



# Liberty Fighters Network

Est. 2016 - A voluntary association without gain (*Universitas*)

**Office of the President: Reyno De Beer**

Landline: +27(0)12 023 1976 / Cellular: +27(0)67 735 7288

Electronic Mail: [reyno@libertyfighters.co.za](mailto:reyno@libertyfighters.co.za)

Website: [www.libertyfighters.co.za](http://www.libertyfighters.co.za) / Telegram: @libertyfightersnews / Twitter: @LFN\_SouthAfrica /

Facebook: Libertyfightersnetwork / YouTube: @LibertyFighters

---

Date: 7 June 2024

ATTENTION: Justice Dumisani Hamilton Zondi JA  
Chairperson of the Electoral Court  
c/o Ms. Carmen De Wee / Ms. Denisile Nhlapho  
Email(1): CDeWee@sca.judiciary.org.za  
Email(2): DeNhlapho@sca.judiciary.org.za  
Email(3): denhlapho.sca@gmail.com

cc. ELECTORAL COMMISSION OF SOUTH AFRICA (IEC)  
c/o Harris Nupen Molebatsi Incorporated  
Email(1): teneille@hnmattorneys.co.za  
Email(2): pharris@hnmattorneys.co.za  
Email(3): sereeka@hnmattorneys.co.za  
Email(4): thobile@hnmattorneys.co.za

cc. ALL IEC COMMISSIONERS  
c/o Mr. Sy Mamabolo (Chief Electoral Officer)  
Email(1): sikotoyin@elections.org.za  
Email(2): bapelak@elections.org.za

Email(3): mokalek@elections.org.za

Email(4): munyaits@elections.org.za

Dear Justice Zondi

**REQUEST FOR DIRECTIONS: ELECTORAL COURT: REYNO DAWID DE BEER v  
ELECTORAL COMMISSION OF SOUTH AFRICA & OTHERS (CASE NO. 0027/24EC)**

---

**Contents**

INTRODUCTION .....	2
CONFLICT OF INTEREST .....	8
ABSENCE OF MINUTES AND RECORDS .....	9
INVESTIGATION .....	11
TRANSPARENCY .....	12
DIRECTIONS .....	12

**INTRODUCTION**

1. On Monday, 27 May 2024 this court issued directions in the above-mentioned matter.
2. On Tuesday, 28 May 2024 I have lodge an objection to those very directions and to date no response from this court has been forthcoming.
3. Respectfully, it reasonably appears as if this court has not attended to many Rule 8 proceedings over the years until now, as the Section 20(7) of the *Electoral Commission Act, 1996 (Act No. 51 of 1996)* ("ECA") investigation is apparently understood to be an "application" process to be followed, instead of an inquiry to be undertaken by this court.

4. As any person with even the slightest knowledge of the law would likely agree, an investigation of the magnitude suggested by the ECA cannot be conducted merely by way of an application process, as this would impede the court's ability to consider all relevant circumstances fully. This thorough examination is necessary to reach a well-founded conclusion and make an appropriate recommendation to the applicable committee of the National Assembly.
5. However, the directions required the Respondents to lodge their "answering affidavits" by Thursday, 30 May 2024, which they have failed to do. On this basis alone, they all appear to be in contempt of court, with no corrective action having been taken by the court, thereby reasonably assuming its acceptance thereof.
6. The attorneys for the First Respondent, the Electoral Commission of South Africa (IEC), Harris Nupen Molebatsi Incorporated, served a letter on this court dated Wednesday, 29 May 2024 (Elections Day), explaining their client's alleged inability to file its "answering affidavit" on time and requesting the court's indulgence to file it at a later stage. Despite this formal request, the court has not waived the time limits directed in any way to date.
7. To this end, none of the commissioners, being the Second to Sixth Respondents, have requested any indulgence for the late filing of their "answering affidavits". They have simply ignored the entire proceedings before this court at that stage and should be held in contempt of court, irrespective of their ostensible responses, as highlighted *infra*.
8. Although the IEC, as an organ of state entity, was only cited as an interested party in my complaint<sup>1</sup>, the individual commissioners should have been represented by their own legal representatives or appeared in person, as the complaint before this court was directed at them in their individual capacities and jointly, insofar as they acted in collaboration with

---

<sup>1</sup> p.7, para. 7, Particulars of Complaint

one another. I have clearly explained against whom the complaint was intended in the particulars of the complaint.<sup>2</sup>

