



**THE ELECTORAL COURT OF SOUTH AFRICA
BLOEMFONTEIN**

Not reportable

Case no: 005/26EC

In the matter between:

UNITED DEMOCRATIC FUND PARTY

APPLICANT

and

ELECTORAL COMMISSION OF SOUTH AFRICA

RESPONDENT

Neutral citation: *United Democratic Front Party v Electoral Commission of South Africa* (005/26EC) [2026] ZAEC 04 (04 September 2026)

Coram: ADAMS J, MANGCU-LOCKWOOD AJ and PROFESSOR PHOOKO
(Additional Member)

Heard: 28 August 2026

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 13H00 on 04 September 2026.

Summary: Section 11 of the Local Government: Municipal Electoral Act 27 of 2000 (Municipal Electoral Act) – 2026 Local Government Election Timetable (timetable) – political party intending to contest ward election required, in terms of item 5(2) of the timetable, to submit – its candidate nomination by 28 August 2026 in the manner prescribed by s 17(1A)(a) of the Municipal Electoral Act – the applicant anticipated that it would be unable to comply with the prescribed deadline and sought an exemption from it – relief sought held to be incompetent – s 11(2)(a) of the Municipal Electoral Act

empowers the Electoral Commission to amend the timetable generally, by notice in the Government Gazette, where such amendment is necessary to ensure a free and fair election – provision does not empower the Electoral Commission to exempt an individual political party from a deadline that remains applicable to all other political parties and candidates – refusal of a request which the Electoral Commission had no power to grant cannot be unlawful, irrational or unreasonable – the decision, was in any event, lawful, rational and reasonable on its merits – the Electoral Commission's considered position is that no amendment is necessary for a free and fair election – the Electoral 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 Municipal Electoral Act or the timetable – strict adherence to electoral deadlines necessary to give effect to the political rights entrenched in s 19 of the Constitution and promote the founding values of democracy and universal suffrage – 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 (Mangcu-Lockwood AJ and Professor Phooko (Additional Member) concurring):

[1] On 28 August 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, the United Democratic Front Party, is a political party recently registered as such with the respondent, Electoral Commission, in terms of s 15 of the Electoral Commission Act 51 of 1996 (Electoral Commission Act). The Electoral Commission is the election management body in South Africa. Fearing that it would not be able to comply with the 2026 Local Government Election Timetable (timetable), published by the Electoral Commission on 7 August 2026 under the Government Notice 4086 of 2026 in GG 55163, the applicant launched this application on an urgent basis. The timetable was published in terms of s 11 of the Local Government: Municipal Electoral Act 27 of 2000 (Municipal Electoral Act). References in the timetable to sections are, unless otherwise indicated, references to sections of the Municipal Electoral Act.

[3] The relief initially sought by the applicant was for an order granting it leave to submit its ward candidate nominations for the 2026 Local Government Elections after the deadline of 17h00 on 28 August 2026 fixed by the election timetable. What the timetable required of political parties before that deadline was for them to nominate ward candidates to stand as representatives of the party in those wards which it intended contesting. By

the time the application was heard by us in the evening of Friday, 28 August 2026, the relief which the applicant was seeking had been narrowed down significantly. The applicant, as per its replying affidavit and the written heads of argument, was then asking only for leave to nominate the so-called placeholder ward candidates in respect of some and/or all the wards it intended to contest. This would entail one candidate being nominated to stand in a number of wards only for purposes of reserving those nominations on behalf of the applicant, with the intention that the applicant would substitute those nominations with other candidates before the next cut-off date in the timetable, that being 4 September 2026.

[4] The implicated provision of the timetable is item 5, which reads as follows: -

‘5 Cut-off date for submissions to contest the elections, list of candidates and nomination of ward candidates

- (1) Registered parties that intend to contest this election in terms of section 14 must submit a party list of their candidates and the prescribed deposit with the supporting documents for the election in the manner provided for in section 14(1A) (a) or (b) in the prescribed form by 28 August 2026.
- (2) Registered parties and independent candidates that intend to contest a ward in this election in terms of section 17 must submit their nominations and the prescribed deposits with the supporting documentation for the said ward election in a manner provided for in section 17(1A) (a) or (b) in the prescribed form by 28 August 2026.
- (3) Payment of the prescribed deposits in terms of sections 14(1)(b), 17(2)(d) and 14A must be made by 28 August 2026.’

