

THE ELECTORAL COURT OF SOUTH AFRICA

BLOEMFONTEIN

Not Reportable

CASE NO: 002/25EC

In the matter between:

ELECTORAL COMMISSION OF SOUTH AFRICA	First Applicant
CHIEF ELECTORAL OFFICER	Second Applicant
and	
THE GOOD PARTY	First Respondent
BRETT NORTON HERRON	Second Respondent
KAIROS COMMUNICATIONS (PTY) LTD	Third Respondent
INCORP GLOBAL INVESTMENTS (PTY) LTD	Fourth Respondent
INCORP TRADE AND INVESTMENTS CC	Fifth Respondent
ASHWIN GOVENDER	Sixth Respondent
SARAVAN DEVARAJ GOVENDER	Seventh Respondent
ELECTROX PROPERTIES (PTY) LTD	Eighth Respondent
ELIAS PHATUDI MAPONYA	Ninth Respondent

Neutral Citation: *Electoral Commission of SA and Another v The Good Party and Others* (002/25EC) [2026] ZAEC 11 (30 October 2026)

Coram: ADAMS J, STEYN AJ and PROFESSOR PHOOKO (Additional Member)

Heard: 21 October 2026

Delivered: 30 October 2026 – This judgment was handed down electronically by circulation to the parties' representatives via email, by publication on the website of the Supreme Court of Appeal and by release to SAFLII. The date and time for hand-down is deemed to be 11:00 on 30 October 2026.

Summary: Application for leave to appeal – s 17(1)*(a)*(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold – another compelling reason for leave to appeal to be granted (s 17(1)*(a)*(ii)) – the decision sought to be appealed against involves an important question of law – leave to appeal granted to the Supreme Court of Appeal.

ORDER

(1) In terms of Uniform Rule of Court 42(1)(b), the section (section 12) referred to in paragraph (4) of the court order of 26 August 2026 is deleted and replaced with ‘section 9(2)'.

(2) The first and second respondents’ application for condonation is granted.

(3) The late filing of the first and second respondents’ written Heads of Argument is condoned.

(4) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the costs of their aforesaid application for condonation.

(5) The first and second respondents are granted leave to appeal to the Supreme Court of Appeal.

(6) The costs of the first and second respondents’ application for leave to appeal shall be costs in the appeal.

(7) The eighth respondent is granted leave to appeal to the Supreme Court of Appeal.

(8) The costs of the eighth respondent’s application for leave to appeal shall be costs in the appeal.

JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J (Steyn AJ and Professor Phooko (Additional Member) concurring):

[1] I shall refer to the parties as referred to in the original opposed application by the first applicant (Electoral Commission) and the second applicant (Chief Electoral Officer) inter alia for an order declaring the respondents to have contravened certain provisions of the Political Funding Act 6 of 2018 (‘Funding Act’), read with the Regulations regarding the Funding of Political Parties (‘Political Funding Regulations’). On 26 August 2026, we handed down a written judgment and order, in terms of which

the first respondent (the Good Party), the second respondent (Mr Herron) and the eighth respondent (Electrox) were declared to have contravened ss 9 and 12 of the Funding Act, read with Regulations 7, 8 and 10 of the said Regulations. Administrative penalties of R50 000, R40 000 and R40 000 were imposed on these respondents respectively. Each party was ordered to pay its/his own costs.

[2] In two separate applications, the Good Party and Mr Herron, in one application, and Electrox, in the other, applied for leave to appeal against the entire judgment and the respective orders affecting them.

[3] At the commencement of the hearing on Wednesday, 21 October 2026, the Good Party and Mr Herron, whom I shall refer to collectively as the Good Party, applied for condonation of the late filing of their written heads of argument, which were filed outside of the prescribed period directed by the court. The late filing resulted from a regrettable miscommunication within the office of the attorneys representing the Good Party. The heads of argument had been prepared timeously by counsel, who had forwarded them to the attorneys for delivery. We were satisfied that a proper case had been made out on behalf of the Good Party for condonation. Importantly, the delay in the late filing of the heads of argument was not demonstrated to have caused any prejudice to any of the other parties. Moreover, the heads were delivered late by only a few days. We accordingly granted the condonation application with an appropriate costs order against the Good Party, being the one asking for the indulgence from this Court.

