IN THE ELECTORAL COURT OF SOUTH AFRICA

BLOEMFONTEIN

Not Reportable

Case no: 0018/26EC

In the matter between:

SKHUMBUZO SIBISI	First Applicant
MTHOKOZISI BUTHELEZI	Second Applicant
THOKOZANI MAPISA	Third Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA	First Respondent
UMKHONTO WESIZWE PARTY	Second Respondent
NKOSINATHI TSAULWAYO	Third Respondent
MBULELO NSELE	Fourth Respondent
NTOBEKO DUBE	Fifth Respondent

Neutral citation: *Sibisi and Others v The Electoral Commission of South Africa and Others* (0018/26EC) [2026] ZAEC 19 (06 November 2026)

Coram: Mangcu-Lockwood and Shongwe AJJ and Professor Phooko (Additional Member)

Heard: 19 October 2026

Order granted: 20 October 2026

Judgment delivered: 06 November 2026

Summary: Internal party disputes – non-compliance with election timetable – no proof of service – review application lodged out of time – no application for condonation – application dismissed – no order as to costs

ORDER

The following order is made:

(a) The application is dismissed.

(b) There is no order as to costs.

JUDGMENT

Mangcu-Lockwood AJ (Shongwe AJ and Prof Phooko(Concurring))

Introduction

[1] The first to third applicants seek an order reviewing the final candidates list published by the first respondent, the Electoral Commission (Commission) on 16 September 2026 in relation to three wards located in eThekwini Municipality, namely ward 42 in Ntuzuma, 03 in uMzinyathi, Inanda and 108 in uMzinyathi, Maphephetheni (the wards). They also seek an order directing the Commission to reinstate them as candidates in respect of those wards.

[2] The applicants are members of the second respondent, uMkhonto Wesizwe Party (MK Party). They bring this matter in their personal capacities. In addition to the Commission and the MK Party, they have cited the third to fifth respondents, who have been certified as the MK Party's candidates on the candidates list published by the Commission in respect of the wards.

Brief background facts

[3] Each of the applicants claims that they were nominated at candidate nomination meetings chaired by MK Party deployees, and that after deliberations, voting and counting of votes, they emerged as the democratically elected and preferred candidates to represent the MK Party for the wards. The meetings were held on 11 July 2026 at Ntuzuma Hall in respect of ward 42, on 5 July 2026 at eThwalenye in respect of ward 3, and there is no date provided in respect of ward 108 but it was held at Phola Hall Homeboyz.

[4] After delivering their replying affidavit, the applicants delivered a supplementary replying affidavit to place registers that prove that they were nominated via ‘people's assembly’. They state that the registers were finalised and collated after the replying affidavit was delivered and are material to prove that the MK party violated its own binding rules.

[5] The applicants take issue with the fact that the final lists of candidates that were published by the Commission on 16 September 2026 did not include their names and that, instead the names of the third to fifth respondents were captured as the ward candidates, indicating the third respondent’s name in ward 42, fourth respondent in ward 03 and fifth respondent in ward 108

[6] They state that they lodged formal objections with the MK Party and the Commission. Although the founding affidavit states that the objections lodged with the MK Party were on 16 September 2026, the documents delivered with the replying affidavit indicate that the objections were lodged with the MK party on 31 August 2026.

[7] The formal grievance in respect of the ward 42 election was lodged with the party's zonal, regional and provincial structures of the MK Party, and recorded that 'on inspection of provisional list submitted to the IEC, the name submitted for ward 42 does not reflect the winner' but '[third respondent] who was second'. The writer, who was the first applicant, acknowledged he was 'fully aware that the IEC deadline for candidate nomination closed on Friday 28 August 2026 at 17:00' and that 'after 17h00 on Friday, no changes will be permitted'. Complaints of the same nature were sent to the MK Party in respect of wards 03 and 108 on the same date, and again on 3 and 6 September 2026.

[8] As for the objection lodged with the Commission, the applicants state that it was lodged on 28 August 2026, but there is no proof in that regard, and the allegation is denied by the Commission.

[9] The applicants state that, despite their objections, the final list was published on 16 September 2026, reflecting the third, fourth and fifth respondents as the ward candidates for wards 42, 03 and 108, respectively.

