



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

**CASE NO.: 2026/068221**

In the matter between:

|                             |                  |
|-----------------------------|------------------|
| <b>LWAZI ROTYA</b>          | Applicant        |
| <b>SINETHEMBA MPANDE</b>    | Second Applicant |
| <b>NOMPUMELELO MZOTHTWA</b> | Third Applicant  |

and

|                                                                            |                   |
|----------------------------------------------------------------------------|-------------------|
| <b>PROVINCIAL EXECUTIVE COMMITTEE OF<br/>THE AFRICAN NATIONAL CONGRESS</b> | First Respondent  |
| <b>AFRICAN NATIONAL CONGRESS</b>                                           | Second Respondent |
| <b>FIKILE APRIL MBALULA</b>                                                | Third Respondent  |
| <b>LULAMA NGCUKAYITOB</b>                                                  | Fourth Respondent |

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**REASONS FOR THE ORDER  
GRANTED ON 26 MARCH 2026**

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**METU AJ**

*What is the relationship between democracy and playfulness? At a time when our cultural democracies are facing an existential crisis, with electoral authoritarian rule becoming far more normalised (Carethers & Press 2022), can participatory, playful and creative forms of citizen assemblies strengthen democratic resistance?*<sup>1</sup>

## INTRODUCTION AND BACKGROUND

[1] Given the circumstances, exigencies of time, the complexity of the case and the importance of the legal principles involved, I reserved giving reasons for the order I granted on 26 March 2026 (cur adv vult). Invariably, I now provide the reasons.

[2] In providing reasons, I am mindful of the dicta in *NDPP v Naidoo & Others*, where Mpati P et Tshiqi JA at paragraph 10 aptly stated<sup>2</sup>:

“Persistent requests for reasons for an order should not be a source of irritation for a judge. This much was made clear by this court in **Pharmaceutical Society of South Africa (Pty) Ltd v Tshabalala-Msimang NO; New Clicks South Africa (Pty) Ltd v Minister of Health** 2005 (3) 238 (SCA) at 260G to 261H, where the following dictum appears:

‘One does sense that the Court below was irritated because the applicants had the temerity to ask for a quick disposition of the applications for leave. There are some who believe that requests for “hurried justice” should not only be met with judicial displeasure and castigation but the severest censure and that any demand for quick rendition of reserved judgments is tantamount to interference with the

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<sup>1</sup> Polonyi, R. “Democracy at play: making ‘theatre as politics’ (and not ‘political theatre’)”. 3 Sept 2025.

<sup>2</sup> [2011] 2 All SA 410 (SCA).

independence of judicial office and disrespect for the Judge concerned. They are seriously mistaken on both counts. First, parties are entitled to enquire about the progress of their cases and, if they do not receive an answer or if the answer is unsatisfactory, they are entitled to complain. The judicial cloak is not an impregnable shield providing immunity against criticism or reproach. Delays are frustrating and disillusioning and create the impression that Judges are imperious. Secondly, it is judicial delay rather than complaints about it that is a threat to judicial independence because delays destroy the public confidence in the judiciary. There rests an ethical duty on Judges to give judgment or any ruling in a case promptly and without undue delay and litigants are entitled to judgment as soon as reasonably possible’.

[3] The Applicants approached this Court on a fast lane seeking to bypass standard court timeframes for immediate relief on the basis that the matter cannot wait for a turn on the ordinary roll. Hardly two (2) hours after delivering the order, a notice of application for leave to appeal was delivered. I resist the temptation of delving into the application for leave to appeal.

[4] The Applicants nailed their colours on the mast, as it were, by premising their claim on three (3) grounds, namely that the Provincial Elective Conference of the African National Congress (“ANC”) for the Eastern Cape Province<sup>3</sup>:

4.1 was unconstitutional in that it was in breach of Section 19 of the Constitution of the Republic of South Africa, Act 108 of 1996 (“the Constitution”);

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<sup>3</sup> CaseLines, Folder 001-3 at para 2.2.1 to 2.2.3.

4.2 was unlawful in that it was in breach of their contractual rights as governed by the Constitution, rules; policies and directives of the ANC; and

4.3 violated the ANC Constitution and the ANC's guidelines for ANC BGMs, BBGMs, Regional, Provincial and National conferences as adopted by the National Executive Committee ("NEC").[my underlining]

[5] Judicial officers are obliged to furnish adequate reasons to explain how and why they arrived at certain decisions. Court proceedings are open to the public and decisions are given in public; the conduct of judicial officers is open to scrutiny. This allows the public to use their democrats to comment or criticise the judgment of our courts<sup>4</sup>.