[5] In sum, s 14 of the Municipal Electoral Act prescribes the requirements for the submission of the party lists of nominated candidates and provides *inter alia* that a party may contest a municipal election in terms of s 13 (1)(a) or (c) ‘only if the party by not later than a date stated in the timetable for the election has submitted to the Commission’ a party list. Section 17 prescribes the requirements for ward candidates to contest a particular ward election and provides *inter alia*, that a person may contest an election as a ward candidate ‘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’. Subsection (1A) provides that the prescribed nomination form must be

submitted by hand to the office of the Commission's local representatives or electronically to the chief electoral officer in the prescribed manner.

[6] The case on behalf of the applicant is that, due to time constraints, it was unable to comply with item 5(2) of the timetable in that it was not able to submit its ward candidate nominations by the deadline. This resulted from the fact, so the applicant submits, that its registration as a political party with the Electoral Commission was finalised only on 24 August 2026, after a prolonged registration process, which also required it to apply to this Court to approve its registration. This means, so the applicant contends, that it had extremely limited time available to it to organise its participation in the municipal elections scheduled for 4 November 2026. In particular, as regards the nomination of ward candidates, it in effect only had from 25 to 28 August 2026 – therefore, a mere four days, to make those nominations. This made it near impossible for it to attend to the organisational work reasonably required to identify and select suitable ward candidates, bearing in mind that it was still required, in the limited time available to it, to approach prospective candidates and obtain their informed consent and acceptance.

[7] In its notice of motion dated 25 August 2026, the applicant sought the urgent review of the Electoral Commission's decision, communicated on 25 August 2026, refusing to amend the election timetable to afford the applicant additional time to submit its ward-candidate nominations. Importantly, in its founding affidavit, the applicant confirms expressly that it was not legally prohibited from submitting candidates because it was unregistered as a political party.

[8] The applicant does, however, emphasise the fact that, according to it, the circumstances and timing of the approval of its registration, left it with an objectively and practically inadequate period in which to complete the substantial organisational work required to nominate ward candidates. It accordingly promptly asked the Electoral Commission to exercise its discretion under s 11(2)(a) of the Municipal Electoral Act, which request was refused on the same day. This refusal, so the applicant contends, failed properly to consider whether a limited amendment of the timetable was necessary to promote a free and fair election.

[9] The applicant points out that it acted reasonably in that immediately after receiving confirmation of its registration from the Electoral Commission, it began to intensify its preparations to nominate ward candidates. So, for example, it posted on its Facebook page the court outcome relating to its approval of registration application and called for ward councillors to come forward and avail themselves for nomination. An urgent meeting was also called with a core group and executives to plan the way forward. It also approached fifteen prospective ward candidates out of the 110 wards the applicant intended contesting. In that regard, the applicant made its intentions clear that it intended to contest approximately 110 wards in the City of Cape Town Metropolitan Municipality.

[10] The Electoral Commission opposed the application on the basis that the primary relief sought by the applicant is incompetent. Section 11(2)(a) of the Municipal Electoral Act permits only a general amendment of the timetable, by notice in the Government Gazette, where that amendment is necessary for a free and fair election. The Electoral Commission contends that the Municipal Electoral Act confers no power to exempt one party from a deadline that continues to bind all others. Therefore, the refusal of a request which the Electoral Commission had no power to grant cannot be unlawful, irrational or unreasonable. The decision was, in any event, lawful, rational and reasonable on its merits. Moreover, it is averred by the Electoral Commission that its considered position is that no amendment is necessary for a free and fair election.

[11] The Electoral Commission furthermore opposed the application on the basis that the applicant's predicament is substantially of its own making. It lodged its registration application seven weeks late, chose the abbreviation which grounded the refusal, misdirected its appeal and made no meaningful preparations while nominations were open. On its own papers it had one confirmed candidate for the 110 wards it wished to contest. In any event, the timetable itself was not challenged. The applicant's inability to nominate after the deadline flowed from the timetable by operation of law, and not from the letter of 25 August 2026 or the decision communicated therein. Setting the letter aside could therefore not assist the applicant.

[12] Lastly and importantly, the alternative placeholder candidate proposal was, according to the Electoral Commission, unlawful. It contemplated late nominations, which s 11(3) and s 17(1) of the Municipal Electoral Act preclude, and declarations which s 69(1) of the Act prohibits.