[4] The Good Party contends that we erred in not considering and/or upholding certain legal points raised by it in the main application. These legal points include the contention that the forensic report, on which the Electoral Commission relied almost exclusively for the relief sought by it in the main application, was simply annexed to the Electoral Commission's founding papers without it identifying certain parts of the report relied upon by it, let alone explaining the relevance of those parts. This, according to the Good Party, was fatal to the Electoral Commission's case and, for that reason alone, the application ought to have been dismissed.

[5] Secondly, the Good Party contends that an administrative penalty is a hybrid statutory remedy, which should not be applied punitively, as was done by the Electoral Commission in the present matter. Section 18 of the Funding Act, it is contended, requires a party seeking the imposition of an administrative penalty to approach the Electoral Court for a determination of whether there was a contravention and whether an administrative penalty should be imposed. The Electoral Court is not obliged to impose such a penalty. In the present instance, it is argued that no administrative penalty was necessary, given that the alleged transgression was committed during the initial phase of the implementation of the political party-funding legislation.

[6] Thirdly, the Good Party submits that the requisite *mens rea* for contravening the relevant provisions was not established. There is a reasonable prospect, it is contended, that another court may find that it was not established that the Good Party knew about the donation.

[7] In addition to these legal points, the Good Party contends that the jurisdictional requirements for the relief granted under s 14(4) of the Funding Act were not fulfilled. In particular, the Good Party contends that there was no proper *audi* as the forensic report was not presented, whether in draft or final form, and the Good Party was not invited to make their representations in relation to it. This, according to the Good Party, was fatal. Furthermore, it is contended that no direction to comply was issued to the Good Party, which meant that it was not afforded an opportunity to comply with the Funding Act, as required by s 15(1) of the said Act.

[8] In sum, the Good Party's contention regarding the foregoing point is that the jurisdictional facts that should have been pleaded by the Electoral Commission in order to trigger this Court's jurisdiction were, in fact, not pleaded. Moreover, it is submitted that the record makes it clear that none of those jurisdictional facts exist.

[9] On the merits, the Good Party submits that, on the facts, its version is neither so far-fetched nor so clearly untenable as to justify rejection on the papers. In particular, the Good Party argues that the court a quo did not have regard to the undisputed evidence of Mr Israel Govender that he was expressly instructed by the complainant, Mr August, to keep the arrangement confined to the two of them,

precisely because the Good Party's leadership was not aware of it. Furthermore, it is contended that the credibility of Mr August is susceptible to criticism given that, by all accounts, he had an axe to grind with the Good Party, as he had left it under acrimonious circumstances.

[10] In a nutshell the Good Party's case in its application for leave to appeal is that the Electoral Court erred in law and in fact in granting the orders against it. According to the Good Party, we misapplied the law by finding that the jurisdictional requirements for the imposition of an administrative penalty had been met. This Court was also allegedly misdirected in preferring the version of the Electoral Commission to its version.

[11] The eighth respondent (Electrox) also applies for leave to appeal on grounds similar to those on which the Good Party's application is grounded. Electrox applies for leave to appeal to the Supreme Court of Appeal against those parts of the judgment and order which concern it, including the declaratory order made against it and the administrative penalty imposed on it. The application for leave to appeal is based on the provisions of sub-section (i), as well as on sub-section (ii) of s 17(1)*(a)* of the Superior Courts Act 10 of 2013 (Superior Courts Act), which reads as follows:

'17 **Leave to appeal**

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;'

[12] The grounds on which Electrox's application for leave to appeal is based are set out below. Importantly, Electrox contends that the grounds of appeal raise constitutional issues and arguable points of law of general public importance concerning the regulation of private political funding and, accordingly, support both a reasonable prospect of success under s 17(1)*(a)*(i) and, independently, a compelling reason under s 17(1)*(a)*(ii) of the Superior Courts Act.

