

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2021/23795

In the matter between:

ELIAS SEKGOBELO MAGASHULE

Applicant

and

CYRIL RAMAPHOSA

First Respondent

JESSIE DUARTE

Second Respondent

AFRICAN NATIONAL CONGRESS

Third Respondent

MEDIA SUMMARY

Date of judgment: 9 July 2021

The following explanatory note is provided to assist the media in reporting this case and is not binding on the High Court of South Africa, Gauteng Local Division or any member of the Court.

On 9 July 2021, the High Court of South Africa, Gauteng Local Division (Johannesburg), handed down judgment in an application by Mr Elias Sekgobelo Magashule (“Mr Magashule”) seeking an order declaring that:

- a) the African National Congress (“ANC”) step-aside rule (i.e. Rule 25.70 of the ANC constitution) is unlawful, unconstitutional, invalid and null and/or void *ab initio*;
- b) the suspension letter issued by the second respondent (“DSG”) on 5 May (but dated 3 May) 2021 is unlawful, unconstitutional, invalid and null and/or void *ab initio*;
- c) the suspension of the first respondent (“Mr Ramaphosa”) is valid and effective until lawfully nullified; and
- d) the instruction announced by the first, second and/or third respondents (“ANC respondents”) for the applicant to apologise for issuing the suspension letter to Mr Ramaphosa is unlawful and unenforceable; and
- e) his suspension from his position as Secretary-General of the ANC or any other position or status he held or enjoyed in the ANC as at 5 May 2021 is set aside and uplifted.

In November 2020, the National Prosecuting Authority (NPA) charged Mr Magashule with several criminal offences, including fraud, corruption and money laundering relating to his tenure as former Premier of the Free State from 2009 to 2017. The DSG addressed a letter, dated 3 May 2021, to Mr Magashule in terms of which he was temporarily suspended, citing his indictment as the reason therefore. The DSG invoked Rule 25.70 of the ANC constitution as the basis of Mr Magashule’s suspension. Also on 3 May 2021, Mr Magashule addressed a letter to Mr Ramaphosa in which he purported to suspend him as the President of the ANC. Whilst both letters were dated 3 May 2021, they were delivered on 5 May 2021.

The validity and implementation of Rule 25.70 of the ANC constitution forms the basis of Mr Magashule’s case, and it has become central to the dispute. Mr Magashule contended that his suspension as Secretary General of the ANC was unlawful and unconstitutional in terms of both the ANC constitution as well as the Constitution of the Republic of South Africa, 1996 (“Constitution”). He argued that his suspension violated the principles of natural justice, including the *audi alteram partem* principle, and violated a number of rights in the Bill of Rights, including the right to political participation (section 19 of the Constitution), the presumption of innocence (section 35 of the Constitution), the right to equality (section 9 of the Constitution) and the right to dignity (section 10 of the Constitution).

The ANC respondents opposed this relief and contended, among others, that the interests and integrity of the ANC in fighting corruption provided the overarching basis for the suspension of Mr Magashule. They further contended that the suspension was effected in accordance with the ANC constitution and denied

that Mr Magashule's suspension, which they describe as precautionary as opposed to punitive, resulted in the violation of any of his rights under either the ANC constitution or the Constitution. They submitted that although adherence to the principles of natural justice was not required in relation to precautionary suspensions, it was nevertheless applied.

In a nutshell, the Court had to determine:

- a) whether Rule 25.70 of the ANC constitution is unconstitutional (in relation to the ANC constitution and the Constitution);
- b) whether the ANC's step-aside rule is valid and constitutional;
- c) whether the suspension of Mr Magashule as SG of the ANC is valid;
- d) whether the suspension of Mr Ramaphosa as the President of the ANC is valid; and
- e) whether the request issued to Mr Magashule requesting him to withdraw (and apologise for) the letter purporting to suspend Mr Ramaphosa is valid.

Before dealing with the main application, the Court first addressed the preliminary issues which related to: (a) the application to strike out brought by Mr Magashule; and (b) the respondents' application for condonation. The Court concluded that each element of the striking out application must fail and dismissed the application with costs. With regard to the respondents' condonation application, the Court was satisfied that a proper case was made for the condonation to be granted.

In deciding on the main application, the Court found that the contention that Rule 25.70 is in conflict with the ANC constitution as well as the Constitution stands to be dismissed. The Court also found that Mr Magashule's contention that the NEC Guidelines do not give full and proper effect to the step-aside rule is unsustainable. With regard to Mr Magashule's suspension, the Court concluded that the decision to suspend Mr Magashule was:

- a) effected in terms of the ANC constitution;
- b) was precautionary in nature; and
- c) complied with the law relevant to precautionary suspensions.

The Court held that, in the event that it may have erred in characterising Mr Magashule's suspension as precautionary, it had also satisfied itself that his suspension accorded with the principles of natural justice.

The Court further found that there was no basis to confirm the purported suspension of Mr Ramaphosa. In this regard, the Court pointed out that mandatory requirements to effect such a suspension in terms of Rule 25.70, amongst them, that he be indicted, were absent and there could therefore be no basis to activate Rule 25.70 as Mr Magashule purported to do in support of his

decision to suspend Mr Ramaphosa. Having found that the purported suspension of Mr Ramaphosa was in conflict with the ANC constitution, the Court held that there was therefore no basis to grant relief setting aside the request to withdraw and apologise. In this regard, the Court stated that it is not called upon to determine the appropriateness of any action the ANC may wish to take arising from this and did not do so.

In concluding, the Court held that it had interrogated Mr Magashule's claim to the relief he sought against both the largely undisputed facts as well as the applicable legal framework. The Court noted that:

"...[I]t is clear that the recognition by the ANC of the nature and the extent of corruption and its impact on society (and on the ANC), triggered the need for decisive action by the party. On this score, there appears to be no dispute between the parties, and the call for decisive action in any event resonates with the objectives of the ANC as set out in its constitution, in particular, the commitment to social justice and the elimination of inequality."

The Court further held that the important associational and participation rights found in s 18 and s 19 of the Bill of Rights create the necessary space for the ANC to bring together its leadership and members in the pursuit of a common vision and common objectives. The Court noted that in doing so the ANC, through its constitution, created the model and mechanisms best suited to its structure and needs. Provided that such a model, evidenced by the ANC's constitution, is consistent with the Constitution of South Africa and further, provided that the ANC is loyal to its own constitution, the Court held that it is largely left to the ANC to best regulate its internal functioning. The Court noted that this is what all members of the ANC sign on to when they elect to be a part of the ANC and that it is the glue which binds them together. It further held that the exercise of this choice is one which the Court must respect – within limits. It is, however, also a choice which has consequences for each member in the context of their associational rights.

Finally, the Court held that it was satisfied that the ANC constitution is consistent with that of the country and that the decision to suspend Mr Magashule was:

- a) effected in terms of the ANC constitution;
- b) was precautionary in nature; and
- c) complied with the law relevant to precautionary suspensions.

However, the Court noted that in fairness to Mr Magashule, it had also satisfied itself that his suspension accorded with the principles of natural justice in the event that it may have erred in characterising his suspension as precautionary. In finding that there was no basis to confirm the purported suspension of Mr Ramaphosa, the Court pointed out that mandatory requirements to effect such a suspension in terms of Rule 25.70, amongst them that he be indicted, were absent and there could therefore be no basis to activate Rule 25.70 as Mr Magashule purported to do in support of his decision to suspend Mr Ramaphosa.

The Court dismissed the application with costs, including the costs of three counsel.