[6] Principles of open justice, openness, transparency, responsiveness, and accountability demand the furnishing of reasons for judgment or order, which serves the important objective of demonstrating to interested parties that a judicial officer applied his/her mind to the issue before him/her and, therefore, that the judgment is not arbitrary. This is what is sought to be achieved in these reasons.

[7] The Fourth Respondent did not participate in these proceedings. Whenever I make a collective reference to Respondents, that would be in respect of the First, Second and Third Respondents unless the context indicates otherwise.

## **ISSUES**

[8] Is the matter sufficiently urgent to be hit and determined as such as contemplated in Rule 6(12) of the Uniform Rules of Court ("URC")?

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<sup>4</sup> |S v Mathebula 2012 (1) SACR 374 (SCA), S v Mokela 2012 (1) SACR 431 (SCA) at paras 11-13.

[9] Do the Applicants have the necessary locus standi to institute the application?

[10] Is the defence of issue estoppel available to the Respondents and, as such, render the Applicants unsuited for the relief they seek?

[11] Are the Applicants suited to relief, inter alia, on an interim basis, an interdict of the Provincial Elective Conference of the ANC for the Eastern Cape Province?

## **NATURE OF THE RELIEFS SOUGHT**

[12] The reliefs sought by the Applicants can be lumped and grouped as:

12.1. declarators;

12.2. directives; and

12.3. the alternative prayer for an interim interdict.

[13] In toto, the Applicants prayed for ten (10) orders, with the eleventh (11th) being an alternative relief. For the sake of brevity, I will thematically deal with the reliefs sought under the rubric of the above groups.

## **GROUND FOR RESISTING THE APPLICATION**

[14] The First to the Third Respondents resisted the application on various grounds, which can be summarised as follows:

14.1. the Applicants have substantial redress in due course;

14.2. the urgency was self-created;

14.3. the Applicants provided unreasonable timelines;

14.4. the application would, in any event, fail on the merits;

14.4.1. there was a genuine dispute of facts raised by the Respondents, which created serious doubt on the establishment of a prima facie right, inter alia:

14.4.1.1. the ANC's Eastern Cape Province did not hold the conference more than once in a cycle period of four (4) years; and

14.4.1.2. the Respondents deny that the verification report has inaccuracies;

14.4.1.3. the Respondents deny the analysis made by the First Applicant with regard to the branches listed;

14.4.1.4. the Applicants do not reside or did not participate in the wards which are the subject of the complaints;

14.4.2. the First Respondent took a decision that no structure would be disbanded, which includes the BECs and when they held the BBGMs; and

14.5. the issue raised in this application had been decided before, therefore the defence of issue estoppel was available to the Respondents.

## APPLICABLE LEGAL FRAMEWORK

### *DISCRETIONARY POWERS OF THE COURT*

[15] Did the Applicants abuse Rule 6 (12)? This is a pertinent question this Court must consider. Coetzee J famously remarked, as the very first sentence of his judgment in *Luna Meubel Vervaardigers (Edms) Bpk V Makin And Another (T/A Makin's Furniture Manufacturers)*<sup>5</sup> that:

“Undoubtedly, the most abused Rule in this Division is Rule 6 (12)”.

[16] It is pivotal that our courts be alive to the fact that not all matters can be heard in the ordinary course, as the prejudice, damage, and suffering of the parties may warrant immediate attention.

[17] I am therefore called upon to determine whether this matter warrants jumping the queue for immediate attention.

### TEST FOR URGENCY

[18] The test for urgency was eloquently formulated in *East Rock Trading (PTY) Ltd, and Another v Eagle Valley Granite and Another's*<sup>6</sup>, where Justice Notshe AJ held that:

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<sup>5</sup> [1977] 2 All SA 156 (W).

<sup>6</sup> (11/33767) [2011] ZAGPJH 196 at para 6.

“The import thereof is that the procedure set out in Rule 6(12) is not for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course”.

[19] Du Plessis J in *ZA Online Store (Pty) Ltd T/A iStore v Tothill*<sup>7</sup>, quoted *East Rock Trading* with approval, where the test for urgency was explained as follows:

“The notion of ‘substantial redress at a hearing in due course’, as contemplated in Rule 6(12)(b), requires that the remedy be not merely available, but also effective and meaningful in the circumstances. The question of harm is not the pivotal question, but an absence of substantial redress in due course...”

