

(008/2022EC) [2022] ZAEC 9 (28 June 2022)

[2022] ZAEC 9

COURT

Electoral Court

BEFORE

Mbha JA, Modiba J, Shongwe AJ, Professor Ntlama-Makhanya, Professor Phooko

CASE / FILE NUMBER

008/2022EC

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REPUBLIC OF SOUTH

AFRICAIN THE ELECTORAL COURT

OF SOUTH AFRICACase No: 008/2022ECIn the matter between:SUID-KAAP
SAAMSTAAN

APPLICANTandELECTORAL COMMISSION

OF SOUTH AFRICA –CHIEF ELECTORAL
OFFICERFIRST RESPONDENTTHE PROVINCIAL
ELECTORAL OFFICER –WESTERN

CAPE

SECOND RESPONDENTTHE MINISTER OF LOCAL
GOVERNMENT –WESTERN

CAPE

THIRD RESPONDENTTHE ACTING MUNICIPAL
MANAGER –OUDTSHOORNFOURTH RESPONDENTMLANDELI ABEDNICO
NNYUKA

FIFTH RESPONDENTNeutral

Citation:Suid-Kaap

Saamstaan v Electoral Commission of South Africa & Others(Case
no 008/22EC) [2022] ZAEC 09 (28 June 2022)Coram:

Mbha JA, Modiba J and Shongwe AJ and Professor Ntlama-Makhanya and

Professor Phooko (Members)JUDGMENTShongwe AJ (MBHA JA,

MODIBA J and PROFESSOR NTLAMA-MAKHANYA and PROFESSOR PHOOKO (Members)

concurring):[1]

This review application emanates from an internal dispute between purported members of the applicant in respect of the legitimacy of the fifth respondent's purported expulsion from the applicant as well as whether certain members of the applicant hold the requisite authority to issue instructions or to correspond with the first respondent (the Commission) in respect of and in relation to amendments to the applicant's party candidate list and founding particulars.[2]

The applicant approached this court seeking the following relief:(a) For an order removing the name of the fifth respondent as the contact person of the applicant in terms of Regulation 9 of the Regulations for the Registration of Political Parties 2004 from its records.(b) For an order that the Commission record the name of Stephzel Willemse as the contact person of the applicant in terms of Regulation 9 of the Regulation for the Registration of Political Parties 2004.(c) For an order that the Commission accept and record on its records the amended Proportional Representation (PR) list of candidates of the applicant as requested in the notice of the applicant dated 27th April 2022. The application is opposed by the Commission and the fifth respondent. Later, the Commission filed a notice to abide and an explanatory affidavit. The fifth respondent filed an answering affidavit confirming his position as the registered leader of the party. The Commission filed a notice to abide and an explanatory affidavit. The applicant filed a replying affidavit.[3]

The facts in this matter are largely common cause, though the fifth respondent disputes some of the allegations by the applicant. In my considered view, the crux of the matter is whether or not, in light of the provisions of Regulation 9 of the Regulations for the Registration of Political Parties 2004, the Commission may accept notification of the change in the applicant's particulars, when such notification is given by persons other than the registered party

leader. I am of the view that this immediately calls for an inquiry into what is the current legislation regulating notification of changes in the founding particulars of the party and amendments to the applicant's party candidate list.[4]

On 27th August 2021 Regulation 9 for the Registration of Political Parties 2004 was amended by Gazette Notice 45060 Proclamation R35 of 27th August 2021. The current Regulation 9 reads as follows:'9 notification of change in registration particulars - Any change in the particulars furnished in Annexure 1 must be notified to the Chief Electoral Officer in writing within 30 days after such change by theregistered leader of the party.' (See Annexure'EA2' of the explanatory affidavit). (My emphasis.)[5]

This application was brought on 14th May 2022, six months after the local government elections in November 2021 and nine months after the amendment of Regulation 9 for the Registration of Political Parties 2004.

