THE ELECTORAL COURT OF SOUTH AFRICA

BLOEMFONTEIN

Not reportable

Case no: 0031/26EC

In the matter between:

ANDRÉ DAWID LÖTTER Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA Respondent

Neutral citation: *André Dawid Lötter v Electoral Commission of South Africa* (0031/26EC) [2026] ZAEC 18 (06 November 2026)

Coram: ADAMS J, YACOOB and MANGCU-LOCKWOOD AJJ

Heard: Decided in Chambers on the Papers

Delivered: This judgment was handed down electronically by circulation to the parties representatives by email, publication on the Supreme Court of Appeal website and by release to SAFLII. The date and time for hand-down is deemed to be 09h00 on 06 November 2026.

Summary: Local Government Elections – s 23 of the Local Government: Municipal Electoral Act 27 of 2000 – review of the Electoral Commission's design of ballot papers – use of the identifier 'IND' for independent ward candidates – whether the decision is lawful and rational – whether the application is out of time in terms of rule 6 of the Electoral Court Rules – application for condonation – application dismissed with no order as to costs.

ORDER

1. The application is dismissed.
2. There is no order as to costs.

JUDGMENT

Adams J (Yacoob and Mangcu-Lockwood AJJ concurring):

[1] On 3 November 2026, we issued an order dismissing the application, with no order as to costs. We indicated that reasons for the said order would be provided in due course. These are the reasons for the order we granted.

[2] The applicant (Mr Lötter) is contesting the upcoming 2026 Local Government Elections (2026 LGE), as a registered independent candidate in Ward 13 of the Setsoto Local Municipality in the Free State Province. The elections were scheduled for 4 November 2026 and special voting had already commenced on Monday, 2 November 2026. The respondent (Electoral Commission) is the election management body in South Africa. Mr Lötter, acting in person, applies on an urgent basis for an order reviewing and setting aside the Electoral Commission's decision to approve the entry 'IND' in the party identification block alongside his candidature on the Ward 13 ward ballot for the 2026 LGE. He also seeks an order directing the Electoral Commission to remove the said entry 'IND' from that block and to leave the block entirely blank.

[3] Having read the papers and the written argument filed on behalf of both parties, this Court has determined that it is expedient and in the interests of justice to determine the matter in chambers without an oral hearing, in accordance with its powers in terms of rule 2 read with rule 11 of the rules regulating the conduct of the proceedings of the Electoral Court (Electoral Court Rules). The parties were informed of this possibility in paragraph 6 of the Directives issued on 26 October 2026.

[4] To place in context the issues in dispute between the parties in this matter, it is apposite to cite in full the relevant part of the Mr Lötter's notice of motion, which indicates that he will be seeking an order in the following terms:

'5. Reviewing and setting aside, to the extent necessary, the respondent's decision, approval or conduct in authorising or providing for the entry 'IND' in the party identification block alongside the applicant's candidature on the Ward 13 ward ballot for the 2026 Local Government Elections in Setsoto Local Municipality, Free State.

6. Directing the respondent to remove the entry 'IND' from that block and to leave the block entirely blank, with no abbreviation, word, label, description or substitute entry of any kind.

7. Directing that the applicant's full name, André Dawid Lötter, and his photograph be retained in their appropriate places on the Ward 13 ward ballot, and that the correction in paragraph 6 not result in the removal or alteration of his candidature, name or photograph.

8. Directing the respondent, to the extent reasonably and practically possible before polling day on 4 November 2026, to implement the correction and take such steps as the Court considers appropriate to give effect to its order.'

[5] Mr Lötter is therefore challenging the Electoral Commission's decision to include the abbreviation 'IND' – which is short for 'independent' – in the party identification column alongside his name on the Ward 13 ballot paper. He seeks an order reviewing and setting aside this design choice and an order directing the Electoral Commission to leave the block entirely blank, while retaining his name and photograph.

[6] The Electoral Commission opposes the application. It raises two primary defences. First, it contends that the application is materially out of time in terms of rule 6 of the Electoral Court Rules and that no proper case has been made out by Mr Lötter for the matter to be heard as one of urgency. Second, it submits that the decision to include 'IND' is lawful and rational, falling squarely within the Electoral Commission's statutory mandate under s 23 of the Local Government: Municipal Electoral Act 27 of 2000 (Municipal Electoral Act).

