



**THE ELECTORAL COURT OF SOUTH AFRICA
BLOEMFONTEIN**

**Not Reportable
Case No: 0028/2024EC**

In the matter between:

REYNO DAWID DE BEER

APPLICANT

and

ELECTORAL COMMISSION OF SOUTH AFRICA

FIRST RESPONDENT

MOSOTHO MOEPYA

SECOND RESPONDENT

JANET LOVE

THIRD RESPONDENT

GLEN MASHININI

FOURTH RESPONDENT

NOMSA MASUKU

FIFTH RESPONDENT

DHAYANITHIE PILLAY

SIXTH RESPONDENT

Neutral Citation: *De Beer v Electoral Commission of South Africa and Others*
(0028/24EC) [2024] ZAEC 29 (6 November 2024)

Coram: ZONDI DP, YACOOB AJ and PROFESSOR NTLAMA-MAKHANYA
(Additional member)

Heard: Decided in chambers on the papers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives *via* email, by publication on the website of the Supreme Court of Appeal and by release to SAFLII. The date and time for hand-down is deemed to be 11:00 on 6 November 2024.

Summary: Request for investigation in terms of s 20(7) of Electoral Commission Act 51 of 1996 read with rule 8 of Electoral Court Rules – complainant demands

particular responses and nature of investigation – not supported by preliminary investigation procedure – *prima facie* evidence not established to support further investigation – request declined. Procedure – discretion of court – not for complainant to demand allocation of scarce court resources – other avenues available.

ORDER

The complaint has no merit, and no further investigation is warranted.

JUDGMENT

Yacoob AJ (Zondi DP and Professor Ntlama-Makhanya concurring):

Introduction and procedural background

[1] Mr de Beer lodged a complaint against the second to sixth respondents (the commissioners), who are all the commissioners of the first respondent, the Electoral Commission of South Africa (the Commission). He requests an investigation in terms of s 20(7) of the Electoral Commission Act 51 of 1996 (the Act), read with rule 8 of the Rules Regulating the Conduct of the Proceedings of the Electoral Court (the rules).

[2] Before I deal with the merits of the complaint, I set out in some detail the manner in which Mr de Beer dealt with the court when lodging the complaint. The reasons for this will become obvious.

[3] The complaint was served on the Commission by email on 23 May 2024, with the intention that it be dealt with before the elections on 29 May 2024. It is not clear on what date it reached the court. The court issued directions on 27 May 2024, directing the filing of answering affidavits by 30 May 2024, and replying affidavits by 03 June 2024. The complaint itself called for the filing of responses within the time prescribed by the court.

[4] Mr de Beer then on 28 May 2024 directed an email to the Court which he copied to the Commission, in which he noted that there was an error in the directions, as rule 8 proceedings are not motion proceedings but an inquiry process and requesting that the directions be amended. In particular, he pointed out that affidavits are not required, but that other processes are.

[5] Mr de Beer then sent another email on 30 May 2024, apparently in response to a request from the Commission's attorneys requesting an extension, again pointing out that these are not application proceedings, and then proceeding to make unnecessary suggestions about the court intending to conceal the truth. He suggests that the investigation ought to be conducted entirely in open court. He also requested clarity regarding whether the Commission's attorneys also represented the individual commissioners.

[6] It appears that these emails were not responded to. It is possible that the timing combined with limited resources meant that they fell through the cracks. It must be noted that the 2024 national and provincial elections were held on 29 May 2024 and this Court was dealing with a plethora of applications at the time. Mr de Beer appeared to be labouring under the apprehension that the court was seized only with his complaint.

[7] On 5 June 2024 the answering affidavits on behalf of the commissioners were filed. On 7 June 2024, Mr de Beer sent another letter to the court, complaining of the procedure followed and of the failure to respond to his letter of 28 May. He complained of the manner in which the commissioners have responded. He also made some general attacks on the state and its institutions, suggested an evaluation of what the commissioners' responses mean and what this Court will make of them, and made veiled allegations that this Court had prejudged the issues and/or is incapable of dealing with the issues. He requested directions from this Court of a specific nature. It appears that Mr de Beer was of the view that there was only one way in which the complaint could be dealt with and that only he could determine what that way was.

