THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable
Case no: 724/2019

In the matter between:

MATSHEPO RAMAKATSA	**FIRST APPELLANT**
THEMBA MVANDABA	**SECOND APPELLANT**
SHASHAPA JOSHUA MOTAUNG	**THIRD APPELLANT**

and

AFRICAN NATIONAL CONGRESS	**FIRST RESPONDENT**
MEMBERS OF THE FREE STATE PROVINCIAL	
EXECUTIVE COMMITTEE OF THE AFRICAN NATIONAL CONGRESS	**SECOND RESPONDENT**

Neutral citation: *Ramakatsa and Others v African National Congress and Another* (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021)

Coram: SALDULKER, MOCUMIE and DLODLO JJA and CARELSE and WEINER AJJA

Heard: 15 February 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. It has been published on the website of the Supreme Court of Appeal and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 31 March 2021.

Summary: Civil Procedure – appeal – lawfulness of the respondents' Provincial Conference in the Free State in 2018 – whether the relevant audit requirements complied with, prior to the Provincial Conference - whether the necessary Branch General Meetings (BGMs) were held lawfully prior to the Provincial Conference – whether it was open to the appellants to attack BGMs which were not affected by the Court order of 15 December 2017 – whether the court below was correct in its application of *Plascon Evans* rule – whether the appellants established irregularities in light of the rebuttals by the respondents in their answering affidavits.

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Jordaan J sitting as court of first instance):

1 Leave to appeal is granted and the costs occasioned by the application for leave to appeal (in this Court as well as in the Court below) are costs in the appeal.

2 The appeal is upheld with costs including costs occasioned by the employment of two counsel.

3 The order of the Court below is set aside and replaced by the following:

'It is declared that the Provincial Conference for the Free State Province that took place on 18 and 19 May 2018 was held in violation of the Court order of 29 November 2017 under case number 5942/2017 and that the said Provincial Conference, its decisions/resolutions and/or outcome are unlawful and unconstitutional.'

4 The declaration of invalidity mentioned in paragraph 3 of the order shall only be effective as from the date of the delivery of this judgment.

JUDGMENT

Dlodlo JA (Saldulker and Mocumie JJA, Carelse and Weiner AJJA concurring):

[1] The application before the Free State Division of the High Court, Bloemfontein (high court) concerned the lawfulness and validity of the Provincial conference of the African National Congress (the ANC) for the Free State which took place on 18 and 19 May 2018. Before this Court, it arises as an application for leave to appeal against a judgment of the high court,[1] Jordaan J sitting as a court of first instance. The application for leave has been set down for oral argument and the parties directed to be prepared, if called upon to do so, to address the merits of the appeal.

[1] In terms of s 17(2) (*b*) of the Superior Court's Act 10 2013.

[2] Before the high court, the appellants sought a declaration that the Provincial conference (the PC) for the Free State Province that took place on 18 and 19 May 2018 was held in violation of the court order dated 29 November 2017 under Free State case number 5942/2017 and that such PC, its decision/resolutions and/or outcome were unlawful and unconstitutional. The appellants also sought a declaration that the respondents acted in contempt of this same court order.

[3] It is common cause that on 29 November 2017 the high court made an order that the PC of the ANC in the Free State was not to be held until certain Branch General Meetings (BGMs) had been held in a lawful manner that accords with the Constitution of the ANC. The members of the ANC had contended that their rights in terms of section 19 of the Constitution of the Republic of South Africa (the Constitution) had been infringed and that the respondents had breached the provisions of the ANC Constitution and National Guidelines which mirror the Constitution of the ANC on elections (the ANC 2018 Guidelines).[2] The contention by the appellants was that as provided in the ANC Guidelines, at the heart of any lawfully convened conference of the ANC, whether at the Regional, Provincial or National level, is the basic requirement that delegates participating at such gatherings must have been elected at properly constituted BGMs. The rationale behind the contention was that if persons who participated at such conference as delegates, who had not been elected at properly constituted BMGs or if delegates who have been elected at properly constituted BGMs are denied such participation in a conference, any decision to hold such conference is invalid and the outcomes of such a conference are equally invalid and null and void.

