



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 number: 3041/2018

In the matter between:

MATSHEPO RAMAKATSA

1st Applicant

LEBEKO MAILE

2nd Applicant

THEMBA MVANDABA

3rd Applicant

SHASHAPA JOSHUA MOTAUNG

4th Applicant

and

AFRICAN NATIONAL CONGRESS

1st Respondent

MEMBERS OF THE PROVINCIAL

2nd Respondent

EXECUTIVE COMMITTEE OF THE AFRICAN

NATIONAL CONGRESS IN THE FREE STATE

HEARD ON: 07 FEBRUARY 2019

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 21 FEBRUARY 2019

BACKGROUND HISTORY

- [1] Various branches of the ANC in the Free State experienced discord and rivalry between two opposing factions, the so-called “pro-Magashule” and “anti-Magashule” factions.
- [2] During 2017 a provincial conference (PC) was scheduled for the Free State ANC to be held from the 1st to 3rd December 2017. That necessitated the various branches of the ANC in the Free State to convene and conduct branch general meetings (BGM) so as to elect delegates to the PC.
- [3] Some members of some of the branches were of the opinion that some of the BGM’s were held irregular which tainted the legality of such meetings. They brought an application for a declarator that some of the meetings in certain specific branches were irregular, unlawful, unconstitutional and/or in breach of the ANC constitution, which would affect the legality of the PC. That application (the first application) was successful in relation to some 28 wards of the ANC in the Free State. The application was heard by a full court and the orders of the majority handed down on 29 November 2017. (The first order).
- [4] The first order declared the meetings in 28 of the contested wards unlawful and the affected wards were specified. The decisions taken at the affected meetings were declared null and void. The majority of the court *inter-alia* issued the following order:
- “4. In holding that the aforesaid meetings were irregular, unlawful, unconstitutional and/or in breach of the ANC constitution, the Provincial Conference of the ANC, Free State, scheduled for 1 to 3

December 2017, will be a nullity and is not (to) be held until the aforesaid meetings have been held in a lawful manner and in accordance with the constitution of the ANC.”

- [5] It is with this part of the order that the minority dissented, in effect holding that such order would be premature.
- [6] As a result of the first order, attempts were made to rerun the affected BGM's from 6 to 9 December 2017 and the PC rescheduled to be held on 10 and 11 December 2017. Still dissatisfied with the lawfulness of the rerun BGM's, aggrieved members of the ANC branches voiced their objection to proceeding with the rescheduled PC. The PC was however proceeded with and concluded.
- [7] A further urgent application was brought by aggrieved members, seeking to void the PC and the resolutions and outcomes emanating therefrom. (The second application). This application was also heard by a full bench. The application was premised on alleged irregularities in the rerun of some of the affected wards. Seven of the wards affected by the first order were not included in the second application. The applicants in the second application were aggrieved in respect of 21 of the wards affected by the first order. The order in the second application was handed down on 15 December 2017 (the second order). The second order invalidated the BGM's of 14 of the 21 wards concerned and invalidated the Free State PC held on 10 and 11 December 2017.

- [8] As a result of the second order, attempts were made to reconvene BGM's in the 14 wards affected by the second order. Eventually the Free State provincial conference was convened and scheduled to be held on 18 and 19 May 2018. A large number of members of the different branches lodged a petition in an attempt to dissuade the ANC from proceeding with the PC as scheduled. That notwithstanding, the PC was held, decisions taken and office-bearers elected.

THIS APPLICATION

- [9] Being aggrieved by the fact that the PC was proceeded with in May 2018, the present applicants lodged a new application which was issued on 15 June 2018. In this application which I heard on 7 February 2019 the applicants seek the following orders:

- “2. A declaration that the Provincial Conference for the Free State province that took place on the 18th and 19th of May 2018 was held in violation of the Court Order of the 29th of November 2017 under case number 5942/2017 and that the said Provincial Conference, decisions/resolutions and/or outcomes are unlawful and unconstitutional;
3. That the aforementioned Provincial Conference, its decisions/resolutions and/or outcomes are a nullity including the appointment of the Provincial Executive Committee;
4. A declaration at the First Respondent is in contempt of court.”

