

CITIZENS COALITION FOR CHANGE & 5 ORS

v

ZIMBABWE ELECTORAL COMMISSION.

And

CITIZENS COALITION FOR CHANGE & 7 ORS

v

ZIMBABWE ELECTORAL COMMISSION.

And

CITIZENS COALITION FOR CHANGE & 7 ORS

v

ZIMBABWE ELECTORAL COMMISSION.

And

CITIZENS COALITION FOR CHANGE & 3 ORS

v

ZIMBABWE ELECTORAL COMMISSION.

HIGH COURT OF ZIMBABWE  
ELECTORAL COURT DIVISION  
NDLOVU J  
BULAWAYO; 19, 20 & 27 July 2023.

### **Electoral Appeals**

*Prof W. Ncube*, for the Appellants.

*Mr. T.M Kanengoni*, for the Respondents.

**NDLOVU J:** These 4 appeals were consolidated into one by consent of the parties at a case Management Meeting on 11 July 2023. The consolidation included another appeal under EC 06/23 which was later withdrawn before hearing.

Although the 4 matters are consolidated into one, *EC11/23* and *EC16/23* are appeals concerning individuals who presented themselves for nomination as Rural District Council candidates for Gwanda and Bubi respectively. On the other hand, *EC14/23* and *EC15/23* involve appeals concerning Provincial Council Party List candidates for Matebeleland South and Matebeleland North respectively.

### FACTS

All 4 matters share common facts in that, the candidates attended the Nomination Court well in time. They were told to attend to anomalies picked on their papers by the nomination officer and they left the Courtroom to attend to those issues. They later returned to the Nomination Court but were refused to resubmit their papers on the basis that they had returned after 1600 Hrs. They take issue therefore with being refused the chance to resubmit their nomination papers that had previously been examined.

### POINT OF LAW

The Respondent took a point of law before the appeals were argued on the merits and argued that there were no proper appeals before me and they reasoned as follows.

All these appeals are being brought in terms of *Rule 11* of the *Electoral [Applications, Appeals & Petitions] Rules, 1995*. In *EC11/23* and in *EC16/23* the appellants pursue their appeal based on the right of appeal provided in terms of *Section 46 (19) (b)* and in *EC14/23* and *EC15/23* the appellants pursue their appeal based on the right of appeal provided in terms of *Section 45E(14)(b)* of the Act. *Sections 45E(14)(b)* and *46(19)(b)* are identically worded [*with necessary modifications*] and provide for a right of appeal to political parties and individuals respectively.

An appeal is defined in Rule 10 of the Rules of this court as *“means an appeal by a candidate in terms of subsection (19) of section 38”* (now 46). That definition takes us direct to the doorsteps of Sections 45 E (14) (b) and 46(19)(b) and these Sections provide for what can be appealed against by a political party and by an individual candidate respectively.

**“45E**

*(14) If a nomination paper has been rejected in terms of subsection (5) or if any name of a party-list candidate has been deleted from the nomination form by the nomination officer-*

(a) ...

(b) *the political party shall have the right of appeal from the decision to a judge of the Electoral Court in chambers....”*

-The reasons listed in *subsection (5)* do not include the refusal by the Nomination Officer to accept the Party List paper from a Party Office Bearer on submission or resubmission on the basis that the Office Bearer came after 4 pm.

**“46**

*(19) If a nomination paper has been rejected in terms of subsection (10) or been regarded as void by virtue of subsection (16)-*

(a) ...

*(b) the candidate shall have the right of appeal from such decision to a judge of the Electoral Court in chambers....”*

- The reasons listed in *subsection (10)*, exclude refusal to accept papers for submission or resubmission on the basis that the candidate has come after 4 pm.
- To be regarded void in terms of *subsection (16)* the candidate would have been nominated for more than one senatorial or National Assembly constituency or a senatorial and National Assembly constituency.

Clearly, a refusal to accept the submission or resubmission of nomination papers is not appealable in terms of *Section 45 E(14) (b)* or *Section 46 (19)(b)* of the Act and by extension to approach this court through *Rule 11* of the Rules of this court.

I, therefore, uphold the point of law taken by the respondent.

## DISPOSITION

There are no proper appeals before this court and as a result, each appeal is Struck off the Roll.

## IT IS HEREBY ORDERED THAT:

1. The appeal filed under *EC11/23, EC14/23, EC15/23* and *EC16/23* be and is hereby struck off the roll.
2. There shall be no order as to costs.

NDLOVU J  
27/07/2023.

*Mathonsi Ncube Law Chambers*, appellants' legal practitioners.  
*Nyika, Kanengoni & Partners*, respondent's legal practitioners.