[4] On 29 November 2017, the full court (Van Zyl, Mathebula and Mhlambi JJ) granted an order in a judgment penned by Van Zyl J in favour of the appellants (the Van Zyl order). The substantive relief contained in the Van Zyl order was the following:

1. It declared that the BGMs that were conducted throughout the various regions in the Free State were irregular, unlawful, unconstitutional and/or in breach of the ANC Constitution.

[2] As amended in 2018.

2. It declared that the decision, resolutions and outcomes of those 28 BGMs are null and void.

3. It directed that:

'The Provincial conference of the ANC, Free State, scheduled for 1 to 3 December 2017, will be a nullity and is not to be held until the aforesaid meetings have been held in a lawful manner and in accordance with the Constitution of the ANC.'

[5] In complying with the Van Zyl order, out of the 50 BGMs affected, the respondents conducted a rerun of the 28 affected BGMs between 6 and 9 December 2017. This too, suffered from many of the same irregularities that had manifested themselves at the BGMs prior to the Van Zyl order. The respondents, despite this, proceeded to convene the PC on 10 and 11 December 2017. Notably, the PC took place a mere 5 days before the National conference held at Nasrec in Johannesburg. This prompted a second urgent application by the aggrieved members of the ANC including the first appellant, Ms Ramakatsa.

[6] On 15 December 2017, the Free State High Court, with a full court presiding, (Molemela JP, Jordaan DJP and Reinders J) delivered a judgment penned by Molemela JP in favour of the aggrieved ANC members. The Molemela order:

1. Declared that the conference held on the 10th and 11th of December 2017 and the resolution and decisions taken at that conference were unlawful and void;

2. Declared that 14 BGMs and the decisions taken at those BGMs were unlawful and void.

[7] These two adverse orders gave the first respondent, an opportunity to be alert and scrupulous in ensuring compliance with the law prior to holding the 2018 PC. The respondents convened and held the PC on 18 and 19 May 2018. This was despite a petition signed by a number of aggrieved members delivered to the offices of the first respondent on 14 May 2018. The petition highlighted the reasons why the PC ought not to proceed. In addition, the appellants' attorney sent a letter on 16 May 2018 to every member of the Provincial Task Team in the Free State (the Free State PTT) explaining,

inter alia, that inadequate notice was given for the PC. In this letter, it was also stated that the convening of the conference was in violation of the Van Zyl order. There was no meaningful response from the respondents. There was, however, a letter from two Free State PTT members who distanced themselves from the decision to hold a conference. It appears that the insistence on proceeding with the conference prompted the launch of the application that served before Jordaan J. On 21 February 2019, Jordaan J dismissed the application, holding inter alia, that the allegations contained in the appellants' founding affidavit are based on information received from the relevant members of the specific wards named but no confirmatory affidavits were attached. It is so that the confirmatory affidavits were attached in the replying affidavit. However, Jordaan J, applying the well-known *Plascon-Evans*[3] rule found against the respondents.

[8] The high court isolated ward 3 in Lejweleputswa, recording that the appellants' alleged that no further meetings were scheduled or held after the Molemela order. On the other hand, (so the Jordaan J judgment went on), the respondents, alleged that successful BGMs were scheduled and held on 19 February 2018. The high court remarked that it was only in reply that the appellants averred that the meeting was unlawful in that 31 of the attendees were not members in good standing. According to the high court, the respondents made various attempts to schedule and hold reruns of the BGMs in respect of all 14 of the wards affected by the Molemela order. Some BGMs were successful and delegates were elected, others did not reach a quorum resulting in no delegates being elected whilst others were disrupted by disgruntled members. The allegations were found by the high court to be supported by documentary evidence. It found that the appellants' allegations to the effect that no additional meetings were held in some of the affected wards after December 2017 were conclusively gainsaid.

