

REPUBLIC OF SOUTH AFRICA



ELECTORAL COURT, BLOEMFONTEIN

CASE NO: 001/22EC
Not Reportable

In the matter between:

**AFRIKAANS KLEURLING BEWUSTHEIDS
PARTY (AKBP) OBO UBUNTU & EMTHANJENI
LOCAL COMMUNITY**

Applicant

and

**THE ELECTORAL COMMISSION
OF SOUTH AFRICA**

First Respondent

**THE MINISTER OF CO-OPERATIVE
GOVERNANCE AND TRADITIONAL
AFFAIRS NCPG**

**MR BENTLEY VAN ROOY
THE MUNICIPAL ELECTORAL OFFICER**

Second Respondent

**MR RUSSEL VAN ROOY
THE AFRICAN NATIONAL CONGRESS PARTY**

Third Respondent

**MR SOUTIE WELDON KOK & OTHERS
THE DEMOCRATIC ALLIANCE**

Fourth Respondent

**MS MARIA BAADJIES & OTHERS
THE ECONOMIC FREEDOM FIGHTERS**

Fifth Respondent

**MR G STEENKAMP & OTHERS
THE NEW INDEPENDENT CANDIDATE**

Sixth Respondent

**MR ANGELO BOOYSE
TOGETHER WITH OTHER ILLEGAL OCCUPIERS**

Seventh Respondent

Neutral Citation: *Afrikaans Kleurling Bewustheids Party (AKBP) and Another v IEC and Others* (Case no 001/22 EC) [2022] ZAEC 5 (29 March 2022)

Coram: MBHA JA, MODIBA J and SHONGWE AJ and MS PATHER and PROFESSOR NTLAMA-MAKHANYA (Members)

JUDGMENT

MBHA JA (MODIBA JA and SHONGWE AJ and MS PATHER and PROFESSOR NTLAMA-MAKHANYA (Members) concurring):

[1] The applicant, the Afrikaans Kleurling Bewustheids Party, registered as a political party on 14 February 2020. It was therefore eligible to contest the 2021 general local government elections (2021 GLGE) to elect municipal councils in municipalities countrywide, specifically in the Ubuntu and Emthanjeni local municipalities (the municipalities), in the Northern Cape. It purports to be acting herein 'on behalf of the Ubuntu and Emthanjeni local community'.

[2] The applicant seeks a mandatory order directing the respondents to 'rescind' from posts officially inaugurated in the Ubuntu and Emthanjeni council. The relief sought is expanded or further explained in the founding affidavit where the applicant prays for an interim order, for the dismissal or cancellation of the inaugurated municipal council, and for dissolution of the entire municipality. This dissolution is sought so that national government can implement a recovery plan that will, *inter alia*, enhance service delivery at local government level.

[3] The applicant's cause of complaint is the alleged misconduct and contravention of the Electoral Code of Conduct (the Code) by the respondents, ie the Independent Electoral Commission (the IEC), the presiding officers, the municipal electoral officer and political parties; namely, the African National Congress (ANC), Democratic Alliance (DA), Economic Freedom Fighters (EFF) and the New Independent Candidate (NIC), which contested the election. In this regard, the applicant avers that the ANC unlawfully registered a lot of youngsters online, whether disabled or not, as special votes 'which ultimately enabled it to win the election in the municipalities'. Furthermore, the other parties contravened the Code by unlawfully pitching tents and tables at or near voting stations, thus unduly influencing votes.

[4] Mr Benjamin Andries de Bruin, the applicant's President who deposed to the founding affidavit avers that he duly lodged formal complaints with the presiding officers. However, the IEC never acted on the complaints and in fact displayed bias towards the

applicant by failing to act and curb corruption and failing to uphold the Code and the rule of law.

[5] The IEC has responded stating that the applicant failed to comply with the provisions of ss 14¹ and 17² of the Local Government: Municipal Electoral Act 27 of 2000 (the MEA) by not submitting party lists of candidates and not nominating any candidates, respectively. In relation to the complaints, the IEC states:

(a) The objections were lodged by the applicant's deponent in terms of s 51(3)³ of the MEA at four voting stations within the Ubuntu Local Municipality.

(b) The presiding officers summarily investigated the factual circumstances underlying the objections and decided the objections. Thereafter, they recorded their decisions on the written objection and then verbally informed Mr de Bruin and any other parties involved in the objection of the decision.

(c) With particular reference to the Kappertjie Gemeenskapsaal, Victory West High School and the AME Church voting stations in ward 4, the decisions by the presiding officers and the municipal electoral officer, were that the occurrences complained of were outside the boundaries of the voting stations. Further in this regard, Mr de Bruin was advised to liaise with security agents ie the police regarding issues that allegedly arose outside of the boundaries of the voting stations.