[13] I find myself in agreement with the contentions on behalf of the Electoral Commission. Section 11(2) of the Municipal Electoral Act permits the Commission, by notice in the Gazette, to amend the timetable if it considers the amendment necessary for a free and fair election or if the voting day is postponed. Section 11(3) provides that any act required to be performed in terms of the Act must be performed by no later than the date and time stated in the timetable.

[14] Section 17(1) requires a ward nomination to be submitted on the prescribed form by not later than the date stated in the timetable. Section 17(3) obliges the Electoral Commission to accept a nomination only if s 16 and s 17 have been complied with and the candidate is registered as a voter on the relevant segment of the voters' roll. Importantly, the Electoral Commission has no discretion to accept a late nomination.

[15] The scheme of the Electoral Act makes a narrow provision for flexibility after the deadline. Sections 14(4A) and 17(2B) of the Act, read with item 6A of Schedule 3, permit substitution where a candidate appears on more than one list or has been nominated by more than one party or person, again by dates stated in the timetable. That substitution operates only upon nominations submitted in time. The Act contains no mechanism by which a nomination may first be submitted after the deadline.

[16] The simple point is this. Beyond these provisions, the Electoral Commission has no power to condone non-compliance with a statutory deadline. A functionary may condone non-compliance with legislation only where the legislation confers that power upon it.

[17] This Conclusion is consistent with the approach adopted in *African Christian Democratic Party v Electoral Commission and Others*,¹ where the Constitutional Court held, in the context of municipal elections, that the Commission's responsibility to a particular party cannot be heightened because of that party's failure to comply with procedural requirement in the Municipal Electoral Act. The Constitutional Court endorsed the principle that, if an election timetable is not adhered to equally by all parties, the legitimacy and fairness of the elections may be compromised.

[18] The same principle was affirmed in *Liberal Party v The Electoral Commission and Others (Liberal Party)*². There the Constitutional Court rejected an amendment to the election timetable sought to accommodate a party that had failed to comply with the prescribed deadline, holding that such an amendment was not necessary for a free and fair election and could prejudice other parties' election preparations and fairness of the elections.

[19] More recently, the Electoral Court applied these principles in *Labour Party of South Africa and Others v Electoral Commission of South Africa and Others*,³ the Court held that there was nothing unlawful about the Commission's insistence on compliance with the deadlines in the election timetable and 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. On appeal, that approach was subsequently endorsed by the Constitutional Court in *African Congress for Transformation v Electoral of South Africa*⁴, where the Constitutional Court held that the Commission and political parties are required to ensure fairness and the proper administration of free and fair elections. It further held that the Commission does not have the power in law to condone non-compliance with the Electoral Act and the Election Timetable, although it may amend the timetable where the statutory requirements for doing so are met.

¹ *African Christian Democratic Party v Electoral Commission and Others* 2006 (3) SA 305 (CC).

² *Liberal Party v The Electoral Commission and Others* [2004] ZACC 1; 2004 (8) BCLR 810 (CC).

³ *Labour Party of South Africa v Electoral Commission of South Africa* 2024 JDR 1554 (EC).

⁴ *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa and Others; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* [2024] ZACC 7; 2024 (8) BCLR 987 (CC).

[20] For the foregoing reasons, the applicant's application falls to be dismissed. The Electoral Commission has no power – statutory or otherwise – to condone non-compliance with a statutory deadline. Conversely, this Court cannot and should not compel it to do so.

[21] Closely related to the foregoing is a further reason why the applicant's application should fail and that relates to the settled legal principles that there should be strict adherence to election timetables.

[22] As has been held by this Court on numerous occasions,⁵ an election timetable and the deadlines set therein are essential for the facilitation of free and fair elections. Electoral authorities, like the Electoral Commission, would not be able to run a free and fair election without clear rules regulating the submission and verification of party and candidate information. For an election to be free and fair, and to be perceived as free and fair, all parties must be held to these rules. There can be no *ad hoc* condonations or indulgences – otherwise some of the parties will be perceived as being favoured by electoral authorities, who must remain neutral.

[23] Parties and candidates want to participate in free and fair elections. Voters must vote in free and fair elections. If the elections are not free and fair, political participation is not promoted but stifled. This, however, requires the Electoral Commission, political parties and independent candidates to all adhere to the deadlines set in the electoral timetable precisely to give effect to all the s 19 political rights. It is also necessary to promote the founding values of democracy and universal suffrage.