[7] The crisp, narrow and pertinent issue to be decided in this matter is this: whether the Electoral Commission in deciding to include 'IND' next to the name of Mr Lötter on the Ward 13 Setsoto ballot paper for the 2026 LGE, acted unlawfully. Put differently, has

Mr Lötter made out a case to have reviewed and set aside the aforesaid decision as unlawful? This issue is to be decided against the factual backdrop of the matter, most if not all of the facts herein, as set out in the paragraphs which follow, being common cause.

[8] The main difficulty faced by Mr Lötter is s 23, which provides as follows:

'**23 Ballot papers**

The Commission *must* determine the design of the ballot paper or ballot papers to be used in an election.' (Emphasis added).

[9] In *Action SA v The Electoral Commission of South Africa (Action SA)*,[1] this Court interpreted s 23 as empowering and obliging the Electoral Commission to determine the design of the ballot paper or ballot papers for use in an election. It held as follows:

'[24] From the above provisions of s 23, it is plain that the Commission has the requisite power, and is in fact, obliged to determine the design of the ballot paper or ballot papers for use in an election. No one else has such power, and clearly two types of ballot papers are envisaged. There are clearly no other restrictions, directions, conditions or guidelines, or discretionary instructions accompanying the Commission's exercise of its powers in this regard. This, for obvious reasons too. One of these is that the Commission may not, in the exercise of its powers to design the ballot paper or ballot papers, consult any of the registered political parties privately, or independently on its own initiative, as to how to design the ballot paper or papers. Admittedly, there are numerous other political parties involved here, not cited in this application. In any event, such eventuality would, undoubtedly, violate the trite principles of natural justice principle of *audi alteram partem* (hear the other side).'

[10] That brings me to the facts in the matter, which, as I have already indicated, are by and large common cause.

[11] On 25 September 2026, in Ficksburg, Mr Lötter attended a presentation in Ficksburg by the Electoral Commission, which displayed proposed ballot designs on a large screen. Mr Lötter observed the entry 'IND' beside his name. He raised concerns about the design, as well as about the placement of the voting boxes and the 'IND' entry and refused to sign off on the proposed ballot. He was not provided with a physical copy

[1] *Action SA v The Electoral Commission of South Africa* (006/2021/EC) [2022] ZAEC 2 (18 January 2022) at para 24.

of the proposed ballot. He later prepared an AI-assisted illustrative reconstruction of the ballot, which he readily concedes is not an official document. Mr Lötter does not disclose whether he noticed that other independent candidates, if any, also had IND next to their name. He seeks only that the indicator be removed from his own name on the ballot paper.

[12] On 19 October 2026, Mr Lötter attended a further ceremony where candidates were invited to sign an undertaking to abide by the Electoral Code of Conduct. He raised concerns regarding special voting percentages and the lack of substantive discussion on the Code. On 26 October 2026, more than a month after becoming aware of the ballot paper design, and a week before special voting would begin, he launched the present application.

[13] The Electoral Commission is the constitutionally designated authority to manage elections and to ensure that they are free and fair. The rationality standard requires that any and all decisions taken by it must be rationally related to the purpose for which the relevant power to make that decision was given. The Electoral Commission confirms in its answering affidavit that it has designed the ballot papers to use 'IND' as an identifier for every independent ward candidate across the country, and that this has been used in the 2021 local government elections and the 2024 national and provincial elections.

[14] As was held in *Action SA*, although s 23 of the Municipal Electoral Act confers on the Electoral Commission a wide discretion in the true sense, such discretion and the powers of the Commission under the said section must still be exercised correctly, judiciously and properly, taking into account all relevant factors and circumstances. The powers are not without restrictions and must be read and interpreted together with the Constitution and other relevant legislative provisions.

[15] In *Maxrae Estates (Pty) Ltd v The Minister of Agriculture, Forestry & Fisheries*,[2] the Supreme Court of Appeal puts the principle as follows:

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[2] *Maxrae Estates (Pty) Ltd v The Minister of Agriculture, Forestry & Fisheries* 2021 JDR 1115 (SCA); (407/2020) [2021] ZASCA 73 (9 June 2021) at para 17.

'… However, the wide Ministerial discretion essentially entailed the consideration by him of the factors that were relevant to the decision he was required to make. The exercise of a wide discretion was no licence for disregarding those factors and making an arbitrary decision. And the Minister could not use the doctrine of separation of powers to shield such arbitrary decision from reviews by the Court. Mere mention that the Ministerial discretion has been exercised for the given purpose was not sufficient. The court was constrained to intervene where the decisionmaker had ignored the relevant factors and taken into account irrelevant considerations.'

[16] The question to be considered by this Court in light of the aforegoing principles is whether the Electoral Commission exercised its power under s 23 lawfully. In that regard, the Commission has the exclusive authority to determine ballot design. There is no legislative prohibition on the use of an identifier for independent candidates.

