CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 352/23

In the matter between:

RIVONIA CIRCLE NPC	First Applicant
BUILD ONE SOUTH AFRICA	Second Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Second Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Third Respondent
MINISTER OF HOME AFFAIRS	Fourth Respondent
INDEPENDENT ELECTORAL COMMISSION	Fifth Respondent
ALL POLITICAL PARTIES REGISTERED FOR ELECTIONS FOR THE NATIONAL ASSEMBLY	Sixth to Further Respondents

ORDER

CORAM: Zondo CJ, Bilchitz AJ, Chaskalson AJ, Dodson AJ, Madlanga J, Majiedt J, Mathopo J, Mhlantla J, Theron J and Tshiqi J.

The Constitutional Court has considered the application brought on 20 December 2023 by way of urgency, including affidavits and written submissions filed by the parties up to 20 February 2023. The applicants seek an order declaring section 27(2)(cB) of the Electoral Act 73 of 1998 (impugned provision) to be constitutionally invalid and related relief in terms of section 172(1)(b) of the Constitution. For the following reasons, it has

concluded that it is not in the interests of justice for the Court to entertain this matter on an urgent basis. The impugned provision was introduced into the Electoral Act by the Electoral Amendment Act 1 of 2023, which was enacted on 13 April 2023, gazetted on 17 April 2023 and took effect on 19 June 2023. It was open to any interested party, including the applicants, to challenge the constitutional validity of the impugned provision from April 2023. On 09 June 2023, One Movement South Africa NPC (OSA) applied to this Court on an urgent basis for section 31B(3)(a) of the Electoral Act to be declared constitutionally invalid (*OSA* application). Section 31B(3)(a) is framed in similar terms to the impugned provision, but relates to independent candidates. The *OSA* application received widespread publicity. The applicants have failed to show any justification for why they did not bring their application earlier than 20 December 2023. The applicants delayed in lodging their application despite the fact that it was known that the President would in due course proclaim an election date, which might be as early as May 2024. The election date has been proclaimed as 29 May 2024 and this Court now finds itself in the position where, if it were to determine the constitutional challenge, it runs the risk of causing disruptions and uncertainty in the preparations for the elections. The fifth respondent (IEC) supported declining to enrol the matter for urgent hearing as an outcome that would provide the requisite certainty. The Court has consequently decided not to enrol the application for urgent hearing. The Court has decided not to award costs.

Bilchitz AJ disagrees with the order and reasons of the majority. His view is that the first and second applicants did not behave unreasonably in not bringing the case earlier or intervening as applicants in the *OSA* application. He takes the view that, even if it is accepted that the applicants made a mistake in this regard, that is not an adequate basis to refuse to address a matter that could involve the infringement of significant political participation rights in the upcoming elections and which may result in the exclusion of unrepresented political parties who are unable to meet the high signature requirement imposed by the impugned provision in time. The IEC also indicated that there would not have been any insurmountable practical problems created by a prompt decision to reduce the signature requirement for unrepresented political parties. Bilchitz AJ is of the view that, because of the very important fundamental rights implicated in this case, the interests of justice dictate that this Court should have heard this application on an urgent basis. He would have enrolled the matter and have had it heard and adjudicated.

Order: The Constitutional Court declines to enrol the matter for urgent hearing.

DUNISANI MATHIBA
ACTING REGISTRAR
CONSTITUTIONAL COURT

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AND TO: ALL POLITICAL PARTIES REGISTERED FOR ELECTIONS FOR THE NATIONAL ASSEMBLY
Sixth to Further Respondents
Service by email to email address set out in annexure "A" to the notice of motion.