

THE ELECTORAL COURT OF SOUTH AFRICA

BLOEMFONTEIN

Not Reportable

CASE NO: 0020/26EC

In the matter between:

SIVUYILE JACQUIN TSHIKILA Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA First Respondent

ECONOMIC FREEDOM FIGHTERS Second Respondent

MUNICIPAL ELECTORAL OFFICER, EC 129 Third Respondent

Neutral Citation: *Sivuyile Jacquin Tshikila v Electoral Commission of South Africa and Others* (0020/26EC) [2026] ZAEC 13 (30 October 2026)

Coram: SHONGWE and YACOOB AJJ, PROFESSOR PHOOKO (Additional Member)

Heard: Decided on the papers in chambers

Delivered: 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 13:00 on 30 October 2026.

Summary: Freedom of association – unilaterally included on candidate nomination list by party without consent – nomination declined post certification by Electoral Commission – seeking court order to have name removed from voter's roll – Electoral Commission filed notice to abide – nothing filed by applicant's party – Minister of Police not cited – no relief against Minister of Police - application partially granted against Electoral Commission - applicant declared not a ward candidate for EFF – Electoral Commission ordered to remove or obscure applicant's name from ballot paper – no order as to costs.

ORDER

1 The applicant's failure to comply with the forms and service provided for in the Rules of Court is condoned, and the application is dealt with as one of urgency in terms of Rule 11 of the Rules of this Court.

2 It is declared that the applicant is not a ward candidate for the EFF.

3 The first respondent is directed to ensure that the ballot paper for Ward 03, Raymond Mhlaba Local Municipality, EC129, does not reflect the applicant as a candidate. This is to be achieved by

a. Reprinting the ballot paper if practicable.

b. If reprinting is not practicable, requiring a voting officer in each voting station to rule a line through the applicant's details in such a way as to obscure his name and prevent any vote being cast for him.

4 There is no order as to costs.

JUDGMENT

Professor Phooko (Shongwe and Yacoob AJJ (concurring)):

Introduction

[1] This is an unconventional application. It is unusual in that the applicants in other several cases sought the inclusion of their names in their party candidate lists whereas the applicant herein seeks to be removed from the party candidate list because of absence of consent. The facts surrounding the applicant's narrative of the events are sketchy, particularly as to when he became aware of the inclusion of his name as a ward candidate.

[2] The applicant is a former member and local leader of the Economic Freedom Fighters (EFF) in Amathole and KwaMaqoma districts. He ceased to be a member of the EFF post the 3rd National Assembly, which was held on 12-15 December 2024 in Nasrec, Johannesburg. The first respondent is the Electoral Commission of South Africa ('the Commission'), a body tasked with the election management in South

Africa. The second applicant is the EFF, a political party, registered pursuant to the provisions of the Electoral Commission Act of 51 of 1996 ('the ECA'). The third respondent is the Municipal Electoral Officer, the Commission's local representative for the Raymond Mhlaba Local Municipality (EC129). The first and the third respondents are referred to collectively as 'the Commission'.

[3] The crux of the applicant's case is that he was nominated without his consent by the EFF and included on the list of ward candidates to stand for election in Ward 03 EC 129. The list of certified candidates was published on 16 September 2026. The applicant's certificate was issued on 25 September 2026. The applicant states that he discovered on an undisclosed date in 'early' September 2026 that his name was on the candidate list. His complaints to the Commission reveal that he discovered his candidacy only on 16 September 2026. His attempts to have his name removed from the candidate list published by the Commission were unsuccessful. Aggrieved by the Commission's inability to remove his name without a court order, the applicant approached this Court seeking relief *inter alia* ordering the Commission to remove his name from the ward candidate list in Ward 03 EC 129.

[4] The EFF has not filed any papers before this Court. The Commission is also not opposing the relief sought but has filed an explanatory affidavit.

The issue for determination

[5] The issue for determination is (a) whether the applicant's name was included without his consent in the list of ward candidate and therefore is entitled to have his name removed and (b) whether the applicant's rights to freedom of association, dignity and political rights have been violated.

Submission of the parties

[6] The applicant alleges that on 16 September 2026, he discovered that his name was submitted to the Commission as an EFF candidate for Ward 03 EC 129. The applicant is adamant that he never signed any nomination form and thus his name was fraudulently submitted by the EFF. Consequently, he opened a criminal case at

KwaMaqoma for alleged forgery and fraud. In addition, the applicant contends that he objected to the Commission about his inclusion on the party candidate list without his consent or will. The objection was made via emails to the Commission on 17 and 18 September 2026.

