

**IN THE ELECTORAL COURT OF SOUTH AFRICA
HELD AT BLOEMFONTEIN**

CASE NO: _____/2026

In the matter between:

AFRICAN NATIONAL CONGRESS

Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AND APPEAL

TAKE NOTICE that the applicant hereby applies to the Chairperson of the Electoral Court, in terms of section 20(2)(b) of the Electoral Commission Act 51 of 1996 ("**the Electoral Commission Act**") read with Rule 5(1) and (2) of the Rules Regulating the Conduct of the Proceedings of the Electoral Court ("**the Rules**"), for leave to appeal to this Court, in terms of section 20(2)(a) of the Electoral Commission Act, against the decision of the respondent set out more fully below, and for the upholding of the appeal.

TAKE NOTICE FURTHER that the applicant seeks an order from the Electoral Court in the following terms:

1. The applicant is granted leave to appeal against the decision by the respondent, taken on or about 1 September 2026, which decision was based on a

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misinterpretation of the law, not to accept the following of the applicant's party lists and ward candidate nominations as having been "submitted" before the prescribed deadline in terms of sections 14 and 17 of the Local Government: Municipal Electoral Act 27 of 2000 (**"the Municipal Electoral Act"**):

- 1.1. the party list for EC106 – Sundays River Valley Local Municipality;
- 1.2. the party list for EC145 – Walter Sisulu Local Municipality;
- 1.3. the party list and ward candidate nominations for EC153 – Ngquza Hill Local Municipality;
- 1.4. the party list and ward candidate nominations for EC154 – Port St Johns Local Municipality;
- 1.5. the party list for KZN221 – uMshwathi Local Municipality; and
- 1.6. the party list for MAN – Mangaung Metropolitan Municipality.

(**"the decision"**),

2. The appeal is upheld.
3. The decision is set aside and it is hereby declared that on a proper interpretation of the law (as set out in the applicants' submissions) that the applicant's party lists and ward candidate nominations as listed in paragraphs 1.1 to 1.6 above were, on a proper interpretation of the law, timeously, lawfully and validly submitted in accordance with sections 14 and 17 of the Municipal Electoral Act for purposes of the Local Government Elections scheduled for 4 November 2026.

4. The respondent is directed to treat the applicant's party lists and ward candidate nominations listed in paragraph 1.1 to 1.6 above as having been timeously, lawfully and validly submitted in accordance with sections 14 and 17 of the Municipal Electoral Act and to include those lists and nominations in the lists and nominations for purposes of the Local Government Elections scheduled for 4 November 2026.
5. The respondent shall bear the applicant's costs of the application and the appeal, including the costs of two senior counsel and two junior counsel.
6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the applicant's grounds of appeal are attached hereto.

TAKE NOTICE FURTHER that the applicant has appointed **SM PATEL ATTORNEYS INC** as its attorneys of record, at whose email address, set out below, it will accept notice and service of all process in these proceedings and that the affidavit of **FIKILE APRIL MBALULA** will be used in support hereof.

DATED at _____ on **4 SEPTEMBER 2026**.

SM PATEL ATTORNEYS INC.
Attorneys for the applicant
122 MARSHALL STREET
Tel: 015 880 2277 // 079 945 8830
E-mail: plk@smpatelattorneys.co.za
Ref: PLK/ANC/IEC/01
C/O PEYPER & BOTHA ATTORNEYS
39C First Avenue,

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Bloemfontein 9302
Tel :051 011 3352
Email: LAW@PBAINC.CO.ZA

TO:
THE SECRETARY
Electoral Court of South Africa
c/o The Registrar
Supreme Court of Appeal
President Brand Street
Bloemfontein
E-mail: denhlapho@sca.judiciary.org.za

AND TO:
ELECTORAL COMMISSION OF SOUTH AFRICA
Respondent
Election House
Riverside Office Park
1303 Heuwel Avenue
Centurion
For attention: The Chief Electoral Officer and the Chief Legal Officer
E-mail: info@elections.org.za

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GROUNDS OF APPEAL

INTRODUCTION

1. This appeal concerns only the interpretation of the word “submitted”, as used in sections 14 and 17 of the Local Government: Municipal Electoral Act 27 of 2000 (**“the Municipal Electoral Act”**).
2. It is purely a question of law. There are no foreseeable disputes of fact.
3. For the avoidance of doubt, this is the application required under Rule 5(2) of the Electoral Court Rules, which must “set out succinctly, fairly and clearly the points of law concerned and the information necessary to enable the Chairperson to consider the application”.
4. This is not the “comprehensive written submissions” referred to in Rule 5(4). The applicant (**“the ANC”**) will deliver those written submissions as and when directed by the Chairperson.

