

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NO:

12226/07

DATE:

2 JULY 2008

5 In the matter between:

ANNEKE BAARTMAN1st ApplicantMICHAEL SINKI MOTSOANE2nd ApplicantGERALD VAN WYK3rd ApplicantWILLEM KAROOLS4th Applicant10 CHRISTINA DARMEN5th ApplicantANTHONY DAIZANA6th Applicant

versus

PETRUS ROODTMAN1st RespondentTHE INDEPENDENT CIVICS ORGANISATION OF15 SOUTH AFRICA2nd RespondentTHE INDEPENDENT ELECTORAL COMMISSIONN.O.3rd RespondentTHE MUNICIPAL MANAGER, BEAUFORT WESTLOCAL MUNICIPALITY N.O.4th RespondentTHE BEAUFORT WEST LOCAL MUNICIPALITY

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N.O.5th RespondentTHE MUNICIPAL MANAGER, CENTRAL KAROODISTRICT MUNICIPALITY N.O.6th Respondent

JUDGMENT

5 DESAI, J

The applicants seek leave to appeal the dismissal of their application. The matter has a long and convoluted history. It initially came before me during the floor-crossing window period.

10 At that stage there appeared to be a live controversy which required an urgent resolution. However the applicants elected not to pursue the matter pending the finalisation of a related application with regard to the leadership of ICOSA. It seems that the applicants must now live with the consequences of that

15 strategic choice.

The applicants also attempted to cross to another party, but this endeavour failed when the IEC declined to process their floor-crossing forms. Although the floor-crossing period had closed the

20 applicants then sought to re-activate – as Mr Börstrom puts it – this matter. As noted elsewhere we were only required to give a ruling on 23 December 2007. This was done. The reasons were to follow at a later stage. This aspect had been agreed upon by the parties.

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On 19 March 2008 by-elections were held in respect of the seats previously held by certain of the applicants. A bid by the applicants to stop these elections, both in this court and in the Supreme Court of Appeal, failed.

The current position is as follows. The seats formerly held by the first, second and sixth applicants – the proportional seats – have been filled by the IEC from ICOSA's party list. The third, fourth and fifth applicants occupied their seats as Ward Councillors. These seats were filled when the by-elections were held. It accordingly appears impossible to reinstate the applicants as councillors as the seats previously held by them have now all been filled with other people.

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The applicants quite clearly intended to leave ICOSA during the floor-crossing period. The tactics employed by them were directed at doing whatever was necessary to re-claim their seats during the floor-crossing period, so that they could immediately leave the party. The application was premised on the matter being heard during the floor-crossing period and did not cater for the retroactive recognition of their right to cross the floor.

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During the course of argument in the principal matter applicants' counsel for the first time presented a draft order including relief retroactively permitting the applicants to cross the floor. He appreciated at that stage that this case would only present a live issue if the applicants could be replaced into the seats formerly held by them and then were permitted to cross the floor to another party.

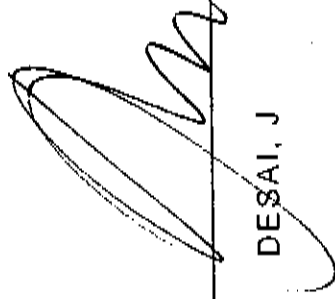
10 The decisions appointing the new councillors have not been challenged by the applicants and there are no vacancies to which the applicants can be reinstated. The applicants' attempted floor-crossing failed and the IEC considered and rejected their floor-crossing forms. That decision was not reviewed, and the IEC, again as Mr Börgstrom puts it, is *functus officio*. It was simply not open to this Court to reopen the window period for the applicants. This would be contrary to the relevant provisions of the constitution.

20 No new matter is raised in the grounds of appeal. The arguments advanced therein, and also orally by Mr Osborne, have been dealt with at length in the reasons already furnished. It seems that the relief sought is entirely moot as no effective relief can be granted on appeal.

For the reasons set out in the principal judgment I am of the view that there are no reasonable prospects of another Court coming to any different conclusion with regard to the merits of the application. In the result the APPLICATION FOR LEAVE TO

APPEAL IS DISMISSED WITH COSTS.

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DESAI, J

I concur

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LE GRANGE, J