



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: **3583/2023**

In the matter between:

**INDEPENDENT SOUTH AFRICAN NATIONAL
CIVIC ASSOCIATION**

APPLICANT

and

BAKOENA STEPHEN RAMOSIE

RESPONDENT

In re:

**INDEPENDENT SOUTH AFRICAN NATIONAL
CIVIC ASSOCIATION (ISANCO)**

APPLICANT

AND

**INDEPENDENT ELECTORAL COMMISSION
(IEC)**

RESPONDENT

JUDGMENT BY:

MOLITSOANE, J

HEARD ON:

2 November 2023

DELIVERED ON:

5 February 2024

- [1] *“In this matter a picture emerges of a distasteful pursuit of position and power, resulting in serious in-fighting amongst national office bearers, who are senior members of the applicant. It emerged from the papers that there have been several High Court applications made by Ramosie and the first respondent (Dr Luyenge) in the name of the applicant, in the Eastern Cape and in the Free State, all with the aim of each party attempting to oust the other, or other members of the applicant.”*¹The remarks by my sister Naidoo J, made about six months ago with reference to Dr Ramosie and Dr Luyenge still hold true to their claim in ISANCO. The pursuit of position, power and attempt to oust each other continues unabated in these proceedings. The end result is that, the authority of each party, like in this case, to represent the Applicant or bring any legal proceedings is challenged.
- [2] In these proceedings the applicant seeks in essence rescission of an order of this Court granted on 27 July 2023 by my sister Reinders J. Looking at this application and the order of Reinders J, the anomaly becomes apparent. In the main application before Reinders J, in which Ramosie deposed to an affidavit, the Applicant is cited as ISANCO. In these, Luyenge also deposed to a founding affidavit, both profess to have been authorised by ISANCO. The anomaly arises on the fact that the Applicant sought an obtained an order which had the effect of removing Luyenge as the party leader and its contact as registered at the Independent Electoral Commission. The relief sought would have the effect of reinstating him as the party leader and contact person and thus rescinding the very order the applicant sought in the first place. The reason for this lies in the confusion of which ISANCO is before Court; is it the one led by Luyenge or the one led by Ramosie.
- [3] The preliminary issue in this application is whether Luyenge is authorised to bring this application on behalf of the applicant. Luyenge has attached a

¹ Independent South African National Civic Organization v Zukile Luyenge (5374/2022) [2023] ZAFSHC 249(20 June 2023) para [13].

resolution dated 2 August 2023 which according to him authorises him to bring these proceedings. Ramosie contends the validity of the resolution.

[4] Ramosie contends that he is authorised to oppose these proceedings and his authority purports to emanate from the meeting of the applicant held on 9 June 2023. According to Ramosie, the Applicant suspended Luyenge by letters dated 29 November 2021 and 20 December 2021. He was then expelled as a leader and member on 29 December 2021, this according to the respondent. Relying on the judgment of the High Court in Makhanda, the respondent contends that the said judgment noted that Luyenge was no longer a member of the applicant. Correspondence was also forwarded to Luyenge confirming the said expulsion.

[5] In my view the issue of the authority to represent ISANCO cannot be resolved on the papers. The papers as they stand raise serious dispute of fact incapable of resolution on the papers. What compounds the problem is that Luyenge on behalf of the applicant in the rescission application has also failed to file a replying affidavit as ordered by my sister Van Zyl J on 11 August 2023.

[6] The evidence as contended in the affidavit of the respondent appears to be that Luyenge was expelled as a member of the applicant. In my view, the sentiments of the Court in Makhanda as well as the correspondence confirming the expulsion lends suspicion that Luyenge is no longer a member of the applicant. In the absence of a contrary view to the answering affidavit, I must accept evidence as contended by the respondent. The decision to expel him has not been reviewed and set aside. I accordingly cannot find that he is properly authorised in these proceedings. This application cannot succeed.

[7] In the absence of a finding as to who is authorised to act for the applicant in these proceedings, it will not be correct to give any cost order against any party herein. I accordingly make this order:

ORDER

1. The rule nisi granted on 11 August 2023 is discharged;
2. There is no order as to costs.

P E MOLITSOANE, J

On behalf of the Applicant: Adv. Nonkonyane
Instructed by: Gcasamba Attorneys
BLOEMFONTEIN

On behalf of the Defendant: Mr. Kleingeld
Instructed by : Kleingeld Attorneys
BLOEMFONTEIN