

IN THE ELECTORAL COURT OF SOUTH AFRICA

HELD AT BLOEMFONTEIN



**Reportable
CASE NO: 008/21 EC**

In the matter between:

PHUMZILE SELDA PHASHA	1 st Applicant
LESIBA LEKGOATHI	2 nd Applicant
MONUABISI ZULU	3 rd Applicant
KENETH MLUNGISI BAFO	4 th Applicant
NKOTO RICHARD MOAKA	5 th Applicant
A M MOHLALA	6 th Applicant
MOHLAKORE MORAKANE MOPEDI	7 th Applicant
BUYISWA JOSEPHINE THWALA	8 th Applicant
NAPOLEON WEBSTER	9 th Applicant
NOMAQALA ALINA TLELIMA	10 th Applicant
FRANS PHUTI NGOETJANA	11 th Applicant
PERSONS WHOSE NAME APPEAR ON THE LIST	12 th to 257 th Applicants
And	
ELECTORAL COMMISSION OF SOUTH AFRICA	1 st Respondent

SIMON MAMABOLO N O	2 nd Respondent
NARIUS MOLOTO N O	3 rd Respondent
PHILLIP DLAMINI N O	4 th Respondent
NTSIRI SHADRACK POOE	5 th Respondent
CITY OF EKURHULNI	6 th Respondent
CITY OF TSHWANE	7 th Respondent
CITY OF CAPE TOWN	8 th Respondent
INTSIKA YETHU DISTRICT MUNICIPALITY	9 th Respondent
GREAT TUBATSE MUNICIPALITY	10 th Respondent

Neutral Citation: *Phasha and Others v The Electoral Commission of South Africa and Others* (Case no 008/21 EC) [2022] ZAEC 1 (3 January 2022)

Coram: Mbha JA, Moshidi AJ and Ms Pather - member

EX TEMPORE JUDGMENT

[1] The above matter was heard in this Court on Monday, 29 November 2021. At the conclusion of argument, and having considered the matter, the Court gave an ex tempore judgment and ordered as follows:

- (a) The entire application is dismissed.
- (b) There is no order as to costs.

[2] The application was found to be materially defective in various material respects, for example:

(a) The 12th to 257th applicants cited in the Notice of Motion were all not before Court. Applicants' counsel could not provide any explanation as to the absence of the names and particulars of such applicants.

(b) The applicants sought, inter alia, an order declaring the local government elections in 25 specified municipalities not to be free and fair. However, only seven (7) of such municipalities were cited as respondents and on whom the application papers were served. The remaining 18 municipalities against whom an order of declaration was sought were not cited, nor were they served with the papers in this litigation.

(c) Whilst the applicants also sought an order suspending the said elections, interested parties, being political parties and independent candidates who contested the elections in the named municipalities, were neither cited nor served with the application papers.

The aforementioned defects are material and fatal to the application. It thus fell to be dismissed on this ground alone.

[3] The application was brought to Court for issuing on Friday, 29 October 2021. The papers were served by email on the respondents at around 23h30 on 28 October 2021. The respondents were afforded until 10h00 on 29 October 2021 to file notices to oppose and until 12h00 on the same day, to file answering papers. The matter was intended to be enrolled for hearing at 14h00 on 29 October 2021. It must be borne in mind that the application concerned the local government elections that were going to take place the next Monday on the 1st November 2021. The Electoral Commission of South Africa (the Commission), together with other respondents duly filed notices to oppose. There was the usual exchange of papers and the matter was ultimately enrolled for the 29th November 2021. Clearly, by then the 'horse had already bolted' so to speak, since the elections had already come and gone. The applicants, however, chose to proceed and argue the matter.

[4] The Court found that the applicants were totally unreasonable and unfair with regard to the time frames given to the respondents. In addition, the rules of the Court were breached in a manner that was found to amount to an abuse of the court process. The Court also found that, whilst the cause of complaint in this matter arose at the latest allegedly on 21 September 2021, there was no explanation given whatsoever either in

the papers or at Court as to why the appellants only launched the application more than a month later on 29 October 2021. The Court found that the urgency with which the application was filed, was self-created, warranting the dismissal of the application on this ground alone.

[5] The Court found that the Commission was obliged to act in terms of a valid court order of the High Court, Gauteng Division, Pretoria, per Mahlangu AJ, that was handed down on 23 August 2021. The order enjoined the Commission to allow the PAC, as represented by the leadership elected at the Bloemfontein conference, held on 20 and 30 August 2019, to participate in the 2021 local government elections. The fact that there is an appeal to the SCA subsequently lodged on 18 October 2021, has no bearing on the events that took place on 21 September 2021 when the Commission accepted registration documents from candidates representing the PAC whose NEC was elected at the aforementioned Bloemfontein conference. In the circumstances, the application was without merit and fell to be dismissed.

[6] The Court also found that no case was made out by the applicants that the Commission had removed or terminated any of the applicants as municipal councillors. The Court was satisfied that the Commission did not have such a power.

Dated at Bloemfontein

03 January 2022

By order of Court