[9] The high court, having found that the respondents went to great lengths to comply with the court order concluded:

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[3] *Plascon-Evans Paints (TVL) Ltd v Riebeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 6341.

'There is no basis on which the allegations of the respondents can be found to be baseless, patently false, fictitious or unsubstantiated. Their material allegations are to a large extent substantiated by documentary evidence.'

The high court concluded its judgment as follows:

'The dispute raised by the respondents are real and material. To the contrary, material allegations made by the applicants were clearly unfounded, if not patently false. The main thrust of the applicants' case related to the alleged non-compliance with the first order. In that regard it stated that only a few of the affected branches held reruns of the BGM's and then only in May 2018. That is clearly far from the truth and in stark contrast with reality.'

Failure to annex confirmatory affidavits to the founding papers must be put to rest. It is clear in paragraph 42 of the founding affidavit that the applicants intended to attach such confirmatory affidavits. The omission was clearly not deliberate but it must have been done inadvertently. These affidavits surfaced in the replying affidavit. Despite the omission, the respondents comprehensively dealt with those issues which were subject to such confirmatory affidavits. They were not prejudiced by the failure to file them simultaneously with the founding papers. This was repeated in the oral argument before this Court on the day of the hearing. Counsel for the first respondent confirmed that there could be no prejudice.[4] It is trite that any applicant relying on information gathered from another source, must always file a confirmatory affidavit. In this matter no prejudice was caused to the respondents at all. When the matter was argued before the high court, such affidavits had become available.

[10] Turning the focus to the relevant provisions of the Superior Courts Act[5] (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice.[6] This Court in *Caratco*[7]*,* concerning the provisions of s 17(1)*(a)*(ii) of the SC Act pointed out

[4] The next day the first respondent filed a notice indicating that the respondents would be prejudiced. Not only was this raised late but also irregularly. Thus, the belated cry of prejudice could not be taken into account in coming to the decision this Court came to. In any event that was not the sole reason for the decision this Court came to ultimately.

[5] Section 17(2)*(d)* Act 10 of 2013.

[6] *Nova Property Holdings Limited v Cobbett & Others* [2016] ZASCA 63: 2016 (4) SA 317 (SCA) para 8.

[7] *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* [2020] ZASCA 17; 2020 (5) SA 35 (SCA).

that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'.[8] I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.[9]

[11] The importance of this matter compels the conclusion that leave to appeal should be granted. One must perhaps emphasise that no doubt can exist that the ANC just like other political parties, is under an obligation to act in accordance with its own Constitution and that a failure to do so raises matters of concern in terms of the SA's Constitution. In this regard, the Constitutional Court made it plain in *Ramakatsa* 1:[10]

'[16] I do not think the Constitution could have contemplated political parties could act unlawfully. On a broad purposive construction, I would hold that the right to participate in the activities of a political party confers on every political party the duty to act lawfully and in accordance with its own Constitution. This means that our Constitution gives every member of every political party the right to exact compliance with the Constitution of a political party by the leadership of that party. The case does raise a constitutional matter.'

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[8] *Ibid,* para 2.
[9] See *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA)*; MEC Health, Eastern Cape v Mkhitha* [2016] ZASCA 176 para 17.
[10] *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC) para 16.

[12] It is prudent at this stage to set out what I regard as foundational to the dispute in this matter. Section 19 of the SA Constitution does not prescribe how members of a political party should go about in exercising their right to participate in the activities of their choice of party. This is not regulated by legislation at all. Talking to this, the Constitutional Court in *Ramakatsa* 1[11] stated as follows:

'Section 19 of the Constitution does not spell out how members of a political party should exercise the right to participate in the activities of their party. For good reason this is left to political parties themselves to regulate. These activities are internal matters of each political party. Therefore, these parties are best placed to determine how members would participate in internal activities. The various Constitutions of political parties are instruments which facilitate and regulate participation by members in the activities of a political party.'

