

THE ELECTORAL COURT OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 0024/26EC

In the matter between:

BONGANI WELLINGTON CIBI **APPLICANT**

and

INDEPENDENT ELECTORAL COMMISSION OF SOUTH AFRICA **RESPONDENT**

Neutral citation: *Bongani Cibi v Independent Electoral Commission of South Africa* (0024/26EC) [2026] ZAEC 16 (03 November 2026)

Coram: Modiba J and Shongwe and Yacoob AJJ

Heard: Decided on the papers in chambers

Delivered: The written judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 03 November 2026.

Summary: Electoral Law – Electoral Commission Act 51 of 1996 – Municipal elections – Review jurisdiction of Electoral Court – whether a reviewable decision was established – registration of a political party and nomination of an independent candidate – statutory requirements and mandatory deadlines for electoral participation – application instituted outside the three-day period prescribed by s 20(1)(*b*) of the Electoral Commission Act 51 of 1996, read with rule 6(1) of the Electoral Court Rules – no application for condonation –failure

to comply timeously with statutory requirements for party registration and independent candidature – alleged confusion arising from communications with Commission officials not excusing non-compliance with mandatory statutory provisions – no reviewable decision established – exclusion from elections resulting from operation of law rather than unlawful conduct by Commission – application dismissed – no order as to costs.

ORDER

1 The application is dismissed

2 There is no order as to costs.

JUDGMENT

Modiba J (Shongwe and Yacoob AJJ (concurring)):

Introduction

[1] This application concerns the proper application of the statutory requirements governing participation in municipal elections, whether as a registered political party or as an independent candidate. At the core of the dispute are actions officials of the Commission allegedly took after the applicant's efforts to participate in the forthcoming municipal elections proved unsuccessful.

[2] The dispute raises three questions: whether the applicant complied with the legislative requirements for participation in the election; whether the Commission took any reviewable decision; and, if so, whether this Court has a basis to interfere with the outcome under the applicable principles of electoral and administrative law.

Background facts

[3] The applicant, Mr Bongani Wellington Cibi, previously contested the 2024 general election as an independent candidate in Gauteng. He intended to participate in the November 2026 municipal elections. Although he initially contemplated contesting as an independent candidate, he subsequently decided, together with members of his community and supporters, to pursue registration of a political party.

[4] On 25 August 2026, the applicant attended at the offices of the Electoral Commission in Centurion with the intention of submitting an application for the registration of a political party. According to the applicant, he arrived with the documentation required for registration, including approximately 400 supporter endorsements. He was informed by officials of the Commission that his application had been submitted out of time. The Commission's position, as reflected in the applicant's affidavits, is that publication in the Government Gazette constituted an essential requirement and that the relevant notice ought to have published not later than fourteen days before 28 August 2026.

[5] The applicant states that he only became aware of the Gazette requirements after attending at the Commission's offices. Despite being informed that his application was late, the applicant requested the Commission's officials to accept the documentation. In his replying affidavit, he expressly admits that he ‘begged’ the official, Ms Thato Mutle (Ms Mutle), to accept the application even if it were later to be rejected. He contends at the same time that the Commission ought not to have accepted the documentation if it knew that the application could not succeed.

[6] The applicant's principal complaint is that officials of the Commission failed adequately to explain the applicable requirements and deadlines. He

contends that no official informed him that publication in the Government Gazette had to occur prior to the deadline in order for his party to contest this election and that the Commission failed to create sufficient public awareness concerning the Gazette requirements and associated time periods for registration of a new political party.

[7] On 26 August 2026, the applicant commenced further communications with the Commission regarding the progress of the registration process. On 27 August 2026, he telephonically enquired about his application and was furnished with an invoice in the amount of R2 000. The applicant understood the issuing of the invoice to indicate that his application was continuing to be processed notwithstanding what he had previously been told about lateness.

[8] During further telephonic engagements on 27 August 2026, the applicant raised the issue that his candidate list had not been accepted when he attended the Commission's offices. He was referred to an official identified as Mr Kgosietsile Michael Tshoke (Mr Tshoke). The applicant states that Mr Tshoke advised him that the political party registration process was no longer available because the application had been lodged late. The applicant says that, during the same discussion, it was agreed that he would instead proceed as an independent candidate.