[8] Mr de Beer was assured that the matter was being attended to and that further directives would be issued, which indeed did happen. Mr de Beer has addressed other correspondence to this Court because the matter has not been dealt with in the manner he would like, or with the expedition which would have been ideal. Of course, any litigant or complainant is entitled to enquire as to the progress of their matter. However, the combative tone of Mr de Beer's correspondence is regrettable. He continues to insist that his objections of 7 June 2024 have not been dealt with. They have been dealt with, simply not in the manner in which he prefers.

[9] On 1 July 2024 a further directive was issued, specifically addressed to Mr De Beer, in the following terms:

‘ . . .

1. Is there any document in the African Commission process which is relevant to his complaint which he has not already provided to this court? If there is, please will he provide it, and if it has to be dealt with confidentially to identify which document is confidential and why.
2. It appears that the core of his complaint is that the commissioners did not, through the Commission, publicize the African Commission process when they became aware of it, and that this had an adverse impact on the freedom and fairness of the elections. Is this a correct characterization? If not, he is invited to provide, in a single paragraph, a correct characterization of the complaint. . . ’

[10] Mr de Beer responded to the directive in a comprehensive document, setting out far more detail than necessary. His response is dealt with in the relevant section below. Mr de Beer also objected to the court reserving its right to determine the matter on the papers, and again stated his view that this Court does not have the power to deal with the complaint in that way. The parties were then requested to file written legal submissions dealing with whether the rule and the Act require any specific form of investigation to be instituted by this Court when a complaint is lodged.

[11] It is worth noting at this point the relevant provisions governing complaints against commissioners and the procedures applicable to them.

Applicable rules and law

[12] Rule 8 deals with an investigation into misconduct, incapacity or incompetence of a member of the Commission. It provides:

‘(1) An allegation of misconduct, incapacity or incompetence on the part of a member of the Commission must be

- (a) in writing and, if possible, accompanied by supporting evidence; and
- (b) lodged with the Secretary.

(2) The member concerned must respond in writing to the allegations within the time prescribed by the Court.

(3) Upon receipt of the response of the member concerned or after the expiry of the time prescribed by the Court in terms of sub-rule (2), the investigation must be dealt with in accordance with the directives of the Court.

(4) The Secretary must submit the written recommendation of the Court and any other documents which the Court may deem fit to the National Assembly without delay.’

It is to be noted that the rule does not prescribe how the court conducts its investigation and what steps need to be taken. It also does not provide for the complainant to prescribe time periods and procedures as he has attempted to do.’

[13] Section 20(7) of the Act simply empowers this Court to investigate any allegation of misconduct, incapacity or incompetence of a commissioner and make a recommendation to a committee of the National Assembly which may include the removal of that commissioner.

[14] I have set out the procedural background and the applicable law because it is important to note that the procedure to be followed in an investigation in terms of rule 8 is entirely in the discretion of the court. It is not open to any complainant to dictate to this Court how its work should be done. It is not appropriate for a complainant to direct invective at this Court and its secretary when the court does not do things in the way demanded by the complainant.

[15] It is, further, clear that the rules and the Act do not set out specifics because the procedure to be followed upon receipt of a complaint will in each case depend on the nature of that complaint and the supporting evidence, if any. In addition, the urgency with which the complaint is dealt with by the court will also be dependent upon the *prima facie* view taken by the court on examining the complaint.

The complaints raised by Mr de Beer

[16] Mr de Beer asserts that he acts in his own interest, in the interest of Mr JG Zuma, the former president of the country (Mr Zuma), and in the public interest, including specifically that of the uMkhonto Wesizwe Political Party (the MKP). Leaving aside whether Mr de Beer is entitled to act in the interest of Mr Zuma and the MKP without joining or serving them and where there is no suggestion that they are unable to act in their own interest, Mr de Beer is clearly entitled to act in his own interest and in the public interest.

[17] Mr de Beer's complaints contain entire applications submitted by him to the Constitutional Court. The first is an application to intervene in the matter of *Electoral Commission of South Africa v Umkhonto Wesizwe Political Party and Others*,¹ (the *MK matter*) which dealt with Mr Zuma's eligibility to be a candidate for the National Assembly, and which was heard on 10 May 2024. The intervention application was dismissed on 7 May 2024. The second is a rescission application Mr de Beer brought on 13 May 2024, to rescind the order dismissing his intervention application. That second application was dismissed on 16 May 2024.

