THE ELECTORAL COURT OF SOUTH AFRICA

BLOEMFONTEIN

Not Reportable

Case No: 001/2024EC

In the matter between:

AFRICAN NATIONAL CONGRESS **APPLICANT**

and

ELECTORAL COMMISSION OF SOUTH AFRICA **FIRST RESPONDENT**

THE CHIEF ELECTORAL OFFICER OF THE ELECTORAL COMMISSION OF SOUTH AFRICA **SECOND RESPONDENT**

UMKHONTO WESIZWE POLITICAL PARTY **THIRD RESPONDENT**

Neutral Citation: *African National Congress v Electoral Commission of South Africa and Others* (001/2024EC) [2024] ZAEC 03 (26 March 2024)

Coram: MODIBA J and SHONGWE AJ, ADAMS AJ and PROFESSORS PHOOKO and NTLAMA-MAKHANYA (Additional members)

Heard: 19 March 2024

Delivered: 26 March 2024

Summary: S 15(1) of the Electoral Commission Act 51 of 1996 (the Electoral Commission Act) – application for the registration of a political party – Chief Electoral Officer (CEO) shall, upon application by a party in the prescribed manner and form, register such party – interpretation of the section – textual and contextual purposive interpretation required – application for registration may be 'supplemented' after

rejection of initial application for registration – no need to start application afresh after rejection by the CEO – registration of third respondent lawful and compliant with s 15(1) of the Electoral Commission Act – political party registered ‘upon application’.

ORDER

The application is dismissed, with no order as to costs.

JUDGMENT

The Court

Introduction

[1] The applicant, the African National Congress (the ANC) applies, on an urgent basis, for a judicial review and a setting aside of the decision, made on 7 September 2023, by the Deputy Chief Electoral Officer (the DCEO) of the first respondent (the Electoral Commission), duly delegated by the second respondent (the CEO), to register uMkhonto Wesizwe Political Party (MK) as a political party (the impugned decision). In the alternative, the ANC seeks an order declaring the registration of MK as a political party to be *ultra vires*, unlawful and invalid. It seeks no order as to costs.

[2] The ANC and MK are political parties registered as such in terms of s 15(1) of the Electoral Commission Act 51 of 1996 (the Electoral Commission Act). The Electoral Commission is established in terms of s 181(1)(f) of the Constitution. The CEO is appointed in that capacity in terms of s 12(1) of the Electoral Commission Act.

[3] In this judgment, extensive reference is made to various provisions of the Electoral Commission Act as amended. Extensive reference is also made to the Regulations for Registration as Political Parties (the regulations):[1] Unless otherwise specified, reference to statutory provisions is to this act and regulations.

[1] The Regulations for the Registration of Political Parties were published in Gazette No. 25894 on 7 January 2004.

[4] Although the ANC does not seek an order against MK, it appropriately cited MK in these proceedings. The order the ANC seeks has a substantial bearing on MK's interests, specifically the right of its founders and members to make political choices in terms of s 19 of the Constitution of the Republic of South Africa, 1996 (the Constitution). This right includes the right to form a political party.[2] Registering a political party with the Electoral Commission is an important process for achieving this right. Once registered, a political party is an important medium through which the other rights protected in s 19 are realized. These include the right to participate in the activities of the political party and to campaign for a political party or cause. Political party membership is also a platform through which citizens stand for, and if elected, hold public office. It is therefore hardly surprising that although the ANC seeks no order against MK, MK is vigorously opposing these proceedings.

[5] The Electoral Commission also opposes the application. In line with its constitutional duty to observe heightened standards in litigation, the Electoral Commission has comprehensively set out its version of the facts before the Court. It has also explained its understanding of the applicable statutory and regulatory provisions and how these informed the impugned decision.

[6] The ANC seeks to invoke the Court's review jurisdiction in terms of s 20(1) of the Electoral Commission Act. S 20(1) read with Rule 6 of the Electoral Court Rules. These provisions require that it brings the application within 3 days of the impugned decision being made. It acknowledges that it failed to bring the application within the prescribed time. It is for that reason that it seeks condonation for its delay in bringing the application.

