

IN THE CONSTITUTIONAL COURT

CASE NO: CCT245/21

In the matter between:

ELECTORAL COMMISSION OF SOUTH AFRICA

Applicant

and

**MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS & OTHERS**

Respondents

SUPPLEMENTARY REPLYING AFFIDAVIT

I, the undersigned,

VUMA GLENTON MASHININI

do hereby make oath and state that:

- 1 I am the Chairperson of the Electoral Commission of South Africa ("the Commission"), duly appointed as such as contemplated in section 8(1) of the Electoral Commission Act 51 of 1996 ("the Commission Act"). I depose to this supplementary replying affidavit on the Commission's behalf.
- 2 The facts that I depose to are true and correct and are within my personal knowledge.

3 I deposed to the replying affidavit, on behalf of the Commission, dated 13 August 2021 (“**the replying affidavit**”). On 16 August 2021, after the replying affidavit had been filed, the Commission received the Economic Freedom Fighter’s (“**EFF’s**”) application for leave to intervene as a respondent.

4 The EFF does not oppose the relief sought by the Commission. However, in the event this relief is not granted, it seeks alternative relief in prayers 4 and 5 of its notice of motion as follows:

4.1 Prayer 4: Subject to this Court not granting the orders sought by the Applicant (“**IEC**”) in paragraphs 3–5, alternatively 8.1 and 8.2 of its Notice of Motion, the Minister of Cooperative Governance and Traditional Affairs, the President of the Republic of South Africa and the National Coronavirus Command Council are directed to amend the current, or promulgate new, Regulations in order to allow political gatherings of more than 100 persons for the sole purpose of enabling the affected political parties to complete their Nomination Lists. This must be done by not later than 7 days of this Court having delivered its orders in the main application

4.2 Prayer 5: Subject to this Court granting the order in paragraph 4 above, the IEC is directed to extend the date for submissions of the party nomination lists as envisaged in IEC’s Election Timetable (as well as the consequential changes thereto) to a date that the IEC will determine, which date shall be consonant with, and accommodative of, prayer 4 above. This must be done by not later than 2 days of the



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relevant parties having fulfilled their obligations in terms of prayer 4 above.

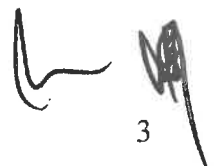
5 The EFF's proposed relief has not been canvassed in the papers of other parties and the Commission has therefore not had an opportunity to respond to the proposals. The Commission seeks leave of this Court to file this supplementary replying affidavit in order to briefly respond to these proposals.

6 In respect of prayer 4, the Commission reiterates the submissions made in paragraphs 74.3 and 74.4 of its replying affidavit, that the country is still in its third wave of infections. However, the relief sought is related to internal matters of political parties and those responsible for the government's Covid-19 response. The Commission abides by the Court's decision in this regard.

7 However, it is clear that the relief in prayer 4 is only necessary if the Court is minded to grant the relief set out in prayer 5. The Commission opposes the prayer 5 relief.

8 The Commission appreciates the need for political parties to be able to complete their nomination lists. However, the Commission cannot provide an extension in the election timetable if the local government elections are to go ahead on 27 October 2021.

8.1 The cut-off date for candidate nomination is 23 August 2021 (for parties contesting by way of party lists and nomination of ward candidates and independent candidates. This is already an extension



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from the earlier cut-off date of 16 August 2021. The extension from 16 August 2021 to 23 August 2021 was as a result of consultation with members of the NPLC who had requested an extension to 23 August 2021, owing to the fact that the Commission could not hold a registration weekend on 17 and 18 July 2021.

8.2 Extending the cut-off date beyond this will have a knock-on effect on the rest of the election timetable and the activities dependent on final candidate submissions. This cannot be accommodated within the time remaining for an October 2021 local government elections. The timetable, attached as "FA13" to the founding affidavit sets out various requirements that follow from the candidate list cut-off date. For example:

8.2.1 The Commission must determine whether the candidates comply with the statutory requirements and must notify a registered party that has submitted a party list of candidates of any non-compliance and provide an opportunity to comply. The cut-off date for compliance is 27 August 2021.

8.2.2 The Commission must determine whether there have been multiple nominations of candidates. It must notify a candidate whose name appears on more than one party list and notify the nominating parties. Similarly, the Commission must notify a ward candidate that has been nominated by more than one party or person and notify the nominating parties or person. The Commission must also provide the

candidates and parties with an opportunity to respond accordingly. The cut-off date for response is scheduled for 2 September 2021.

8.2.3 It is only after the above process has taken place that the Commission is in a position to certify the party lists and compile the list of parties entitled to contest the local government elections and the list of candidates. It must do the same for the list of ward candidates to contest each ward. This must take place by 07 September 2021.

8.2.4 The voters' roll segments must be printed for contesting parties and independent candidates in accordance with the elections being contested. The Commission needs certainty for which contestants it must print and supply the voters roll, and who is entitled to request the roll. This requires the completion of the candidate certification scheduled for 7 September 2021.

8.2.5 Following certification the Commission must issue the prescribed candidate certificate to each candidate on the certified party lists and the certified list of ward candidates. This must be done by 13 September 2021.

8.3 Once the steps above have been completed, the Commission will be less than six weeks out from the local government election week which commences with two polling days for special votes on 25 and 26 October 2021.

8.4 Within this six-week period the Commission needs to prepare 4468 unique ward ballots. The ballots must be printed and packaged and then be transported to around 240 sites for onward distribution to 23 151 voting districts.

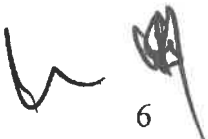
8.5 Within this same six-week period the Commission must prepare, print, package and distribute the proportional representation ballots in respect of 205 municipalities and 44 district municipalities.

8.6 Any extension of the candidate nomination cut-off date would require extensions of the related subsequent steps and ultimately reduce the period for preparing and distributing the ward ballots and proportional representation ballots. The logistics of this task are already under a tight six-week time frame. The relief sought by the EFF would significantly reduce the available time. It requires the following:

8.6.1 The Court must deliver its order.

8.6.2 The Minister must within a week thereafter amend or promulgate Regulations to permit the gatherings.

8.6.3 The Commission must then determine a date for the final submission of nomination lists that is consonant and accommodative of the purpose of enabling affected political parties to complete their nomination lists. The Commission must therefore set an extension that is reasonably capable of achieving this purpose. It could not be less than two weeks. It is not plausible that this relief can be achieved


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without an extension of the present timetable by at least four weeks, if not more. The result would be that the Commission will only be in a position to prepare the ballots for 4468 wards, 205 municipalities and 44 district municipalities and to distribute them to over 23 000 polling stations two weeks before the local government elections must take place. This is an impossible feat.

- 9 The Commission submits that the impossibility of this relief further supports its submissions that constitutionally compliant local government elections are not possible in October 2021.


VUMA GLENTON MASHININI

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's both true and correct. This affidavit was signed and sworn to before me at Centurion on this the 18th day of **August 2021**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.


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