The Commission's case

[10] Only the Commission delivered an answering affidavit. It states that, before the launching of these proceedings, it has no record of any objection, complaint or query from any of the applicants or from anyone on their behalf. That was until 18 September 2026 when an e-mail was received from the first applicant's e-mail addressed to the registrar of this Court, in which the Commission was copied. It attached the founding affidavit in this matter. The full set of papers was eventually served upon the Commission on 1 October 2026 by e-mail. There is otherwise no

evidence of an objection that was lodged with the Commission before the institution of these proceedings.

[11] As to the substance of the applicants' case, the Commission has set out the facts as drawn from its Online Candidate Nomination System (OCNS) and the nomination records kept at its offices in eThekwini. The records reveal that, during the relevant period, the Online Party Administrator (OPA) of the MK Party was Ms Zandile Caryn Hlophe-Mkhwanazi from whose profile every entry on behalf of the MK Party was made. Every system notification was sent to her e-mail address, including confirmation of the final submission of the party candidates. Ms Hlophe-Mkhwanazi has, however, since been removed as the OPA, although it is not clear when.

[12] The Commission's records, indicate that on 19 August 2026 the OPA captured some unnamed persons in respect of wards 03 and 42, neither of whom were the applicants. On 28 August 2026 the unnamed persons were replaced with the third respondent at 02h04 in respect of ward 42, and with the fourth respondent at 02h46 in respect of ward 3.

[13] In respect of ward 108, the OCNS audit trail shows that at 03h49 on 28 August 2026 the third applicant's name was captured on the system by the OPA. However, some five hours later, at 08h18 her name was replaced with the name of the fifth respondent. As a result, the Commission characterises the initial submission of the third applicant's name as provisional which is not unusual.

[14] At 12h56 on 28 August 2026, the MK Party submitted its eThekwini award nominations as final. Immediately thereafter, the OCNS sent an automated e-mail to

the OPA, confirming the submission of final nominations, and attaching the party's captured ward candidate list.

[15] The submission of lists was accompanied by each nominated candidate's signed acceptance of nomination, an undertaking to be bound by the Code of Conduct (the Code), a declaration of eligibility and a copy of the candidate's identity document. The applicable prescribed party deposit was paid. The Commission verified that each of the candidates is a registered voter on the eThekwini segment of the voters' roll.

[16] On 16 September 2026, the Commission certified the list of candidates for all wards, including the three wards. On 25 September 2026 it issued prescribed certificates to each certified candidate, including the third to fifth respondents. It received no communication from the MK Party withdrawing, disputing or seeking to change its nominations in respect of the wards.

[17] The Commission says it never received any nomination for the applicants for any ward at all, whether *via* the OCNS or by physical lodgment at its offices. There is also no indication of amendment of the nominations of the third to fifth respondents after they were submitted as final. All of this was done by the MK Party, which nominated the third to fifth respondents through its authorised representative in the prescribed form, and before the deadline.

Preliminary issues

[18] A glaring concern in the matter relates to the failure to serve the papers upon the third to fifth respondents, whose candidacy is the direct result that is sought to be overturned. No proof of service is attached to the papers. No physical addresses are indicated for the third to fifth respondents. And they have not signaled any indication that they have received notice of the papers, or that they intend to oppose the matter.

[19] Instead, the applicants have attached screenshots of WhatsApp messages, and they wish for the Court to draw inferences that the respondents did indeed receive service. The WhatsApp message that is said to have been sent to the third respondent resulted in a double blue tick, but no response was received. It bears mentioning that the screenshot in question does not have the name of the third respondent, and instead identifies a person named *'Khansela MK'*. Although it was submitted during the hearing that this refers to the third respondent, there is no such indication in the papers, and it cannot be assumed it refers to the third respondent.

[20] In respect of the fourth respondent, the WhatsApp message resulted in two grey ticks, and no further response. There is no basis to assume the papers were received by the recipient.

[21] In respect of the fifth respondent, the applicants state that they obtained an e-mail address for service upon the fifth respondent, which was used as the delivery address for service. However, it is difficult to know with any certainty that the e-mail address belongs to the fifth respondent since the name indicated in the email address is not that of the fifth respondent, and there is no proof that the fifth

respondent supplied the e-mail address. The screenshot in that regard is cut off from the page, and what is legible is labeled *'Lungelo Council'*.

[22] The result is that the proof of service does not satisfy the requirements for service of the pleadings. The need to prove service is important because the third to fifth respondents have not given any indication that they received service or, whether they intend to oppose the matter. Since the relief sought has significant consequences for these respondents, seeking a final order for their removal as candidates, it is important that proof of proper notice should have been provided for service, to ensure that they obtain opportunity to be heard if they so wish.