[13] It is the ANC Constitution that regulates and facilitates how its members may participate in the internal activities of the party. Rule 17 of the ANC Constitution is of importance and is set out hereunder.

'**Rule 17 Provincial Conference**

17.1 Subject to the decisions of the National Conference and the National General Council, and the overall guidance of the NEC, the Provincial Conference shall be the highest organ of the ANC in each Province.

17.2 The Provincial Conference shall:

17.2.1 Be held at least once every 4 (four) years and more often if requested by at least one third of all Branches in good standing in the Province.

17.2.2 Be composed of:

(i) Voting delegates as follows: . . .

(ii) Non-voting delegates . . .

Provincial Conference shall:

17.2.2.5 Determine its own procedures in accordance with democratic principles and practices;

[11] *Ibid* para 73.

17.2.2.5 Vote on key questions by secret ballot if at least one third of the delegates at the Provincial Conference demand it; and

17.2.2.7 . . .

17.3 The Provincial Conference shall:

17.3.1 Promote and implement the decisions and policies of the National Conference, the National General Council, the NEC and the NWC;

17.3.2 Receive and consider reports by the Provincial Executive Committee, which shall include the Chairperson's address, the Secretary's report, which shall include a report on the work and activities of the ANC Veterans' League, the ANC Women's League and the ANC Youth League in the Province, and the Treasurer's report;

17.3.3 Elect the Provincial Chairperson, Deputy Chairperson, Secretary, Deputy Secretary, Treasurer and the 30 (thirty) additional members of the Provincial Executive Committee, who will hold office for four (4) years. The Provincial Secretary shall be a full-time functionary of the Organisation;

17.3.4 Carry out and develop the policies and programmes of the ANC in the Province;

17.3.5 . . .

17.3.6 . . .

17.4 A member elected to the PEC shall resign from any position held in a lower structure in the ANC.' (Emphasis added.)

[14] Rule 17.2 provides in peremptory terms (it uses the word 'shall') and it makes provisions which are two-fold, namely:

1. That a provincial conference *shall* be held at least once every four years; and

2. A Provincial conference *shall* be held more often if requested by at least one third of all branches in Province. It is necessary to mention that the ANC Constitution makes provisions that the ANC from time to time should make guidelines and these form an integral part of the Constitution. In this matter the applicable ANC Guidelines and Provincial conferences are dated April 2018. (Emphasis added.)

[15] Numerous complaints were made by the appellants which they contend were not addressed prior to the holding of the PC. The appellants contended that the holding of the PC was not, for instance, preceded by an audit process of all branches and membership. I undertake to return to the auditing complaint later in this judgment. The high court isolated ward three Lejweleputswa and dealt with what took place there. It did not deal with the numerous other wards that document irregularities.

[16] One cannot turn a blind eye to what appears to have occurred in the following wards. In Thabo Mofutsanyana ward 5 (Maluti-A-Phofung), the respondents made a single attempt to rerun the BGMs and that was only a mere two days before the holding of the PC. Clearly, there would have been no room for any dispute resolution provided for in Appendix 4 of the ANC Constitution prior to the holding of the PC. As it appears, no formal attendance register was used. Members' names were entered in manuscript on a blank piece of paper. There was no deployee to oversee the meeting. According to the second respondent an attempt was made to call a deployee to attend. The point is that in this ward, even if the BGM was quorate, the use of an informal and somewhat irregular register rendered the BGM unlawful. How could anyone ascertain whether the persons who registered were members in good standing? This branches' BGM was set aside by both the Van Zyl and Molemela orders on different dates. It is beyond question that the respondents had a duty to ensure that it held a lawful BGM before proceeding to convene the Provincial conference.

