



THE ELECTORAL COURT OF SOUTH AFRICA

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

From: The Registrar, Electoral Court

Date: 12 June 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

Jabulani Khumalo v Independent Electoral Commission of South Africa (0025/24EC) [2024] ZAEC 20 (12 June 2024)

The applicant, Jabulani Khumalo (Mr Khumalo), seeks an order in terms of which the Electoral Commission's (the Commission's) decision to remove him and record Jacob Gedleyihlekisa Zuma (Mr Zuma), as the president and leader of Umkhonto Wesizwe political party (MKP), is declared *ultra vires*, invalid and unlawful and is set aside. In addition, he seeks an order directing the Commission to record him as the president of MKP with immediate effect.

Mr Khumalo alleges that Ms Duduzile Zuma-Sambudla (Ms Zuma-Sambudla) forged his signature and sent a fraudulent letter to the Commission informing it that Mr Khumalo has resigned and he is to be replaced by Mr Zuma as the party leader for MKP on the Commission's records.

MKP and Mr Zuma (the respondents) oppose the application on several points in limine and the merits. They deny the forgery and fraud allegations. They allege that Mr Khumalo wrote the alleged letter and signed it in the presence of Ms Zuma-Sambudla and several other witnesses and emailed it to the Commission.

The Commission abides the court's decision but filed an explanatory affidavit to explain regulation 9 of the Regulation for the Registration of Political Parties of 2004 as amended (regulation 9), which regulates the procedure to be followed when a registered political party changes its particulars and to explain its version of events. It contends that Mr Khumalo sent a letter to it requesting it to place Mr Zuma's photo on the ballot paper as the face of MKP and presidential candidate. The Commission informed him that in terms of its policy, only a party leader may appear on the ballot paper. While Mr Khumalo had expressed reluctance to change MKP particulars to reflect Mr Zuma as its leader, when the Commission insisted that that is the only way he could be placed on the ballot paper, he undertook to resolve the issue and revert. Subsequently, Ms Zuma-Sambudla who is the MKP official liaison person with the Commission sent the alleged fraudulent letter. It had no

reason to suspect that the letter was fraudulent and acted reasonably by accepting the letter under these circumstances.

The issues that arise for determination in respect of the respondents' points in limine is (a) whether the Electoral Court's jurisdiction in terms of s 20 (1) of the Electoral Commission Act 51 of 1996 is properly engaged, (b) whether Mr Khumalo has *locus standi* to bring the application, (c) whether Mr Khumalo delayed bringing the application and if so, whether the delay may be condoned or overlooked in the interests of justice. In respect of the merits, two questions arise namely; (a) whether Ms Zuma-Sambudla forged Mr Khumalo's signature in a letter advising the Commission to change the particulars of MKP to replace Mr Khumalo with Mr Zuma as its leader, and (b) whether, when it acted on the request, the Commission breached regulation 9. Lastly, this court is required to determine whether, in the event it dismisses the application, the award of punitive costs against Mr Khumalo is warranted.

In respect of jurisdiction, the court held that its review jurisdiction in terms of s 20 (1) of the Electoral Commission Act 51 of 1996 (the Commission Act) is properly engaged because a determination by the Commission whether the written notification to update MKP records complies with the procedural requirements in regulation 9 is a decision as contemplated in s 20(1)(a) of the Commission Act. It is empowered to make such a decision. The decision relates to an electoral matter because a political party is a primary mechanism through which citizens participate in an election.

In respect of *Locus standi*, the court held that as an expelled member of MKP, Mr Khumalo lacks *locus standi* to seek relief concerning the leadership of MKP.

On urgency, the court found that Mr Khumalo failed to bring the application within the 3 days required in terms of s 20(1)(b) of the Commission Act, read with Rule 6 of the Electoral Court Rules. The delay is unreasonable because it is not fully explained. A proper case for the delay to be condoned or overlooked in the interests of justice is not made.

The court determined the disputed facts on the respondents' version in accordance with the *Plascon-Evans* rule. It found that the respondents' version is well substantiated and not far-fetched. Mr Khumalo wrote the alleged fraudulent letter advising the Commission to change its records to reflect Mr Zuma as the leader of MKP. The Commission complied with regulation 9 when it acted on this request because it acted on a written notice of the change by the then MKP leader, Mr Khumalo. Regulation 9 does not require that the party leader sends the notice. Therefore, the application falls to be dismissed.

Regarding costs, the court found that a departure from the custom of not awarding costs in this court in line with the *Biowatch* principle and that an award of punitive costs is warranted because Mr Khumalo perjured himself in affidavits filed in this application, the application is frivolous, lack merits and constitutes an abuse of the court's process.

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