[17] The Electoral Commission accordingly maintains that its decision, insofar as one was taken to use 'IND' as an identifier for independent candidates, is lawful, rational and constitutional. I agree. It cannot be said with any conviction that the insertion of the 'IND' identifier to denote that a candidate is independent is irrational. It serves the legitimate purpose of enabling voters to identify the candidate of their choice with confidence and minimising the risk of miscast and spoilt ballots. It tells voters, accurately, that the candidate is independent and not nominated by a party. It ensures that the identifier column is populated consistently, so that a voter reading down the column can see whether each contestant represents a party or stands independently. It is uniform across all wards in the country, supporting coherent voter education messaging. By contrast, a blank space is used for party-nominated candidates whose party has not registered an abbreviated name. Leaving Mr Lötter's space blank would make his entry resemble that of a party candidate without a registered abbreviation, which would be more, not less, likely to cause confusion.

[18] Moreover, Mr Lötter's claim that the identifier will cause voter confusion is at best speculative. He concedes that he has not observed any voter being confused by the 'IND' identifier. It has also not been demonstrated that ballots have been spoiled purportedly as a result of the aforesaid design of the ballot paper. By all accounts, the adverse effects which concern him, as conceded by Mr Lötter, have not been and cannot be quantified,

probably because there are no such negative effects. The point is simply that there is no evidence, expert or otherwise, of confusion or negative impact as a result of the 'IND' identifier other than in Mr Lötter's imagination. The voters who asked him which party he belongs to did so in the course of campaigning, not on seeing the ballot paper. The identifier 'IND' in fact answers that very question.

[19] Importantly, the relief sought by Mr Lötter, if granted, would create a single bespoke deviation from the design applied to all independent ward candidates. The Constitutional Court has emphasised that the electoral framework protects the integrity of the electoral process by avoiding ad hoc decisions and treating all candidates and parties equally. So, for example, it was held in *Electoral Commission v Inkatha Freedom Party (Inkatha Freedom Party)*,[3] as follows:

'It is necessary that the integrity of the electoral process be maintained. Indeed, the acceptance of the election as being free and fair depends upon that integrity. Elections must not only be free and fair, but they must be *perceived* as being free and fair. Even-handedness in dealing with all political parties and candidates is crucial to that integrity and its perception by voters. The Commission must not be placed in a situation where it has to make ad hoc decisions about political parties and candidates who have not complied with the Act. The requirement that documents must be submitted to the local offices of the Commission does not undermine the right to vote and to stand for election. It simply gives effect to that right and underscores the decentralised and local nature of municipal elections.'

[20] Mr Lötter has not been singled out. The same identifier is applied to all 636 independent ward candidates contesting the 2026 LGE. On the other hand, the suggestions by Mr Lötter – that he should have been afforded an opportunity to comment on and give input in relation to the way in which his details are reflected on the ballot – are impractical and innately unreasonable. In addition to adding unnecessary costs, to be borne by South Africans, the proposed course would be adding further procedural steps, which would prolong the preparations for the elections. The same consideration applies to the proposal by Mr Lötter that ward candidates should be provided with sample ballot

[3] *Electoral Commission v Inkatha Freedom Party* [2011] ZACC 16; 2011 (9) BCLR 943 (CC); 2011 JDR 0421 (CC) at para 55.

papers, which, according to him, would promote transparency and permit meaningful scrutiny of ballot design.

[21] Lastly, and importantly, Mr Lötter's political rights under s 19 of the Constitution remain fully respected and are not in any way violated by the insertion of the independent identifier. He has been accepted as an independent ward candidate and has been registered as such. He appears on the ballot paper under his full name and photograph. Conversely, if Mr Lötter is to be granted the relief sought by him in this application, there is a real risk that the freeness and the fairness of the upcoming elections would be adversely affected by, for example, a postponement of certain segments of the elections. The relief sought by Mr Lötter should not be granted so as to maintain the integrity of the electoral process, upon which the acceptance of the election as being free and fair depends (to borrow from *Inkatha Freedom Party*).

[22] I therefore conclude that the decision by the Electoral Commission relative to the design of the Ward 13 Setsoto ballot paper, is not unlawful or unconstitutional. Mr Lötter's judicial review application should therefore be refused.

[23] There is another reason why the application should fail and that relates to urgency or rather the fact that Mr Lötter failed miserably in demonstrating that the application should be heard as an urgent application. Rule 6 of the Electoral Court Rules requires a review application to be lodged within three days of the decision being made. Rule 10 provides that a party who fails to comply is barred unless the court, on good cause shown, directs otherwise.