[20] Du Plessis J laid down the steps in a test for urgency at paragraph 39 as follows:

“The primary question the court must ask is whether the applicant can obtain substantial redress in due course. If the answer is no, the matter may be enrolled on the urgent roll. Only once that threshold is crossed do secondary considerations arise. These include whether the applicant unduly delayed launching the application, whether the procedural timeframes were unreasonably truncated, whether there was non-compliance with the court’s practice directives, whether notice to affected parties was adequate, and broader considerations of the administration of justice. While these factors are relevant, they cannot displace the core requirement under Rule 6(12)(b).

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<sup>7</sup> 2026 (1) SA 627 (GJ).

Procedural imperfections should not bar urgent relief where warranted, unless they show that the matter is not genuinely urgent or that the non-compliance is so severe that it undermines the orderly administration of justice.”

[21] This is an objective test. The Applicants canvas and outline the grounds upon which they seek an injunction of this Court on an urgent basis. In paragraphs 129 to 142 of the founding affidavit, the Applicants outline the basis upon which this matter must be treated as one of urgency. I must add that grounds for urgency can be gleaned beyond these paragraphs, as a closer reading of paragraphs 35 to 42 of the founding affidavit shows. For the sake of brevity, I will not repeat here the contents of the said paragraphs.

[22] Guidance on the ascending order of urgency is found in *Luna Meubel Vervaardigers. An applicant seeking urgent redress from the court must make out a case for urgency in the founding papers*. The degree of urgency will be considered by the court when deciding whether, and to what extent, it will condone non-compliance with the ordinary rules of procedure. This is what I did.

[23] To illustrate the point on degrees of urgency, *Il & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Another*<sup>8</sup> tells us:

“Should the matter be too urgent for affidavits to be prepared, the court can condone non-compliance with rule 6 (12) in terms of its powers under rule 27. Matters of extreme urgency can thus be brought before the court at any time, day or night.”

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<sup>8</sup> [1981] 2 All SA 378 (C).

[24] The Respondents complain about what they refer to as ‘contrived truncated timelines’. Axiomatically, this is the cornerstone of this application, wherein the Applicants lament<sup>9</sup>:

“...various material irregularities which occurred during the pre-conference period ...relating to the auditing of branch membership, branches being allowed inadequate time for remedying any errors found, insufficient time being allowed for appeals...” [my underlining].

[25] Having looked at the circumstances under which the application is brought, I am satisfied that the Applicants explicitly set out facts in support of why the matter cannot wait to be heard in the normal motion court roll.

[26] I disagree with the Respondents, wherein at paragraph 10 of their short heads of argument, it is suggested that the Applicants “*waited until the last minute to defeat the rights of opponents*”. It cannot be said that the Applicants sat on their laurels, having regard to the fact that they maintain a daily account of activities following the trigger of the dispute<sup>10</sup>.

[27] In conjunction with whether the Applicants delayed in seeking this Court’s injunction, I also considered whether they would not have substantial relief in due course.

[28] The Respondents contended that the Applicants could have the process reviewed and set aside if it is later found to be flawed. I am not persuaded that the review would provide a substantial relief, given the nature of the complaints, which are the substratum upon which the disputes relate.

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<sup>9</sup> CasLines, Folder 004-13 (FA at 25.2).

<sup>10</sup> CaseLines, Folder 004-52 to 004-54 (FA at paras 135 to 141).

[29] In the premise, I am of the view that the matter deserves to be heard and determined as one of urgency.

### *ISSUE ESTOPPEL*

[30] The defence of *issue estoppel*, if successful, prevents a party in proceedings from contradicting a finding of fact or law that has already been determined in earlier proceedings between the same parties (or their privies) – provided that the determination was central to the decision in those proceedings. It is a component of *res judicata*. There must be a final judgment

[31] *Issue estoppel* also applies when, in a subsequent case, different relief based on different causes of action is sought if it involves the determination of the same issue of fact or law. The dictum in *Ekurhuleni*<sup>11</sup>, where it was held as follows: -

‘...the submission that *res judicata* does not apply because of the lack of sameness in the cause of action is misconceived. Sameness is determined by the identity of the question previously set in motion’

[32] I find that there is no central issue between this matter and the one that the Respondents rely on, which was finally determined. This defence must fail.

### *LOCUS STANDI*

[33] The Respondents contended that none of the Applicants alleged that they were personally affected by the complaints, as raised in the founding papers. Properly construed in terms of the accepted canons of construction, the Respondents were putting in issue the Applicants’ *locus standi in iudicio*.