[6] Even before I consider the merits, this application is materially defective in various ways, each of which has fatal consequences. I examine each in turn:

(a) The applicant did not contest the 2021 GLGE as it did not comply with ss 14 and 17 of the MEA. It is not clear in what capacity the applicant has brought this application. To compound this problem even further, the applicant has purported to bring the application 'on behalf of the Ubuntu and Emthanjeni Community'. Clearly the applicant has sought to

¹ Section 14 of the MEA with the heading 'Requirements for parties contesting election by way of party lists' provides:

'(1) A party may contest an election in terms of section 13(1)(a) or (c) only if the party by not later than a date stated in the timetable for the election has submitted to the Commission—

(a) in the prescribed format and signed by the party's duly authorised representative—

(i) . . .

(ii) a party list. . . '

² Section 17 of the MEA, with the heading 'Requirements for ward candidates to contest election' provides:

(1) A person may contest an election as a ward candidate only if that person is nominated on a prescribed form and that form is submitted to the Commission by not later than a date stated in the timetable for the election.'

³ Section 51(3) of the MEA provides that:

'An agent or ward candidate, or a voter, may object to any conduct, other than that mentioned in subsection (1), (1A) or (2), or an officer, an agent, or any other person present at a voting station.'

bring the application in the community's interest and not its own. However, the said community is not a legal person and thus has no capacity to institute legal proceedings in its own name unless an enabling order was accordingly sought and granted by a competent court. It bears further mentioning that no reliance was placed on s 38⁴ of the Constitution of the Republic of South Africa for authority to bring these proceedings on behalf of the community. Most importantly, neither the applicant nor the Ubuntu and Emthanjeni local community were parties to Mr de Bruin's s 51(3) objection, and cannot therefore claim any relief to that objection, even if any were available.

(b) I have earlier in the opening paragraphs of this judgment tried to decipher the actual relief sought in this application. What is sought in the Notice of Motion is completely different to the relief asked for in the founding affidavit. In my view, the relief sought is not only incoherent and obscure, but is also practically incompetent. It is not at all clear whether the applicant seeks to review or appeal the decisions of the presiding officers and the municipal electoral officer relating to the objections in terms of s 51 of the MEA.

(c) In terms of s 22(5) of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act), an elected councillor is deemed to assume office on the date of the declaration of the results of an election by the IEC. The term of a municipal council, in terms of s 24(1) of the Structures Act, is five years calculated from the day following the date set for the previous election of all municipal councils.

[7] Importantly, a municipal council may only be dissolved in limited circumstances by the relevant provincial executive in terms of s 139(1)(c) of the Constitution. This can only happen where a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or relevant legislation. Section 139(5)(b) also empowers the relevant provincial executive to dissolve a municipal council if the municipality is in a financial crisis or in serious or persistent material breach of its obligations to provide basic services or to meet its financial obligations.

[8] Clearly, no case as aforementioned has been made warranting the intervention by the relevant provincial executive. In any event, no court has the power to dissolve a municipal council. This Court has only the powers expressly granted to it by the Electoral Commission Act 51 of 1996. The relief sought in this application is accordingly totally incompetent.

⁴ Section 38 of the Constitution provides that anyone listed in this section has the right to approach a competent court alleging that a right in the Bill of Rights has been infringed or threatened. Such persons include anyone acting as a member of, or in the interest of a group or class of persons, and anyone acting in the public interest.

[9] Finally, the application is fatally defective due to non-joinder of parties having a substantial interest in these proceedings. Although the applicant in essence seeks the dissolution of the two sitting councils in the municipalities, these have not been cited nor served with the application papers. Neither have political parties, which participated in the election, been properly cited in their legal capacities as such. The applicant has only cited what appears to be individuals who formed part of these parties candidates' lists and in respect of the Ubuntu Local Municipality only. It cannot simply be assumed that these individuals possess the necessary authority to defend legal proceedings on behalf of their respective political parties.

[10] As far as the merits are concerned, the entire averments by the IEC are not disputed in any way. In fact, the applicant refers, erroneously it appears, to some indebtedness sounding in money. It follows that based on the *Plascon-Evans* rule,⁵ the IEC's version must prevail. I need also point out that in so far as the complaint of the ANC alleging registering minors as special votes is concerned, there was a material failure by the applicant to comply with the provisions of s 65(1) of the MEA requiring that an objection must be material to the result of an election.

[11] The members of the Court unanimously agreed that no oral hearing was warranted in this application and that it should be disposed of on the papers filed on record.

[12] In the circumstances the following order is made:

- 1 The application is dismissed.
- 2 There is no order as to costs.

B H MBHA
CHAIRPERSON
OF THE ELECTORAL COURT

29 March 2022

⁵ *Plascon-Evans Paints Ltd. v Van Riebeeck Paints (Pty) Ltd.* 1984 (3) SA 623 (A). This rule holds that in motion proceedings when factual disputes arise in circumstances where the applicant seeks final relief, the relief should be granted in favour of the applicant only if the facts alleged by the respondent in its answering affidavit, read with the facts it has admitted to, justify the order prayed for . . . Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted.