



THE ELECTORAL COURT OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE ELECTORAL COURT

From: The Registrar, Electoral Court

Date: 25 October 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 Supreme Court of Appeal

Umkhonto Wesizwe Political Party v The Electoral Commission of South Africa and Others (0034/24EC) [2024] ZAEC 26 (25 October 2024).

On 25 October 2024 at 11h00, the Electoral Court handed down judgment granting the Umkhonto Wesizwe Political Party (MK Party) leave to withdraw its application, with costs awarded against it. The application concerned alleged election irregularities against the first and second respondents, the Electoral Commission of South Africa (the Commission) and the Chief Electoral Officer.

After answering papers were filed by the respondents and the matter set down for hearing, the MK Party sought to withdraw their application unilaterally and without first tendering costs. It later proposed terms that included a tender of costs, which was rejected by the Commission and the Chief Electoral Officer. Instead, they sought an order barring the MK Party from reinstating similar proceedings on the same or substantially identical issues and relief without leave of the Electoral Court. The Commission also sought costs on an attorney and client scale, citing this application as another attempt by the MK Party to litigate similar allegations despite a prior dismissal by the Constitutional Court.

The Electoral Court, in its judgment, found that while the MK Party should be granted leave to withdraw its application, imposing conditions on future litigation would unjustifiably restrict its constitutional right of access to justice, which is 'foundational to the stability of an orderly society.' The Court held that the proper avenue for such restrictions would be through the Vexatious Proceedings Act 3 of 1956. However, the Court found that the MK Party's conduct throughout the proceedings warranted a punitive costs order. This included their attempt at a unilateral withdrawal of the application after answering affidavits were filed and the matter being set down for hearing, which the Court found to be procedurally defective as it failed to comply with the requirements of Uniform Rule 41, while the opposing parties had incurred substantial costs in defending the application. The Court held that this conduct constituted a significant departure from normative litigation practice.

Ultimately, the Court granted the MK Party leave to withdraw the application but imposed a punitive costs order. The MK Party was ordered to pay the Commission and Chief Electoral Officer's costs on the attorney-client scale, including the costs of two counsel. As previously agreed between the parties in the proposed tender of costs, it was ordered to pay the Democratic Alliance's costs on a party and party scale, including the costs of counsel at scale C.

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