[7] The ANC seeks that the impugned decision be reviewed under the legality principle. In essence, the ANC's case is that the DCEO acted unlawfully and outside the bounds of the law, in that it registered MK, as there was no application before it for such registration. It had also alleged that the two notices published by MK in the

[2] S19(1)*(a)* of the Constitution.

Government Gazette as required in terms of s 15(4A) (s 15(4A) notice) were defective. The ANC is not persisting with this ground of review.

[8] The respondents have raised several points *in limine*. They both oppose the urgency and condonation relief which the ANC seeks. They also contend that this court lacks jurisdiction over the matter. In addition, MK contends that the ANC has pre-empted the impugned decision. Further, MK had sought to impugn the authority of the deponent to the ANC's affidavits, filed in this application, to bring the application on behalf of the ANC. It is not persisting with this point *in limine.*

[9] Both respondents oppose the application on the merits. Essentially, they contend that the application falls to be dismissed because, when he made the impugned decision, there was a proper application for the registration of MK as a political party before the DCEO, and the impugned decision was lawfully made in terms of s 15(1).

[10] The issues that arise for determination are primarily issues of law. They are as follows:

(a) whether the ANC's delay in bringing the application should be condoned;

(b) whether this Court has jurisdiction over the relief the ANC seeks;

(c) whether the ANC pre-empted the impugned decision;

(d) whether there was no proper application for registration of MK when the impugned decision was made and for that reason, when he made the impugned decision, the DCEO acted beyond the scope of his powers as set out in s 15(1).

[11] The respondents' points *in limine* are dispositive of the application. Although, for reasons set out in this judgment, the points *in limine* stand to be upheld, the judgment traverses the merits for two reasons: firstly, the merits are relevant for determining whether the ANC's delay in bringing the application ought to be condoned in the interests of justice. Secondly, superior courts have urged courts of first instance to determine all issues that arise in a matter to avoid a court of appeal

dealing with any issue in the first instance in the event this Court's order is taken on appeal.[3]

Points in limine

Urgency and condonation

[12] The ANC acknowledges that it brought the application outside the prescribed three-day period. It has put up an explanation for the delay. It seeks condonation for its delay. It contends that if it is not afforded an urgent audience, it will be denied substantial redress in due cause.

[13] As pointed out by counsel for MK, this is the wrong approach to urgent applications in electoral matters brought before this Court. Urgency, in review applications brought before this Court, is a statutory requirement. S 20(1) read with rule 6(1), requires that the application is brought within three days of the impugned decision, conducted urgently and disposed of expeditiously.

[14] Since it did not bring the application within three days of the impugned decision being made, in terms of rule 10, the ANC is barred to bring the application unless, on good cause shown, this Court directs otherwise. It is for this reason that the ANC has applied for condonation for bringing this application late.

[15] The party seeking condonation must give a full explanation for the delay. It is one of the factors to be considered when determining whether condonation should be granted. The explanation must cover the entirety of the delay.

[16] The second stage of the enquiry involves a legal evaluation taking into account a number of factors such as the nature of the impugned decision, the nature of the relief sought, the extent and cause of the delay, the reasonableness of the explanation, the importance of the issue to be raised, the prospects of success,

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[3] *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* [2012] ZASCA 15; 2012 (3) SA 486 (SCA); [2012] 2 All SA 345; 2012 (6) BCLR 613 15 para 49; *Louis Pasteur Holdings (Pty) Ltd and Others v ABSA Bank Ltd and Others* [2018] ZASCA 163; 2019 (3) SA 97 (SCA) para 33; *Theron and Another NNO v Loubser NO and Others, In Re; Theron NO and Another v Loubser and Others* [2013] ZASCA 195; [2014] 1 All SA 460 (SCA); 2014 (3) SA 323 (SCA) para 26.

including the possible consequences of setting aside the impugned decision including potential prejudice to affected parties and whether such may be ameliorated by the court's power to grant a just and equitable remedy.[4] The interests of justice are an overriding factor in this enquiry. Some of these factors require the merits of the review to be traversed.

