

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

In the matter between -

THE NEW NATIONAL PARTY OF SOUTH AFRICA

APPLICANT

and

**THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

1ST RESPONDENT

THE MINISTER OF HOME AFFAIRS

2ND RESPONDENT

THE MINISTER OF FINANCE

3RD RESPONDENT

**THE CHAIRMAN OF THE
ELECTORAL COMMISSION**

4TH RESPONDENT

THE CHIEF ELECTORAL OFFICER

5TH RESPONDENT

**FIRST RESPONDENT'S ANSWERING AFFIDAVIT TO APPLICANT'S
SUPPLEMENTARY AFFIDAVIT DATED 10 MARCH 1999**

I, the undersigned,

ALBERT SEPATAKE MOKOENA

do hereby make oath and state that -

- 1 I am the Director-General of the Department of Home Affairs ("the Department"). I deposed to the first respondent's answering affidavit in the court *a quo*. My personal particulars therein cited remain the same. I am duly authorised to depose to this affidavit. The facts herein contained are within my own knowledge, unless otherwise stated or indicated, and are true and correct.

- 2 I have read the supplementary affidavit deposed to by ANDRÉ HURTLEY GAUM and I respond thereto in the paragraphs that follow with reference to the paragraph numbers in the said supplementary affidavit. It has not been possible for me, given the time constraints within which this response had to be produced, to test the information purportedly provided by various officials of the Department, nor to procure any verifying information from them.

- 3 I pause to mention, for the sake of clarity, that the issue of the capacity of the Department to issue bar-coded identity documents to enable eligible voters to register and to vote in the 1999 elections, fails to take cognizance of the following. The real question is whether the Department can produce enabling documents to register and to vote in the 1999

general nelections.

- 3.1 The Department has the capacity, in appropriate circumstances, to issue bar-coded identity documents in two (2) months;
- 3.2 The Department has the capacity to issue temporary certificates, namely temporary identification certificates ("TICs") and temporary registration certificates ("TRCs") in appropriate circumstances within 24/48 hours.
- 3.3 The capacity to produce TRCs and TICs in the time frame of five months (14 October 1998 to 15 March 1999) for registration has not been stretched at all.
- 3.4 These temporary documents, namely TRCs and TICs, are easily obtainable and can be used for registration and voting in respect of the latter, while the former is limited to registration.
- 3.5 It is misleading, therefore, to contend that only a bar-coded identity document is sufficient to register and to vote in the coming elections.

I beg leave to refer to the affidavit of DAVID MAMABOLO in regard to the issue of TRCs and certain questions which were raised by the Court.

4 AD PARAGRAPH 1

The allegations contained herein are noted.

5 AD PARAGRAPH 2

5.1 I annex hereto, marked "MAS1", a letter written by me to all Regional Directors, which speaks for itself. Applications for bar-coded identity documents and temporary registrations certificates ("TRCs") are made at the Department and not the Commission.

5.2 I furthermore annex, as Annexure "MAS2", a prior memorandum dated 8 March 1999, which is self-explanatory. It is clear from these memoranda that voter registration continued to days beyond those mentioned by

the applicant and proceeded until 19h00 on 15 March 1999.

6 AD PARAGRAPH 2.1

The allegations herein are incomplete and misleading. The registration process continued until 19h00 on Monday, 15 March 1999.

7 AD PARAGRAPH 2.2

Registration in fact continued until 19h00 on 15 March 1999.

8 AD PARAGRAPH 2.4

I append hereto an affidavit deposed to by Dr FREDERICK MARK ORKIN. I confirm the allegations contained in that affidavit insofar as they relate to me. I reiterate that voter registration continued until 19h00 on 15 March 1999. It is true that long queues of persons were formed at various Home Affairs' offices, but it is untrue that the Department was inundated with applications for bar-coded identity documents. The queues, although

long, were manageable and the offices of the Department remained open to attend to those requiring assistance.

9 AD PARAGRAPH 2.5

It is noted that what is stated in this paragraph is that -

" Many potential voters were unable to stand in the long queues and had to turn away."

This turning away by individuals was in consequence of the fact that they were not willing to wait their turn. They left voluntarily.

10 AD PARAGRAPH 2.6

10.1 What was sought by the applicant is a further round of general registration. This implies that about 14 965 voting stations would have to be open on a continuous basis.

10.2 In truth, the Commission did not close generally. Local electoral offices remained open. These are situate at the various municipal sites throughout the country. Consequently, every member of the public who wanted to

do so could still register. I requested confirmation hereof from the Chief Electoral Officer. He indicated that this information is correct, but that the IEC did not want to submit anything in writing to this Court as the IEC wanted to continue to remain impartial, so to speak.

10.3 The statement by the IEC Chairperson that the problem of TRCs and the issuing of identity documents seemed to be widespread and similar reports were received from Gauteng and the Eastern Cape is one with which the Department does not agree. The Gauteng Home Affairs Department has never experienced prohibitive difficulties in this regard. It has the necessary capacity to process all applications.

10.4 Insofar as the Eastern Cape is concerned, the problem there revolved around the fact that the area was designated a disaster area as a result of tornados. The area lacked infrastructure. Telkom lines were down in the areas which were designated disaster areas in the Eastern Cape.

