



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Xolile David Kham and Others v Independent Electoral Commission and Others**

**CCT 64/15**

**Date of hearing: 10 September 2015**

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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 Thursday, 10 September 2015 at 10h00 the Constitutional Court will hear an application in a matter concerning irregularities with the voter registration and the voters roll in municipal by-elections.

The case arises out of eight by-elections held in the Tlokwe Local Municipality (Potchefstroom) during August, September and December 2013. All the applicants were candidates for election in the by-elections in their respective wards, which they all lost. The applicants complained that the voter registration and the subsequent voter's roll compiled by the first respondent, the Independent Electoral Commission (IEC), were incorrect and inaccurate. Further complaints were made concerning the applicants' dissatisfaction with certain irregularities pertaining to incomplete voters rolls and the timing of their availability. The IEC launched its own investigation into the allegations of irregularities and found the complaints lacked merit.

The applicants then applied to the Electoral Court requesting it to order the IEC to launch an independent investigation into irregularities in various wards in the by-elections (the main relief). Further, depending on the results of the investigation, they asked that the by-elections in these wards be set aside (the alternative relief).

The Court held that it lacked the power to order the IEC to conduct an independent forensic investigation of the alleged irregularities and thus could not grant the main relief. It also found that to grant such relief would usurp the powers conferred on the IEC by the Constitution. The Court found that the alternative relief was dependent on the success of the main relief and held that if the main relief failed, the alternative relief should also fail.

The Court endorsed the IEC's decision to reject the applicant's objections and concluded that the irregularities complained of did not materially affect the outcome of the by-elections which may justify the setting aside of the elections. In a dissenting judgment, one judge held that although the Court lacked the competence to order the IEC to conduct an investigation, it could set aside the elections.

Before the Constitutional Court, the applicants concede that the Electoral Court did not have the power to grant the main relief. They however contend that the alternative relief was not dependent on the success of the main relief and the alternative relief should have been granted due to the irregularities that occurred. The IEC submits that its conduct was reasonable in the investigation of irregularity with voters registration. The IEC argues that the Electoral Court's finding against the applicants on their main relief affects the alternative relief and thus the relief should accordingly have failed. The IEC argues that applicants raise a new ground of relief before this Court and the applicants seek to include background facts that go beyond the issues arising from factual findings of the Electoral Court.