FACTS

5. The brief facts are as follows.
6. The ANC is a political party registered with the respondent (**“the Commission”**).
7. South Africa’s next Local Government Elections (**“the Elections”**) will be held on 4 November 2026.

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8. Party lists and ward candidate nominations were required to be submitted to the Commission by 17h00 on 28 August 2026 (**“the deadline”**).
9. The ANC elected to submit its party lists and ward candidate nominations through the Commission’s Online Candidate Nomination System (**“the OCNS”**).
10. On 28 August 2026, before 17h00, the ANC had completed the OCNS forms and uploaded all of the necessary supporting documents onto the OCNS interface in respect of all of the councils and wards it intends to contest in the Elections. This included the following (**“the affected submissions”**):
 - 10.1. the party list for EC106 – Sundays River Valley Local Municipality;
 - 10.2. the party list for EC145 – Walter Sisulu Local Municipality;
 - 10.3. the party list and ward candidate nominations for EC153 – Ngquza Hill Local Municipality;
 - 10.4. the party list and ward candidate nominations for EC154 – Port St Johns Local Municipality;
 - 10.5. the party list for KZN221 – uMshwathi Local Municipality; and
 - 10.6. the party list for MAN – Mangaung Metropolitan Municipality.
11. The OCNS had thus received all required information and documents in respect of the affected submissions before the deadline.
12. However, the ANC encountered technical difficulties with the OCNS itself, which prevented the ANC from pressing the “submit as final” button on the OCNS in respect of the affected submissions. In particular:

- 12.1. At 16h34, the ANC's administrators were logged out of the OCNS and returned to its landing page.
- 12.2. At 16h35, they attempted to report these difficulties to the responsible official of the Commission, who returned their call at 16h40.
- 12.3. At 16h57, they were again logged out of the OCNS and returned to the landing page.
13. On 1 September 2026, the Commission held a meeting of the National Political Liaison Committee, at which the Chief Electoral Officer inter alia conveyed that the Commission had considered the status of candidates captured on the OCNS but not reflected as having been submitted as final, and had decided that the affected parties "have not submitted candidates in respect of [those] wards and municipalities". This was confirmed by the Chairperson of the Commission at a media briefing on 2 September 2026.
14. That is the decision against which the ANC seeks to appeal.
15. On 2 September 2026, the ANC sent a letter to the Commission, a copy of which is attached marked "**ANC...**". In that letter, the ANC inter alia:
 - 15.1. explained the technical difficulties it had encountered with the OCNS in respect of the affected submissions;
 - 15.2. requested the Commission to reconsider its decision, and to process the information and documents that had already been captured, uploaded, received and stored on the OCNS before 17h00;

- 15.3. explained that the ANC was not seeking to supplement or amend any of that information or those documents;
- 15.4. requested a response by 12h00 on 4 September 2026 (today).
16. By 12h00 on 4 September 2026 (today), the Commission had not responded to the ANC's letter, let alone reconsidered or reversed its decision.
17. Hence, this application for leave to appeal.

URGENCY

18. The matter is urgent.
19. On the Commission's own account of the steps which remain:
- 19.1. notices requiring identity documents and signed nomination acceptance forms will be or will have been issued on 4 September 2026 (today), with a cure period expiring on 7 September 2026;
- 19.2. parties will be notified of duplicate candidacies on 9 September 2026, with substitutions permitted until 11 September 2026;
- 19.3. the final list of candidates will be compiled on 16 September 2026; and
- 19.4. the ballot paper draw and the signing of the Electoral Code of Conduct will take place on 23 September 2026.
20. The applicant thus respectfully requests that this application be considered and disposed of as expeditiously as the Rules permit, and in any event well before 16 September 2026.