[17] Ultimately, the court is vested with a discretion to overlook the delay. S 172(1)*(a)* of the Constitution grounds this discretion. This Court is duty-bound by this provision to declare the impugned decision to be unlawful if it finds that it was exercised in breach of s 15(1). This is the relief the ANC prayed for in paragraph 3 of its notice of motion. This Court will fail in its constitutional duty in terms of s 172(1)*(a)* if it does not enquire into the lawfulness of the impugned decision due to the ANC's failure to comply with the procedural requirements in s 20(1) and rule 6.

[18] The impugned decision was made on 7 September 2023. The ANC only brought this application on 9 January 2024. Its explanation for bringing the application outside the prescribed period is that it was not aware of the DCEO's 4 August 2023 letter which grounds the review because there is no statutory obligation on the DCEO to publish his decision not to register a political party. It only became aware of this letter in January 2024.

[19] The ANC's explanation is irrational because it does not come close to justifying its delay in bringing the application late. It is not impugning the decision the DCEO made on 4 August 2023. It is therefore irrelevant that it only became aware of this letter in January 2024.

[20] The ANC became aware of the impugned decision on 11 September 2023. At that stage, it took a decision to appeal that decision with the Electoral Commission in terms of s 16(2). It lodged the appeal on 20 September 2023. The Electoral Commission considered the ANC's appeal and dismissed it on 24 November 2023.

[4] Ibid para 54-63.

[21] The ANC alleges that it discussed the 24 November 2023 decision internally. A decision was made to pursue legal proceedings. It was only able to instruct attorneys on 26 December 2023 to institute this application. Between 26 and 31 December 2023, several consultations between ANC officials and its legal representatives were held. After these consultations, its legal representatives started drafting papers.

[22] It blames the delay in bringing the application on the timing of the Electoral Commission's 24 November 2023 decision, as well as the fact that members of the ANC and its legal team were closing offices for the December holidays. To lessen its inordinate delay in bringing this application, it contends that the clock started ticking on 24 November 2023. Yet, it painstakingly explained that it is not impugning the 24 November 2023 decision in these proceedings.

[23] What renders the ANC's explanation even more irrational is that it did appeal the impugned decision to the Electoral Commission within the period prescribed by the s 16(2)*(b)*.[5] This resulted in the Electoral Commission's 24 November 2023 decision. It does not impugn this decision in these proceedings. It impugns the decision the DCEO took on 7 September 2023 which it became aware of on 11 September 2023. Therefore, the fact that the ANC initially decided to appeal the 7 September 2023 decision to the Electoral Commission, does not justify the delay in bringing the present application. The timing of the 24 November 2023 decision also does not justify the delay in bringing this application.

[24] Notwithstanding that the 24 November 2023 decision does not justify the delay, the ANC also fails to fully explain why it took more than a month after that decision was taken to discuss and decide its next course of action. If its offices were closing for the festive season, the statutory requirement for urgency in this application ought to have urged it to act with the requisite urgency. It fails to state on what date its offices closed in December 2023. Ironically, it instructed its attorneys in the peak

[5] S 16(2)*(b)* provides that the appeal shall be lodged within 30 days of the publication of the notice to register a political party in the Government Gazette. The DCEO caused the notice to be published on 22 September 2023.

of the December holiday period on 26 December 2023. It fails to explain why it could not do so earlier. It offers no explanation why it took a further two weeks after it instructed its attorneys for the application to be instituted.

[25] In any event, these omissions are of no moment because the ANC's appeal to the Electoral Commission against the 7 September decision does not justify the delay. It ought to have instituted the present application within three days of becoming aware of the impugned decision. At that point, the festive season was more than three months away.

[26] The ANC's contention that it only became aware of the DCEO's 4 August 2023 letter to MK in January 2024 also does not justify the delay. It concedes that it should have been more diligent in accessing MK's registration application file at the Commission.

[27] Notably, the ANC underplays the primary cause of its predicament. It blames the fact that it was not informed of the DCEO's 4 August letter on the absence of a statutory obligation on the DCEO to publish the rejection of an application for political party registration. The statutory obligation to inform a third party of a decision not to register a political party is implicit in s 16(2). This provision regulates appeals against the DCEO's decision to register or not to register a political party.