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<sup>11</sup> Nkabinde ADCJ (as she then was) in *Ekurhuleni Metropolitan Municipality v Germiston Municipal Retirement Fund* 2017 (6) BCLR 750 (CC) at para 31.

[34] In *Watt v Sea Plant Products Bpk*<sup>12</sup>, it was held that *locus standi in iudicio* is an access mechanism controlled by the court itself. The general requirements for *locus standi* are:

34.1 the plaintiff must have adequate interest in the subject matter of litigation. This is usually described as adequate interest in the subject matter of litigation;

34.2 the said interest must not be remote;

34.3 the interest must be actual, not abstract or academic; and

34.4 it must be a current interest and not a hypothetical one. (See: *Four Wheel Drive CC v Leshni Rattan NO* [2018] ZACA 124 at para 7).

[35] *Locus standi* is described in LAWSA (The Law of South Africa) LexisNexis JA Faris et al., Durban 2022, as follows:

“He who has a right to sue in an action is said to have a locus standi in such action, and vice versa. “Everyone has a right to be heard in his own cause, and no one, save a qualified practitioner, has a right to be heard in the cause of another” (per SEARLE, JP in *Rescue Committee, DRC v Martheze* 1926 CPD 300). The test is, “has the person appearing a direct personal interest in the suit”. In that case, it may be considered as ‘his cause’” (ibid).”

[36] In *Amler’s Precedents of Pleadings. LexisNexis. LTC Harms et al. 2018* on page 248, the following is said:

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<sup>12</sup> [1998] 4 All SA 109 (C) at 113H.

“The question of ***locus standi*** is in a sense procedural, but it is also a matter of substance. It concerns the sufficiency and directness of a person’s interest in the litigation to be accepted as a litigating party. It is also related to the capacity of a person to conclude a jurat act. Sufficiency of interest depends on the facts of each case and there are no fixed rules.”

[37] In *Jacobs v Waks* 1992 (1) SA 521 (A) at page 534D; *Gross v Pentz* [1996] 4 All SA 63 (A), 1996 (4) SA 617 (A). The general rule is that it is for the party instituting proceedings to allege and prove its locus standi, and the onus of establishing it rests on that party. It must accordingly appear ex facie the founding papers that the parties have the necessary legal standing (*locus standi in iudicio*).

[38] In this instance, I find that the Applicants have the necessary legal standing to institute this application.

#### ***NON-COMPLIANCE WITH SECTION 17.2.1 OF THE ANC CONSTITUTION***

[39] The ANC Constitution in Section 17.2.1 provides:

“17.2 The Provincial Conference shall:

17.2.1 Be held at least once every 4 (four) years and more often if requested by at least one third of all Branches in good standing in the Province.”

[40] The Applicants took issue with the impugned Provincial Elective Conference being held two (2) months earlier than the last conference. According to the Applicants, this flouted ANC’s very own constitution.

[41] Respondents disputed that the Provincial Elective Conference would be held more than once in a period of four (4) years.

[42] The arguments by the parties turned into the interpretation of paragraph 59 in the matter of *Dube & Others v Zikalala & Others*, wherein Koen J stated<sup>13</sup>:

“[59] It seems to me on a proper construction of rule 17.2.1 of the ANC constitution in the context of the entire document, that my initial construction is the most plausible and preferred one. Consistent with the comments in Ramakatsa where the provincial conference was held in 2012, the next one would be required to be held in 2016. Whether it is held early or later in the year, hence whether it might result in a term of office for members of the PEC holding office of slightly less, or possibly a few months more than four years, is materially irrelevant. That is an inherent flexibility in having a provincial conference ‘at least once every 4 (four) years’. If ‘more often’ than that, then a request by at least one third of all branches in the Province’ is required...”[my underlining]

[43] It suffices to mention that the judgment in *Dube* is not binding on this Court, but has a persuasive effect.

#### *REQUIREMENTS FOR AN INTERIM INTERDICT*

[44] This Court is enjoined to determine whether or not the Applicants are entitled to an interim interdict. To secure such a relief, the Applicants must show and satisfy this Court that they have established:

44.1 at least a *prima facie* right, even if it is open to some doubt;

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<sup>13</sup> [2017] 4 All SA 365 (KZP).

- 44.2 a reasonable apprehension of irreparable and imminent harm to their right if the interim interdict is not granted;
- 44.3 that the balance of convenience favours the granting of the interim interdict; and
- 44.4 that they have no other satisfactory remedy.