9. Therefore, Section 20(7) of the ECA pertains to the investigation of complaints against one or more commissioners and not against the IEC itself, which is a distinct state organ entity. The commissioners merely are members of the IEC, they have not become the IEC, either individually or jointly, and should be regarded as separate from the IEC.
10. Further, Rule 8(2) clearly prescribes that "[t]he member concerned must respond in writing to the allegations within the time prescribed by the Court." The reference to 'member' clearly does not include the IEC. From this rule alone, it is evident that the IEC should remain independent and impartial when participating in the investigation process against its commissioners. These separations between persons and entities are fundamental concepts of the law of persons.
11. Notwithstanding, on Wednesday, 5 June 2024, both the IEC and four of its commissioners, excluding the Fourth Respondent, Mr. Glen Mashinini, filed their combined response to my complaint in the form of affidavits, likely in adherence to the directions. These affidavits were lodged by the same attorneys representing the IEC.<sup>3</sup> This clearly raises the possibility of a conflict of interest for these attorneys, as they cannot represent both the IEC and the commissioners, who are accused of acting improperly against the IEC, thereby compromising the body's independence and impartiality.
12. Furthermore, from the contents of these affidavits, it is evident that the attorneys of the IEC, who also represent the defending commissioners, have drafted the papers for their clients as if they are arguing motion proceedings. This includes ad hominem attacks against me, the complainant, in an attempt to persuade this court to summarily dismiss my

---

<sup>2</sup> p. 8, *para.* 14, Particulars of Complaint

<sup>3</sup> *paras.* 3 – 4, Affidavit by Mr. Moepya

complaint as frivolous and vexatious. They have even demanded that the court impose a punitive costs order against me, assuming that we are engaged in ordinary litigation.

13. Their ultimate justification for these findings against me, is founded upon alleged authority in the purported judgment of *Minister of Cooperative Governance and Traditional Affairs v De Beer*<sup>4</sup> which, as the judges of appeal know too well, are contested in pending matters before the High Court and the Magistrates Courts where the Supreme Court of Appeal has assumed the status of an entity capable of being sued before the court itself. Also an extremely awkward legal paradox established resulting from following incorrect legal processes.
14. In some ways, Mr. Julius Malema and I might have one thing in common: we may not be loved by those we oppose, but we are surely asking the right questions. Similarly, the judiciary and legal fraternity of South Africa might not like me at all, but I am highlighting the gaps in the law that are exposed by not correctly following the *Constitution of the Republic of South Africa, 1996* ("Constitution"). Therefore, please forgive me if I appear to be an arrogant "layperson" litigant; it is not my intention. My conflict with the judiciary and legal fraternity is purely to enforce the constitutional rights of the People of South Africa.
15. It seems that the essence of the proceedings before this court has been overlooked. This court was established as a court of justice to accommodate matters informally brought by anyone, including citizens and voters. For instance, even complaints drafted by hand on a postcard by a grandmother living in a hut in the Drakensberg would be considered a legitimate initiating process. The formal format and content of my complaint before this court are by choice and not because it has been mandated to be treated similarly to a formal application or action before a superior court.

---

<sup>4</sup> Minister of Cooperative Governance and Traditional Affairs v De Beer and Another (Case no 538/2020) [2021] ZASCA 94 (1 July 2021)

16. The rules of proceedings for this court simply state that a complaint must be in writing, not necessarily by affidavit. Therefore, it is logically assumed that the court must take control over such complaints and ensure that all relevant evidence is obtained to properly complete its investigation.
17. When drafting its rules, this court was surely mindful that some complaints against a commissioner would be valid at face value but might be submitted by "laypersons" who lack the ability to properly reveal all relevant information as a legal practitioner would. However, given the importance of ensuring that the IEC remains the constitutional entity it was meant to be at all costs, this court has made the investigative proceedings simple without detracting from its authority to determine its own practices, procedures, and rules.<sup>5</sup>
18. The defending Respondents desire this court to adjudicate my complaint against the backdrop of introducing various procedural and technical preliminary objections, resembling formal superior court proceedings, instead of fully responding to the complaint levelled against each one of them.
19. An aspect that has intrigued me significantly over the years during litigation with the state is the persistent practice by the state's legal practitioners to aggressively pursue the state's position, leaving no stone unturned to do so, regardless of the fact that Section 7(2) of the Constitution demands that "*[t]he state must respect, protect, promote and fulfill the rights in the Bill of Rights*".
20. In light of this mandatory obligation by the state, it becomes apparent that, like the IEC, the state is not permitted to solely advocate for its own notions. It must be open to considering, and even advancing, the positions of a challenger, leaving the correct position to be determined by our courts based on balanced, unbiased arguments by the state's legal practitioners. This approach is noticeably absent from the case presented by the defending

---

<sup>5</sup> s20(3) ECA

Respondents and aims to violate my rights as enshrined by the Bill of Rights, which they are constitutionally obligated to respect, protect, promote, and fulfill. This obligation extends not only to myself but also to the People of South Africa, a component that is regularly disregarded by the state during all its litigation.

