

SOUTH AFRICA / JUDGMENT

Tsogang Civic Movement v Electoral Commission of South Africa and Others (11/2022 EC) [2022] ZAEC 12 (30 December 2022) [2022] ZAEC 12

COURT

Electoral Court

BEFORE

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

CASE / FILE NUMBER

11/2022 EC

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IN THE ELECTORAL COURT OF SOUTH AFRICA

HELD AT BLOEMFONTEIN

Not Reportable

Case number: 11/2022 EC

In the matter between:

TSOGANG CIVIC MOVEMENT

Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA

First Respondent

GOVERNMENT PRINTING WORKS

Second Respondent

DITSOBOTLA LOCAL MUNICIPALITY

Third Respondent

Neutral Citation: Tsogang Civic Movement v Electoral Commission of South Africa and Others
(11/2022 EC) [2022] ZAEC 12 (30 December 2022)

Coram: Zondi JA, Shongwe AJ, Modiba J, and Professor Ntlama-Makhanya and Professor Phooko (Additional Members)

Delivered: These reasons were handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 09:45 am on

30 December 2022.

REASONS

Shongwe AJ (Zondi JA, Modiba J and Professor Ntlama-Makhanya and Professor Phooko (Additional Members) concurring):

Introduction

[1] This is an urgent review application opposed by the Electoral Commission (the Commission), first respondent only. The second and the third respondents did not file any notice to oppose. The applicant prays for:

‘(1) Reviewing and setting aside the decision of the first respondent, that notwithstanding non compliance with the 14-day period as envisaged in Section 15 and/or Section 16 of the Electoral Commission Act 51 of 1996, which is a direct result of the conduct of the [First] Respondent, the Chairperson of the Electoral commission or any such authorized person within the Commission, could not issue a certificate in terms of Section 15(5) to the Applicant;

(2) That the First Respondent be compelled to allow the Applicant to register and publish its candidate list in terms of the Act;

(3) That first respondent be compelled to do all things necessary required by it to ensure that the Applicant is able to participate in the election of 14 December 2022 in Ditsobotla Municipality Local Elections.

(4) Alternatively, and in the event that the above honourable court is unable to grant any of the foregoing prayers, that the elections of 14 December 2022 be delayed and/or postponed to a suitable date to enable the applicant to comply with the statutory prescripts and contest in the elections currently scheduled to be heard on 14 December 2022 in the jurisdiction of the third Respondent.’

After the first respondent filed its answering affidavit and the applicant having filed its replying affidavit, the Court, having considered all the papers before it, decided the matter in chambers on the papers, without any oral submissions as follows:

‘The application is dismissed with no order as to costs.’

What follows are the reasons for the order.

Factual Background

[2] The applicant applied to the first respondent to be registered as a political party in November 2022. The intention was to participate and contest the by-elections were to be held on 14 December 2022 in the area of Ditsobotla Local Municipality- the third respondent in this matter. To confirm a registration of a political party, the Chief Electoral Officer (CEO) of the Commission has to issue a registration certificate. Before a registration certificate could be issued the applicant had to cause the notice of application to be published in a Government Gazette or local newspaper circulating in the area in terms of s 15(1) read with s 16(1) of the Electoral Commission Act 51 of 1996 (the Commission Act). Only after 14 days of the publication can the CEO consider issuing a registration certificate.

[3] On 1 November 2022 the applicant timeously submitted to the second respondent, the Government Printing Works for the publication of its notice of application to be registered as a political party. However, for some unexplained reasons, the publication only occurred on 18 November 2022. The applicant submitted to the Chief Electoral Officer

proof of publication of the prescribed notice of application for registration. This was late for the Commission to timeously issue a certificate of registration. Section 16(1) of the Commission Act read with the Regulations for the Registration of Political Parties 2004 (the Regulations) requires that a period of fourteen days must have elapsed since the submission to the Chief Electoral Officer proof of publication of the prescribed notice of application for registration as a political party before a registration could be issued.

[4] The earliest possible date would have been 6 December 2022 – this date would have been outside the cut-off date of the submission of its candidate list which was before 17h00 on 21 November 2022 as per the election timetable for the by-elections which were to take place on 14 December 2022.