[28] Initially, this section gave any person the right to appeal the CEO's decision to register or not to register a political party. It was amended in August 2021 to limit the right to appeal against the decision not to register a political party to the applicant for registration, and the decision to register a political party, to a third party who objected to the application for registration during the 14-day objection period which runs from the date of publication of the s 15(4A) notice in the Government Gazette. This statutory amendment is important as it enhances the Electoral Commission's internal dispute resolution mechanism provided for in the Electoral Commission Act. It affords third parties an opportunity to express their interest in an application for registration of a political party by having their objections to an application determined by the Electoral Commission as early as possible in the registration process.

[29] As evident from the present facts, electoral processes are not only manifestly urgent, as already stated, they also facilitate the realization of political rights entrenched in the Constitution. As the Electoral Commission explained, it has a statutory duty to promote the realization of these rights, hence its approach to applications for registration is to assist applicants to register and not to make it difficult for them to register.

[30] If a party who is aggrieved by the registration of a political party only raises a dispute after the decision to register a political party is made, it could have a prejudicial effect on the realization of the political rights of the party applying for registration, particularly in a case such as this one where the application for registration was made 11 months before national and provincial elections scheduled for 29 May 2024, the review application is instituted four months before the scheduled elections and the application is considered by the court two months before the elections.

[31] If the relief ANC seeks is granted, it will be too late for MK to re-apply for registration as a political party to contest the upcoming elections. The ANC is least concerned about this adverse outcome because it has not placed factors this court ought to consider when determining a just and equitable relief in terms of s 172(1)*(b)* of the Constitution to ameliorate the adverse consequences of setting aside the registration of MK as a political party. In that enquiry, this Court must consider and balance the interests of all the parties.[6] It contends that it was for the respondents to place such facts before this Court. As pointed out by counsel for the Electoral Commission, on the authority in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others,*[7] which has colloquially become known as AllPay 1, this can be remedied by issuing a directive that the parties place such factors before the Court.

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[6] *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* [2010] ZACC 26; 2011 (4) SA 113 (CC); 2011 (3) BCLR 229 (CC) para 84 to 87.

[7] *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others* 2014 (1) SA 604 (CC) para 24-26 and para 46. Also see paras 5 to 8 of the order.

[32] The Electoral Commission would have informed the ANC of the decision the DCEO made on 4 August 2023 to reject MK's application for registration as a political party if it (ANC) had objected to MK's application for registration within 14 days of publication of the s 15(4A) notice, this acquiring an interest in MK's application for registration, and the right to appeal the impugned decision in terms of s 16(2)*(b)*. The ANC had two opportunities to object to MK's application for registration. The first was within 14 days after the 1 June 2023 s 15(4A) notice was published in the Government Gazette. The second was within 14 days of the 30 June 2023 s 15(4A) notice being published in the Government Gazette. In both instances, it failed to do so. Therefore, it only has itself to blame for not being aware of the 4 August 2023 decision until January 2024.

[33] Even if it had become aware of the 4 August 2023 letter when the Electoral Commission sent it to MK on 8 August 2024, having failed to object to MK's application for registration, by operation of the law, the ANC became non-suited to impugn the DCEO's decision to register MK. In terms of s 16(2)*(b)*, only a party that objected to an application for registration as a political party may impugn the DCEO's decision to register a political party.

[34] The impugned decision has serious implications for South Africa's democracy as political parties are an important vehicle for the exercise of political rights enshrined in s 19 of the Constitution.

[35] The ANC contends that if the application is not heard, it will be denied substantial redress in due course because it is impugning MK's registration on the basis that it is unlawful. If the application is not heard, an unlawfully registered political party will, to the prejudice of voters, participate in the national and provincial elections scheduled for 29 May 2024, thus denying it substantive redress in due course.

[36] There is no merit in this contention. For the reasons set out above, the ANC is not only barred from bringing the application, but also non-suited by operation of law. It is therefore not entitled to substantive redress in due cause. Therefore, in terms of rule 6, read with rule 10, it does not meet the requirements for condonation.