Clearly the applicant was ignorant of the legislative position at the launch of the application. The Commission's records indicate the fifth respondent as the registered party leader and not the name of Stephzel Willemse. Up to date the Commission has not received a written notification of any change or an amendment to the Deed of Foundation from the registered leader of the party as prescribed by Regulation 9 for the Registration of Political Parties 2004. Instead, the Commission has undeniably received a written notification from the fifth respondent confirming that he is the registered leader of the party.[6]

The applicant alleges that the fifth respondent has been expelled from the party which allegation is disputed by the fifth respondent, therefore this dispute on the composition of the leadership of the applicant constitutes an internal party dispute. The Commission has as early as 26th April 2022 advised the applicant that it does not deal with political party's internal disputes. It also advised the applicant to approach this court to resolve the internal dispute in

terms of s 20(2)(a) of the Electoral Commission Act 51 of 1996 (the Commission Act). The contents of Annexure 'EA7' clearly explains the provisions of Item 18 and 20 of Schedule 1 of The Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) pertaining to the filing of PR vacancies and the amending of party lists. The applicant failed to heed this advice. In its replying affidavit the applicant concedes at paragraph 20.1 that it was not aware of the amendment of Regulation 9 for the Registration of Political Parties 2004. Instead of withdrawing its application at that moment it persisted with it.[7]

From the short discussion above there is clearly no substance in this application.

It deserves to be dismissed. I wish to thank the Commission for providing this court with a clear and concise explanatory affidavit setting out the legal procedural frame-work regarding what needs to be done when there is a change of leadership or vacancy in a political party's composition. I also wish to implore political party leaders to encourage their membership to acquaint themselves with the current applicable rules, regulations and legislation. This will, to a great extent, save them financially.[8]

For the above reasons this court makes the following order: The application is dismissed with no order as to costs.

J B Z SHONGWE
ACTING JUDGE
ELECTORAL COURT
28 June 2022
REPUBLIC OF SOUTH AFRICA
IN THE ELECTORAL COURT
OF SOUTH AFRICA
Case No: 008/2022EC

In the matter between:

SUID-KAAP
SAAMSTAAN
APPLICANT
and
ELECTORAL COMMISSION
OF SOUTH AFRICA –
CHIEF ELECTORAL
OFFICER
FIRST RESPONDENT
THE PROVINCIAL
ELECTORAL OFFICER –
WESTERN
CAPE
SECOND RESPONDENT
THE MINISTER OF LOCAL
GOVERNMENT –
WESTERN
CAPE
THIRD RESPONDENT
THE ACTING MUNICIPAL
MANAGER –
OUDTSHOORN
FOURTH RESPONDENT
MLANDELI ABEDNICO
NNYUKA
FIFTH RESPONDENT

Neutral

Citation:Suid-Kaap

Saamstaan v Electoral Commission of South Africa & Others(Case
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Coram:

Mbha JA, Modiba J and Shongwe AJ and Professor Ntlama-Makhanya and
Professor Phooko (Members)

Coram

:

Mbha JA, Modiba J and Shongwe AJ and Professor Ntlama-Makhanya and
Professor Phooko (Members)

JUDGMENT

Shongwe AJ (MBHA JA, MODIBA J and PROFESSOR NTLAMA-MAKHANYA and PROFESSOR PHOOKO (Members) concurring):

- [1] This review application emanates from an internal dispute between purported members of the applicant in respect of the legitimacy of the fifth respondent's purported expulsion from the applicant as well as whether certain members of the applicant hold the requisite authority to issue instructions or to correspond with the first respondent (the Commission) in respect of and in relation to amendments to the applicant's party candidate list and founding particulars.
- [2] The applicant approached this court seeking the following relief:
- (a) For an order removing the name of the fifth respondent as the contact person of the applicant in terms of Regulation 9 of the Regulations for the Registration of Political Parties 2004 from its records.
 - (b) For an order that the Commission record the name of Stephzel Willemse as the contact person of the applicant in terms of Regulation 9 of the Regulation for the Registration of Political Parties 2004.
 - (c) For an order that the Commission accept and record on its records the amended Proportional Representation (PR) list of candidates of the applicant as requested in the notice of the applicant dated 27th April 2022. The application is opposed by the Commission and the fifth respondent. Later, the Commission filed a notice to abide and an explanatory affidavit. The fifth respondent filed an answering affidavit confirming his position as the registered leader of the party. The Commission filed a notice to abide and an explanatory affidavit. The applicant filed a replying affidavit.
- [3] The facts in this matter are largely common cause, though the fifth respondent disputes some of the allegations by the applicant. In my considered view, the crux of the matter is whether or not, in light of the provisions of Regulation 9 of the Regulations for the Registration of Political Parties 2004, the Commission may accept notification of the change in the applicant's particulars, when such notification is given by persons other than the registered party leader. I am of the view that this immediately calls for an inquiry into what is the current legislation regulating notification of changes in the founding particulars of the party and amendments to the applicant's party candidate list.
- [4] On 27th August 2021 Regulation 9 for the Registration of Political Parties 2004 was amended by Gazette Notice 45060 Proclamation R35 of 27th August 2021. The current Regulation 9 reads as follows:

'9 notification of change in registration particulars - Any change in the particulars furnished in Annexure 1 must be notified to the Chief Electoral Officer in writing within 30 days after such change by the registered leader of the party.' (See Annexure 'EA2' of the explanatory affidavit). (My emphasis.)

registered leader of the party

[5] This application was brought on 14th May 2022, six months after the local government elections in November 2021 and nine months after the amendment of Regulation 9 for the Registration of Political Parties 2004. Clearly the applicant was ignorant of the legislative position at the launch of the application. The Commission's records

indicate the fifth respondent as the registered party leader and not the name of Stephzel Willemse. Up to date the Commission has not received a written notification of any change or an amendment to the Deed of Foundation from the registered leader of the party as prescribed by Regulation 9 for the Registration of Political Parties

2004. Instead, the Commission has undeniably received a written notification from the fifth respondent confirming that he is the registered leader of the party.

[6] The applicant alleges that the fifth respondent has been expelled from the party which allegation is disputed by the fifth respondent, therefore this dispute on the composition of the leadership of the applicant constitutes an internal party dispute. The Commission has as early as 26th April 2022 advised the applicant that it does not deal with political party's internal disputes. It also advised the applicant to approach this court to resolve the internal dispute in terms of s 20(2)(a) of the Electoral Commission Act 51 of 1996 (the Commission Act). The contents of Annexure 'EA7' clearly explains the provisions of Item 18 and 20 of Schedule 1 of The Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) pertaining to the filing of PR vacancies and the amending of party lists. The applicant failed to heed this advice. In its replying affidavit the applicant concedes at paragraph 20.1 that it was not aware of the amendment of Regulation 9 for the Registration of Political Parties 2004. Instead of withdrawing its application at that moment it persisted with it.

[6] The applicant alleges that the fifth respondent has been expelled from the party which allegation is disputed by the fifth respondent, therefore this dispute on the composition of the leadership of the applicant constitutes an internal party dispute. The Commission has as early as 26th April 2022 advised the applicant that it does not deal with political party's internal disputes. It also advised the applicant to approach this court to resolve the internal dispute in terms of s 20(2)

(a)

of the Electoral Commission Act 51 of 1996 (the Commission Act). The contents of Annexure 'EA7' clearly explains the provisions of Item 18 and 20 of Schedule 1 of The Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) pertaining to the filing of PR vacancies and the amending of party lists. The applicant failed to heed this advice. In its replying affidavit the applicant concedes at paragraph 20.1 that it was not aware of the amendment of Regulation 9 for the Registration of Political Parties 2004. Instead of withdrawing its application at that moment it persisted with it.

[7] From the short discussion above there is clearly no substance in this application. It deserves to be dismissed. I wish to thank the Commission for providing this court with a clear and concise explanatory affidavit setting out the legal procedural frame-work regarding what needs to be done when there is a change of leadership or vacancy in a political party's composition. I also wish to implore political party leaders to encourage their membership to acquaint themselves with the current applicable rules, regulations and legislation. This will, to a great extent, save them financially.

[8] For the above reasons this court makes the following order:

The application is dismissed with no order as to costs.

J B Z SHONGWE

ACTING JUDGE

ELECTORAL COURT

28 June 2022

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