



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Electoral Commission v Mhlope and Others**

**CCT 55/16**

**Date of hearing: 9 May 2016**

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### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 9 May 2016 at 10h00 the Constitutional Court will hear an urgent application for leave to appeal concerning the obligation of the Electoral Commission to furnish the addresses of registered voters to those contesting elections. An application for direct access is brought in the alternative for declaratory relief should the application for leave to appeal fail.

Following the Constitutional Court's decision in *Kham and Others v Electoral Commission and Another*, the Electoral Commission was to hold by-elections in the Tlokwe Local Municipality in February 2016. On the eve of the elections, independent candidates participating in those elections challenged the validity of the certified voters' roll in the Electoral Court on the basis that it contained names of approximately 4 000 voters without their addresses. Their contention was that, according to the decision in *Kham*, the voters' roll should have addresses of all voters where those addresses are objectively available. They sought a postponement of the elections.

Based on its interpretation of this Court's decision in *Kham*, the Electoral Court upheld the argument of the independent candidates and held that elections conducted in accordance with the challenged voters' roll would not be free and fair. As a result, the elections were postponed.

The respondents cited before the Court are the independent candidates, the African National Congress (ANC), the Democratic Alliance (DA), the Minister of Cooperative Governance and Traditional Affairs (the Minister) as well as various other state organs. The Inkatha Freedom Party (IFP) and National House of Traditional Leaders have both successfully intervened in the proceedings, and have been joined as respondents.

In its application for leave to appeal, the Electoral Commission argues that the Electoral Court's interpretation of *Kham* was wrong, and that the Electoral Commission is only obliged to furnish the voters' addresses which it has in its possession. Further, it argues that if the Electoral Court's interpretation was correct, the result will be the disenfranchisement of some 12 million voters whose names will have to be removed from the roll for lack of addresses. This, it argues, will be incompatible with the principle of statutory interpretation favouring enfranchisement rather than disenfranchisement. In the event that the application for leave to appeal fails, the Electoral Commission seeks direct access to the Constitutional Court and requests it to fashion a just and equitable remedy that exonerates it from obtaining the addresses of all registered voters for the 2016 local government elections and 2019 national and provincial elections.

The independent candidates contend that the Electoral Court's decision was sound, and that the appeal should fail. Moreover, they argue that the Electoral Commission will be able to obtain the addresses of all voters before the 2016 local government elections by using various online and governmental databases. In respect of the application for direct access, they argue that the relief sought is not appropriate as it would condone the Electoral Commission's non-compliance with its obligation to ensure free and fair elections.

The ANC agrees with the Electoral Commission and supports the relief sought in both applications. The Minister also supports the relief sought by the Electoral Commission, and adds that a postponement of the 2016 local government elections in order for the Electoral Commission to obtain the addresses is not a constitutionally viable option. The National House of Traditional Leaders similarly supports the relief sought by the Electoral Commission, highlighting that the Electoral Court's interpretation would negatively impact those living in rural areas as they do not have conventional addresses.

The DA and the IFP oppose the application for leave to appeal. The DA argues, however, that this Court should order the relief sought in the direct access application but limit it only to the 2016 local government elections. The IFP opposes the direct access application. Instead, it proposes a provisional balloting system to be used by the Electoral Commission to solve the issue. The IFP proposes that the registered voters, whose addresses are not reflected on the roll, be allowed to cast provisional votes, and political parties and other interested individuals, be afforded a limited opportunity to lodge objections to the counting of these provisional votes.