- [10] The applicants also seek a punitive cost order.

- [11] It should be noted that the second applicant in this application was an applicant in the first application and the first applicant in this

application was an applicant in the second application as well. It is obvious that, although different applicants feature in the different applications, all the applications including this one has been brought in the furtherance of the same grievances and in effect constitute continuation of the same dispute.

- [12] In the founding affidavit the deponent on behalf of the applicants describes the purpose of the application as being to seek a declaration that the PC was held in violation of the first order and the resultant relief.
- [13] It is alleged that the application is based on the fact that the further BGM's were not held lawfully, that the respondent's conduct amounts to a breach of the ANC constitution and infringement of members rights in terms of section 19 of the Constitution of the Republic of South Africa and infringes on the applicants common-law and contractual rights flowing from their membership of the ANC. It is alleged that the process of authorising the PC was tainted by conflict of interest, bias, unfairness and mala fides.
- [14] In this application the applicants rely on alleged irregularities concerning the following wards;
- Thabo Mofutsanyana: wards 3,5,6,7,8,9,11,12,13,14,17,19,22, and 23.
 - Lejweleputswa: wards 3,7 and 25.
 - Mangaung: wards 5,8,11 and 45.

- [15] Wards 3, 7 and 12 Thabo Mofutsanyana, and ward 25 Lejweleputswa were subject to scrutiny in the second application and not voided in the second order.
- [16] Wards 8 and 13 Thabo Mofutsanyana which formed part of the first order was not questioned in the second application and also not wards 11 and 45 Mangaung.
- [17] Ward 17 Thabo Mofutsanyana did not form part of any of the previous applications.
- [18] The applicants now seek to revive the question as to legality of the BGM's in those wards which were already considered in the second application and in wards not complained of in the second application. To allow that will open the door for repeated applications, each of which for a different ward and will lead to a piecemeal adjudication of what is in essence the same dispute. Those wards already considered in the second application and not voided then, cannot be open for reconsideration now. Those wards which they decided not to question in the second application when they had the opportunity of doing so, clearly signified their satisfaction and lack of concern in regard to those. It is not in the interest of justice and finality of litigation to allow the applicants to deal with their complaints in such a piecemeal and haphazard way. The only wards that remained open for attack are those 14 that were voided in the second application and order.

[19] I was a member of the full bench in the second application and deem it necessary to mention that, in respect of a number of the wards complained of in that application, the answering affidavits handed in on behalf of the respondents were not signed or attested and therefore not regarded as admissible evidence. The allegations on behalf of the applicants in that application therefore largely remained unanswered. In this application there are proper admissible answering affidavits. I therefore have to apply the well-known Plascon-Evans rule in the adjudication of this application.

VIOLATION OF THE COURT ORDERS

[20] The complaints of the applicants in regard to the 14 wards that were voided in the second application can be summarised as;

- insufficient or no notification of rerun BGM's;
- no further reruns of meetings done at all;
- meetings concluded without being quorate;
- one branch having less than the required minimum membership numbers;
- non-members participating and
- irregular and questionable attendance registers.

[21] I do not intend to deal with each branch and each complaint in detail. I will rather deal with complaints and allegations in respect of some wards, the respondents' answers thereto and the applicants' response as examples of the general disputes. The allegations contained in the founding affidavit on behalf of the applicants are obviously based on information allegedly received from the relevant members of the specific wards, who are named

in the affidavit. No confirming affidavits were attached to the founding papers. They were only attached to the replying affidavits and purport to confirm the founding affidavit. They do not confirm the replying affidavit.

[22] The following wards in the Thabo Mofutsanyana area are used as examples;

- Ward 5. Applicants allege that Mr Motaung, member of the ward alleges that only 30 members attended the meeting. In answer the second respondent attaches an attendance register containing 60 signatures and maintains that some attendees refused to sign the register.

- Ward 6. The applicants allege that this ward had only 84 members, less than the minimum requirement of 100. It is also alleged that the names of some of the members did not appear on the register. In answer the second respondent alleges that the branch consists of 103 members and that three reruns of the BGM were held respectively on 11 February 2018, 21 March 2018, both of which were not quorate. The meeting was postponed 13 May 2018 when a quorum was reached, 72 members voted and delegates elected. The allegation by applicants that non-members were allowed to attend is denied by respondents.

- Ward 14. Mrs Moorosi allegedly reports no further meetings were held after 7 December 2017. Second respondent avers that a rerun of the BGM was held on 25 February 2018 to which she was personally invited but refused to sign a receipt of the invitation. In reply the applicants allege that the meeting held on 25 February 2018 was not conducted lawfully.

- Ward 22. The applicants allege that the last meeting held in this ward was on 6 December 2017 and no further meetings were convened. Second respondent alleges that a successful rerun of the BGM was held on 25 February 2018. In reply the applicants allege that the last mentioned meeting was not held lawfully because the membership list was based on an outdated audit.

[23] The two wards in Mangaung also serve as examples;

- Ward 5. Applicants allege that no further meetings were held after the previous court orders. In reply second respondent alleges that a rerun was convened for 18 February 2018 but the meeting was disrupted by the third applicant resulting in the meeting not being quorate. A further meeting was held on 12 March 2018 where the same happened. The last meeting held on 13 May 2018 was also disrupted and thus cancelled. In reply the applicants allege that the third applicant was not notified of such meetings, no formal attendance register was held at the meeting of 18 February 2018 and notice of the meeting of 13 May 2018 was inadequate.

- Ward 8. The applicants allege that a meeting was scheduled for 12 May 2018 and, not being quorate, postponed to 16 May 2018 and a quorum again not attained. Respondents allege that four reruns were scheduled respectively on 12 February 2018, 24 February 2018 and the two dates referred to by the applicants. None of the meetings were quorate.

[24] Ward 3 in Lejweleputswa is another example. The applicants allege that no further meetings were scheduled or held after the second order of 15 December 2017. The respondents allege that a

successful BGM was scheduled and held on 19 February 2018. In reply the applicants aver that the meeting was unlawful in that 31 of the attendees were not members in good standing.

[25] According to the respondents various attempts were made to schedule and hold reruns of the BGM's in respect of all 14 of the wards affected by the second order. Some were successful and delegates elected, some did not reach a quorum and therefore no delegates were elected and some were disrupted by disgruntled members. These allegations are supported by documentary evidence, inter-alia notices of meetings and attendance registers. The allegations of the applicants to the effect that no additional meetings were held in some of the affected wards after December 2017 are conclusively gainsaid. The veracity of the information given to the applicants by the relevant members is therefore suspect. It is only in reply that the applicants raise alternative attacks on the legality of the meetings by inter-alia questioning the regularity of the attendance registers and the question whether attendees were members in good standing. As far as the allegations in the reply are based on information obtained from the relevant branch members, such are not confirmed in their Supporting affidavits which only confirms the founding affidavit.

[26] If the allegations of the respondents are accepted, various attempts were made to reconvene BGM's at all of the affected branches. Some have admittedly not resulted in a successful outcome due to lack of quorum or disruption, even after repeated attempts.

- [27] Paragraph 4 of the first court order could never have intended an obligation to not only rerun the BGM's but also to see that it results in a successful outcome. If a properly convened meeting did not reach a quorum or is disrupted by disgruntled members, the fate of such meeting is not in the control of the respondents. Unfortunately, paragraph 4 of the first order opened the door for dissatisfied members to create apparent irregularities and then rely on those so as to invalidate the meetings and, as a result, also the Provincial Conference. That could never have been the intention of the majority in the first order.
- [28] The applicants also complain that the rerun of the BGM's were done at such a late stage that no room was left for postponed meetings or enough time to seek internal relief by means of the internal dispute processes. In this regard the deponent to the founding affidavit stated; "For the vast majority of the 28 affected branches, no attempt was made to rerun the BGM's..... In few branches where BGM's were held, they were only scheduled to take place in May 2018, one week prior to the Provincial Conference."
- [29] As is apparent from the examples relating to the relevant affected branches referred to above, if the respondent's version is to be accepted, the aforesaid quoted allegations are simply false and misleading. The meetings in May followed upon various prior attempts to conclude successful meetings.

CONFLICT OF INTEREST AND BIAS

[30] The applicants allege that the secretary general of the ANC, Mr Magashule is conflicted as far as disputes surrounding the lawfulness of the provincial conference are concerned. Therefore, he should not have been allowed to preside over disputes in that regard. No examples of such instances are provided. In view of that, no basis exists for a finding that the alleged bias affected the lawfulness of the PC.

MEMBERSHIP AUDIT

[31] Applicants allege that the membership status relating to the affected branches were outdated and not verified. It is also stated that the guidelines for regional and provincial conferences require an audit of branches and membership not more than nine months before the conference. According to them the last audit was done in April 2017. The second respondent maintains that an audit and verification of the affected branches was done at the beginning of February 2018 as appears from the report of the National working committee annexed. The first respondent alleges that a provincial audit was completed on 10 December 2018 and refers in that regard to what appears to be an audit summary. That document is referred to as annexure ES8 but during argument it became clear that the document is the annexure marked ES7. It however is not dated. The argument on behalf of the applicants was advanced in the mistaken belief that the said annexure was not annexed. Due to that, the authenticity and date of the document was not addressed.

If an audit was done in December 2017, that disposes of the applicant's complaint.

NOTICE TO DELEGATES

[32] Applicants contend that the PC was also unlawful due to the fact that no or insufficient notice was given to duly elected delegates. It was alleged that Mr SJ Motaung, the chairman of a branch and elected delegate was only notified by SMS the morning that the PC was due to commence. The branch secretary Me V Makafu, also a delegate, was also not notified. Mr G Mokotso, branch chairman and delegate received no notification. Second respondent alleges that both men attended a meeting of the Regional General Council held on 13 May 1918 where the PC was discussed. Second respondent claims that they all were notified and were aware of the PC by 7 May 2018. These allegations by respondents were not answered to in the reply.

CONTEMPT OF COURT

[33] The applicants seek an order declaring the first respondent to be in contempt of court. That is sought on the basis of the alleged violation of paragraph 4 of the first court order. Again, if the version of the respondents is to be accepted, the respondents went to great lengths in their efforts to comply with the order. There would be no foundation for a finding that they acted in wilful disregard of the order.

CONCLUSION

[34] I have carefully considered the various allegations. There is no basis on which the allegations of the respondents can be found to be baseless, patently false, fictitious or unsubstantiated. Their material allegations are to a large extent substantiated by documentary evidence. The matter has therefore to be adjudicated on the basis of the acceptance of that evidence.

[35] The disputes raised by the respondents are real and material. To the contrary, material allegations made by the applicants were clearly unfounded, if not patently false. The main thrust of the applicant's case related to the alleged non-compliance with the first order. In that regard it was stated that only a few of the affected branches held rerun BGM's and then only in May 2018. That is clearly far from the truth and in stark contrast with reality.

[36] In discussing the various issues herein-before I have already intimated that, should the respondent's version be accepted, the applicants cannot succeed. That applies to all the aforesaid issues.

COSTS

[37] All the parties sought costs on a punitive scale. I have already pointed out that the applicants purported to revive issues relating to wards that have already been dealt with in the previous applications and not open to reconsideration. That was blatantly opportunistic. However, I am not convinced that, in all the circumstances of this matter, a punitive order is called for or justified. There is however no compelling reason why costs should not follow the result. I am not convinced that the application was

motivated by a bona fide attempt to vindicate the applicants' constitutional rights instead of attempting to score political points in the factional rivalry. Moreover, the applicants relied on half-truths, not mentioning the material fact that various rerun BGM's were scheduled and held in almost all of the affected wards.

[38] The applicants enrolled the matter for hearing on the 6th December 2018. Respondents objected to the set down as being irregular. My learned colleague on the 6th December 2018 ordered the application to be removed from the roll and (curiously) made an alternative order to the effect that the notice of set down is set aside as irregular. Costs were reserved. I accept that the aforesaid alternative order served as the basis for the removal from the roll. In view of that it follows that the wasted costs were caused by the irregular set down and should be borne by the applicants.

[39] In the result, the application is dismissed in *toto* with costs, including the costs occasioned by the employment of two Counsel where so employed, including the costs reserved on 6th December 2018.

A. F. JORDAAN, J

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