[13] Firstly, Electrox submits that the Electoral Court erred in law and on the facts in accepting, and in granting final relief, on the basis of a version advanced in the

Commission's founding papers that was materially self-contradictory regarding the facts necessary to bring Electrox within the ambit of s 9(2) of the Funding Act. In that regard, Electrox submits that the Commission's founding affidavit is irreconcilably contradictory as to the identity of the donor. On the one hand, the Commission categorically states in its founding affidavit that 'the Good Party secured a donation of R900 000 from Electrox', yet, in the same breath, it avers, in the alternative, that if Electrox did not make the donation, then it was made by the fifth respondent (Incorp Trade) and/or the third respondent (Kairos Communications).

[14] Electrox further contends that, although alternative pleading may be permissible, the Commission could not simultaneously allege that Electrox had been confirmed as the donor and plead, at the same time, that Incorp Trade, Kairos Communications or another entity was the donor if Electrox was not. According to Electrox, these are mutually exclusive propositions concerning the essential question to which s 9(2) applies, which is said to be fatal to the Electoral Commission's case at a factual level.

[15] The same argument is raised by the Electrox as regards the Commission's papers relating to the nature of the alleged donation as pleaded by the Commission. Section 1 of the Funding Act distinguishes between a monetary donation and a donation in kind, including money paid on behalf of a political party for expenses incurred by it and the provision of assets, services or facilities for its use or benefit otherwise than on commercial terms. The Commission, Electrox argues, alternates between characterising the R900 000 as a monetary donation towards the purchase price of campaign material and as a donation in kind, and between characterising it as Electrox buying the donated t-shirts and donating them to the Good Party. According to Electrox, these contradictory characterisations of the type of donation are also fatal to the Commission's case.

[16] Moreover, Electrox alleges that the quantum and quantity underpinning the alleged donation are irreconcilable across the Commission's own papers. The Commission's case is that the R900 000 corresponded to 30 000 t-shirts at R30 each, yet the founding affidavit states that the Good Party received only 6 500 t-shirts. The Commission's material thus records, according to Electrox, five materially different

quantities: 60 000 said to have been ordered, 44 300 said to have been bought or delivered, 30 000 quoted, 14 300 reflected on invoice 4014, and 6 500 said to have been received. At minimum, Electrox argues that the contradictions raised in relation to the quantum of the donation give rise to a real, genuine and *bona fide* dispute as to whether the R900 000 represented a donation of ascertainable goods or value to or for the benefit of the Good Party.

[17] The second ground of appeal is that we erred in law in finding that the jurisdictional facts for declaratory relief against Electrox had been established or, alternatively, in exercising our discretion to grant declaratory relief in circumstances where we ought not to have done so. The Commission's pleaded case was that Electrox made a donation, as defined in s 1 of the Funding Act, and was therefore obliged, under s 9(2), read with Regulation 8, to disclose it. Electrox denied that the R900 000 payment to Incorp Trade was a donation to or for the benefit of the Good Party and produced the private commercial agreement and proof of payment. The Court was required, according to Electrox, to determine whether the Commission had established the facts necessary to bring Electrox within the ambit of s 9(2), rather than to infer liability from the fact of payment alone.

[18] Moreover, Electrox contends that the Electoral Court erred in its interpretation and/or application of ss 9 and 12 of the Funding Act to the facts before it. Section 9(2) imposes a disclosure obligation upon a juristic person that makes a donation exceeding the prescribed threshold; s 12 imposes accounting obligations upon a political party and its accounting officer. The Court is said to have conflated, according to Electrox, these distinct statutory obligations when it declared Electrox non-compliant with s 12 and imposed a penalty under that provision, notwithstanding that the Commission's case against Electrox was pleaded under s 9(2).

[19] I interpose here to note that the reference in para (4) of the order of the court a quo is clearly a patent error in the said order. The intention of the court was to refer to the contravention by Electrox of the provisions of s 9(2) of the Funding Act. The foregoing can clearly be discerned from what is said by the court a quo in para 22 of its judgment, where it held as follows:

‘The payment was a donation. Electrox Properties ought to have reported the donation in terms of the Funding Act. It did not do so, *in contravention of s 9(2) of the said Act*, read with reg 8 of the Regulations, and it must thus be fined.’ (Emphasis added).

[20] That error can and should be corrected in terms rule 42(1)(b) of the Uniform Rules of Court, as being a patent typographical error. The said error resulted in an order being granted that did not reflect the court’s true intention when it pronounced the order. The error is clearly attributable to the court itself and may therefore, *mero motu*, be corrected so as to give effect to the true intention of the court.