[24] In *Inkatha Freedom Party*,⁶ Ngcobo CJ held that 'the foundational values of universal suffrage and multi-party democracy ... [as foundational values] are best advanced through the Commission's rigorous adherence to the provisions of the Act'. Rigorous adherence to deadlines 'is crucial to the integrity of the electoral process'. It may be apposite to cite in full the para 55 of the judgment, which reads as follows:

⁵ Ibid fn 5 above.

⁶ *Electoral Commission v Inkatha Freedom Party* 2011 JDR 0421 (CC).

'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.' (Emphasis added).

[25] The electoral timetable is the central mechanism which regulates and thus gives effect to the rights to vote, stand for public office and to free and fair elections. Fairness cannot be assessed subjectively by considering only the circumstances of one non-compliant party or candidate. It is inherently unfair to parties and candidates that complied with a deadline to permit the alteration of that deadline, especially to where the alteration is for purposes of suiting the convenience of a party that failed to comply with the deadline purely in consequence of subjective factors. It would come at a cost to political parties and independent candidates who have planned their campaigning based on the proclaimed date and who have not been cited in these proceedings.

[26] As was held by the Constitutional Court in *Liberal Party*⁷, the idea that an election timetable can be altered because one party had failed to comply with it, should be rejected. An amendment to the timetable, the Court held, 'is not necessary for a free and fair election'. In fact, in the Court's opinion, it would have had the opposite effect – it 'could prejudice other parties' election build-ups and indeed free and fair elections'.

[27] On the basis of these authorities and the principles enunciated therein, the applicant's application should fail. These principles were applied as recently as 2024 in the *Labour Party* matter. Four registered political parties and one independent candidate had missed the national candidate submission deadline of 8 March 2024 and approached

⁷ *Liberal Party v The Electoral Commission and Others* [2004] ZACC 1; 2004 (8) BCLR 810 (CC).

this Court for a reopening of the process. This Court refused, and the Constitutional Court declined to come to their assistance. The Constitutional Court⁸, held as follows: -

'Like all organs of state, in accordance with the doctrine of legality, the Commission has only those powers granted to it by the law, that is, the Constitution and legislation, be it principal (Acts) or subsidiary legislation (Regulations, etc). Rigid adherence to these instruments by both the Commission and all parties is required so that there is fairness to all parties and to ensure that the Commission can properly arrange a free and fair and smooth-running election. Absent rigid adherence the efficiency and fairness requirements will be undermined. That requires deadlines, like those contained in the Election Timetable to be strictly adhered to. Fairness to compliant parties would be subverted if parties who fail to comply with a regulation are nonetheless permitted to contest an election. The Commission does not have the power in law to condone non-compliance with the Electoral Act, the Regulations and the Election Timetable. This rigidity is tempered by the provisions of section 20(2) of the Electoral Act, which grant the Commission the power to amend the Election Timetable. That power is to be exercised only if it considers the amendment necessary for a free and fair election or if the voting day is postponed in terms of section 21.'

[28] Over and above the foregoing, the application should fail for the reason that factually the applicant's predicament was self-created. As was held by this Court in the applicant's review application relating to its registration with the Electoral Commission, the applicant must shoulder some responsibility for the delays in the finalisation of its registration. It failed to lodge a hard copy of its registration application until 10 April 2026 – some seven weeks after it submitted the application electronically. This Court also found that the Electoral Commission had displayed no bias or incompetence. This means that at least seven weeks of the period of which the applicant complains are attributable to the applicant alone, being the interval between emailing its application and lodging it properly. Moreover, the sole ground of refusal was the abbreviation which the applicant had itself chosen. An abbreviation is optional, as this Court confirmed. Had the applicant applied without one, or with an unobjectionable one, the ground of refusal would never have arisen.

⁸ *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* [2024] ZACC 7; 2024 (8) BCLR 987 (CC) para 82.

[29] What is more is that the applicant failed to prepare for its participation in the Municipal Elections in parallel to its registration application, as a reasonable political party would have done. Registration was not a precondition for preparation. Only the submission of nominations required registered status. Nothing in law or in fact prevented the applicant from identifying wards, recruiting candidates, obtaining their acceptances and identity documents, and completing the prescribed forms, so that its nominations could be lodged immediately upon registration.