[45] The basis for the *prima facie* right is that the First Applicant asserted that he is a member of the ANC in Ward 24, Mcebisi Bata Branch; the Second Applicant is a member of the BEC and the Branch Treasurer of Valithuba Tshwaku Branch and the Third Applicant is a member of Ward 26, Ingquza Hill Sub-Region. As members of the ANC, in terms of Clause 5.1 of the ANC Constitution, they have the right to:

***Rule 5 RIGHTS AND DUTIES OF MEMBERS***

**5.1 Rights**

- 5.1 A member shall be entitled to:
  - 5.1.1 Take a full and active part in the discussion, formulation and implementation of the policies of the ANC;
  - 5.1.2 Receive and impart information on all aspects of ANC policy and activities;
  - 5.1.3 Offer constructive criticism of any member, official, policy programme or activity of the ANC within its structures;
  - 5.1.4 Take part in elections and be elected or appointed to any committee, structure, commission or delegation of the ANC; and
  - 5.1.5 Submit proposals or statements to the Branch, Province, Region or NEC,

As such, I consider the Applicants to have established a *prima facie* right.

[46] Applicants nailed their colours on the ANC mast by relying on being members of the ANC. According to the applicants, as members of the ANC, they have the political right to participate in ANC leadership elections, a process that must be conducted transparently, fairly, and democratically<sup>14</sup>. This right is derived from section 19 of the Constitution of South Africa. Therefore, they are asserting their *prima facie* on this ground.

[47] Applicants contended that once the elections are conducted, the newly appointed incumbents will take leadership and steer the organisation in a direction not mandated by members of good standing. According to the Applicants, even if the unlawfulness is reviewed and set aside, they will not get substantial relief in due course.

[48] Applicants further contended that the balance of convenience favoured the granting of a relief interdicting the continuation of the Provincial Elective Conference for the Eastern Cape.

[49] Finally, the Applicants would not have any other satisfactory remedy.

[50] With regard to the issue that there are dispute of facts, the starting point is the rule in ***Plascon-Evans***, where the following was said<sup>15</sup>:

[94] “...However, it must be pointed out that where a respondent raises a bare denial to an allegation made by an applicant, the denial is not regarded as raising a genuine dispute of fact. In such a case the allegations made by the applicant may be taken into account in deciding whether the order sought

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<sup>14</sup> CaseLines, Folder 004-11 (FA at para 18).

<sup>15</sup> *Plascon-Evans (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd* 1984 (3) SA 620.

is justified, unless the respondent has requested that the applicant's deponent be subjected to cross-examination.

[95] Because affidavits in motion proceedings constitute pleadings and evidence, the failure to respond to allegations made by an applicant is taken to be an admission of those allegations..."

[51] This Court finds that there is no genuine dispute of facts raised by the Respondents.

### *COST ORDER*

[52] It is trite that costs remain within the Court's purview and discretion. Whilst it is common for costs for interim orders to be reserved for later determination when the final order is made, this is not cast in stone, and there is no hard-and-fast rule to that effect.

[53] I had the benefit of deciphering from the papers and hearing arguments from all the parties, which enabled me not only to assess the complexity of the matter but also to appreciate the long, odd hours at which Counsel had to work, during which they had to deal with forensically challenging material. In the circumstances, to defer the determination of costs to another Court would fly in the face of tenets of justice, as I am better poised to make the determination of an appropriate cost order.

[54] This was not a run-of-the-mill kind of case. It was also a matter of public interest. In determining costs, I had regard to the decision in *Mashava v Enaex Africa*

(Pty) Ltd and Others<sup>16</sup>, where the court clarified that the amendments to Rule 67A of the URC.

[55] The fundamental principle pertaining to costs was enunciated in *Ferreira vs Levin N.O and Others*, is still applicable, where it was held<sup>17</sup>:

“The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs...”

[56] I exercised my judicial discretion to make the cost order against the First, Second and Third Respondents. I did so because, with respect to the issues raised by the Applicants, they attained some measure of success, which entitles them to indemnification.

## DISCUSSION

[57] It is common cause that the Fourth Respondent did not enter the fray, inasmuch as he is the author of a letter dated 19 March 2026, under the caption “*membership systems failure, manipulation and inconsistent application of guidelines*” addressed to the NEC. The Convener of ANC NEC Deployees was also copied to this letter, which was annexed to the papers as “**LR 6**”.

[58] It comes as no surprise that the Fourth Respondent neither entered the fray nor deposed to the answering affidavit in respect of the First Respondent, having

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<sup>16</sup> 2025 (1) SA 466 (GJ).

