



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 January 2025

Status: Immediate

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African Transformation Movement v Electoral Commission of South Africa and Others (035/2024EC)
[2024] ZAEC 01 (14 January 2025)

Today the Electoral Court dismissed an application by African Transformation Movement (ATM) against the Electoral Commission (the Commission) for alleged irregularities in the May 2024 National and Provincial Elections (2024 NPE).

ATM, a political party, participated in the 2024 NPE and pursuant thereto won two seats in the National Assembly, as well one seat in a Provincial Legislature. ATM's case, in a nutshell, was that, because of alleged inaccuracies and inconsistencies in the Voters' Roll, discrepancies in respect of the ballot boxes, the alleged malfunction of the Voter Management Devices (VMD's) and misconduct on the part of certain Commissioners, it could not be said that the 2024 NPE were 'free and fair'. This, in turn, meant, according to the ATM's case, that the results of the 2024 NPE, as declared by the Commission on 2 June 2024, should then be reviewed, declared a nullity and therefore set aside.

ATM also contended that s 24A of the Electoral Act 73 of 1998, as inserted by s 7 of Act 34 of 2003 and as amended by s 9 of Act 4 of 2021 (Electoral Act), should then be declared to be unconstitutional as far as the provision limits the right to vote entrenched in s 19(3) of the Constitution. (Section 24A requires, as a general rule, a voter to vote only in the voting district where she/he is registered.)

The Commission and the Democratic Alliance or DA (the respondents) opposed the application on the basis that no case was made out by ATM for the relief sought. These respondents contended that the ATM had failed to demonstrate that there were indeed such serious irregularities prior to, during and/or after the elections as to justify an order declaring the 2024 NPE to have not been 'free and fair'. The respondents raised several legal points in *limine*: non-joinder; lack of proper and effective service; lack of jurisdiction and non-compliance with the timeframes for the institution of reviews under the Electoral Court Rule 6.

The question that had to be decided by the EC was whether or not factually, there were these irregularities in the election processes complained of by ATM, and, if so, whether those irregularities were of such a material nature that they invalidated the 2024 NPE.

The EC found that the application consisted almost exclusively of a series of sweeping, vague and general allegations, none of which were supported by any or credible evidence. That the unsubstantiated averments on the founding papers of ATM were nothing more than mere assertions and expressions based on unfounded suspicions and often based on inadmissible hearsay. The allegations were noticeably denied by the Commission in its answer to the application. The Commission, as the EC agreed, further contended that the application was fatally defective because of ATM's repeated failure to appreciate and utilise the appropriate mechanisms under the Electoral Act to raise its complaints at the appropriate time.

Essentially, the EC found that ATM disregarded the requirements for a valid s 55 objection and failed to recognise that s 55 objections concerned 'voting and counting of votes, that is material to the determination of the final result of the election', which the EC pointed out was not alleged on any of ATM'S papers. Agreeing with the Commission's contentions, the EC highlighted that the mere fact that there were complaints does not prove that they were well-founded and that the elections were compromised, as ATM appeared to believe.

In dismissing the application, the EC held that factually ATM had not even begun to make out a case for the relief sought in its application; had failed to prove any of the irregularities complained of; and had not demonstrated that the alleged irregularities were material to the determination of the final result of the election. Application also dismissed on points in limine raised by the Commission and the DA, further stating that the EC bore no jurisdiction over the constitutionality of s 24A.

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