[24] Mr Lötter became aware of the 'IND' identifier on 25 September 2026. He explicitly states in his founding affidavit that he raised concerns about it on that date. At the very latest, he had actual knowledge of the feature he now challenges on that day. The three-day period expired on 28 September 2026. The application was launched on 26 October 2026, some 31 calendar days later.

[25] Mr Lötter's primary contention is that the three-day period should not be treated as having begun on 25 September 2026 because he was not provided with an official copy

of the ballot and because the decision was not clearly communicated. I find this argument unpersuasive. Mr Lötter admits he saw the identifier, understood it, and objected to it on the day. The absence of a physical copy did not prevent him from identifying the feature he wished to challenge. The decision was the Electoral Commission's determination of the ballot design under s 23, which was made and communicated to candidates at the presentation.

[26] Even if Mr Lötter's understanding of the legal implications evolved over time, that does not suspend the running of the time limit. The rule is designed to ensure prompt adjudication of electoral disputes. Mr Lotter's reliance on the development of his legal argument is insufficient to explain the delay.

[27] His alternative request for condonation must also fail. He has not provided a full and satisfactory explanation for the entire period of the delay. He explains that between 25 September and 10 October 2026 he had not yet developed his legal argument; that between 10 and 14 October 2026 he focused on the issue; and that he faced personal difficulties, including lack of electricity and internet access. However, he attended election events during this period, including the 19 October 2026 ceremony, and was able to communicate with the Electoral Commission. As this Court recently held in *Phoshoko v Electoral Commission of South Africa (Phoshoko)*,[4] a candidate who leaves matters to the last minute places himself in the position in which he finds himself.

[28] Mr Lötter's personal circumstances as a self-represented litigant are understandable, but they do not constitute good cause for a delay of this magnitude in a forum where statutory urgency applies. The delay has prejudiced the Electoral Commission, which has had mere hours to respond, and has brought the matter before the court when ballot papers have already been printed and are in distribution. The application should therefore fail for lack of urgency.

[4] *Phoshoko v Electoral Commission of South Africa* (0019/26EC) [2026] ZAEC 10 (22 October 2026) para 33.

[29] One last issue requires my attention, that being the Electoral Commission's application for condonation of the late filing of its answering affidavit. The Commission was required to file its answering affidavit by 19h30 on 27 October 2026. It filed on 28 October 2026, approximately 18 hours late. The explanation provided by the Electoral Commission is that the Chief Electoral Officer was attending to urgent duties at the National Results Operation Centre, and that a comprehensive response required consultation with staff across different provinces.

[30] While the explanation is not perfect, the delay was short, and Mr Lötter, who bizarrely opposed the application for condonation, was able to file a replying affidavit within the time available to him. Mr Lötter has not demonstrated any, let alone substantial prejudice. In *Phoshoko*, this Court granted condonation for a late answering affidavit filed by the Electoral Commission in comparable circumstances. In the interests of justice, condonation should be granted.

[31] The late filing of the Electoral Commission's answering affidavit is accordingly condoned, and same is received and admitted into the record.

[32] In the circumstances, Mr Lötter's application falls to be dismissed.

Costs

[33] The award of costs is a matter which is within the discretion of the court considering the issue of costs. This discretion must be exercised judicially, having regard to all the relevant considerations. One such consideration is the practice in this Court, in line with *Biowatch Trust v Registrar, Genetic Resources, and Others,*[5] that no costs orders should be granted against an unsuccessful party. But this is not an inflexible rule, and it can be departed from where there are strong reasons justifying such departure, such as in instances where the litigation is frivolous or vexatious. I mention – only in passing – that, in my view, the litigation by Mr Lötter in casu was clearly frivolous. Objectively viewed, it

[5] in *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

is difficult to comprehend why, in the circumstances of the matter, Mr Lötter insisted on persisting with his ill-advised application.

[34] All the same, I remain of the view that there is no reason why the aforegoing general rule should be departed from. Each party should therefore bear its own costs.

Order

[35] In the result and for these reasons, the following order was granted on Tuesday, 3 November 2026:

1 The application is dismissed.

2 There is no order as to costs.

L R ADAMS
JUDGE OF THE ELECTORAL COURT
Bloemfontein

Appearances:

For the applicant:	André Dawid Lötter
Instructed by:	In person
For respondent:	M De Beer
Instructed by:	Eversheds Sutherland (SA) Incorporated, Johannesburg Honey Attorneys, Bloemfontein