[7] The applicant further alleges that as a result of the inclusion of his name on the candidate list, his rights to dignity, freedom of association and political rights have been violated.[1] In addition, the applicant inter alia contends that he was unable to object before the 4 September 2024, which was the date by which objections had to be filed, as he was not aware about the inclusion of his name on the ward candidate list. Therefore, the applicant contends that a nomination without his consent is *void ab initio* and cannot be cured by his failure to object by 4 September 2026 or when the candidate list was certified on 16 September 2026.

[8] Even though the Commission filed its notice to abide, it provided an explanation in the form of an overview of the legal architecture as provided for in the Local Government: Electoral Act 27 of 2000 ('LG Act') in that a registered party nominates a person to contest a ward on behalf of party as per s 16(1)(*a*) and (2)(*a*) of the said Act. This is done in accordance with the prescribed procedure including an undertaking by the candidate to be bound by the Electoral Code of Conduct, and a signed declaration by the candidate to the effect that he/she is not disqualified as per s 17(2)(*d*), (*e*) and (*f*) of the LG Act. The information is then submitted to the Commission through an authorised party representative who gives an undertaking, declaration and a warranty about the candidates as per Municipal Electoral Regulations, 2000 ('the Regulations'). According to the Commission, it accepts party ward nominations submitted in compliance with the Regulations via the parties authorised representative.

[9] The Commission then adheres to the election timetable through the compilation of lists and certification of candidates contesting each ward followed by the issuance of a certificate to each candidate as per s 18(1) of the LG Act and Regulation 12. The LG Act and Regulations only permit candidate removal prior to

[1] See ss 10, 18 and 19 of the Constitution of the Republic of South Africa, 1996.

certification. Once the certification has taken place, the LG Act does not provide room for the removal of ward candidates from the certified list.[2] Based on this, the Commission submits that it can only remove a candidate from a certified list if ordered so by this Court. The Commission also points out that it would have to reprint the relevant ballot papers before special voting begins, on 2 November 2026.

Urgency / Condonation

[10] Rule 6(1) requires a party who is entitled to and wants to take a decision of the Commission on review to do so within three days after the decision has been made. Furthermore, Rule 10 provides that 'failure to comply with the prescribed time limits or directives of the Court will, by this mere fact thereof, result in a party being barred, unless the Court, on good cause shown, directs otherwise'. This application was brought outside the permissible time. The applicant attributes the delay to the absence of knowledge about his inclusion in the ward candidate nomination list. The Commission does not raise any issues relating to condonation. The applicant is a layman and his explanation is sound. These factors should count in his favour.

[11] However, it must also be considered that the reason for the short time periods is the stringency of the election timetable, and the fact that, generally speaking, voting must go ahead on the date proclaimed.

[12] The applicant asks this Court to determine the application on an urgent basis. The Commission also does not oppose the matter being heard on an urgent basis. It is common cause that the election date is fast approaching. Consequently, this matter ought to be heard on urgent basis as electoral disputes are in their nature inherently urgent and demand speedy and expeditious resolution.[3]

---

[2] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA) para 26.
[3] *African National Congress v Electoral Commission of South Africa and Another* (007/26EC) [2026] ZAEC 5 (23 September 2026) para 93.

The law

[13] The LG Act is clear in that candidates nominated by their party must *inter alia* make a signed undertaking to be bound by the Electoral Code of Conduct, and a signed declaration by the candidate to the effect that he/she is not disqualified as per s 17(2)(*d*), (*e*) and (*f*) of the LG Act. It is not disputed that the applicant never signed anything related to his nomination as a ward candidate. The applicant has furnished evidence that he tried, without success, to object against the inclusion of his name on the candidate list via emails to the Commission. Consequently, this Court is prepared to give the candidate the benefit of the doubt in that he never consented to the inclusion of his name as a ward candidate for the EFF.

[14] About the rights to freedom of association and political rights, the right to stand for public office is often associated with 'the right to make political choices and freedom of association'.[4] Everyone has a right not to associate and to freely make their political choices. This is important especially in the context of our unpleasant past. Freedom of association as a political right entails 'that all persons should be entitled to associate or not with other persons of their choice in a totally non-coercive way'.[5] Accordingly, the EFF cannot coerce the applicant without his consent to stand for office as ward candidate against his will. To do so, would go counter the spirt of our hard-earned constitutional democracy.