[18] According to Mr de Beer, the 'content and events surrounding' those applications contain evidence supporting the complaint. The complaint is, according to him, related to a matter that was then pending before the African Commission of Human and Peoples' Rights (the African Commission). He asks that the applications be read in detail to understand the complaint.

[19] Mr de Beer contends that there was an 'ongoing international process' before the African Commission, and that the commissioners were aware of this process. The process was apparently relevant to Mr Zuma's eligibility to be a candidate for the National Assembly. Mr de Beer complains that the commissioners failed to consider the process and failed to disclose its existence to the Constitutional Court, which he submits was necessary for the Constitutional Court to reach a 'balanced, independent and impartial decision'. One assumes that, in Mr de Beer's view, the failure to disclose to this Court the proceedings before the African Commission would also fall within that category. In fact, it is that failure which prompted him to bring his application to intervene in the Constitutional Court.

[20] Mr de Beer contends that this intentional concealment of relevant facts by the commissioners was intended to harm Mr Zuma and the MKP, to deny voters' rights to make an informed choice, and thereby to interfere with the outcome of the elections, resulting in a process that was neither free nor fair.

¹ *Electoral Commission of South Africa v Umkhonto Wesizwe Political Party and Others* [2024] ZACC 6; 2024 (7) BCLR 869.

[21] Nevertheless, Mr de Beer does not disclose to this Court what the decision of the African Court is, but claims that it must remain confidential, despite alleging that the commissioners are aware of the decision and implying that they have concealed it in bad faith. Mr de Beer then contends that the concealment by the commissioners is what has led to the Constitutional Court dismissing the recusal application before it, despite the fact that the Constitutional Court had the information now presented to this Court notionally available to it and had decided that it was irrelevant.

[22] Mr de Beer then alleges that the Commission appealed this Court's decision in the *MK matter* for some reason other than to seek clarity on the interpretation of s 47(1)(e) of the Constitution, because, according to him, seeking clarity on the interpretation of s 47(1)(e) of the Constitution² would have required disclosure and consideration of the African Commission proceedings. It is unclear what the true purpose of the appeal is then purported to be, although one infers that it is something to do with influencing the outcome of the elections. It is unclear also how the interpretation of s 47(1)(e) of the Constitution depends on the factual existence of African Commission proceedings.

[23] Mr de Beer suggests that there is corruption that this Court must investigate, and that this Court must cooperate with any other investigative body. However, Mr de Beer does not appear to have reported his suspicions to any other body which may possess more effective investigative capabilities than this Court does.

[24] I set out below an analysis of the two applications attached to Mr de Beer's complaint, on which he relies for his request for an investigation in terms of rule 8, and which he contends raise suspicions of corruption, treason and terrorism on the part of the commissioners.

The application for leave to intervene

[25] The application for leave to intervene reveals that the Liberty Fighter's Network (LFN), an organisation which Mr de Beer represents, had been Mr Zuma's representative in a complaint lodged at the African Commission against the Republic

² The Constitution of the Republic of South Africa, 1996.

of South Africa (the RSA) in January 2022. Mr de Beer and Mr Zuma had decided to make common cause because they detected patterns of corruption and collusion between the executive and the judiciary, particularly the Supreme Court of Appeal (SCA) and the Constitutional Court, which resulted in what Mr de Beer contends are unfair and deliberate findings of contempt against himself and Mr Zuma, coupled with findings in favour of Mr Ramaphosa, who was at the time the President of the country.

[26] Mr de Beer contends that either the media has intentionally suppressed this information or 'we have simply outsmarted them'. It is not clear whether this means Mr de Beer wanted the media to report on the complaint or not. Nevertheless, he contends that he did not seek to intervene in this Court (the Electoral Court) because he assumed that the State would disclose the international proceedings through the Commission, which he describes as one of the State's organs. He assumed that the African Commission processes had been disclosed when this Court issued an order without reasons, and was surprised when the reasons did not refer to the African Commission.