[17] According to the second respondent, in ward 6 in the region of Thabo Mofutsanyana, a provincial delegate was elected at a lawfully conducted BGM. It is apparent though from the attendance register attached to the second respondent's answering papers that no delegates ought to have been appointed from this branch. I say so because 28 persons who attended the BGM could not be considered to be members in good standing based on the attendance register itself. In truth, the meeting was not quorate and no delegate could and/or should have been elected. To illustrate, Mr Lucky Hadebe listed as number 6 on the attendance register last paid his membership in the

amount of R40.00 on 15 November 2015. Mr Hadebe was not a fully paid up member and was therefore not a member in good standing. Despite this apparent glaring non-compliance, Mr Hadebe had attended the BGM and on the common cause facts and as evidenced by his signature on the attendance register, voted whoever was voted into power at that BGM.

[18] Ward 11 in the Thabo Mofutsanyana region was attended by 107 persons at the BGM who were not members in good standing because of their membership having expired. If one deducts the 107 persons whose membership had expired from the total number of persons who attended the meeting (195) it is itself evident that the meeting was not quorate. The quorum required 174 attendees but only 88 paid up actual members appear to have been in attendance. An insufficient number of members in good standing attended to quorate the conference. Needless to mention that despite this a delegate was elected. That this rendered the BGM and its outcome unlawful is beyond question.

[19] In ward 19 in the region of Thabo Mofutsanyana, a complaint was raised that unknown persons had signed next to the names of certain members on the attendance register. When this was brought to the attention of the deployee, complaining members were accused of being disruptive. The second respondent in its answering affidavit did not deny this irregularity. Needless to mention that the conceivable dispute of fact regarding this irregularity did not arise. Similarly, in ward 3 in the region of Lejweleputswa, according to the attendance register which was attached to the second respondent's answering affidavit 31 persons attended the BGM despite the fact that they were not members in good standing. If one deducts the 31 persons, the number of members in good standing would only be 72, which falls below the quorum threshold. Clearly, no delegate could or should have been appointed. Therefore, the appointment of a delegate from this BGM was unlawful because the relevant BGM was not quorate.

[20] Ward 7 in the region of Lejweleputswa bears mention. The complaint in this specific ward is about the inadequate notification of the BGM. According to the attendance register which is outdated, this branch has 600 members. At the BGM convened a year

earlier on 14 May 2017, the meeting was quorate with a total of 302 members who had attended. In contrast, the BGM that was held on 13 May 2018, only saw a total of 19 members in attendance. Nineteen members is approximately 3% of the branch's total membership. One immediately asks oneself what the possible reason is for the exceptionally low attendance. These numbers support the contention that the members were not invited. The second respondent does not, in its answering affidavit, allege that members were notified of the BGM held on 13 May 2018. It does not appear that an attempt was made to lawfully convene a BGM for this affected branch. In the founding papers, it was alleged that no deployee was present on 13 May 2018. The second respondent, represented by the deponent to the answering affidavit, the Secretary of the ANC, Mr Ace Magashule, confirmed this and stated that 'he did not have to come, as the meeting could not proceed'. The ANC Guidelines make it clear that a deployee ought to be present at any proposed BGM where elections of a delegate are to take place. The attendance register attached to the second respondent's answering affidavit was not signed by the branch chairman nor the Secretary as required in terms of the ANC Guidelines.[12] This was certainly an irregularity.

[21] At least eight of the 28 BGMs identified in the Van Zyl order did not take place lawfully or at all. On this basis alone, the PC could not lawfully proceed. The high court upheld the contention that the appellants were precluded from challenging some of these BGMs because they were not the subject of a challenge in the proceedings before Molemela JP. I have mentioned above that the Van Zyl order dealt with 28 branches. Of course, it is so that only 17 of the 28 were challenged in the proceedings before Molemela JP. This, however, could not be construed to mean that the BGMs of the other 11 branches had been lawfully held. Failure by one group of applicants to challenge the 11 branches before Molemela JP cannot preclude a different group of applicants from challenging them in the present proceedings.