[37] The ANC is facing an even greater hurdle; it impugns the 7 September 2023 decision in the wrong forum. The impugned decision was lawfully made. All these factors do not support the exercise of this Court's discretion to overlook the delay in the interests of justice. We set out reasons for these finding below.

Jurisdiction

[38] The ANC seeks to invoke this Court's review jurisdiction.

[39] The respondents contend that this Court lacks jurisdiction to review the DCEO's 7 September 2023 decision as this is not a decision of the Electoral Commission. In reply, the ANC contends that the DCEO's decision is a decision of the Electoral Commission. Only the CEO and DCEO at the Electoral Commission can make the decision to register a political party. When they do so, they exercise power on behalf of the Electoral Commission. It further contends that it matters not that it is the DCEO who made the decision because his decision is binding on the Electoral Commission.

[40] The ANC also further contends that since it seeks declaratory relief in the alternative, as this Court is a specialist court with similar status to the High Court in terms of s 166*(e)* of the Constitution, it enjoys jurisdiction in s 21(1)*(c)* of the Superior Courts Act to grant declaratory relief.[8] It also enjoys the power in terms of s 172(1) of the Constitution to declare public power exercised unlawfully to be unlawful and unconstitutional.

[41] When interpreted with reference to the language used, the context and purpose of the Electoral Commission Act, the interpretation of s 20(1) which the ANC

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[8] S 21(1)*(c)* of the Superior Courts Act', titled 'Persons over whom and matters in relation to which Divisions have jurisdiction' provides as follows:

(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –

. . .

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.'

is contending for is unsustainable as it will undermine the dispute resolution scheme created in the Electoral Commission Act.

[42] As already held, when it failed to object to MK's application for registration, the ANC became non-suited. The Electoral Commission Act does not make provision for an aggrieved party to impugn a political party after the period provided for in the s 15(4A) notice has expired or by way of these proceedings as the ANC seeks to do. S 16(2)*(b)* only affords parties who objected, the right to impugn the CEO's decision to register a political party.

[43] The ANC could not successfully use the internal dispute resolution mechanisms provided for in the Electoral Commission Act when it appealed the DCEO's 7 September decision to the Electoral Commission. The appeal was dismissed because the ANC is non-suited by s 16(2)*(b)* from impugning that decision. This application is also unsustainable because it can only impugn the Electoral Commission's 24 November 2024 decision invoking the Electoral Court's jurisdiction in terms of s 20(1). The ANC has pre-empted it. Notably, when it appealed the impugned decision to the Electoral Commission, it did not raise the ground it raises in these proceedings.

[44] The ANC blames the DCEO for non-suiting it when he considered MK's supplemented application and not a fresh one as stated in his 4 August 2024 letter. It further contends that, had the DCEO insisted on a new application for registration being filed by MK, the latter would have had to publish a new s 15(4)A notice, thus affording it an opportunity to become an interested party by objecting to MK's application for registration. Hence, it contends that the DCEO's decision falls to be reviewed and set aside for as it was unlawfully made.

[45] The predicament that the ANC finds itself in does not justify a wide interpretation of s 20(1). Such an interpretation would undermine the statutory dispute resolution mechanism provided for in the Electoral Commission Act. It also does not promote the realization of the rights in section 19 of the Constitution. The ANC only has itself to blame for not objecting during the two objection periods occasioned by

the 1 and 30 June 2023 s 15(4A) notices. It is this omission that resulted in it being nonsuited in terms of s16(2)*(b)*.

[46] The Electoral Court lacks jurisdiction to review the DCEO's 7 September 2023 decision. It only has jurisdiction to review the Commission's 24 November 2023 decision, which the ANC has effectively pre-empted as it is not reviewing it.

[47] Since in this judgment, we find that there is nothing unlawful in the way the DCEO dealt with MK's application for registration, the ANC's resort to what it contends are this Court's powers is terms of s 21(1)*(c)* of the Superior Court's Act and s172(1) of the Constitution is also unsustainable. In any event, we doubt that this Court, being a specialist court, albeit with the status of the high court, may grant declaratory relief in terms of s 21(1)*(c)* of the Superior Courts Act in a matter in which it does not enjoy jurisdiction in terms of its enabling statute. It would serve no purpose to delve into this enquiry because even if this Court could grant such an order, on the ANC's case as pleaded, for reasons set out in the next section of this judgment, it fails to make a proper case for an order declaring the DCEO's decision to be *ultra vires*, unlawful and invalid.

