



CONSTITUTIONAL COURT OF SOUTH AFRICA

African National Congress v Chief Electoral Officer of the Independent Electoral Commission

CCT 45/09
[2009] ZACC 13

Reasons delivered: 3 June 2009
Order made: 5 May 2009

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This application was launched in the Constitutional Court on 5 May and was heard the same day. The Court granted an order upholding the ANC's appeal and stating that reasons for this decision would be furnished in due course. On 3 June 2009, the Court issued a judgment providing such reasons.

The matter concerned an urgent application for leave to appeal by the African National Congress (ANC) against a decision of the Electoral Court upholding the objection of the Chief Electoral Officer (CEO) of the Independent Electoral Commission to one of the candidates included on the ANC list for election to the National Assembly in the 2009 General Elections. The CEO objected to the candidate in question – Mr Holmes Peter Maluleka – on the basis that he was not registered on the voters' roll. She reasoned that he was consequently ineligible to be a member of the National Assembly.

The CEO's objection was initially considered and dismissed by the Electoral Commission on 22 March 2009. The CEO then appealed against that decision to the Electoral Court which, on 4 April 2009, upheld her objection. However, the Electoral Court only furnished reasons for its decision on 30 April 2009, after the general elections had already taken place and shortly before the members of the National Assembly were due to be sworn in.

As a result, the ANC launched an urgent application in the Constitutional Court for leave to appeal against the finding of the Electoral Court. The ANC argued that the matter was founded on a simple misunderstanding which arose from the fact that Mr Maluleka was issued two identity documents – one in 2000 and the other in 2006 – bearing different identity numbers. Mr Maluleka had used the first identity document to register as a voter, but had

used the second identity document to accept nomination as a candidate in the elections. When the CEO checked Mr Maluleka's second identity number against the voters' roll it did not appear, and she concluded that he was not registered on the voters' roll at all. The ANC argued that since Mr Maluleka was in fact on the voters' roll (albeit under a different identity number), the CEO's objection to his candidacy had no basis.

The CEO did not oppose the application. Instead, an explanatory affidavit was filed on her behalf stating that, had she known the true facts concerning Mr Maluleka's identity numbers, she would not have objected to his candidacy in the first place.

The Court in the reasons furnished today holds that section 96 of the Electoral Act 73 of 1998 does not oust its jurisdiction to hear electoral disputes which raise constitutional matters. Since this matter clearly implicated Mr Maluleka's right in terms of section 19(3)(b) of the Constitution to stand for election to the National Assembly, the Court held that it had jurisdiction to hear the appeal. The Court held that, on the facts set out, there was no reason to justify prohibiting Mr Maluleka from standing for election, and it consequently upheld the appeal against the decision of the Electoral Court. As costs were not sought, no costs order was made.