[30] The applicant's own conduct proves the point. Its first public call for candidates was published on its Facebook page on or about 23 August 2026, the day before the Electoral Commission directed its registration, and was itself made subject to that decision. Recruitment did not depend on registered status. The applicant expressly disavows any contention that it was legally prevented from submitting candidates. Its papers record that it had itself downloaded and printed the prescribed nomination documents. On its own case, nothing stood in the way of full preparation.

[31] The simple point is this. Awaiting the outcome of the review before preparing was the applicant's own choice. On its papers, the first two weeks of the 21-day nomination window passed without any step at all. That risk cannot now be transferred to the Electoral Commission, to other contestants or to the electorate.

[32] Lastly, I proceed to deal with the applicant's application for an order to the effect that it be allowed to nominate a ward candidate or ward candidates, as place holders for and on behalf of other candidates who will substitute him / her / them as the certified ward candidates in due course. In other words, the applicant asks to be permitted to submit the name of one available person as its candidate in more than one ward by the deadline and thereafter, if an extension is granted, to replace that person, ward by ward, with properly selected candidates. It asserts, without reference to any provision, that this is permissible under the electoral framework. That assertion is denied by the Electoral Commission.

[33] This relief claimed by the applicant initially in the alternative assumed greater significance in view of the fact that, as indicated *supra*, it was indicated by the applicant at the hearing of the application on 28 August 2026, that it was then only proceeding for this relief.

[34] The difficulty that the applicant faces in that regard is that such relief sought is no different from the primary orders prayed for by the applicant in its notice of motion. It also in effect asks for an order amending or varying the election timetable. And, for the reasons already alluded to, the applicant is not entitled to such relief.

[35] The simple point is this. The proposed replacement stage is in effect the submission of new nominations after the deadline. Sections 11(3) and 17(1) of the Municipal Electoral Act preclude exactly that. The only substitution mechanisms after the deadline are those in s 14(4A) and s 17(2B), which are narrow and are themselves subject to dates in the timetable. The replacement nominations are and remain impermissible late nominations. The proposal requires the nomination of a person as a candidate in wards which, on the applicant's own case, that person does not intend to contest, supported by prescribed declarations signed for that purpose. Section 69(1) of the Municipal Electoral Act prohibits the making of a statement required under the Act which is known to be false or is not believed on reasonable grounds to be true.

[36] I therefore conclude that the so called 'placeholder proposal' by the applicant is not legally sustainable.

[37] For all of these reasons, I conclude that the applicant has not made out a case for the relief sought in this urgent application. In sum, the Electoral Commission does not have the power to grant the relief sought by the applicant. Section 11(2)(a) of the Municipal Electoral Act permits only a general amendment of the timetable, by notice in the Government Gazette, where that amendment is necessary for a free and fair election. The Act confers no power to exempt one party from a deadline that continues to bind all others. The refusal of a request which the Electoral Commission had no power to grant cannot be unlawful, irrational or unreasonable. The decision was in any event lawful,

rational and reasonable on its merits in that the Electoral Commission's was correct in its considered position is that no amendment is necessary for a free and fair election.

[38] Importantly, the Electoral Commission, political parties and independent candidates are all required to adhere to the deadlines set in the electoral timetable precisely to give effect to all the s 19 political rights. It is also necessary to promote the founding values of democracy and universal suffrage.

[39] In light of my foregoing findings, it is not necessary for me to deal with the other grounds of opposition to the application raised by the Electoral Commission, in particular the legal points in limine relating to non-joinder and lack of authority. Suffice to state that there may very well be merit in the legal point relating to the non-joinder of any and all of the other political parties and independent candidates who will be contesting the upcoming elections.

Costs

[40] 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 principle, in line with *Biowatch Trust v Registrar, Genetic Resources, and Others*,⁹ that in general in this Court, an unsuccessful party ought not to be ordered to pay costs. 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.

[41] I can think of no reason why the foregoing general rule should be departed from. Each party should therefore bear its own costs.

Order

[42] In the result and for these reasons, the following order was granted on 28 August 2026:

⁹ in *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

- 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 Applicants:

A G Marks

Instructed by:

In person on behalf of the Applicant, Cape Town

For Respondent:

T Motau SC with M Tsele

Instructed by:

Motsoeneng Bill Attorneys, Johannesburg

Honey Attorneys, Bloemfontein.