[5] After the exchange of various correspondence between the applicant and the second respondent, the applicant sent a letter to the CEO of the Commission demanding the issuance of the registration certificate. On 22nd November 2022, the CEO replied to this letter advising the applicant of the fact that the CEO could not issue the registration certificate as the applicant failed to comply with the peremptory legislative requirements. The applicant was also informed of the relevant legislative scheme. The applicant was further provided with comprehensive reasons why the CEO could not accede to the demand.

Legislative Framework

[6] It is trite that the Commission is subject only to the Constitution and the law. Section 13 of the Local Government: Municipal Electoral Act 27 of 2000 provides that only registered political parties may contest elections for municipal councils. It is significant to note that the applicant was not a registered political party by the 21st November 2022- the date of the letter of demand.

[7] Section 15(1) read with s 15(b) of the Commission Act provides for the registration of political parties and the issuance of registration certificates. Section 15(4A) of the Commission Act provides that:

‘A party applying for registration in terms of sub-section (1) must publish the prescribed notice of application in-

- (a) . . .
- (b) . . .
- (c) The relevant provincial Gazette or a local newspaper circulating in the municipal area concerned, in the case of an application referred to in sub-section (1)(c).’

The above provisions are peremptory and not discretionary. The reason for this is to allow the public an opportunity to peruse the intended application for registration and to object thereto, if necessary.

[8] Section 16 provides that the CEO may not register a political party in terms of s 15 or 15(A) if ‘14 days have not elapsed since the applicant has submitted to the CEO proof of publication of the prescribed notice referred to in section 15(4A)’. It is important to note that up to and until the letter of demand the applicant had not properly published the notice of application and allowed 14 days to lapse. Regulation 2 of the Regulations stipulates that, inter alia: ‘The CEO must reject an application for any of the reasons contemplated in section 16 (1) of the Commission Act

or if the application does not comply with the provisions of the Commission Act or Regulations’.

Discussion

[9] It is common cause that the applicant published the notice of application in the Gazette on 18 November 2022 and submitted to the CEO proof of publication of the relevant notice on 21 November 2022. It is also not disputed that before the peremptory 14 days had elapsed, the applicant demanded on 21 November 2022 the issuance of the registration certificate. This demand was not only premature but also unlawful. The law is clear on what should happen before the registration certificate is issued. It is also clear that the CEO has no discretion and may not register a party before certain requirements are met. It is not disputed that the 14 days had not lapsed when it demanded the registration certificate, all the applicant says is that the second respondent is to blame for the delay. In other words, because the second respondent is to blame, the Commission should be vicariously held responsible for the conduct of the second respondent. Unfortunately, the applicant fails to mention the reason why the Commission should be held responsible.

- [10] It is my considered view that the Commission acted lawfully, reasonably, rationally and within the ambit of the law and Regulations. I reject the notion that the Commission acted unfairly and irrationally to prejudice the applicant as there is no evidence to support these allegations. The application does not pass muster and therefore stands to be dismissed.
- [11] In the alternative the applicant asked for the postponement of the by-elections in the ward it intended to contest, however, the applicant failed to join the other contestants who would be directly impacted by the postponement or at least give them a notice that it would be asking for a postponement of the by-elections. Even after the Commission raised the issue of non-joinder in its answering affidavit, the applicant decided to say nothing on the issue of non-joinder in its replying affidavit. I am constrained to conclude that the applicant failed to make out a proper case on the postponement of the by-elections.
- [12] The applicant failed to ensure that it was registered timeously as a result excluded itself from contesting in the by-elections. Therefore, it is not entitled to the relief sought. These are the reasons why the application was dismissed with no order as to costs.

J B Z SHONGWE

ACTING JUDGE OF THE

ELECTORAL COURT

APPEARANCES

For the first applicant: K P Mputle

Molefi Thoabala Inc., Bloemfontein

For the first respondent: P S Mamabolo

Instructed by: DMO Attorneys, Bryanston

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Prepared on 13 October 2026 · Esheria