[23] Another procedural concern relates to the lateness of the delivery of the application. As already indicated, the objection letters were first addressed to the MK Party on 31 August 2026. This shows that the applicants were aware by 31 August 2026 at the latest that the MK Party had submitted the names of the third to fifth respondents as nominees. Yet they only approached this Court and the Commission on 18 September 2026. No explanation has been provided for this delay, especially given that they knew that no changes could be made to the list after 28 August 2026.

[24] The significance of this is that the deadline for such nominations has passed, having been on 28 August 2026, and the Commission has no power to accept a late nomination or to condone non-compliance with the timetable, which is the effect of the relief sought by the applicants.

[25] Insofar as the applicants rely on the certification decision of 16 September 2026 as the decision they seek to challenge, the application was delivered one day

out of time. In terms of Rule 6(1), an application or submissions for review of a decision of the Commission must be lodged within three days after the challenged decision was made. In this case, the three days period expired on 21 September 2026. In terms of the Rules, failure to comply with that time limit bars the application unless the Court condones the breach on good cause shown.

[26] The Constitutional Court has confirmed that the Commission has no power to condone the late submission of candidates' lists. [1] This Court has applied those decisions in this election.[2] The lateness of the application is not a mere matter of technicality. The effect of the relief sought is that the Commission would be required to withdraw three candidates' final certificates, amend three certified lists, and amend and reprint the relevant ballot papers, all within the month before voting day.

[27] The ballot papers have already been printed. Each of the three wards has its own ward ballot paper on which the certified candidates appear, in the order fixed by the ballot paper draw which was held as far back as 23 September 2026. An order substituting the applicants for the third to fifth respondents would require the Commission to withdraw three certificates it had issued and to amend three certified lists. It would have to redraw and reprint three ward ballot papers and the corresponding result slips and distribute them.

[28] All of this would place an unduly onerous burden upon the Commission. It would also cause disruption to the election timetable which was *gazetted* and

---

[1] *Liberal Party v the Electoral Commission and Others* 2004 (8) BCLR 810 (CC) para 25; *African Congress for Transformation v Electoral Commission of South Africa* [2024] ZACC 7; 2024 (8) BCLR 987 (CC) paras 82 – 83.
[2] *Operation Dudula v Electoral Commission of South Africa* (008/26 EC) [2026] ZAEC 7 (2 October 2026); *United Democratic Front Party v Electoral Commission of South Africa* (005/26 EC) 2026 ZAEC 4 (4 September 2026) paras 16, 20.

published some months back, and would have an effecting on the rest of the nation. In light of the fact that the applicants have failed to show good cause for condonation, there is no justification to grant an order with such severe consequences.

The main case

[29] In the review application, the applicants seek an order setting aside the final candidate list published by the Commission on 16 September 2026 in respect of the three wards. The basis for the relief is that the three respondents' names were included contrary to the MK Party's nomination process. While the MK Party has not opposed the application, that does not necessarily mean the relief should be granted. It remains to be considered whether a case has been established on the papers.

[30] In respect of the review, the key provision is s 17(3) of the Local Government: Municipal Electoral Act 27 of 2000 (the Act), which provides as follows:

'The Commission must accept a nomination submitted to it and allow the nominated person to stand as a candidate in the ward if –

(a) the provisions of section 16 and this section have been complied with; and

(b) the candidate is registered as a voter on that municipality's segment of the voters' roll.'

[31] The provision is peremptory. This is indicated by the word 'must'. The Commission has no discretion to refuse a compliant nomination, and it has no discretion to accept a late nomination.

[32] It is not disputed that the Commission accepted nominations submitted by the MK Party and certified the lists on which the candidates appeared after undertaking the verifications required of it by the Act. It verified that each nomination came from

the party's designated administrator, in the prescribed form, before the deadline. It verified the deposit, the undertaking, the declaration and the identity document. And it verified that each nominee is on the eThekwini voters' roll.

[33] The thrust of the application is that the Commission should have overridden the party's selection of candidates and selected the applicants' names instead of the valid nominations submitted by the party's authorised representative. The Applicants refer in this regard to ss 190 and 195 of the Constitution of the Republic of South Africa 1996, which sets out the duties of the Commission. There is no such duty upon the Commission in terms of the Act or the Constitution. In fact, the Constitutional Court has cautioned that 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.[3]

[34] There is simply no case made that the Commission acted unlawfully, irrationally, and unfairly in its duties. There is also no case made out that the third to fifth respondent's nominations failed to comply with a requirement for nomination as set out in the provisions of the Act, or that they are not registered voters in eThekwini, or that they were disqualified from standing.

