



THE ELECTORAL COURT  
REPUBLIC OF SOUTH AFRICA

**JUDGMENT**

Case No: 001/2008

No precedential significance

**THE AFRICAN NATIONAL CONGRESS**

**Applicant**

and

**THE ELECTORAL COMMISSION**

**Respondent**

**BOYISILE MAFILIKA**

**1<sup>ST</sup> Intervening Party**

**MONWABISI GODFREY MBALISWANA**

**2<sup>ND</sup> Intervening Party**

**NOMAMEENE THERESA BOTTOMAN**

**3<sup>RD</sup> Intervening Party**

**Neutral citation:** *ANC v Electoral Commission* (001/2008)[2008] (November 2008)

**Coram:** Mthiyane JA. (Ms S Abro and Ms S Moodley Members)

**Heard:** 6 December 2008

**Delivered:** 9 December 2008

**Summary:**

Municipality.

[3] The applicant was required to comply with the requirements for the submission of nomination forms which are set out in s 17(1) of Local Government: Municipal Electoral Act 27 of 2000. The section provides that a person may contest the election as a ward candidate 'only if' he or she is nominated on a prescribed form and that form is submitted to the office of the Commission's local representatives by not later than a date stated in the time table for the election.

[4] On 19 November 2008 – as required in s 11(1) of the Municipal Electoral Act – the Commission published a time table for the by-elections - the time table required registered political parties to submit nomination forms of candidates by 17h00 on 27 November 2008 to the Commission's duly appointed local representatives for that municipal area.

[5] The timetable provides in clause 1 thereof that an act required in terms of the Municipal Electoral Act to be performed by not later than a date in the timetable must be performed before 17h00 on that date, unless specified otherwise.

[6] Clause 5 of the timetable expressly requires that **by not later than 27 November 2008 at 17h00**, the nomination of a person to contest the by-election in a municipality as a ward candidate must be submitted to the Commission's local representative on a prescribed form in the prescribed manner in terms of s 17(1) of the Municipal Electoral Act.

[7] The fairness of the cut off date and the period permitted for the

submission of nomination forms are not challenged.

[8] The applicant's co-ordinator for the by-elections in the City and for the Cederberg Municipality, Mr Tyhalisisu submitted nomination forms on the applicant's behalf to the Commission's representative.

In respect of the City he submitted 8 nominations for the 8 ward by-elections without bank guaranteed cheques for the deposit as required by s 17(2)(d) of the Municipal Electoral Act. The required cheques only arrived, on the applicant's own version, at 17h10, after the cut off time.

[9] In respect of the Cederberg Municipality, Mr Tyhalisisu did not have certified copies of the identity documents of the nominees, as required by s 17(2)(c) of the Municipal Electoral Act. Copies of the identity documents were transmitted to the Commission's local representatives by telefax between 17h02 and 17h20 ie after the cut off time, which in any event, does not comply with the prescribed requirements. A certified copy of one of the nominees' identity document was received at 17h40, and original certified copies were only submitted the next day ie 28 November 2008.

[10] On the applicant's own version, s 17 of the Municipality Electoral Act and the time table were not complied with. The provisions of the Act and the timetable are peremptory and the Commission has no power to condone non-compliance with the provisions of s 17. Unlike the Electoral Act 73 of 1998 where s 28 of that Act confers power on the Commission to condone non-compliance, the Municipal Electoral Act has no corresponding provision (See *Liberal Party v Electoral Commission* 2004 (8) BCLR 810 (C). In *Liberal Party v Electoral Commission* the

Constitutional Court accepted that the Commission had no discretion to condone the late submission of candidate lists. That case dealt with s 27 of the Electoral Act which is couched in terms similar to s 17 of the Municipal Electoral Act. Based on this principle it follows that the local representatives of the Commission had no discretion to accept the late submission of nomination forms for by-elections. In the present matter it is common cause that the nomination forms were only submitted after the cut-off time. In my view this puts paid to the applicant's case.

[11] The cut off provisions in my view impose an injunction. Where one is dealing with an injunction the true enquiry is not whether there has been exact, adequate or substantial compliance but, rather, whether there has been compliance therewith. (See *Maharaj v Rampersad* 1964 (4) 638 (A) 643D -G.)

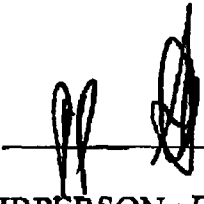
[12] To allow the kind of tardiness displayed by the applicant's representatives in the submission of nomination forms and the statutorily required attachments would create uncertainty in the electoral process. Elections are characterised by deadlines and stipulated time frames within which certain things must be done. Anything short of that would not only lower the standard of excellence the Commission has set for itself to deliver free and fair elections, but would open the door to a shambolic free for all. Such a scenario would make it very difficult for the Commission to conduct an orderly election.

[13] The decision in the *African Christian Democratic Party v the Electoral Commission* 2006 (3) SA 305 (C) does not assist the applicant. The distinguishing factor in that case is that it was found by the majority of the Court that sufficient funds, namely R10 000 had been deposited

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with the Commission timeously to enable the applicant to contest the election. In the present matter the required deposit was not paid until after the cut off time and the documents were not lodged timeously.

[14] The applicant and the Commission had no objection to the intervening parties being joined as parties to those proceedings. There is therefore no reason to refuse their application to be joined in the proceedings.

  
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KK MTHIYANE  
CHAIRPERSON : ELECTORAL COURT