<sup>17</sup> *Ferreira v Levin NO & Ors; Vryehoek & Ors v Powell NO & Ors* 1996 (2) SA 621 (CC) at para 3.

regard to the averments made at paragraph 3.3 of First Respondent's answering affidavit deposed to by Ms Helen Sauls-August, the Deputy Provincial Secretary of the ANC in the Eastern Cape Province, wherein it stated<sup>18</sup>:

"It is evident from the founding affidavit of the Applicants that the Fourth Respondent is conflicted in this matter, and therefore, he is not competent to depose to the affidavit for and on behalf of the First Respondent in view of the letter he penned to the National Officials of the Second Respondent attached to the Applicants' founding affidavit marked "**LR 6**" thereof.

[59] Only on 24 March 2026 did the Convener of ANC NEC Deployees, Ms Mmamoloko Kubayi ("Ms Kubayi"), craft a report in response to the Fourth Respondent's letter, which in these papers is marked "**LR 6**", wherein she writes<sup>19</sup>:

"Our view, as the deployees, is that the claim that the complaints he received could place the credibility of the conference in jeopardy and attract unnecessary litigation is without merit. We believe indeed that litigation as we have seen across the country as possible, not because we have challenges that warrants for such but because of individuals who are committed to frustrating organisational process. PEC officials together with NEC Deployees are currently investigating a video alleged to be by a PEC member comrade Sabisa..."

[60] It is also common cause that the impugned Provincial Elective Conference of the ANC in the Eastern Cape was to be held in East London. In terms of the common law principle of *rationae res gestae*, the cause of action arose with the jurisdiction of this Court.

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<sup>18</sup> CaseLines, Folder 043-6 (1<sup>st</sup> Resp's AA at para 3.3).

<sup>19</sup> CaseLines; Folder 048-10 (Annex "**ANC 3**").

[61] In *Gallo Africa Ltd v Sting Music (Pty) Ltd*<sup>20</sup>, Harms DP had this to say:

‘Section 19(1)(a) of the Supreme Court Act provides that a high court has jurisdiction:

“over all persons residing or being in and in relation to all causes arising... within its area of jurisdiction and all other matters of which it may according to law take cognizance.”

...Although effectiveness “lies at the root of jurisdiction” and is the rationale for jurisdiction, “it is not necessarily the criterion for its existence”. What is further required is a ratio jurisdictionis. The ratio in turn, may, for instance, be domicile, contract, delict and, relevant for present purposes, *ratione rei sitae*. It depends on the nature of the right or claim whether the one ground or the other provides a ground for jurisdiction. Domicile on its own, for instance, may not be enough.’

[62] It cannot be controverted that it is only after the “Final Verification Report”<sup>21</sup>, which was prefaced by a communiqué informing the PEC that the ANC Eastern Cape had achieved its seventy per cent (70%)<sup>22</sup>, that triggered the dispute brought to this Court on an urgent basis.

[63] Applicants also demonstrated that they will not get substantial relief in due course<sup>23</sup>. There is credence to the notion that, once the impugned Provincial Elective Conference of the ANC for the Eastern Cape Province takes place, it would allow delegates who were irregularly appointed to participate in the elections for the new leadership of the ANC in the Eastern Cape, according to the Applicants. In that

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<sup>20</sup> [2011] 1 All SA 449 (SCA) at para 10.

<sup>21</sup> CaseLines, Folder 009-2; Annexure “**LR 5**”.

<sup>22</sup> CaseLines, Folder 008-1; Annexure “**LR 4**”.

<sup>23</sup> CaseLines, Folder 004-54 to 004-55 (FA, para 142) read with Folder 004-14 (FA, para 28.3).

event, I am of the view that the Applicants would not get a substantial relief that is also effective and meaningful in the circumstances. Coming to this conclusion, the matter deserves to be enrolled in the urgent court. Consequently, the second leg of the enquiry kicks in once the threshold is met.

[64] The Applicants provided a detailed account of daily events from 19 March 2026 to 23 March 2026<sup>24</sup>, when the urgent application was launched. The event the Applicants sought to prevent was scheduled to run from 26 March 2026 to 29 March 2026.

[65] The Applicants lodged a certificate of urgency on Monday, 23 March 2026, which elicited a directive which I issued on the same day, putting the parties to terms and setting the matter to be heard on 25 March 2026 at 11H30.

[66] At the hearing of this application, Mr Cassim conceded that the trigger for urgency was the “Final Verification Report” issued by the Third Respondent on 18 March 2026. In the papers, a final ANC Eastern Cape summary report is appended as “**LR 5**”<sup>25</sup>.