[35] In terms of the Act, only a registered party may nominate a ward candidate to stand as its representative in a ward.[4] A party acts through its authorised representative, which is defined as a natural person 'duly authorised by the party in

[3] *Electoral Commission of the Republic of South Africa v Inkatha Freedom Party* [2011] ZACC 16; 2011(9) BCLR 943 (CC) para 55.
[4] Section 13(1)*(b)*, 16(1)*(a)* and 16(2)*(a)*.

accordance with its constitution to act on the party's behalf for purposes of... nominating award candidate'.[5] In this case, that was the OPA.

[36] In terms of s 17(1), a person may contest a ward 'only if that person is nominated on a prescribed form and that form is submitted to the Commission by not later than a date stated in the timetable for the election'. In other words, a person is only nominated when the party's authorised representative submits the prescribed form.

[37] The form is submitted by hand at the office of the Commission's local representative, or 'electronically to the chief electoral officer in the prescribed manner'.[6] It must be accompanied by the deposit, by the candidate's signed undertaking to be bound by the Code, and by the candidate's signed declaration that he or she is not disqualified.[7] The Commission may also call for the candidate's signed acceptance of nomination and a copy of the candidate's identity document.[8]

[38] The evidence establishes that the OPA, as the MK Party's representative, made all the entries and changes appearing on the OCNS system. Save for the third applicant who was provisionally nominated for a few hours and thereafter replaced, the OCNS records confirm that the applicants were never nominated as the final candidates by the MK Party. Furthermore, none of the applicants signed a prescribed nomination form, an undertaking or a declaration that reached the Commission.

---

[5] Section 1.
[6] Section 17(1A).
[7] Section 17(2)*(d)*, *(e)* and *(f)*.
[8] Section 17(2A).

[39] At the core of the case brought by the applicants is the complaint that the MK Party's structures overrode the outcomes of three branch meetings and instead submitted the names of the third to fifth respondents. That is a dispute about the party's internal arrangements, which are best left for the political party to regulate.[9] A member may enforce the party's constitution and rules against his or her party, not against the Commission.

[40] It is clear from the evidence that the applicants' quarrel lies with their party, the MK Party. In fact, the replying affidavit confirms this. Referring to provisions of the MK Party constitution, the applicants state that they were not lawfully removed from the party; neither were they were charged with any disciplinary charges. They state that their removal and substitution with third to fifth respondents is unconstitutional, unlawful and violates s 19(1)*(b)* of the Constitution. This is a clear indication that the applicants' remedy is against their political party, not to the Commission.

[41] Besides, at least in respect of ward 42, the results of the votes relied upon by the applicants appear to have been disputed from the very night of the votes. Ms Madlala, the MK Party's deployee in ward 42 who oversaw the voting process records that the count was disputed on the same night of the voting, and the meeting became increasingly hostile, such that she was unable to formally announce the ward councillor candidate results, and she was escorted from the venue by the police, the Metro Police and military veterans. Thus, on the applicants' own documents, the ward 42 result was disputed on the day and was never formally announced. However,

[9] *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC) para 73.

it is not necessary or desirable to make any final determination on the party's internal arrangements in this judgment.

[42] What is relevant in these proceedings is that, since the applicants were never nominated on the Commission's system, there can be no talk of their reinstatement. During the hearing of the matter, the applicants sought to make much of the fact that the third respondent's name was, at some stage, nominated on the OCNS. However, the OCNS evidence indicates that the nomination was only provisional, and that her name was later replaced within a matter of some hours. The system allows political parties to effect changes to their nominations. The fact of changing a name does not establish any irregularity or unlawfulness on the part of the Commission. No case has been made out in that regard.

[43] For all the above reasons, no case has been made out by the applicants. As a result, an order was issued on 20 October 2026 in the following:

a. The application is dismissed.
b. There is no order as to costs.

_____

MANGCU-LOCKWOOD

ACTING JUDGE OF THE ELECTORAL COURT

Appearances

Counsel for Applicants:	
Instructed by:	In person
Counsel for First Respondent:	Daniel Sive
Instructed by:	Diale Mogashoa Attorneys, Menlyn