[15] Finally, the applicant is concerned about the protection of his dignity as he states that when one stands for public office, he/she opens him/herself to public scrutiny which comes with various forms of attack and prejudice that may put his dignity at risk. In interpreting the right to dignity in *Affordable Medicines Trust v Minister of Health and Others,* the Constitutional Court held that '…freedom to choose a vocation is intrinsic to the nature of a society based on human dignity as contemplated by the Constitution [and that] one's work is part of one's identity and is constitutive of one's dignity'.[6] The applicant is unequivocal that he is not willing to

---

[4] *One Movement South Africa NPC v President of the Republic of South Africa and Others* 2024 (3) [2023] ZACC 42; 2024 (3) BCLR 364 (CC); 2024 (2) SA 148 (CC) para 279.
[5] M Budeli 'Undertanding the right to freedom of association at the workplace: Components and scope' 2010 Obiter at 17.
[6] *Affordable Medicines Trust and Others v Minister of Health and Another* (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) para 59.

stand for public office as a ward candidate and put his dignity at risk for the reasons stated above. Therefore, his choices ought to be respected.

[16] What is also apparent is that the Commission cannot be faulted as it processes and record information given to it by party-authorised representatives. In other words, the Commission acted in good faith. This is rather an issue between the applicant and his party.

[17] It must also be considered that the applicant's appearance on the ballot paper as a candidate is misleading to the electorate. The fact that the EFF has chosen not to oppose this relief implies that it does not consider that it would be unduly prejudiced if the relief sought were granted.

[18] In all the circumstances, applicant's application stands to partially succeed. I say so because the horse has bolted as the ward candidates have already been certified, including the applicant. Consequently, the aspect of ordering the Commission not to certify the applicant's name as a ward candidate has become moot.

[19] In addition, the lateness of the date means that it may not be practical to order the Commission to reprint the ballot paper. The Commission has not advised the Court of the number of ballot papers required for the relevant ward, nor of the amount of time it would need to print new ones. It seems appropriate rather to require the Commission to notify voters, possibly by means of prominent notices in voting stations, that the applicant is not a candidate, and to require that it is made clear to voters that the applicant is not a candidate, either by reprinting the relevant ballot papers, or, if that is not practicable, by means of requiring that voting officers make manual amendments to ballot papers as they are issued to voters, for example, by ruling a line through the applicant's name on the ballot paper with a marker sufficiently thick to obscure his name.

[20] The applicant also seeks this court to direct the South African Police Service (SAPS) to investigate his case (CAS 66/9/2026). However, SAPS, whom a declaratory order is sought against has not been joined in these proceedings. This

alone affects the relief sought due to non-joinder.[7] That relief also is not clearly within the jurisdiction of this Court.

Costs

[21] The award of costs is a matter which is within the discretion of the Court which must be exercised judicially by considering all the relevant factors. This court is slow on imposing cost orders against a losing party in electoral matters unless such party's conduct dictates otherwise.[8] The applicant does not seek a costs order against the respondents. The Commission also does not seek a costs order against the applicant. Therefore, it is only fair that each party should bear its / his own costs.

Order

[22] In the result and for these reasons, the following order is granted:

1 The applicant's failure to comply with the forms and service provided for in the Rules of Court is condoned, and the application is dealt with as one of urgency in terms of Rule 11 of the Rules of this Court.

2 It is declared that the applicant is not a ward candidate for the EFF.

3 The first respondent is directed to ensure that the ballot paper for Ward 03, Raymond Mhlaba Local Municipality, EC129, does not reflect the applicant as a candidate. This is to be achieved by

a. Reprinting the ballot paper if practicable.

b. If reprinting is not practicable, requiring a voting officer in each voting station to rule a line through the applicant's details in such a way as to obscure his name and prevent any vote being cast for him.

4 There is no order as to costs.

---

[7] *Pule and Another v Minister of Police* (1575/2023) [2025] ZANWHC 104 (20 June 2025) para 11.
[8] *Arise Afrika Arise (AAAR) v Electoral Commission of South Africa* (008/2023 EC) [2024] ZAEC 1 para 31.

PROFESSOR M R PHOOKO
ADDITIONAL MEMBER OF THE ELECTORAL COURT

Appearances

For the Applicant:	In person
For the First and Thirds Respondents:	Abiding
Instructed by:	Bowman Gilfillan Inc