

**IN THE ELECTORAL COURT OF SOUTH AFRICA**

Case No.: 003/22EC

In re the matter between:

**DEMOCRATIC ALLIANCE**

Applicant

and

**ELECTORAL COMMISSION**

First Respondent

**CHIEF ELECTORAL OFFICER**

Second Respondent

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**RESPONDENTS' APPLICATION FOR LEAVE TO APPEAL**

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**KINDLY TAKE NOTICE THAT** the first and second respondents (the "*Electoral Commission*" or "*Commission*") hereby apply for leave to appeal against the whole of the order of the Electoral Court dated 12 May 2022 to the Supreme Court of Appeal.

**TAKE NOTICE FURTHER THAT** the Electoral Court has jurisdiction to grant leave to appeal to the Supreme Court of Appeal as:

- (a) the Electoral Court is expressly granted a status similar to that of a High Court in terms of section 18 of the Electoral Commission Act 51 of 1996, as was recognised in an appeal to the Supreme Court of Appeal in *Electoral Commission of South Africa v The Cape Party* [2017] ZASCA 161 (27 November 2017) at paras 20-23; and

- (b) in terms of section 16(1)(c) of the Superior Courts Act 10 of 2013 “*an appeal against any decision of a court of a status similar to the High Court lies to the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal*”.

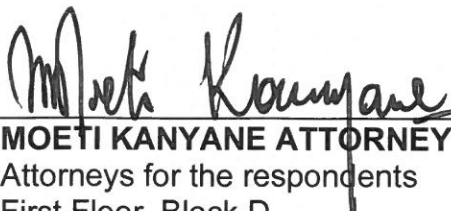
**TAKE FURTHER NOTICE THAT** the grounds on which leave to appeal is sought are the following:

- 1 The Court erred in paragraph 1 of its order in upholding the application for the judicial review of the Commission’s decision to reject the applicant’s objection to the registration of voters in circumstances where the applicant (“*the DA*”) did not establish that the Commission: had acted irrationally in doing so; or was influenced by a material error of law.
- 2 The Court ought to have found that the Commission’s decision and process were rational and that it acted upon a proper understanding of its legal duty to investigate the complaint to the registration of the 235 voters in Ward 13 of the uMdoni Local Municipality, KwaZulu-Natal.
- 3 The Court erred in paragraph 2 of its order in directing the Commission to determine the DA’s objection and “*use an objective method of verifying the 235 impugned voters’ addresses, which method shall where necessary, include door to door verification*” – the Court erred:
  - 3.1 in ordering the Commission to “*verify*” the 235 voters’ addresses in circumstances where the Commission had no duty to do so in law; and

- 3.2 where the Commission had already undertaken a rational investigation into the objection and found no evidence to support the DA's subjective speculation of voter fraud, irregularities or "*busing-in*".
- 4 The Court ought to have dismissed the DA's application.
- 5 For these reasons, in terms of section 17(1)(a)(i) of the Superior Courts Act there are reasonable prospects that the Supreme Court of Appeal would reach a different conclusion to that of the Electoral Court.
- 6 Furthermore, there is also a compelling reason for the appeal to be heard, as the Supreme Court of Appeal would provide clarity as to the legal nature of the Commission's duty to investigate objections to the voters' roll, particularly in circumstances where the objecting party does not provide objective evidence to support the objection.

**KINDLY TAKE NOTICE FURTHER THAT** the Commission reserves the right to supplement its application for leave to appeal upon receipt of the Court's reasons for the order.

**DATED AT CENTURION ON THIS THE 17<sup>th</sup> DAY OF MAY 2022.**



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**MOETI KANYANE ATTORNEYS**  
Attorneys for the respondents  
First Floor, Block D  
Corporate 66 Office Park  
269 Von Willich Avenue  
Die Hoewes, Centurion  
Tel: 012 003 6471 / 087 352 2751

Fax: 086 416 2255  
Ref: M Kanyane/M Rambau  
Email: [moeti@kanyane.co.za](mailto:moeti@kanyane.co.za)  
[mashudu@kanyane.co.za](mailto:mashudu@kanyane.co.za)

**To:** **THE SECRETARY OF THE ELECTORAL COURT**  
**BLOEMFONTEIN**  
c/o Supreme Court of Appeal  
Bloemfontein  
By email: [AVorster@sca.judiciary.org.za](mailto:AVorster@sca.judiciary.org.za)

**And to:** **MINDE SCHAPIRO & SMITH INC.**  
Attorneys for the applicant  
Tygervalley Office Park 11  
Cnr Old Oak & Willie Van Schoor Rds  
Tygervalley, Bellville  
Western Cape  
Tel: 021 9189000  
By email: [elzanne@mindes.co.za](mailto:elzanne@mindes.co.za)

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