[48] For the above reasons, the respondents' jurisdiction point in *limine* stands to succeed.

The merits

[49] The only issue to be considered by this Court is whether the DCEO acted lawfully and in compliance with the peremptory procedural requirements for the registration of a political party, when he registered MK. Crystallised further, the question to be decided by this Court is whether the DCEO, in having had regard to a so called 'supplemented' application by MK, when he registered MK as a political party, acted within the four corners of chapter 4 and s 15 and 16 of the Electoral Commission Act read with its regulations. Contrary to the ANC's contention, not much turns on the interpretation of DCEO's letter of 4 August 2023.

[50] The ANC's case is that the provisions of s 15(1) were not complied with by the DCEO when he made the impugned decision. This, the ANC contends, was because the application which had been filed by MK and in respect of which there had been publication in terms of s 15(4A), had been vitiated and in effect rendered *pro non scripto* by the DCEOs rejection letter of 4 August 2023 in which he advised MK as follows: -

'Please take note that the application for the registration of the abovementioned party has been rejected because the signatures of supporters on the deed of foundation showed patterns of discrepancies which indicate that the signatures were made by a person/s other than the voter.'

[51] This letter, so the argument on behalf of the ANC continues, constitutes a decision by the DCEO which rejected MK's application for registration as a political party. The reason given in the letter for the rejection was that the application did not 'substantially comply with the provisions of s 15 and the regulations. The concluding paragraph of the letter reads thus:

'The rejection of the application does not debar [MK] from submitting a fresh application, complying with all the requirements, to the Chief Electoral Officer.'

[52] The ANC argues that MK failed to submit a 'fresh' application. It also failed to publish a fresh s 15(4A) notice in the Government Gazette, informing the public that it seeks registration. Instead, it supplemented its initial (rejected) application, even though there is no provision in the Electoral Commission Act for supplementation of an application that has been decided upon and rejected. Pursuant to such supplementation, the CEO unlawfully registered MK on 7 September 2023.

[53] The law applicable to the registration of political parties, in particular s 15(1) of the Electoral Commission Act and its interpretation, so the argument on behalf of the ANC is concluded, does not permit an application for registration to be supplemented. Its interpretation of the said section, according to the ANC, is supported by the 4 August 2023 letter, which clearly and unambiguously states that MK's application was rejected and that it is not 'debarred' from submitting a 'fresh application, complying with all the requirements'.

[54] Whether these submissions on behalf of the ANC are sustainable depends on a proper interpretation of s 15 read with the regulations and annexure 1 thereto. It is so, as was held by the Constitutional Court in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others,*[9] that 'the legislature and the executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. The simple point being that, in terms of the principle of legality, the CEO could not register a political party in a way and in terms of a procedure that he is not empowered to do by the Electoral Commission Act.

[55] The ANC contends that, in considering the language used in s 15(1), it is self-evident that the word 'supplement' is absent from the section. If the legislature intended for the supplementation of an application for registration, s 15(1) would have said so. Absent an express statement in s 15 which says that an application for registration may be supplemented, the word 'supplement' cannot be read into the section.

[56] The foregoing, coupled with the contents of the 4 August 2023 letter, so the submissions of the ANC are concluded, mean that, after the rejection of MK's application by the CEO on 4 August 2023, MK had to submit a new application, starting the process from scratch, if it wished to pursue its application for registration. Implicit in this new application that had to start all over again, was the need for MK to publish a fresh s 15(4A) notice in the Government Gazette. As the facts demonstrate, this publication never took place.

[57] We disagree with these submissions on behalf of the ANC. We find that, the requirements for the registration of MK, in terms of s 15 of the Electoral Commission Act read with the regulations and annexures thereto, properly interpreted, were met.