LEGAL FRAMEWORK

The Municipal Electoral Act

21. Section 14 of the Municipal Electoral Act provides as follows in the relevant part (with underlining added):

14. Requirements for parties contesting election by way of party lists

- (1) A party may contest an election in terms of section 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) in the prescribed format and signed by the party's duly authorised representative –
 - ...
 - (ii) a party list;
 - (iii) an undertaking binding the party, its candidates, persons holding political or executive office in the party, its representatives, members and supporters, to the Code; and
 - (iv) a declaration that none of the candidates on the party list is disqualified from standing for election in terms of the Constitution or any applicable legislation and that each of those candidates has signed the prescribed acceptance of nomination; and
 - (b) a deposit equal to a prescribed amount, if any, payable in the prescribed manner and form.
- (1A) A party must submit the documents referred to in subsection (1) –
 - (a) by hand to the office of the Commission's local representatives; or
 - (b) electronically to the chief electoral officer in the prescribed manner.

22. Section 17 of the Municipal Electoral Act provides as follows in the relevant part (with underlining added):

17. Requirements for ward candidates to contest election

- (1) 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.
- (1A) The prescribed nomination form must be submitted—
 - (a) by hand to the office of the Commission's local representatives; or
 - (b) electronically to the chief electoral officer in the prescribed manner.

The Regulations

23. Regulation 4(3) of the Municipal Electoral Regulations promulgated under the Municipal Electoral Act ("**the Regulations**") states as follows:

If a party elects to submit the information and documents contemplated in section 14(1)(a) electronically as contemplated in section 14(1A)(b), it must do so by—

- (a) completing the electronic forms available for that purpose on the CNS system; and
- (b) uploading the annexures referred to in the said electronic forms onto the CNS system.

24. Regulation 11(2) states as follows:

If a party contemplated in section 16(1)(a) or a person contemplated in section 16(1)(b) elects to submit the information and documents contemplated in section 17(1) and (2) electronically as contemplated in section 17(1A)(b), such party or person must do so by—

- (a) completing the electronic forms available for that purpose on the CNS system; and

- (b) uploading the annexures referred to in the electronic forms onto the CNS system.

WHY THE COMMISSION'S DECISION IS WRONG

The word “submit” bears one meaning in section 14(1A), and the manual mode discloses what that meaning is

25. Section 14(1A) creates a single obligation and offers two alternative means of discharging it. A party “must submit the documents referred to in subsection (1) — (a) by hand to the office of the Commission’s local representatives; or (b) electronically to the chief electoral officer in the prescribed manner”.
26. Section 17(1A) is in the same form. The verb governs both paragraphs; it is not repeated in either of them; and it cannot bear one meaning where the party takes route (a) and a stricter meaning where it takes route (b).
27. The Commission itself proceeds on the footing that the two routes are subject to the same statutory discipline. It has recorded that the cut-off “applied to both manual submission and online/ electronic nominations”, and it has described the two as alternative means of satisfying the identical requirement of section 14: “submission of a party list either by hand or electronically”.¹
28. What, then, does the Act require of a party which elects the manual route? It requires that the documents be “submit[ted] ... by hand to the office of the

¹ Electoral Commission of South Africa *Candidate Nomination Update: NPLC* (presentation to the National Political Liaison Committee, 1 September 2026) (“the NPLC presentation”), second slide headed “Background”.

Commission's local representatives". The obligation is discharged by delivering the documents into the hands of the Commission at the designated place. The Act does not require that the party's representative enter the building before 17h00; it requires that the documents be submitted by hand to the office by then. An instruction by the Commission that its doors close at 17h00 is an administrative mechanism by which the Commission applies the statutory deadline. It is not the source of that deadline, and it is not an additional statutory requirement.

29. It follows that in the manual mode nothing turns upon what the receiving official then does with the documents. A party which hands its lists across the counter at 16h50 has submitted them. It has submitted them whether or not the receiving officer stamps them, registers them, indexes them or captures them before 17h00, or at all. The receiving institution's internal processing of what it has received is the institution's act. It is not the submitting party's act, and the institution's failure or delay in performing it cannot unmake a submission which is already complete.
30. The electronic mode is to be construed to the same standard, and section 19(2) of the Electronic Communications and Transactions Act 25 of 2002 ("**the ECT Act**") requires that it be.
 - 30.1. The electronic equivalent of handing the documents across the counter is the delivery of the data into the information system designated by the Commission to receive it.

- 30.2. The electronic equivalent of the receiving officer's registration of what he has received is the change of status which the Commission's software effects upon data already in the Commission's possession.
- 30.3. To hold that the electronic filer has not submitted until that status has been recorded is to impose upon him a requirement which the manual filer does not bear, and to make his compliance depend upon an act which is not his to perform.
31. A construction which produces that inequality between two routes which the Act offers as equals is not tenable. It offends the ordinary rule that a verb used once to govern two alternatives bears the same meaning in respect of each. It offends section 2 of the Municipal Electoral Act, which requires the Act to be interpreted so as to give effect to the Constitution, and section 4(2), which requires it to be administered in a manner conducive to free and fair elections. And it treats the 299 parties which used the electronic route less favourably than the 224 which submitted by hand, in respect of an obligation which the Act imposes upon both in identical words.

The regulation-maker has itself characterised uploading onto the CNS system as "submission"

32. The definition of "CNS system" in Regulation 1 describes the system as one *"to be used for the electronic submission of the information and documents contemplated in sections 14(1A)(b) and 17(1A)(b)"*. The regulation-maker has thus characterised a party's actions on the system as *submission*. The definition

contains no intermediate concept of an upload which is not yet a submission, and no concept of a submission which is provisional until confirmed.

33. The Commission's decision proceeds upon precisely such a distinction, between data which is "captured" and data which is "submitted as final". That distinction is a feature of the design of the Commission's software. It is not a distinction known to the Act or to the Regulations.
34. The Commission's own account to political parties adopts the regulation-maker's usage. It told the National Political Liaison Committee that it had "*prescribed the Online Candidate Nomination System (OCNS) for electronic submission of candidates*",² not for the capture of candidates, nor for their preparation, nor for their provisional recording, but for their submission.

A requirement found only in the design of the Commission's software is not "prescribed" and cannot condition the validity of a submission

35. To the extent that the Commission contends that a "submit as final" step was a condition of valid submission, that requirement was imposed, if at all, by the user interface of its system, by its user guides, or by instruction given at briefings. It was not prescribed by regulation.
36. The Commission may not elevate an unpromulgated feature of its own software into a statutory precondition of a valid nomination. Three provisions independently foreclose that course:

² NPLC presentation, second slide headed "Background".

- 36.1. “*Prescribed*” in the Municipal Electoral Act means prescribed **by regulation** under section 89, and section 89(4) requires publication in the *Government Gazette*.
- 36.2. Section 89(1) obliges the Commission to make regulations regarding any matter that *must* be prescribed. The manner of electronic submission is such a matter, because sections 14(1A)(b) and 17(1A)(b) require submission “in the prescribed manner”. The Commission discharged that obligation by enacting regulations 4(3) and 11(2). Those regulations are the exhaustive statement of the prescribed manner.
- 36.3. Section 28(1) of the ECT Act provides that where a public body accepts the electronic filing of documents, it “*may specify by notice in the Gazette — (a) the manner and format in which the data messages must be filed ... and (f) any other requirements for data messages*”. The mode of specification is prescribed and it is exclusive. A requirement communicated only through a software interface or a user manual is not specified by notice in the *Gazette*, and cannot found a valid requirement.
37. The Commission has never asserted that it prescribed such a step. In its own account of the matter, given to political parties four days after the deadline, it identified its act of prescription as the prescription of the system: “*the Commission has in fulfilment of section 14(1)(A) prescribed the Online Candidate Nomination System (OCNS) for electronic submission of candidates*”. Its statement of the requirements of section 14 was confined to submission and the

payment of the deposit.³ The requirement upon which the decision depends is to be found in no Act, in no regulation, in no *Gazette* notice and in no item of the election timetable. It is to be found only in the behaviour of a computer program.

The ECT Act determines the answer, and the Commission failed to apply it

38. The ECT Act applies. Section 4(1) provides that *“this Act applies in respect of any electronic transaction or data message”*. The exclusions in Schedules 1 and 2 are confined to the Wills Act, the Alienation of Land Act, the Bills of Exchange Act and the Stamp Duties Act. Neither the Municipal Electoral Act nor any other electoral instrument is excluded. The ECT Act applies to the Commission, which is both a “public body” and a “person” within the meaning of section 1. The point is placed beyond argument by regulation 1 of the Municipal Electoral Regulations itself, which imports the ECT Act’s definition of “website” into the electoral regulatory scheme.

39. Section 19(2) of the ECT Act supplies a mandatory rule of construction which names the very verb in issue:

“An expression in a law, whether used as a noun or verb, including the terms ‘document’, ‘record’, ‘file’, ‘**submit**’, ‘lodge’, ‘deliver’, ‘issue’, ‘publish’, ‘write in’, ‘print’ or words or expressions of similar effect, must be interpreted so as to include or permit such form, format or action in relation to a data message unless otherwise provided for in this Act.”

40. The Municipal Electoral Act uses “*submit*” and “*submitted*” without definition. Section 19(2) directs how those words are to be construed in relation to a data

³ NPLC presentation, second slide headed “Background”.

message: they include the *action* in relation to a data message by which submission is effected. The prescribed action is that stated in Regulations 4(3) and 11(2): completing the forms and uploading the annexures. The applicant performed that action before the cut-off. It follows that it submitted.

41. Section 23(b) determines when, in law, the Commission received the applicant's data. It provides that a data message:

“must be regarded as having been received by the addressee when the complete data message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee”.

42. Section 23(b), unlike section 23(a), is not confined to data messages used in the conclusion or performance of an agreement. It applies to a data message simpliciter, and therefore to a statutory electronic submission.
43. The CNS system is the paradigm of an information system “*designated or used for that purpose by the addressee*”: it is defined by the Commission's own regulation as the system “to be used for the electronic submission” of precisely these documents; it is located on the Commission's own official website; and access to it is controlled by the Commission through a pin code which the Chief Electoral Officer allocates on written request.
44. Once the complete data message entered that system and could be retrieved and processed by the Commission, it was, in law, received by the Commission. Receipt turned on entry and retrievability. It did not turn on any status flag which the Commission's own software did or did not set.

45. Section 26(1) disposes of any argument founded on the absence of a system-generated confirmation. It provides, in terms, that “[a]n acknowledgement of receipt of a data message is not necessary to give legal effect to that message”. The absence of a confirmation cannot deprive the uploaded data of the legal effect it already had.

Sections 14 and 17 must be interpreted purposively

46. Section 2 of the Municipal Electoral Act obliges every person interpreting or applying that Act to “do so in a manner that gives effect to the constitutional declarations, guarantees and responsibilities contained in the Constitution”. Section 4(2) obliges the Commission to administer the Act “in a manner conducive to free and fair elections”. These are duties, not discretions.
47. The Constitutional Court has held that the foundational values of the Constitution “require a court of law, and the Electoral Commission, when interpreting provisions in electoral statutes, to seek to promote enfranchisement rather than disenfranchisement and participation rather than exclusion”.⁴
48. The enquiry into compliance is not a formal one. It is “whether what the applicant did constituted compliance with the statutory provisions viewed in the light of their purpose”, and “[a] narrowly textual and legalistic approach is to be avoided”.⁵ The

⁴ *African Christian Democratic Party v Electoral Commission and Others* 2006 (3) SA 305 (CC); [2006] ZACC 1 (“**ACDP**”) para 23.

⁵ *ACDP* para 25.

question is whether the steps taken were effective to bring about the result which the enactment, read as a whole, requires.⁶

49. The purpose of sections 14 and 17 of the Municipal Electoral Act has been authoritatively identified. It is “to ensure that candidates and political parties contesting elections declare their intentions to do so by a certain date and provide the Electoral Commission with the necessary information to enable them to organise the elections”.⁷
50. Measured against that purpose, the ANC complied. Before the deadline the Commission had, in its own system, in machine-readable form, and available to it for retrieval and processing:
 - 50.1. the applicant’s declared intention to contest each affected municipality and ward;
 - 50.2. the complete particulars of every affected candidate;
 - 50.3. the annexures and supporting documents required by the electronic forms; and
 - 50.4. the prescribed deposits, paid in respect of municipalities throughout the country.
51. Nothing that the statute requires a party to place before the Commission by the cut-off was absent. The Commission had everything it needed to organise the

⁶ ACDP para 25, adopting *Weenen Transitional Local Council v Van Dyk* 2002 (4) SA 653 (SCA) para 13; and para 24, adopting *Maharaj and Others v Rampersad* 1964 (4) SA 638 (A) at 646C.

⁷ ACDP para 31.

election in the affected municipalities and wards. The only thing missing was a status marker within the Commission's own software.

52. A construction that converts nominations substantively lodged before the cut-off into non-nominations, because the Commission's own system failed to record a marker, serves no legitimate purpose of the statute. It disenfranchises where the statute intends to enfranchise. It excludes where the statute intends participation. And it visits upon the party the consequences of a failure in a system that the party did not build, does not control and cannot inspect.

Inkatha Freedom Party is distinguishable, and its reasoning supports the appeal

53. In *Inkatha Freedom Party* the Constitutional Court held that submission at an office other than the Commission's local office was not compliance. The party's documents had never reached the prescribed place at all; they were tendered at Durban when Umzumbe was required.
54. Here the documents did reach the Commission, in the very system the Commission designated for their receipt, and before the time the Commission stipulated for their receipt.
55. The four purposes which the Court identified as being served by the requirement of local submission are, on the present facts, each satisfied: "*to promote the efficient processing and verification of election documents in order to ensure the fairness of an election*", evidenced by "*the nature of the documents to be submitted pursuant to sections 14 and 17 for processing and verification*", "*the requirement that the Commission ensure that it has the capacity to receive and process election documents*", "*the administrative needs of the Commission in*

managing elections", and *"the necessarily local nature of the democratic process in the context of municipal elections"*.⁸ Data resident in the Commission's national candidate nominations database, indexed by municipality and by ward, serves every one of them.

56. The Court in *Inkatha Freedom Party* also endorsed the proposition that a party's inability to contest an election *"arises solely from its failure to comply ... and cannot be laid at the door of the Commission"*.⁹ On the present facts, the failure can be laid at no other door. It was the Commission's system which terminated the applicant's sessions, and the Commission's records which will establish that it did.

***African Congress for Transformation* is distinguishable, and expressly contemplates relief where the system itself has failed**

57. In *African Congress for Transformation* the Constitutional Court refused relief to three parties which had failed to meet the nomination deadline, on the factual finding that *"the OCNS was functional and fit for purpose"* and that the applicants were *"the authors of their own misfortune"*.¹⁰ The Court recorded that the applicants had adduced *"no videos, expert reports or screenshots"* in support of their allegations of malfunction.¹¹

⁸ *Electoral Commission of the Republic of South Africa v Inkatha Freedom Party* [2011] ZACC 16; 2011 (9) BCLR 943 (CC) (*"Inkatha Freedom Party"*) para 45.

⁹ *Inkatha Freedom Party* para 52, quoting *Liberal Party v Electoral Commission and Others* 2004 (8) BCLR 810 (CC) para 30.

¹⁰ *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) (*"African Congress for Transformation"*) paras 106, 107 and 113.

¹¹ *African Congress for Transformation* para 109.

58. The present matter is materially different in four respects.
59. The applicants there had *not uploaded* their candidate data. One had uploaded 54 of 524 candidates; another captured its first candidate at 16:59:59. Here the upload was complete before the cut-off. The Commission's own records so reflect. That is a difference in kind, not degree: there the information was never before the Commission at all.
60. The malfunction there was asserted; here the material facts are recorded in the Commission's own presentation to the National Political Liaison Committee, which reports 2 274 candidates captured on the system but not finally submitted, and which expressly describes 1 794 ward nominations as having been "*captured on time*".¹²
61. There the incidence was isolated: 87 parties complied, and the Court reasoned from that objective fact. Here the incidence is systemic, and it is confined to a single channel. Of the 299 parties which used the electronic route, 34 were unable to record their party lists as finally submitted and 30 were unable to record their ward nominations as finally submitted. Of the 224 parties which submitted by hand, the Commission reports no comparable failure at all.¹³ Where in *African Congress for Transformation* the objective figures pointed to the users, here they point to the system.
62. There the record was bare. Here it is not: the telephonic report to the responsible official of the Commission at 16h35 and that official's return call at 16h40; the

¹² NPLC presentation (n 5), slide headed "Candidates Captured and Not Submitted". Emphasis added.