[27] The complaint by Mr de Beer or the LFN to the African Commission is not annexed to the papers. Instead, there is correspondence from the Commission and the submissions made on behalf of the RSA. The general import of the submissions is that, since the primary relief sought by Mr Zuma is that he is not committed to prison, and his sentence has been remitted, the issue is moot, and that the remainder of the complaint should be dismissed for vagueness.

[28] Mr de Beer submits that he assumed the submission was made after consultation between the President and the Chief Justice, and that the Commission, being an organ of state, must have known what the submission said and cannot have a different view. He also contends that the submission means that the remission means that Mr Zuma's name is cleared of any wrongdoing. However, this is not what the submission says or means.

[29] Mr de Beer states in his application that the decision of the African Commission cannot be disclosed as it must be kept confidential in accordance with Article 59 of the

African Charter, while at the same time conceding that it can be disclosed to a court on the proviso that it be kept confidential.

[30] Mr de Beer is relatively coy about the nature of the corruption or dishonesty he complains of. A possible inference is that the alleged corruption or dishonesty of the commissioners of which Mr de Beer complains is that they knew and did not disclose to either this Court or the Constitutional Court the argument submitted for the RSA, which Mr de Beer interprets as disposing of the question of whether Mr Zuma was qualified to stand as a candidate for the National Assembly. However, assuming the commissioners were aware of the argument, the only thing the submissions deal with is whether Mr Zuma would be required to return to prison. This was not a question before this Court or the Constitutional Court.

[31] The nebulous manner in which the complaint is articulated is the reason Mr de Beer was invited to clarify, concisely, what exactly the complaint is. From his response, it emerges that his complaint is not that the commissioners did not act through the Commission but that they did not act individually to publicize the process, or even to make efforts to find out what the decision was in dealing with other court matters, but otherwise that the conceptualization of the complaint is accurate. The relevant African Commission documents were provided to the Chairman of the court, with a request that a specific directive regarding confidentiality be made if the documentation is made available to the other parties.

[32] Mr de Beer's response to the enquiry from this Court demonstrates that he holds the view that the commissioners hold a higher duty than anyone else in the Republic to bring to the attention of the public this African Commission process, which he believes is vital, and was vital to the decision voters were making, and that they hold this duty in their personal capacity rather than as commissioners. Why members of the Commission would hold such a duty in their personal capacity rather than as members of the Commission, and should have to act as individuals rather than through the Commission, is, again, unclear.

[33] This Court is of the view that it is not necessary to have sight of the documents submitted by Mr de Beer, since, even if they were something that could have swayed

the outcome of the election, the notion that the commissioners, without knowledge of the contents, had some kind of individual obligation to discover the contents and require them to be referred to in argument by the representatives of the Commission, because they would, after having discovered what the contents were, have realised the outcome of the election would be changed, is not only incredibly far-fetched, but impractical, meritless, and based on incorrect assumptions of both how a government and independent state institutions interact, and the difference between the obligations of individuals in their personal and official capacity. Certainly, no commissioner in their personal capacity would have had the authority to instruct the legal representatives of the Commission.

[34] The assumptions on which Mr de Beer bases his complaint are flawed, in that he seems to consider the South African government to be a monolithic structure, which precludes independence, while simultaneously complaining of a lack of independence. For example, he assumes, with no basis, that the President would consult with the Chief Justice before instructing a response to the complaint to the African Commission. He assumes, with no basis, that the Commission would know what the executive arm of the state is doing, even if it is in an area in which the Commission has no authority or interest. He assumes, too, that the Commission has no legal right to an independent position, even though it is not an organ of state that is subject to direction by the Executive, but a Chapter 9 Institution, which is an independent institution subject only to the Constitution and the law.³

[35] Were events to have taken place in the manner in which Mr de Beer claims he assumed they would have, and apparently wished for them to do, that would have been cause for concern, as a danger to the independence and the finely balanced oversight mechanisms set up in the Constitution, not only between the legislature, executive and judiciary, but also with the addition of the Chapter 9 institutions. Mr de Beer's complaint that those interactions appear not to have taken place seem to be the basis for his allegations of treason but may provide some solace to those who place reliance on the aspiration to constitutional democracy.

