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NOTICE 2915 OF 1998

ELECTORAL COURT

RULES REGULATING ELECTORAL DISPUTES AND COMPLAINTS ABOUT INFRINGEMENTS OF THE ELECTORAL CODE OF CONDUCT IN SCHEDULE 2 OF THE ELECTORAL ACT, 1998(ACT NO. 73 OF 1998) AND DETERMINATION OF COURTS HAVING JURISDICTION

The Electoral Court has under section 20(4) of the Electoral Commission Act, 1996(Act No. 51 of 1996), made the rules in the Schedule.

SCHEDULE

DEFINITIONS

1. In these rules, a word to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates -
 - '**apply**' means on motion, and 'application' has a corresponding meaning;
 - '**Chairperson**' means the Chairperson of the Court appointed in terms of section 19(1) of the Electoral Commission Act, 1996 (Act No. 51 of 1996);
 - '**clerk of the court**' means a clerk of the court appointed under section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and includes an assistant clerk of the court so appointed;
 - '**Code**' means the Electoral Code of Conduct in Schedule 2 of the Electoral Act, 1998 (Act No. 73 of 1998);
 - '**Court**' means the Electoral Court established in terms of section 18 of the Electoral Commission Act, 1996 (Act No. 51 of 1996);
 - '**day**' means any other day than a Saturday, Sunday or public holiday;
 - '**lodge**' means to serve copies on all parties and file the original with the clerk of the court or registrar or Secretary, as the case may be;
 - '**Magistrate's Court**' means a court established in terms of section 2(1)(f) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);
 - '**Magistrates' Courts Rules**' means the rules regulating the conduct of proceedings of the Magistrate's Court;
 - '**notice**' means notice in writing;
 - '**registrar**' means the registrar of a High Court appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959);

'Secretary' means the Secretary of the Court care of the registrar of the Supreme Court of Appeal, Bloemfontein;

'serve' means to serve by facsimile or to hand to all parties concerned;

'the Act' means the Electoral Act, 1998 (Act No. 73 of 1998);

'Uniform Rules' means the rules regulating the conduct of proceedings of the several provincial or local divisions of the High Courts.

DETERMINATION OF COURTS AND JURISDICTION

2. (1) The Magistrate's Court and the High Court in whose area of jurisdiction -
- (a) any electoral dispute; or
 - (b) any complaint about an infringement of the Code,
- has arisen, have, subject to subrules (2) and (3), jurisdiction to hear such dispute or complaint.
- (2) The following courts have jurisdiction to impose the following sanctions referred to in section 96 of the Act:
- (a) The Court, all the sanctions in subsection (2);
 - (b) The High Court, all the sanctions in subsection (2) except (2)(h) and (i);
 - (c) The Magistrate's Court, all the sanctions in subsection (2) except (2)(d)(vii), (h) and (i) and with regard to the sanctions in subsection (2)(b) and (c), the Magistrate's Court must have regard to its civil jurisdiction.
- (3) A party may approach the Court directly in respect of any electoral dispute or complaint about an infringement of the Code-
- (a) where a sanction referred to in section 96(2)(h) or (i) of the Act is sought; and
 - (b) notwithstanding the provisions of subrule (1), in any matter where special circumstances are present, with prior leave of the Chairperson and at least two members of the Court.
- (4) The offences referred to in Part 1 of the General Provisions of Chapter 7 and in sections 107, 108 and 109 of the Act, are dealt with in accordance with the legislation applicable to criminal matters.

REPRESENTATION OF PARTIES

3. (1) A party may institute or defend and may carry to completion any proceedings either in person or by a duly authorised and suitably qualified representative.
- (2) A group of persons associated for a common purpose may in instituting or defending proceedings act through a member thereof nominated by it.

APPLICATIONS

4. (1) Proceedings in respect of electoral disputes and complaints referred to in rule 2 are instituted by way of application.
- (2) An application must set out clearly and succinctly -
- (a) in the case of an electoral dispute -