[9] It is common cause that the applicant thereafter received documentation relating to the independent candidate process. He completed the requisite form and returned it to the Commission. However, he contends that he expected to receive an invoice for approximately R1 800 applicable to independent candidates, but continued to receive reference only to the R2 000 invoice associated with the political-party registration process.

[10] The applicant repeatedly sought clarification regarding the invoice, between 14h00 and 17h00 on 27 August 2026. Receiving no satisfactory response, he paid the R2 000 on 27 August 2026 because he wished to preserve any opportunity to participate in the election. He contends that the Commission's officials were fully aware throughout that his overriding objective was to contest the election, whether as a political party representative or as an independent candidate.

[11] On the morning of 28 August 2026, the applicant submitted the independent-candidate form to Mr Tshoke. During a subsequent telephone conversation, a dispute arose regarding the R2 000 payment and whether a further amount was payable in respect of the independent candidate process. The applicant contends that he acted throughout in good faith and sought only to ensure compliance with the Commission's requirements.

[12] The applicant further alleges that he requested the return of certain documents which he had previously submitted to the Commission and that an undertaking was given that those documents would be returned to him. According to him, the documents were only returned on 29 August 2026, by which time the relevant deadline had expired, rendering him unable to pursue the independent candidate route successfully. He maintains that he therefore lost the opportunity to contest the election through no fault of his own.

[13] The applicant accordingly seeks to impugn the Commission's alleged decision refusing the registration of his political party and contends that officials of the Commission contributed materially to his inability to participate in the election process by failing adequately to explain the applicable legal requirements, by accepting documentation despite knowing that it was defective

or late, and by providing confusing information regarding the applicable electoral process and payments.

[14] These proceedings were instituted by way of motion proceedings. To the extent that disputes of fact arise on the affidavits, they must be determined in accordance with the principle articulated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.[1] The court is required, subject to limited exceptions, to accept the facts stated by the respondent together with those facts admitted by the applicant. The applicant can obtain relief only where the respondent's version is so far-fetched or clearly untenable that it may be rejected on the papers.

[15] The Commission disputes several of the applicant's material allegations. These include his assertion that Commission officials created a legitimate expectation that his political party would be able to register in order to contest the elections on 4 November 2026; that officials agreed he could validly continue as an independent candidate despite the expiry of applicable deadlines; and that the Commission failed to publicise or explain the relevant statutory requirements.

[16] Even on the applicant's own version, however, he was informed on 25 August 2026 that the application to register a political party had been lodged late. He also admits that Mr Tshoke advised him on 27 August 2026 that the party-registration route was unavailable because the application was late. The applicant's complaint is not that he was never informed of the lateness but rather that he should have been informed earlier and more clearly.

[17] To the extent that the Commission denies having represented that the applicant could still participate in the election despite non-compliance with

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[1] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at at 634E to 635C.

statutory deadlines, the dispute must be resolved in the Commission's favour under the Plascon-Evans rule. The applicant's belief that issuing an invoice signified approval of his application is an inference he drew, not an unequivocal representation reflected in the documentary record.

[18] Likewise, insofar as the applicant contends that officials were responsible for his failure to comply with the prescribed requirements, while the Commission contends that the applicable electoral deadlines and requirements remained binding and were not met, the Commission's version must prevail.

[19] The facts that emerge as common cause, alternatively as established under the Plascon-Evans approach, are that the applicant sought first to register a political party; that the application was regarded by the Commission as having been lodged too late to comply with the prescribed time periods for the forthcoming elections; that the applicant thereafter explored the possibility of participating as an independent candidate; and that he ultimately failed to satisfy the applicable requirements within the prescribed deadlines. The dispute concerns responsibility for that outcome, not whether the statutory requirements were met.

The parties' contentions

[20] The applicant contends that the Commission unlawfully prevented him and the community he sought to represent from participating in the forthcoming municipal elections. His primary complaint is that the Commission relied on what he describes as unpublished or inadequately publicised requirements relating to Government Gazette publication and associated time periods. He contends that the Commission did not publicly communicate a cut-off date for party registration and that prospective political parties were not adequately informed that objections had to be permitted for a period before registration could occur. He submits that

the Commission failed to create public awareness of these requirements and thereby acted unfairly towards new political participants.