³ In terms of s 181(2) of the Constitution.

[36] On the other hand, Mr de Beer complains, with no evidence whatsoever, that the courts, in applying the law, come to conclusions that are relatively consistent, and that this must result from collusion. Be that as it may, none of this is grounds for an investigation in terms of rule 8. The only issue relevant to the Commission, as far as I can see, is whether the commissioners knew and ought to have placed before this Court the argument before the African Commission, and whether that failure to do so was the result of a lack of integrity.

[37] In his application for intervention Mr de Beer also makes much of the fact that various counsel are involved in different matters and different organisations. This betrays only a lack of understanding of how the independence of counsel works. In any event that too is irrelevant to whether the commissioners lacked integrity in any way.

The application for rescission

[38] Mr de Beer then, after the *MK matter* was heard in the Constitutional Court, filed an application for rescission of the 'alleged order' of the Constitutional Court denying his application to intervene. He asked also for the right to deliver written submissions and appear at a specially convened hearing before judgment was handed down.

[39] The primary reason for the rescission application is that the order dismissing the intervention application states that the 'Constitutional Court has considered the application for admission as *amicus curiae* and has concluded that the applicant does not raise any novel arguments. Consequently, the application is dismissed'. The order does not deal with Mr de Beer's application for intervention as an interested party. Mr de Beer contends that this must mean either that the judges did not consider his application properly, that they do not know the law, or that they are biased, as they only admitted *amici* who submitted argument against Mr Zuma's position.

[40] He also takes issue with the fact that he informed the Constitutional Court that he would not be available on 9 and 10 May but they still went ahead with the hearing of the matter on 10 May. Mr de Beer is then further perplexed because the African Commission proceedings were not mentioned, and his application clearly mentioned

the African Commission. This presumably is why he tried again to raise the issue before the Constitutional Court.

[41] Mr de Beer also complains that he sent a press release about the African Commission proceedings to the media which was largely ignored. One media outlet interviewed him and did not broadcast it. He complains that the elections cannot be free and fair because the media are, in his view, collaborating to portray Mr Zuma and the MKP negatively, and the courts and the media are preventing him from making revelations about the African Commission proceedings. There is no evidence before this Court of anyone preventing Mr de Beer from making any lawful revelations about any subject matter.

[42] Surprisingly, despite his complaints that he is being prevented from making revelations, Mr de Beer does not reveal the actual complaint that was made to the African Commission. Instead, the court must glean from the African Commission's responses and the submissions by the RSA what the complaint was.

[43] Mr de Beer also complains about a '*van Heerden*' complaint which the Constitutional Court and the Chief Justice are apparently aware of, also a complaint to the African Commission, which deals with 'a direct intrusion into our democracy'. The complaint apparently deals with the Constitutional Court's practice of dealing with matters without hearings.

[44] Mr de Beer then contends that if his revelations about the African Commission's decision are ignored and the Constitutional Court sets aside this Court's decision, that would have 'extreme repercussions on the reliability of the outcome of the Elections'. He does not explain why.

[45] The rescission application was dismissed on the basis that, between 7 May when the first order was made and 10 May when the *MK matter* was heard, Mr de Beer did nothing to bring his apparent objection to the nature of the order to the attention of the Constitutional Court.

[46] At this point, and without the complaint to and decision of the African Commission, Mr de Beer's complaint is no more than cryptic inference, apparently based on a very different understanding of how the Constitution expects the different arms of government to function, and there is nothing which this Court would be able to properly investigate. Mr de Beer complained that this Court did not direct him to make the complaint and decision of the African Commission available to it. However, it is for him, as a complainant, to ensure that his complaint is supported by whatever evidence is in his possession, to ensure that this Court does not waste its time wading through nebulous and baseless complaints.

[47] Mr de Beer wrote more than one letter to this Court contending that a formal inquiry in which evidence is led must be held. However, on the parties being requested to make legal submissions on whether any particular kind of investigation is called for by the rule or the Act, Mr de Beer himself submits that the investigation could be anything from an examination of the papers submitted to a formal inquiry.