- 11.1 I respectfully say that these newspaper reports do not constitute evidence to gainsay the Department's clear assertion that it was able to cope with the late rush of applications for bar-coded identity documents.
- 11.2 Furthermore, these newspaper reports contain incorrect hearsay matter. It is therefore not necessary for me to deal with every subparagraph herein nor, for that matter, in any detail.
- 11.3 No applicant whatsoever was unduly turned back from the Department. The fact is that certain political parties decided to convey bus-loads of applicants for identity documents all at the same time resulted in long queues being formed at certain offices of the Department. The Department, however, attended to and assisted all those who waited their turn to be assisted.

The Department was able to cope with all such applications for bar-coded identity documents as were made to it. No person who came to the Department at the Barrack Street offices to apply for a bar-coded identity document was turned away. The reason for the long queues at certain offices of the Department is that political parties caused bus-loads of applicants for green bar-coded identity documents to be transported to such offices all at the same time. The Department, however, attended to all those who waited their turn to be assisted.

13 AD PARAGRAPH 3.6

The Department indeed implemented a plan to assist those who still had the opportunity to register by enabling them to apply for TRCs even after normal working hours.

14 AD PARAGRAPH 3.7

It is not true that the Commission readjusted the figure of potential eligible voters downwards as alleged. In terms of the Electoral Act persons who are eligible to vote must be in possession of green bar-coded identity documents, a temporary identification certificate ("TIC") or a TRC and must have registered in order to vote. The explanation for the adjustment

emerges from the affidavit of Dr FREDERICK MARK ORKIN which is annexed hereto.

15 AD PARAGRAPH 4

Again, the allegations herein contained are generally objectionable for the reason that they contain hearsay or opinion evidence. Nonetheless, I attempt to provide answers as follows.

16 AD PARAGRAPH 4.1

The underlying reason for this kind of warning is to encourage and urge people to register. In the event registration continued until 19h00 on Monday, 15 March 1999.

17 AD PARAGRAPH 4.2

17.1 It is inaccurate and misleading to allege that the basis for the alleged adjustment of eligible voters was *inter alia* to exclude people in possession of identity documents without a bar-code, as well as blue identity documents, the details of which appear in the population register.

17.2 The meeting between the heads of Home Affairs, the INDEPENDENT ELECTORAL COMMISSION and STATISTICS SOUTH AFRICA was aimed at reaching consensus on a scientifically determined number of eligible voters based on reliable data. The end result also conforms with the interpretation of eligible voters as contained in the Electoral Act, 1998.

17.3 In elaboration hereof I refer to the affidavit of Doctor ORKIN.

18 AD PARAGRAPH 4.3

18.1 The only people who turned away at the HOME AFFAIRS' mobile offices are those without proper supporting documents for their identity document applications. It is not accepted that in Bizana alone 55 000 eligible voters would be disenfranchised as a result of the Department's

incompetence.

18.2 The problem which occurred in Bizana was not related to the Department's competence or capacity but to infrastructural difficulties in that area which were timeously attended to. A total of seven mobile units were immediately allocated to serve that area and all those who wanted to make applications were duly attended to.

19 AD PARAGRAPH 4.4

I have already referred to the reasoning in Dr ORKIN's affidavit.

20 AD PARAGRAPH 4.5

Mobile units were made available and the Department approached Telkom to restore the communication lines. This was done timeously.

21 AD PARAGRAPHS 4.6 TO 5

I append hereto, marked "MAS3", a letter from the Home Affairs Regional

Director: Western Cape, as to the various strategies that were employed by the Department to ensure that all those who applied for bar-coded identity documents and TRCs were properly attended to.

22 AD PARAGRAPHS 6 TO 10

I caused the portions of this affidavit relating to Mr DRIES VAN NIEKERK to be made available to him. Mr VAN NIEKERK wrote a letter to me in which he denies the allegations herein. He furthermore states that all applicants were attended to. That letter is appended hereto marked "MAS4".

23 AD PARAGRAPH 11

As stated previously, the Department was able to serve every one who waited his or her turn. Even if that meant remaining open after hours, even until 22h00. As stated previously, the seemingly material allegations herein are hearsay.

24 AD PARAGRAPHS 12 TO 17

- 24.1 In the short time available within which to respond to the allegations herein, which I reiterate are of a hearsay nature, I have been able to establish that the various officers of the Department were able to attend to members of the public who made applications.
- 24.2 I append hereto, marked "MAS5", a further letter which I received from the Acting Head of the Office of the Home Affairs in Pietermaritzburg, namely Mrs INA FOURIE. This letter indicates that the hearsay evidence provided by the deponent on behalf of the applicant is indeed unreliable.
- 24.3 It is also not true that no mobile units were used in the Johannesburg and Cape Town areas. All regional and district offices were allocated mobile units to attend to applicants who were unable to attend Home Affairs Offices.

D E P O N E N T

THUS DONE AND SIGNED BEFORE ME AT **JOHANNESBURG** THIS 18TH DAY OF **MARCH** 1999, THE DEPONENT HAVING ACKNOWLEDGED

THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS
DECLARATION AND CONSIDERS IT BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS
Ex Officio