[21] Electrox also contends that the Electoral Court erred in failing to engage with the specific evidence that the R900 000 payment was made to Incorp Trade under a private commercial agreement, including proof of payment and the absence of an invoice rendered to Electrox. The court should not have treated the payment as a donation without identifying the facts that rendered the payment non-commercial or establishing that it was made to or for the benefit of the Good Party. This, according to Electrox, constitutes a challenge to the legal sufficiency of the evidence and to the application of the statutory definition of a donation.

[22] Electrox further contends that the Electoral Court misapplied the *Plascon-Evans* rule and the ‘far-fetched or clearly untenable’ exception. Electrox argues that it seriously and unambiguously addressed the central fact in its answering affidavit: it identified the R900 000 payment to Incorp Trade as arising from a private commercial agreement and produced proof of payment. That was not a bare denial, but a version raising a real, genuine and *bona fide* dispute on the jurisdictional fact of whether Electrox donated to or for the benefit of the Good Party. The Court was not entitled to choose the Commission’s version as more probable or to shift onto Electrox an onus that remained on the Commission.

[23] The third ground of appeal is that the Electoral Court, according to Electrox, erred in imposing an administrative fine without first identifying a legally sustainable contravention, the correct statutory provision, and the applicable Schedule 1 category. Section 18(2), according to Electrox, confers a discretion to impose a fine; it does not make the imposition of a penalty automatic. The court did not, it is contended, exercise

that discretion judicially, with due regard to Electrox's status as a juristic donor, as it was required to do so.

[24] The next ground of appeal is to the effect that the Electoral Court erred in law and/or exceeded its jurisdiction under s 18 of the Funding Act by treating the Commission's allegations and the conclusion of its investigators as a sufficient antecedent finding of contravention and by itself making the primary finding against Electrox. Section 18(1), so Electrox contends, permits the Commission to institute proceedings to request an administrative fine in respect of a contravention. In contrast, s 18(2) empowers the Electoral Court to impose a fine in respect of a contravention. Read with ss 14 to 18 and s 20, those provisions at least give rise to an arguable question whether the Commission first had to make a procedurally valid decision or finding capable of review or appeal before asking the Court to impose a fine. The Commission's founding papers pleaded that Electrox had contravened s 9(2) and sought a declaration and fine from the Court. Its later assertion that it had already 'found' a contravention cannot, according to Electrox, be accepted without examining whether a separate decision was actually made and communicated.

[25] There are further grounds of appeal raised by Electrox, including a contention that the Electoral Court erred in rejecting Electrox's complaint that the enforcement process resulting in a punitive administrative fine was procedurally unfair and inconsistent with ss 33 and 34 of the Constitution and the *audi alteram partem* principle. According to Electrox, the administrative fine is quasi-penal in character and exists alongside criminal offences under s 19; heightened procedural safeguards were accordingly required. Electrox contends that the Court should have addressed whether Electrox had been afforded a fair opportunity to inspect, answer and challenge the investigative material relied upon against it before final relief was granted.

[26] So in sum, the grounds on which Electrox applies for leave to appeal are that, factually the Commission's mutually destructive founding versions on donor identity, the nature and value of the alleged donation, and its failure to establish the s 9(2) jurisdictional fact, coupled with the misapplication of *Plascon-Evans*, provide a sound and rational basis for another court to reach a different conclusion. Furthermore, according to Electrox, there is a further compelling reason why the appeal should be

heard under s 17(1)*(a)*(ii), including the constitutional and general-public-interest issues already identified, and the importance of clarifying the treatment of mutually destructive founding versions, defective founding papers and documentary foundations when final, quasi-penal relief is sought under the Funding Act.

[27] It is contended on behalf of the first, second and eighth respondents that, the court a quo did not deal with some of the legal objections raised by them in opposition to the Electoral Commission's application. This does not, however, mean that those points were not considered. On the contrary, the court, after considering the legal points raised by these respondents, concluded that none of the points *in limine* had merit. That is a conclusion which another court may very well disagree with.