The commissioners' responses

[48] The Commission has responded to the complaint against the commissioners as an institution, with individual commissioners simply confirming their versions. Mr de Beer has objected to this united front, but there is nothing at this point which demonstrates that it is inappropriate. There is nothing to indicate that each commissioner did not, as is usually the practice, provide their version, which was combined into one main affidavit for convenience and coherence, and then confirm that main affidavit. Nor is there anything untoward in the response being provided by way of affidavit, even though the rule does not strictly require it.

[49] The response was filed late, and condonation is sought on the basis that the commissioners were busy running the elections and that a request for an extension had been sought. There is no prejudice to anyone in the delay and condonation is granted.

[50] The commissioners point out that the complaint does not disclose any evidence of misconduct, incapacity or incompetence, and submit that it is frivolous and vexatious. The commissioners appear to understand the core of Mr de Beer's

complaint to be the same as that inferred by the court – that the Commission did not bring the African Commission process to the attention of this Court and the Constitutional Court.

[51] The commissioners state, under oath, that they were unaware of the African Commission process until Mr de Beer brought his applications to the Constitutional Court. They also point out that, that process was not relevant to what they were dealing with, and that, once the commissioners became aware of the process, there was no obligation on the Commission to raise it before the Constitutional Court. In any event, as Mr de Beer has made clear, he himself brought the process to the attention of the Constitutional Court.

[52] The commissioners also object to Mr de Beer's standing, contending that the matter is not as urgent as Mr de Beer claims, and submit that the issue is now moot. The commissioners further take issue with the unfounded serious accusations such as fraud, corruption, treason and terrorism, and ask for a punitive costs order. They refer to comments made by the SCA about Mr de Beer's communications with that court, much of which could equally be applied to the tone and nature of Mr de Beer's communications with this Court's Secretary.⁴ It may well be Mr de Beer's ordinary manner of communication, but it is still inappropriate and bears the risk that, when there really is incompetence, or worse, a lack of integrity, that may be worthy of Mr de Beer's scathing commentary, it will not be taken seriously.

[53] The commissioners' affidavit sets out the legal framework underpinning the existence of the Commission as a Chapter 9 institution and submit that frivolous, vexatious and unsubstantiated complaints may result in these institutions intimidated into not properly carrying out their Constitutional function. It points out that the Commission is independent from the executive, legislature and the judiciary and has nothing to do with the international affairs of the Republic. It points out also that Mr Zuma and the MKP's counsel chose not to raise the African Commission process after Mr de Beer raised it in his application, so that the allegations about suppression of relevant information can be viewed with some doubt.

⁴ *Minister of Cooperative Governance and Traditional Affairs v De Beer and Another* [2021] ZASCA 95; 3 All SA 723 (SCA) at paras 118 and 119.

[54] The commissioners then deal in detail with the process before the African Commission, including its powers and mandate, and points out that neither it, nor the African Court on Human and Peoples' Rights exercise appellate jurisdiction over the courts of member States, and that in any event, the African Commission only makes recommendations, not binding decisions.

[55] The commissioners submit that the jurisdictional prerequisites for an investigation to be instituted are not met, because the allegations, if proved, do not lead to a conclusion of misconduct, incapacity or incompetence on the part of any commissioner, and because there is no evidence or substantiation of the allegations.

[56] The commissioners also imply that this Court does not have jurisdiction or authority to investigate the complaint, partly because the elections have come and gone.

Mr de Beer's response

[57] I have already set out as part of the procedural background Mr de Beer's response. However, in the context of the commissioners' response as set out above, I set out what is relevant.

[58] Mr de Beer takes issue with the commissioners' overly technical approach, and points out that the procedure is intended to be accessible to the layperson. He raises the question of whether there might be a conflict of interest between the Commission and the commissioners, as the complaint is against the commissioners as individuals, and that they may be using the Commission as an institution to avoid facing up to the complaints against them. He complains about the lateness of the affidavit. He speculates about the manner in which a decision was taken that the Commission would defend the complaint against the commissioners.

[59] Mr de Beer concludes that the defence against his complaint reopens the Commission's previous decision about Mr Zuma's candidacy. It is not clear why, particularly when the Constitutional Court has determined the issue.