[22] Having identified the areas of concern above, I deem it necessary to return to the issue of audits. The ANC Guidelines applicable in this matter make it plain that 'national

[12] Guidelines for ANC Conferences para 11.

conducts an audit of branches and membership, based on a cut-off date that is not more than nine months before the date of the Provincial and Regional conference, to determine the delegation to the conferences'.[13] The appellants have made it clear in the founding papers that the audit of membership is critical in that a member who is not in good standing is disqualified from participating in the affairs of the ANC. There can be no dispute that the Guidelines of the ANC prescribe that for a valid conference to be held, it must be preceded by an audit which should be conducted within nine months of the date of the conference. It would appear that the last audit of the Free State ANC was conducted during April 2017. This, certainly is more than nine months prior to the conference which was held on 18 and 19 May 2018.

[23] Clause 4 and 5 of the ANC 2018 Guidelines make it plain what the procedure is which must be followed before the holding of all PCs or Regional Conferences (RCs). The following procedure must be followed.

'1. An audit of branches and members must be conducted and that must be based on a cut-off date that is not more than 9 months before the date of the Provincial or Regional conference;

2. The outcome of the audit is circulated to Regional Executive Committees and the individual branches.

3. All branches must convene BGMs as to, inter alia, nominate candidates for the Provincial Executive Committee.

4. There must be notice of the date, venue, programme and draft credentials of the conference which must be circulated to the branches.

5. It is only at this point that a Provincial conference can be held.

The audit requirement cannot be ignored or postponed because absent audit there can be no legitimate Provincial or Regional conference. It determines the status of participants because it is only members in good standing that must attend and participate in the affairs of the ANC. The same applies to a branch which is not in good standing. Such a branch cannot be represented at a conference.'

[13] Guideline for ANC Conferences para 5(a).

[24] The second respondent's response in the above regard is that a membership verification audit was done by the National Audit Team in February 2018 in respect of 14 wards that needed to be rerun. The approach was of course unlawful in that it says in simple terms, save for the 14 branches in respect of which the audit was done in February 2018, no audit was apparently conducted in respect of the other BGMs which deployed delegates to the PC. There is a contradiction between what the respondents contend in this regard. The first respondent asserts that the PC was a continuation of the conference that was declared null and void and that 'the last audit was done [on] 10 December 2017'. The latter's assertion contradicts the second respondent's contentions that a verification/audit was conducted in February 2018. The first respondent referred to an annexure which did not exist. It emerged during arguments before the high court what the correct annexure was, but that annexure too cannot serve as objective evidence that an audit was conducted in December 2017 and in respect of which branch it related to. The document is titled 'ANC Free State Provincial Summary Report'. It is not dated and it hardly makes it clear when and where such audits were conducted and for which branches. Importantly, it fails to establish that an audit of all the necessary branches was conducted during December 2017.

[25] In passing, one must mention that both respondents' versions are undermined by the attendance registers. These registers are attached to the second respondent's answering affidavit. These attendance registers show that in respect of all branches the last audit was conducted in April 2017. Therefore, the required audit was conducted more than nine months before the PC and contrary to the assertion that an audit was conducted during February 2018. The failure of the respondents to respond squarely and with sufficient details to allegations made by the appellants, the contradictions between the two versions presented by the respondents, and the effect of the attendance registers leads to the ineluctable conclusion that there has been no compliance with the peremptory audit requirement.