[28] Importantly, there exists a real possibility that another court may find that there is merit in the arguments raised on behalf of the said respondents in relation to the jurisdictional requirements for the imposition of administrative penalties. Another court may find that, having regard to the scheme of the legislative provisions, the Electoral Commission was required, first and foremost, to make a decision that there had been a contravention of certain provisions of the Funding Act and its regulations. That is so if one has regard only to s 18 of the Funding Act, which reads as follows:

'**18 Administrative fines**

(1) The Commission may institute proceedings to request the imposition of an administrative fine in respect of any contravention of this Act.

(2) The Electoral Court may impose an administrative fine in accordance with Schedule 1 in respect of a contravention or a repeated contravention of this Act.'

[29] As for our factual findings, which the respondents contest, nothing new has been raised by them in their application for leave to appeal. In our original judgment, we dealt with most, if not all, of the said issues, and it is not necessary for us to repeat them in full. Suffice to restate the conclusion we reached in our judgment, namely that '… applying *Plascon Evans*, the applicants' version should be accepted, and that of the Good Party and the other respondents rejected as far-fetched and untenable'.

[30] The traditional test in deciding whether leave to appeal should be granted was whether there was a reasonable prospect that another court may come to a different conclusion from that reached by us in our judgment. This approach has now been

codified in s 17(1)*(a)*(i) of the Superior Courts Act, which came into operation on 23 August 2013 and which provides that leave to appeal may be granted only where the judges concerned are of the opinion that 'the appeal would have a reasonable prospect of success'.

[31] In *Ramakatsa and Others v African National Congress and Another* (*Ramakatsa*),[1] the SCA held that 'the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a court of appeal ['would'] reasonably arrive at a conclusion different to that of the trial court…These prospects of success must not be remote, but there must exist a reasonable chance of succeeding'. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[32] The ratio in *Ramakatsa* simply followed *S v Smith*,[2] in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows:

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success. That the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[33] In *Mont Chevaux Trust v Tina Goosen*,[3] the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported

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[1] *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) para 10.

[2] *S v Smith* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) para 7.

[3] *Mont Chevaux Trust v Tina Goosen,* LCC 14R/2014 (unreported).

judgment in *Notshokovu v S.*[4] In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*.[5]

[34] I am persuaded that the issues raised by the first, second and eighth respondents in their applications for leave to appeal are issues in respect of which another court is likely to reach conclusions different from those reached by us. We therefore conclude that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with our factual findings and legal conclusions. The appeals, therefore, in our view, have a reasonable prospect of success.

[35] Moreover, we are of the view that there are other compelling reasons why the appeal should be heard, as envisaged by s 17(1)*(a)*(ii) of the Superior Courts Act, and those relate to the fact that the issues implicated in this matter are novel in that they arise from recently enacted legislation.

[36] Leave to appeal should therefore be granted to the Supreme Court of Appeal.

Order

[37] In the circumstances, the following order is made:

(1) In terms of Uniform Rule of Court 42(1)(b), the section (section 12) referred to in paragraph (4) of the Court Order of 26 August 2026 is deleted and replaced with ‘section 9(2)'.

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[4] *Notshokovu v S* case (157/15) [2016] ZASCA 112 (7 September 2016) para 2.

[5] *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016) para 25.

(2) The first and second respondents' application for condonation is granted.

(3) The late filing of the first and second respondents' written Heads of Argument is condoned.

(4) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the costs of their aforesaid application for condonation.

(5) The first and second respondents are granted leave to appeal to the Supreme Court of Appeal.

(6) The costs of the first and second respondents' application for leave to appeal shall be costs in the appeal.

(7) The eighth respondent is granted leave to appeal to the Supreme Court of Appeal.

(8) The costs of the eighth respondent's application for leave to appeal shall be costs in the appeal.

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L R ADAMS

JUDGE OF THE ELECTORAL COURT

Appearances

For the First and Second Applicants:	B D Lekokotla and M Z Gwala
Instructed by:	Mota Africa Incorporated, Pretoria
For the First and Second Respondents:	H J De Waal SC
Instructed by:	Lionel Murray Schwormstedt & Louw, Cape Town
For the Eighth Respondent:	C A C Korf
Instructed by:	Maponya Incorporated, Pretoria.