



THE ELECTORAL COURT OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE ELECTORAL COURT OF SOUTH AFRICA

From: The Registrar, Electoral Court

Date: 25 November 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Electoral Court of South Africa

African Restoration Alliance v Independent Electoral Commission of South Africa (0032/24EC) ZAEC 31 (25 November 2024)

Today the Electoral Court dismissed the application for leave to appeal and with no order as to costs against the decision of the Electoral Commission of South Africa (Commission) that was handed down on 2 June 2024, dismissing the objections raised and submitted by the applicant at 20h50 on 31 May 2024, following the National and Provincial Elections that were held on 29 May 2024.

The application was brought in terms of s 20(2)(b) of the Electoral Commission Act 51 of 1996 which provides that leave to appeal against the decision of the Commission should be sought and obtained from the chairperson of the Electoral Court. In support of this application, the applicant relied on the founding affidavit deposed to Mr Jerome Benjamin Swartz, the applicant's President, who alleged that he was duly authorized person to bring the application.

On 31 May 2024, relying on s 55 of the Electoral Act, the applicant lodged an objection with the Commission concerning the outcomes of elections held at voting districts during the National and Provincial elections held on 29 May 2024. It is this decision which the applicant intended to challenge on appeal should it be granted leave to appeal. The application for leave was however late. It ought to have been lodged with this Court three days after receiving the Commission's impugned decision on Sunday, 02 June 2024. The applicant should have lodged its appeal on/or before Friday, 7 June 2024. It is, therefore, four days late.

The application for leave to appeal was late. Rule 5(1) of the Electoral Court Rules regulating the conduct of the proceedings of this Court, requires the application to be brought 'within three days after the decision has been made'. In terms of Rule 10 the consequence of 'the failure to adhere to the limits or directives of the Court is that a party in default may be barred unless the Court, on good cause shown, directs otherwise'.

As regards the prospects of success, the applicant alleged it had received further affidavits detailing numerous voting irregularities and had also received documentary evidence which indicated that it should have received at least 67 000 votes which was enough to guarantee it a seat in parliament. It went on to say it had at least 11000 (eleven thousand) party agents participating in the process across South Africa. It argued that based on the number of agents it had deployed it is improbable that it could only receive about 11000 votes. It contended that this goes to show that there was tampering of votes.

The application was opposed by the Commission. It contended that the applicant's objections were correctly dismissed due to the applicant's failure to comply with s 55 of the Electoral Act and Rule 31. The Commission pointed out that it informed the applicant to lodge an appeal with the Court in the prescribed manner if was not satisfied with its decision. The Commission further argued that the applicant should have cited other political parties who are likely to be affected by the relief sought by the applicant.

The Electoral Court held that no reasonable explanation for the delay has been given by the applicant and that any appeal would have had no prospect of success. The applicant dragged its feet. In this case, as in any election, the outcome of the elections must be announced within seven (7) days after an election as envisaged in section 57(2) of the Electoral Act. The Court rejected the applicant's contention that the announcement of the election results was 'rushed' and that the consideration of the time limits 'cannot be an overriding factor'. The announcement of the election results was prescribed by law and the Commission had to act in compliance with the said prescriptions of the law. The court accordingly dismissed the application for condonation for the late filing of the leave to appeal.

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