- (i) the nature of the dispute and the facts upon which the dispute is based;
 - (ii) the registered parties or persons involved in the dispute; and
 - (iii) the relief claimed and the grounds upon which such relief is claimed.
- (b) in the case of a complaint about an infringement of the Code -
 - (i) the registered party, candidate or person who allegedly infringed the Code;
 - (ii) the nature of the infringement and the facts upon which the infringement is based;
 - (iii) the relief claimed and the grounds upon which such relief is claimed; and
 - (iv) the sanctions, referred to in section 96(2) of the Act, sought and where applicable, the grounds upon which the sanctions are sought.
- (3) An application must be accompanied by any relevant document substantiating the application.
- (4) The required information referred to in subrule (2) must be set out in an affidavit.
- (5) The application must be lodged in the appropriate court having jurisdiction.
- (6) The respondent must within three days after receipt of the application, lodge an answering affidavit.
- (7) The applicant must within two days after receipt of the answering affidavit, lodge a replying affidavit, if any.
- (8) After the lodging of any replying affidavit or after the time for lodging a replying affidavit has expired and on request of the applicant, the clerk of the court, the registrar or the Secretary, as the case may be, sets the matter down for hearing with due consideration of the provisions of section 20(5) of the Electoral Commission Act, 1996 (Act No. 51 of 1996).
- (9) The court hearing an application may extend or curtail the periods provided for in subrules (6) and (7).
- (10) (a) In urgent applications the Court or a judge or a magistrate, as the case may be, may dispense with the provisions of this rule and may dispose of such matter at such time and place and in such manner and in accordance with such procedure, which must as far as practicable accord with the terms of this rule, as to it, him or her seems meet.
(b) The applicant must set out clearly and succinctly the circumstances that render the matter urgent and the reasons why he or she claims that he or she could not be afforded substantial redress at a hearing in due course.
- (11) The Uniform Rules or the Magistrates' Courts Rules, as the case may be, are *mutatis mutandis* applicable in respect of applications except as otherwise provided in this rule.
- (12) The Uniform Rules are, subject to this rule, *mutatis mutandis* applicable

in respect of applications brought directly to the Court.

APPEALS

5. (1) An appeal lies as of right against a decision of a Magistrate's Court to the appropriate High Court and from there to the Court on a point of law only and with leave of the Chairperson.
- (2) (a) The appellant must lodge a notice of appeal within three days after the decision setting out clearly and specifically the grounds of fact and/or law on which the appeal is based, with the clerk of the court.
(b) The clerk of the court submits the notice of appeal forthwith to the presiding officer who gives his or her written judgment within three days after the notice of appeal has been received from the clerk of the court.
(c) The clerk of the court hands the written judgment to the appellant who obtains a date for hearing within two days after receipt of the judgment, from the registrar.
(d) The registrar sets the matter down for hearing of the appeal with due consideration of the provisions of section 20(5) of the Electoral Commission Act, 1996 (Act No. 51 of 1996) and informs the appellant of such date.
(e) The appellant forthwith informs the clerk of the court and the respondent of the date.
(f) The clerk of the court forthwith prepares as many copies of the record as directed by the registrar and transfers the copies to the registrar.
- (3) (a) An application for leave to appeal to the Court from the court of appeal, must be lodged within three days after the decision of the court of appeal with the Secretary setting out clearly and specifically the grounds of law on which leave to appeal is sought, together with a copy of the judgment, if available.
(b) The Secretary forthwith submits the application to the Chairperson who considers the application in chambers.
(c) If leave to appeal is granted by the Chairperson the Secretary sets the matter down for hearing of the appeal with due consideration of the provisions of section 20(5) of the Electoral Commission Act, 1996 (Act No. 51 of 1996) and informs the parties and the registrar of the time, date and place of the hearing.
(d) The registrar forthwith prepares as many copies of the record as directed by the Secretary and transfers the copies to the Secretary.
- (4) (a) An appeal against a decision of the High Court as court of first instance lies, with leave of that court, to the Court, failing which with leave of the Chairperson.
(b) An application for leave to appeal against a decision of the High Court as court of first instance, must be filed within three days after the decision of that court with the registrar after service on

all other parties setting out clearly and specifically the grounds of fact and/or law on which the appeal is based.

- (c) The registrar forthwith submits the application to the judge who heard the matter, who considers the application in chambers.
- (d) If leave to appeal is not granted by the judge, the applicant may within two days request the registrar forthwith to submit the application to the Secretary who forthwith submits it to the Chairperson who considers the application in chambers.
- (e) If leave to appeal is granted either by the judge referred to in paragraph (c) or by the Chairperson, subrule(2)(c) and (d) is *mutatis mutandis* applicable.

PROCEDURE TO APPLY WHEN RULES ARE SILENT

- 6. (1) A party who wishes to refer a matter to the Court and who is of the view that the rules do not address or do not adequately address a particular aspect must inform the Secretary accordingly without delay.
- (2) The Secretary, after having obtained the Court's directives, must inform the party concerned and other interested parties thereof without delay.
- (3) This rule does not affect the Court's authority to determine its own practice and procedures and make its own rules and the other courts having jurisdiction are bound by directives so given.

FAILURE TO COMPLY WITH TIME LIMITS OR DIRECTIVES

- 7. Failure to comply with the prescribed time limits or the directives of any court having jurisdiction will, by the mere fact thereof, result in a party being barred, unless such court, on good cause shown, directs otherwise.