[26] The declaration of nullity of the PCs and RCs contained in both the Van Zyl and Molemela orders required the Provincial Executive (the PEC) of the ANC to start the whole process *de novo*. In doing so, the second respondent had to fully comply with the Constitution of the ANC read together with the applicable ANC 2018 Guidelines. There are about 309 branches in the Free State Province. They all had to be audited anew. The argument that only 28 mentioned in the Van Zyl order had to be audited is without merit. The PC had to be held *de novo* and all prescripts of the ANC Constitution had to be complied with as if no attempt to hold a conference ever took place. The 2018 ANC Guidelines have binding force. There can be no dispute in this regard. The Constitutional Court in *Ramakatsa* 1[14] talked to this:

'[79] Before demonstrating that some of the irregularities raised were established it is necessary to outline the nature of the legal relationship that arises from membership of the ANC. At common law a voluntary association like the ANC is taken to have been created by agreement as it is not a body established by statute. The ANC's Constitution together with the audit guidelines and any other rules collectively constitute the terms of the agreement entered into by its members. Thus the relationship between the party and its member is contractual. It is taken to be a unique contract.'

[27] The importance of auditing is underscored by the fact that it ensures that the participants in the ANC process are fully paid up members of the ANC who can participate in the elections and vote for those they want to lead them and not non-members. Thus, prior to the holding of the PC an audit process of all branches and membership must be conducted. The question remains therefore whether the delegates to the elective PC had been properly accredited and audited as required in terms of the Constitution of the ANC and its Membership Audit Guidelines. As demonstrated above, the answer is a resounding no. It is trite that in motion proceedings, the proper approach to determine whether an applicant has made out a case for the relief sought, in a case where some of the allegations are disputed by the respondents, is that the applicants would succeed if the admitted facts it alleged together with the facts alleged by the respondent justify the relief sought.[15] The audit Guidelines constitute an integral part of the governance

[14] *Ramakatsa* para 79.
[15] *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) supra fn 2.*

instrument of the ANC. A mandatory pre-audit must be conducted by the PEC or RC in preparation for the National audit which is conducted by the National Audit Team in each province within a cut-off date.

[28] The respondents complain bitterly that the appellants rushed to court before exhausting all available internal remedy mechanisms within the ANC as prescribed in the Constitution of the ANC. It is correct that appendix 4 thereof provides for a dispute resolution procedure by means of which a branch, a region or sub-region may lodge a dispute and have it resolved by the National Dispute Resolution Committee and ultimately by the Appeal Committee. It is not my aim to devote too much time to this concern by the respondents. It bears mention that the aggrieved members sent a complaint to the PC held on 18 and 19 May 2018 but were simply ignored. It suffices to say that members of the ANC are members of the community, citizens of this country. Each member of the community who is aggrieved is constitutionally entitled to approach the courts. The first respondent did not file its heads of argument in terms of this Court's rules. When this concern was raised by the presiding judge, the appellants had abandoned the prayer for the contempt of court. There has been an inordinate delay in prosecuting this matter. The PEC has been running the affairs of the ANC in the Free State for a considerable period. It must have taken numerous resolutions/decisions relating to governance issues in the Province. It therefore would be prudent that an order should be made so as to avoid the Free State ANC from being thrown into chaos.

[29] The following order is made:

1 Leave to appeal is granted and the costs occasioned by the application for leave to appeal (in this Court as well as in the Court below) are costs in the appeal.

2 The appeal is upheld with costs including costs occasioned by the employment of two counsel.

3 The order of the Court below is set aside and replaced by the following:

'It is declared that the Provincial Conference for the Free State Province that took place on 18 and 19 May 2018 was held in violation of the Court order of 29 November 2017

under case number 5942/2017 and that the said Provincial Conference, its decisions/resolutions and/or outcome are unlawful and unconstitutional.'

4 The declaration of invalidity mentioned in paragraph 3 of the order shall only be effective as from the date of the delivery of this judgment.

DV Dlodlo
Judge of Appeal

APPEARANCES:

For the Appellants:	S Budlender SC (with him K Magan)
Instructed by:	Selepe Attorneys, Johannesburg
For the Respondents:	Semenya SC and WR Mokhare SC
Instructed by:	Moroka Attorneys, Bloemfontein