



MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 23 July 2021

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Electoral Commission of South Africa v Democratic Alliance (1068/2019) [2021] ZASCA 103 (23 July 2021)

In the run up the national and provincial elections in 2019, the Good Party, led by Ms Patricia De Lille, lodged a complaint with the Electoral Commission of South Africa (the Commission) that the Democratic alliance (DA) had contravened s 89(2) of the Electoral Act 73 of 1998 (the Electoral Act) and item 9(1)(b) of the Electoral Code of Conduct (the Code) in Schedule 2 to the Electoral Act, by publishing a false statement that Ms De Lille had been fired from the DA (the impugned statement). She had resigned as Mayor of the City of Cape Town in exchange for the DA withdrawing internal disciplinary charges of intimidation and misconduct against her. The Commission found that the DA had contravened item 9(1)(b) of the Code and directed it to stop making any further false statements in relation to Ms De Lille and to issue a public apology.

The DA successfully applied to the Electoral Court to review and set aside these decisions by the Commission. The Electoral Court held that it did not matter whether or not the impugned statement was false, as item 9(1)(b) of the Code was

inapplicable because the impugned statement did not impact on the mechanics or conduct of an election. The Commission also was not empowered to grant the remedies that it did. The Commission appealed to the Supreme Court of Appeal (SCA).

Today the SCA dismissed the appeal against the Electoral Court's order. It found that the impugned statement was not false because Ms De Lille was forcibly expelled from the DA. The SCA held that the Commission has no power under the Constitution, the Electoral Act or the Electoral Commission Act 51 of 1996 (the ECA) to make a finding that the Electoral Act or the Code has been contravened or to impose a sanction for such contravention. At best, the Commission is empowered, in terms of s 103A of the Electoral Act, to resolve a complaint about an infringement of the Code through conciliation. The administrative penalties provided under s 96 of the Electoral Act, such as prohibiting a party from using public media, holding public events or disqualifying its candidature entirely, can be imposed only by courts designated for that purpose by the Electoral Court. Item 94 of the Code states that no person or registered party may contravene the Code or fail to comply with its provisions. Section 97 of the Electoral Act makes this an offence subject to a fine or imprisonment for a period not exceeding 10 years. Consequently, only a criminal court has the power to decide whether a provision of the Code has been contravened and to impose a sanction for such contravention. The Commission has no power to do so.