¹³ NPLC presentation (n 5), slide headed "Nomination Platform".

written message transmitted at 16h57; and, decisively, the Commission's own system records, from which it compiled and presented to political parties the very figures upon which the applicant relies.

63. Critically, the Court in that matter expressly contemplated that a demonstrated failure of the Commission's own system, causally connected to non-compliance, could found relief:

“[E]ven if the OCNS did not work and that had caused AASD not to comply, it could justify different relief like an amendment to the timetable to enable all parties to comply and a postponement of the election. It could never justify an ad hoc individualised exemption for AASD alone to the exclusion of all other parties”.¹⁴

64. The applicant seeks no ad hoc individualised exemption. Its primary contention is one of compliance, which requires no exemption at all. Its alternative contention invokes precisely the systemic route the Court identified: the Commission's power, under section 11(2)(a) of the Municipal Electoral Act, to amend the election timetable where *“it considers it necessary for a free and fair election”*, a power available for the benefit of every affected party and independent candidate on identical terms.

The construction adopted is inconsistent with the anti-technicality provisions of the Municipal Electoral Act and with section 19 of the Constitution

65. Section 84(1) of the Municipal Electoral Act provides that *“a mistake in ... the final list of candidates referred to in sections 15 and 18 does not invalidate ...*

¹⁴ *African Congress for Transformation* para 112 (emphasis added).

that list of candidates", and section 84(2) provides that an election may not be set aside for a failure to comply with the Act "*unless the mistake or failure materially affected the result of the election*". The Act is not a formalistic instrument.

66. Section 19 of the Constitution entrenches the right of every citizen to form a political party, to participate in the activities of a political party, and to stand for public office; and the right of every adult citizen to vote in elections for any legislative body established in terms of the Constitution. The Municipal Electoral Act was enacted to give effect to those rights.¹⁵
67. The Commission's construction excludes the applicant, together with every other affected party (34 in respect of party lists and 30 in respect of ward nominations), from contesting elections in municipalities and wards where their candidate information was in the Commission's possession before the deadline. It likewise deprives the voters of those municipalities and wards of the choice which section 19 exists to protect. A construction that produces that result, where an equally available construction of the same words does not, is not one that "*gives effect to the constitutional declarations, guarantees and responsibilities contained in the Constitution*" as section 2 requires.
68. For the reasons set out above, the ANC respectfully prays for an order in terms of the notice to which these grounds of appeal are attached.

¹⁵ ACDP para 16: "The Municipal Electoral Act was enacted by Parliament specifically to give effect to the constitutional rights entrenched in s 19."

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HELD AT BLOEMFONTEIN**

CASE NO: _____/2026

In the matter between:

AFRICAN NATIONAL CONGRESS

Applicant

and

ELECTORAL COMMISSION OF SOUTH AFRICA

Respondent

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL ON INTERPRETATION**

I, the undersigned,

FIKILE APRIL MBALULA

Do hereby make oath and say that

1. I am an adult male Secretary General of the Applicant herein and .
2. The facts herein contained are within my own personal knowledge and belief and are true and correct and I am duly authorized to depose to this affidavit.
3. I have read the application for leave to appeal prepared on behalf of the Applicant, the notice of motion and the grounds that have been prepared in support thereof by the legal team representing the Applicant.

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4. I confirm that the Applicant seeks leave to appeal and the relief sought in the notice of motion on the grounds therein set out.



DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, and considers the oath binding on his conscience, and that he signed and swore to this affidavit before me at PARKMORE on this 04 day of September 2026.



COMMISSIONER OF OATHS

Gugulethu Oscar Madlanga
 Commissioner of Oaths
 Practising Attorney
 Madlanga & Partners Inc. Attorneys
 Madlanga Office Park & Law Chambers
 120, 4th Street, Parkmore
 Sandton, Johannesburg
 P.O. Box 522118, Saxonwold, 2132
 Tel: +27 11 217 7290
 Fax: +27 86 219 0390 / +27 11 447 6666
 Email: admin@mpiattorneys.co.za