[67] The Third Respondent, on the same day of the “Final Verification Report,” penned a communiqué in which it is stated<sup>26</sup>:

“Important factors to be noted and considered by the PEC when convening the Provincial conference in line with the ANC Constitution and Guidelines to conferences and adopted by the NEC:

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<sup>24</sup> CaseLines, Folder 004-51 to 004-54 (FA, paras 129 – 141).

<sup>25</sup> CaseLines, Folder 009-2.

<sup>26</sup> CaseLines, Folder 008-2.

67.1 The signed-off Final verification report may not be altered even after corrections or verdicts from the dispute resolution process. An Addendum will be created if and when necessary, following the dispute resolution process.

67.2 All disputes related to the Provincial conference must be concluded and finalised before the Conference can be convened.”

[68] As stated above<sup>27</sup>, the Fourth Respondent wrote to the NEC of the ANC, expressing the province's state of unreadiness. This did not elicit any response from the Third Respondent save for the generation of at least two (2) addenda to the “Final Verification Report” dated 19 March 2026 and 23 March 2026. As already alluded to, a response came from the Convener of the NEC Deployees, Ms Kubayi, on 24 March 2024, which is annexed to the papers as “**ANC 3**”.

[69] The Applicants sought raw data of the electronic system, which had not been provided. Up until the lodgement of this application, the Respondents did not provide the required raw data. However, the reasons provided are that the Protection of Personal Information Act, 4 of 2013 (“POPI Act”) prevent such disclosure of information pertaining to the electronic membership system results for branch attendances<sup>28</sup>. Later, the Second and Third Respondents take a different tack by tendering to provide this information<sup>29</sup>. The Applicants accepted this tender. In light of this offer and acceptance, there is a valid contract between the parties, which I cannot ignore.

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<sup>27</sup> CaseLines; Folder 010-2.

<sup>28</sup> See 2<sup>nd</sup> and 3<sup>rd</sup> Respondents’ AA at paras 5; 82 to 86.

<sup>29</sup> See 2<sup>nd</sup> and 3<sup>rd</sup> Respondents’ AA at para 87.

[70] With the foregoing, I deduce that there were, at the time of hearing this application, still unresolved disputes regarding the verification of certain BGMs and BBGMs. This is bolstered by an addendum to the “Final Verification Report”, dated 23 March 2026, appended to annexure “**RA 1**”. At items 5 to 7 of the said addendum, it is recorded:

**“5. Challenges**

- The lack of BBGM Verification Report makes its difficult for the PEC to know the exact number of Branches qualified. [sic]

**6. Recommendations**

- PSO and NEC deployees to urgently follow up on the BBGM verification Report.

**7. Conclusion**

- The report is a true reflection of the work done after the PEC meeting. The report is therefore tabled before the PEC for consideration and ratification.”

[71] No evidence was led, nor were any submissions made that rebutted the glaring evidence before me that the PEC could not, with certainty, determine branches that qualified to participate in the Provincial Elective Conference.

[72] Further, it was clear that the recommendations made at item 6 were not followed, nor was there any explanation proffered for not carrying them.

[73] Finally, between the issuing of the addendum on 23 March 2026 and the hearing of this application on 25 March 2026, the PEC did not sit to consider and ratify the report.

[74] In the premise, it is inconceivable that the preparation for the Provincial Elective Conference met the standard laid down in the ANC's own governance instruments, more particularly the "Conference Guidelines".

[75] The Respondents, on their own *ipse dixit*, acknowledge the existence of unresolved disputes.

## **FINDINGS**

[76] Having regard to the conspectus of facts, paying close attention to when the dispute arose and the steps taken by the Applicants when the dispute crystallised. In the same breath, I considered whether the Applicants may have substantial relief in due course. An inevitable conclusion was that the matter was sufficiently urgent to warrant a hearing and determination.

[77] I am of the view that it would not be in the interests of justice to deny the Applicants an opportunity to have the merits of their application heard and ventilated purely on technical grounds.

[78] I was also not persuaded that the defence of *issue estoppel* was available to the Respondents, as the matter they referred to was not finally determined on the merits. The matter in question concerned a Regional Conference, not a Provincial Conference. I do not fathom, therefore, that it could be between the same parties

and concern the same subject matter, *albeit* there may be some overlap regarding certain BGMs and BBGMs.