21. They are also falsely attempting to convince this court that I want it to reconsider the dismissed applications before the Constitutional Court, which is entirely vexatious, to say the least. In my particulars of complaint I have specifically stressed that –

De Beer respectfully submits that the content and events surrounding these applications contain evidence supporting this complaint and should be incorporated herein. These applications are not submitted to request this Court to make any findings regarding the decisions and reasons provided by the Constitutional Court, as such matters are logically beyond the jurisdiction of this Court.

6

22. In a peculiar manner, the defending Respondents' significant objection against my complaint, expressed in nothing less than disrespectful terms toward me, is their belief that the Constitutional Court's dismissal of my applications regarding my intervention in that case should guide this court to dismiss this complaint as well.<sup>7</sup>
23. In fact, their presumed arrogance in treating my complaint with contempt has exposed them to be exactly the commissioners I suggested were not independent and acted biased. This effectively confirms that they ought to be investigated for misconduct, incapacity, and/or incompetence.

---

<sup>6</sup> p. 9, *para.* 17, Particulars of Complaint

<sup>7</sup> p. 19, *para.* 45, Affidavit by Mr. Moepya

## CONFLICT OF INTEREST

24. The IEC's attorneys have drafted and lodged the responding affidavits for all defending commissioners as well. The reason why Mr. Glen Mashinini did not file his affidavit and effectively defend the complaint with the others, particularly in a similar template-styled fashion confirming the contents of the responding affidavit, is surely an aspect that justifies closer scrutiny of this complaint and treating it with the attention it deserves.
25. During judicial inquiries, testimonies are generally given independently, in the witness's own words, and not in unison, as the commissioners have collaborated on their evidence. This is highly inappropriate and raises suspicion that they all had to speak with one voice, suggesting that individual testimonies might have exposed misconduct, incapacity, and/or incompetence.
26. The responses of all the defending commissioners were expected to be in their own words, addressing why each of them did not want the IEC to raise the international process before the African Commission on Human and Peoples' Rights ("ACHPR") of Mr. Zuma at the hearing before our *apex* court. What has transpired is that the IEC has confirmed that the commissioners only became aware of those proceedings when I raised it in my application to the Constitutional Court. Furthermore, the commissioners, acting as part of the IEC, supported the notion that it was irrelevant and not necessary for the IEC's counsel to argue at the hearing.
27. Therefore, by providing a collective response, they have essentially confirmed that the IEC revisited and reviewed the decision they made on 28 March 2024 regarding Mr. Zuma's candidacy. It suggests that this decision was no longer considered valid and had been replaced by the one made by the IEC before the Constitutional Court hearing, following my revelations. Consequently, the commissioners, through their collaboration, allowed the

inference that the Constitutional Court passed judgment on the decision made by the IEC on 28 March 2024, which was no longer valid.

28. Furthermore, the decision by the IEC to defend this complaint of mine, as confirmed by the collaborating response of the defending Respondents dated 6 June 2024, also reopens the entire question surrounding the previous decision about Mr. Zuma's candidacy. In their response, they explained why the ACHPR process would not have assisted Mr. Zuma at all.<sup>8</sup>
29. That explanation was never raised before the Constitutional Court, as would have been expected of the IEC as a supposed independent and impartial state organ. According to the IEC's own version, it arbitrarily decided that the Constitutional Court need not address such an important legal argument.
30. Therefore, this conflict of interest between the IEC on one hand and the commissioners on the other has effectively resulted in Mr. Zuma and the MKP being able to apply to this court to review the IEC's latest decision, prompted by its choice to submit a combined affidavit for all Respondents.

## **ABSENCE OF MINUTES AND RECORDS**

31. For the IEC, composed of all the commissioners in their official capacities, to have decided between 6 May 2024, when my intervention application before the Constitutional Court was lodged, but before the hearing on 10 May 2024, that the ACHPR proceedings were irrelevant, the commissioners surely had to have formally met as the IEC to make such a determination. This is precisely what the responding affidavits suggest, as otherwise, it

---

<sup>8</sup> p. 19 – 23, *paras.* 46 – 51, Affidavit by Mr. Moepya

would have been automatically irregular for the commissioners not to have done so when such an important revelation comes to light.