[58] The important point about s 15(1) is that, in peremptory terms, it envisaged that the CEO 'shall' register an applicant as a political party 'upon application' by that

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[9] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* [1998] ZACC 17; 1999 (1) SA 374; 1998 (12) BCLR 1458 para 58.

party ‘in the prescribed manner and form’. We interpret this clause, ‘upon application’, to require the CEO to have before him the application ‘in the prescribed manner and form’ when he registers the applicant as a political party. It matters not, on the construction of the section, the regulations and annexure 1 thereto, how the application came before him or whether it came before him in one go or in phases or, for that matter, in the proverbial ‘drips and drabs. Contrary to the ANC’s submissions, the absence of a reference in s 15(1) to ‘supplementing’ of the application, does not, detract from the fact that, on a plain reading of the provision, the words, the grammar and the syntax of the section lend itself to an interpretation that, as long as the application, in the prescribed manner and form, is before the CEO, he should register the political party.

[59] The ANC’s contention that, because the section makes no reference to ‘supplementation’, an application cannot be supplemented, holds no water. It is an artificial approach. It implies that, contrary to the substantive approach to the consideration for an application for registration, as implied from the reasons for which the CEO may decline to register a political party, which are set out in s 16(1), the CEO should refuse to register a political party for elementary administrative details which the Act and the regulations did not deem necessary to prescribe. Nowhere in s 15 or the regulations is the way the application is to be submitted, prescribed. Importantly, the section does not require an applicant to comply fully at the first go.

[60] As regards context, there was no need for an applicant, after an application for registration is rejected by the Electoral Commission, to commence the whole process afresh. 14 days had passed since the corrected s 15(4A) notice was published on 30 June 2023 and the ANC had not registered an objection. Therefore, the DCEO was not prohibited from registering MK in terms of s 16(1).[10] Moreover, the Electoral Commission has demonstrated that there were other political parties, which also supplemented their applications after initial rejections, where after, their

[10] S 16(1) provides as follows:

‘(1) The chief electoral officer may not register a party in terms of s 15 or 15A, if-

(a) fourteen days have not elapsed since the applicant has submitted to the chief electoral officer proof of publication of the prescribed notice of application referred to in s 15 (4A).’

applications for registration were approved. This translates into a contextual interpretation that favours the respondents' case.

[61] As for purpose, at the heart of s 15 are the political rights enshrined in s 19 of the Constitution. With that purpose in mind, s 15 is aimed at ensuring that every citizen can form and register a political party. That, therefore, means that the said section should be interpreted in a way, which facilitates the formation and registration of political parties as against hamstringing it. That purpose is attained by an interpretation contended for by the respondents *in casu*.

[62] For all these reasons, it is iterated that the DCEO, in registering MK, complied with the requirements of s 15 of the Electoral Commission Act read with s 16(1), the regulations and annexure 1 thereto. We therefore find that there is nothing unlawful about the registration of MK by the DCEO on 7 September 2023.

Costs

[63] In line with the principle in *Biowatch*, costs are customarily not awarded in this Court. We have not been persuaded to depart from this custom.

Order

[64] In the result, the following order is made:

The application is dismissed with no order as to costs.

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L T MODIBA
JUDGE OF THE ELECTORAL COURT

_____
Z J SHONGWE
ACTING JUDGE OF THE ELECTORAL COURT

_____
L R ADAMS
ACTING JUDGE OF THE ELECTORAL COURT

_____
PROFESSOR R PHOOKO
ADDITIONAL MEMBER OF THE ELECTORAL COURT

_____
PROFESSOR N NTLAMA-MAKHANYA
ADDITIONAL MEMBER OF THE ELECTORAL COURT

Appearances

For the applicant:	S Baloyi SC with T Ramogale and F Mohamed
Instructed by:	Ka-Mbonane Cooper, Johannesburg Van der Merwe & Sorour, Bloemfontein
For the first and second respondent:	T Motau SC with D Sive
Instructed by:	Barnard Incorporated, Pretoria McIntyre Van der Post, Bloemfontein
For the third respondent:	D Mpofu SC with M Sikhakhane SC and P May
Instructed by:	Zungu Incorporated Attorneys, Sandton Matsepe (BFN) Incorporated, Bloemfontein.