[79] I also find that this defence of *issue estoppel* is diametrically connected to the date on which it is now common cause that the dispute arose. This defence is therefore not sustainable.

[80] The plethora of facts placed before me showed that the Applicants had a *prima facie* right, a reasonable apprehension of harm or injury, and no adequate alternative remedy.

[81] I take guidance from the wisdom of Yacoob J, in *Ramakatsa*<sup>30</sup>, where in paragraph 16, he postulated:

“I did not think that the Constitution could have contemplated that political parties could act unlawfully. On a broad purposive construction, I would hold that the right to participate in the activities of a political party confers on every political party the duty to act lawfully and in accordance with its own constitution. This means that our constitution gives every member of every political party the right to exact compliance with the constitution of a political party by the leadership of that party...” [my underlining]

[82] Having regard to the *stare decisis* principle, I follow *Ramakatsa*, having particular regard to what Moseneke DCJ postulated<sup>31</sup>:

“Following a careful consideration of the matter, we are satisfied that the established facts sustain the first two grounds on which the appellants rely.

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<sup>30</sup> *Ramakatsa & Others v Magashule & Others* 2013 (2) BCLR 202 (CC).

<sup>31</sup> *Ibid* at para 61.

This, in our view, entitles them to some remedy. Whether they should be granted the relief sought, is a question that we consider later when we reach the remedy aspect of the judgment. The finding we reach on the two grounds renders consideration of the third ground unnecessary.”

[83] For edification purposes, the first two grounds on which the applicants in *Ramakatsa* relied were:

83.1 That their rights flowing from the ANC’s constitution, read with its audit guidelines, have been infringed. This was referred to as a contractual claim arising from the appellants’ membership to the ANC.

83.2 Their constitutional right to participate in the activities of the ANC was breached as a result of a number of irregularities that occurred before the challenged conference was held.

[84] In this case, the Applicants, one way or the other, have mirrored the relief they seek on the two (2) grounds approved in *Ramatsa*. This can be gleaned from paragraphs 18 and 25 of the founding affidavit, where it is stated:

“[18] The ANC Constitution gives effect to section 19 of the Constitution. It is also a binding contract between the applicants and the ANC...

[25] The applicants contend that the Conference has been called in breach of the Constitution of South Africa and the ANC Constitution...”

[85] Having regard to the facts presented before me and the applicable law, I am of the view that the Applicants have established entitlement to some remedy.

[86] It cannot be denied that we live in a world that is increasingly difficult to distinguish between facts and falsehoods. I could not, with a stroke of pen, grant the declaratory relief the Applicants sought without getting more cogent proof.

[87] The rationale behind the order I granted was to allow the ANC to get its house in order without imposing any timelines, so that they would be at liberty to ensure compliance at their earliest opportunity.

[88] As in *Ramakatsa*, I was not inclined to determine how the ANC should regulate its internal processes, given the powers in Rules 11.3 and 12.2.4 of the ANC constitution.

[89] The finding outlined above renders it unnecessary to consider whether the impugned Provincial Elective Conference of the ANC in the Eastern Cape Province would constitute more than one conference in a four (4) year cycle. I do not consider it necessary to make a determination on this issue, as nothing turns on it.

[90] Having found that this matter attracted public interest, it followed that such interest would best be served by adjudicating it promptly and making a determination at the earliest possible time.

[91] For brevity, I will not repeat the order granted on 26 March 2026.

**B METU**

**ACTING JUDGE OF THE HIGH COURT EASTERN CAPE DIVISION**

*These reasons were handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on CaseLines. The date of hand down is deemed to be **14 April 2026**.*

**APPEARANCES:**

|                                                           |   |                                                              |
|-----------------------------------------------------------|---|--------------------------------------------------------------|
| Counsel for the Applicants                                | : | Mr Mpofu SC, together with<br>Mr Salukazana and Ms Makangela |
| Instructed by                                             | : | Makangela Mtungani Inc                                       |
| Counsel for the 1 <sup>st</sup> Respondent                | : | Mr Bodlani SC together with<br>Ms Mashiya                    |
| Instructed by                                             | : | Enzo Meyers Attorneys                                        |
| Counsel for 2 <sup>nd</sup> & 3 <sup>rd</sup> Respondents | : | Mr Cassim SC together with<br>Mr Saloojee                    |
| Instructed by                                             | : | Ntanga Nkuhlu Inc                                            |
| Heard on                                                  | : | 25 March 2026                                                |
| Order Delivered on                                        | : | 26 March 2026                                                |
| Reasons handed down:                                      | : | 14 April 2026                                                |