[21] The applicant further contends that Commission officials encouraged him to run as an independent candidate after informing him that he could not complete the political-party registration process in time. He alleges that he received incorrect information about required payments, was not properly assisted in completing the independent candidate process and did not receive certain supporting documentation back until after the relevant deadline expired. He maintains that, with proper assistance, he could have participated in the election.

[22] The applicant accordingly submits that the Commission's conduct was procedurally unfair, constituted an abuse of power and unlawfully deprived him of the opportunity to contest the election. He seeks an order effectively restoring his opportunity to participate in the election either through the registration of his political party or as an independent candidate.

[23] The Commission advances four principal contentions. First, it submits that no decision is reviewable. According to the Commission, it did not refuse any application. Rather, officials merely explained the legal consequences of the statutory framework governing political party registration and election timetables. The Commission accepted and processed the applicant's registration application, even though it could not finalise registration before the close of nominations for the upcoming elections.

[24] Second, the Commission contends that the applicant failed to comply with the statutory requirements governing the registration of political parties in time for the new political party to contest the forthcoming election. It relies on s 15(4A), s 15(4B) and s 16(1)(*a*) of the Electoral Commission Act 51 of 1996 (the

Commission Act), which require publication of a notice of application and the expiry of a fourteen-day objection period before registration may be considered. Because the applicant's notice was published on 21 August 2026, registration could not lawfully occur before the close of nominations on 28 August 2026.

[25] Third, the Commission submits that the applicant likewise failed to satisfy the statutory requirements applicable to independent candidates. It relies on s 16 and s 17 of the Local Government: Municipal Electoral Act 27 of 2000 (the Municipal Electoral Act), which require the submission of a valid nomination, supporting voter signatures and the prescribed deposit before the deadline stipulated in the election timetable. The Commission contends that no compliant nomination was submitted before the deadline.

[26] Finally, the Commission contends that the relief sought is incapable of being granted because there is no decision to set aside, no extant nomination process to revive, and no lawful basis upon which the statutory election timetable could be disregarded. In support of this submission it relies, amongst others, on *Liberal Party v Electoral Commission and Others* (*Liberal Party*)[2] and *African Congress for Transformation v Electoral Commission of South Africa* (ACT)[3].

Analysis

[27] The applicant's case encounters a fundamental difficulty. The relief sought presupposes a reviewable decision by the Commission refusing either to register his political party or to permit him to contest the election as an independent candidate. The evidence does not establish such a decision.

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[2] *Liberal Party v Electoral Commission and Others* 2004 (8) BCLR 810 (CC) paras 22, 25 and 27.
[3] *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa and Others; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* (CCT 106/24; CCT 113/24; CCT 114/24) [2024] ZACC 7; 2024 (8) BCLR 987 (CC) paras 82 and 112.

[28] On the accepted facts, officials informed the applicant on 25 August 2026 that, because the notice relating to the proposed political party had only been published on 21 August 2026, the registration process could not be completed before nominations closed on 28 August 2026. That advice reflected the legal consequences of s 15(4B) and s 16(1)(*a*) of the Commission Act. The Commission nevertheless accepted the application at the applicant's request. Indeed, in his replying affidavit, the applicant accepts that he urged the Commission's officials to accept the application despite the delay. The complaint in reply is not that the application was refused, but that it should not have been accepted if it could not succeed. That is inconsistent with the premise upon which the review is founded.

[29] The Electoral Court's review jurisdiction under s 20(1)(*a*) of the Commission Act is directed at decisions of the Commission relating to electoral matters. An explanation of the legal consequences of statutory provisions does not itself constitute a reviewable administrative or electoral decision. The applicant therefore failed to identify any decision the Commission made that is reviewable.

[30] In any event, even if a reviewable decision were assumed in the applicant's favour, the application cannot succeed because the applicant brought the review application late and sought no condonation. The application is fatally late.

[31] The applicant seeks to impugn a decision allegedly communicated on 25 August 2026. In terms of s 20(1)(*b*) of the Commission Act, read with rule 6(1) of the Electoral Court Rules, a review to this Court must be noted within three days of the decision concerned. Accordingly, the application ought to have

been lodged no later than 28 August 2026. It was instead only instituted on 12 September 2026.

[32] In the context of electoral disputes, where expedition and finality are paramount, such a delay is inordinate. No explanation for the delay has been provided, and no condonation application has been brought. Even if condonation had been sought and a reasonable explanation furnished, the appeal enjoys no reasonable prospects of success for the reasons that follow.