32. Any formal meeting of such nature must be properly recorded, and minutes must be prepared; otherwise, the commissioners acted incompetently. The defending Respondents have not disclosed any such minutes or recordings of that meeting.
33. Furthermore, the decision by the IEC to join the commissioners in defending the complaint against them, and that the same attorneys representing the IEC would also represent the commissioners, should have been made at a properly constituted meeting of the IEC, with records and minutes prepared. Once again, those minutes and recordings are being withheld from this court.
34. The minutes and recordings of these two IEC meetings, directly concerning this matter and documenting the required deliberations between the commissioners, are undoubtedly relevant to this investigation and must be disclosed.
35. At this juncture, it seems reasonable to me that the commissioners have abused their authority by collaborating to make the IEC a defending party before this court, rather than submitting their individual responses and obtaining their own legal counsel. The minutes and recordings of those meetings would clarify whether this is indeed the case.
36. Certainly, there should be no objection from the IEC itself to be fully transparent in disclosing them, considering its role as the expected independent and impartial constitutional body responsible for ensuring free and fair elections. Furthermore, Section 32(1)(a) of the Constitution grants me the right to access that information held by the IEC, regardless of this court's automatic right, as per Rule 11(2)(c), to request such minutes and records of proceedings by the IEC.

37. Those minutes and recordings are public records that the IEC is obligated to provide to anyone requesting them, particularly when needed to investigate commissioners suspected of misconduct, incapacity, and/or incompetence. To uphold its independence and impartiality, the IEC must furnish that information without this court even having to request it.

## **INVESTIGATION**

38. The defending Respondents have essentially, in clear contempt of this court's authority, implied in their responding affidavits that recommendations of this court would not carry much weight, as the National Assembly has its own processes to follow to remove any of the commissioners.<sup>9</sup>

39. They further suggest that this court lacks the authority to request assistance from other organs of state for its investigation.<sup>10</sup> However, the defending Respondents have provided no reference to any authority indicating that this court is prohibited from utilizing organs of state to assist in its investigation into the suggested misconduct, incapacity, and/or incompetence of the commissioners.

40. This presents a typical scenario where this court may need to arrange a directions hearing to ensure the proper conduct of the inquiry, including outlining the procedures to be followed.

41. The failure of the Respondents to adhere to the directions has left me in the predicament of not having any guidance on the format and deadline for my reply to the defending

---

<sup>9</sup> p. 10 – 12, *para.* 29, Affidavit by Mr. Moepya

<sup>10</sup> p. 36, *para.* 119, Affidavit by Mr. Moepya

Respondents' combined response. Their responses were delivered long after the deadline, causing the time set for my reply to pass as well.

## **TRANSPARENCY**

42. As an independent and impartial constitutional state organ, the IEC was expected to inform the public through a media release to all media outlets that they had become aware of the existence of the ACHPR process by Mr. Zuma during the Constitutional Court proceedings. They should have stated that they decided it would not impact the court's decision regarding Mr. Zuma's candidacy. Consequently, they refrained from instructing their legal counsel to argue that point before the Constitutional Court.
43. If the Respondents have nothing to hide or believe that they have done nothing wrong in the execution of their duties, such action would only strengthen their positions, indicating that there was no misconduct, incapacity, or incompetence on their part. It would also demonstrate transparency and trust in the IEC, particularly given the various allegations made against it regarding the fairness of the elections.

## **DIRECTIONS**

44. In light of what I have raised *supra*, I respectfully request this court to consider making the following directions:-
  - 44.1. That the defence entered by the First Respondent, the IEC, in respect of the complaint in terms of Rule 8 before this court, is discarded;
  - 44.2. That the Second to Sixth Respondents are directed to file their individual responses to the complaint by such date set by the court;

- 44.3. That the First Respondent is directed to lodge with this court and serve upon the Complainant the complete minutes and recordings of the meetings held between 6 May 2024 and 10 May 2024, as well as pursuant to the IEC's decision to defend this complaint and any subsequent meetings in respect of the content of the responding affidavits, by the date set by the court;
- 44.4. The Complainant is directed to reply to the responses by the defending Respondents by such date set by the court;
- 44.5. The IEC is directed to publish a suitable, independent and impartial, media release to all media to declare that it became aware of the ACHPR proceedings by Mr. Zuma only during the Constitutional Court processes and that it decided at that time that it would not have impacted the proceedings before such court and refrained from instructing its counsel to pertinently mention such revelations to the presiding judges of the Constitutional Court;
- 44.5. Subsequent the lodgement of the Complainant's reply, the secretary of the court will determine a date for a directions hearing *via* MS Teams pertaining to such matters as the court deems fit and proper in its discretion;
- 44.6. Any further and/or alternative directions.
45. This court is respectfully requested to consider this request and to respond as soonest possible.
46. My rights remain reserved *in toto*.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'R. De Beer', with a large, sweeping flourish extending to the right.

**Reyno D. De Beer**

Complainant

Also

President: Liberty Fighters Network