[60] And finally, Mr de Beer sets out what he would expect of the Commission if it was open and transparent. The real complaint now is that the commissioners, in their individual capacities, did not inform the public that they had become aware of the African Commission process, that they individually decided it would not impact the court's decision, and had therefore refrained from finding out more about the process or instructing the Commission's counsel to argue that point.

[61] It is unclear why this is the only course of action that Mr de Beer considers open to the Commission, or the commissioners, or indeed why he has the view that the commissioners' view of relevance would trump that of the advice of their counsel. This is all, in any event, speculative. It is interesting that he takes no issue with Mr Zuma not having instructed his counsel to argue the point.

Analysis

[62] As I have set out above, the true nature of the complaint is difficult to distil. It is the reason Mr de Beer was asked to clarify what the complaint is. Even after his response was given, there is some doubt, taking into account the content of Mr de Beer's previous correspondence, which referred to the fact that his African Commission process has not been given 'airtime' by the Commission, the media and the courts. That particular complaint has no merit and does not bear investigation. It appears that his wish for the Commission to give a press statement (which the commissioners can only do in their capacity as commissioners) is founded on the fact that the media has ignored him. There is no obligation on the Commission or on the individual commissioners to have raised the issue.

[63] That said, that does not mean that all of the points raised by the Commission or by the commissioners have merit. My view is that Mr de Beer, as a member of the South African public, has standing. The integrity of the members of the Commission is of vital public interest and if there is a real concern, anyone can and should raise it. The problem here is whether there is a real concern.

[64] The Commission's contention that the complaint is moot also has no merit. If a commissioner, or all commissioners, are found to lack integrity, that can and must be dealt with at any time, whether elections have happened and results declared or not.

Commissioners cannot take refuge in the fact that the particular election in which irregular conduct may be alleged to avoid an investigation.

[65] As far as the complaint that there was a failure to publicise the African Commission process is concerned, there is no obvious conflict of interest between the Commission and the commissioners, and there is nothing irregular in the way in which the commissioners have responded to the complaint. Indeed, the commissioners would have none of the obligations Mr de Beer contends they do if they were not members of the Commission, and therefore their response through the Commission in this particular instance, when the obligations of the commissioners are not at odds with the obligations of the Commission, is not in any way irregular.

Mr de Beer's complaints regarding process

[66] In view of Mr de Beer's sometimes vitriolic criticisms of the procedures followed by this Court in dealing with his complaint, the parties were requested to make written legal submissions regarding whether the court is required to follow any specific process when a complaint is referred to it.

[67] However, even Mr de Beer's own submissions acknowledge that, in certain circumstances, an examination of a complaint and responses on paper may be sufficient. Certainly, in this case, there was no need to refer the matter to a full inquiry as demanded by Mr de Beer in one of his letters, or to 'cooperate' with other institutions. There was no evidence of corruption, treason or terrorism, and no allegation of anything which, if followed up, might lead to a conclusion of corruption, treason or terrorism. Of course, there is nothing to prevent Mr de Beer from referring the complaint to one of the other institutions he wished the court to cooperate with. That is his right. However, he must also understand that, if there is not sufficient basis on which an institution can find it may base an investigation, that institution would be entitled to decline to investigate.

[68] It may also be that this Court would need to be a little more circumspect about issuing directions in rule 8 proceedings, as in this case, for example, there was not even a *prima facie* case to answer, and in other complaints, different procedures may need to be followed. This Court will take note of this, and Mr de Beer is to be thanked

for bringing the issue to the court's attention. However, it is an unpalatable fact that things may be lawful, reasonable and consistent with the Constitution, but still distasteful to some of us, and that is something we have to live with.

[69] The Commission asks that a punitive costs order be made against Mr de Beer. However, my view is that such an order may have a chilling effect and prevent complaints being made against the Commission and commissioners, which is undesirable.

[70] There is no merit in Mr de Beer's complaint and there is no need for this Court to make any submissions to Parliament on this issue. We make the following order:

The complaint has no merit, and no further investigation is warranted.

S YACOOB
ACTING JUDGE OF THE ELECTORAL COURT

Appearances

For the applicant: R D de Beer (In person)

For the first respondent: M du Plessis SC and M de Beer

Instructed by: Harris Nupen Molebatsi Inc, Johannesburg.