[33] In those circumstances, it cannot be in the interests of justice to condone the non-compliance. The appeal therefore falls out of time and must be dismissed. Nevertheless, lest any issue raised by the applicant be considered for the first time in a further appeal, I deal briefly with the merits.

[34] As to the registration of a political party, s 15(4B) of the Commission Act requires the publication of the notice of the application and affords interested persons fourteen days to lodge objections. Section 16(1)(*a*) precludes the Chief Electoral Officer from registering a political party before the expiry of that period. The evidence establishes that the relevant notice was published on 21 August 2026 and that the application was submitted on 25 August 2026. Registration could therefore lawfully occur only after the close of nominations on 28 August 2026. The Commission had no statutory power to shorten the objection period or exempt the applicant from these requirements.

[35] The applicant's complaint that he was unaware of the legal requirements cannot alter this position. The requirements are prescribed by statute. A lack of knowledge of the law does not suspend its operation, nor does it confer upon the Commission a power to ignore mandatory statutory provisions. The Community

Movement's inability to contest the municipal election arose from the timing of the application and the operation of the statutory scheme itself.

[36] Nor did the applicant meet the requirements to participate as an independent candidate. It is common cause that he chose that route after discussions with Commission officials. The record shows that the Commission provided him with the requirements for an independent candidature before the close of nominations. Yet no valid nomination accompanied by the prescribed supporting signatures and compliant documentation was submitted before the deadline.

[37] The applicant attributes this failure to confusion over invoices, inadequate assistance from officials, and delayed returns of documents. Even accepting his version where it does not conflict with the Commission's, those contentions do not establish compliance with the statutory requirements. At best, the applicant seeks to explain why compliance did not occur. He does not demonstrate that a valid nomination was submitted or that the Commission unlawfully prevented one from being submitted.

[38] Applying the Plascon-Evans rule, the disputes concerning the significance of the R2 000 invoice, the content of telephonic discussions and the adequacy of assistance provided by officials must be determined in favour of the Commission where genuine disputes exist. The Commission denies representing that the applicant would nevertheless be entitled to contest the election despite non-compliance with statutory requirements. There is no basis on the papers for rejecting that version as far-fetched or untenable.

[39] More importantly, none of the disputed issues is material to the outcome. Whether the invoice created confusion, whether communications could have been clearer, or whether the officials could have been more helpful does not alter the decisive fact that the statutory prerequisites for participation as either a political party or an independent candidate were not fulfilled within the prescribed time periods. The applicant does not contend that he submitted the nomination documents necessary for his independent candidature.

[40] The applicant's exclusion from the election therefore did not result from a decision of the Commission. It followed by operation of law. The Commission Act and the Municipal Electoral Act prescribe mandatory requirements for participation in elections. Where those requirements have not been met, neither the Commission nor this Court may simply disregard them in order to accommodate an individual participant. Doing so would undermine the integrity, certainty, and fairness of the electoral process and would be unfair to parties and candidates who complied with the prescribed legal framework.

[41] Finally, even if the Court were to assume a reviewable decision existed, the applicant has not established the review grounds advanced. The evidence does not demonstrate procedural unfairness, irrationality, bad faith, ulterior purpose, or any other recognised basis for interfering with the Commission's conduct. At best, the applicant's case establishes dissatisfaction with the consequences of statutory requirements he became aware of too late. That does not constitute a basis for judicial intervention.

[42] For all these reasons, the application falls to be dismissed. The applicant did not satisfy the legal requirements for participation in the election either as a registered political party or as an independent candidate; no reviewable decision has been identified; his inability to contest the election arose from the operation

of the applicable statutory provisions; and no review ground has been established on the papers. The application was also brought late, with no condonation sought.

[43] As to costs, the general rule in electoral litigation is that costs are not awarded against an unsuccessful party unless the proceedings are frivolous, vexatious, or otherwise constitute an abuse of process. The Commission correctly did not seek a costs order, as it did not contend that the present appeal falls within any of those exceptional categories. It is therefore appropriate that no costs order be made.

Order

[44] The following order is made:

1 The application is dismissed

2 There is no order as to costs.

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JUDGE OF THE ELECTORAL COURT

Appearances

For the applicant:	In person
For the respondent:	M Sheburi
Instructed by:	DMO Attorneys Inc, Bryanston.