

ANC liable for over R100m for 2019 elections' banners

By [Tania Broughton](#)

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Nine Judges in three different courts have now ruled that a KwaZulu-Natal marketing company had a binding contract with the ANC and the party owes millions of rands for the supply of election banners ahead of the May 2019 general elections.

(Read: [Bid to seize ANC assets after failure to pay R102-million bill](#))



Source: www.unsplash.com

In the latest ruling, unanimous from the Supreme Court of Appeal (SCA), Judge Trevor Gorven said the party's version that it had no contract with Ezulweni Investments was "utterly untenable".

Denial

"The denials of the ANC fall into the category of bald, uncreditworthy denials designed to create fictitious disputes of fact," said the judge. The court had also refused an application by the ANC to lead further evidence during its appeal in the form of a forensic report, ostensibly done by EMS Forensics into the procurement.

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In refusing to consider this, Judge Gorven said the report itself was not put up but only an executive summary and it was unsigned and undated. It made reference to a Whatsapp message indicating that the company and the ANC's representatives could "make millions" out of the deal. Judge Gorven said this had not been presented as evidence when the matter came before the two lower courts.

Ezulweni had requested access to the device on which the message was reportedly received but this had been refused. An IT expert had also testified, unchallenged, that WhatsApp messages could be amended, edited or faked. Previously Ezulweni applied to seize assets worth more than R102m from the ANC after the party refused to pay it despite two judgments in the company's favour: one handed down in September 2020, and an appeal heard by a full bench of the Johannesburg High Court in June 2022.

In the High Court appeal ruling, the three judges said the ANC's defence was "far-fetched". The ANC applied to the SCA for leave to appeal that ruling, but the appeal lapsed. After Ezulweni obtained the writ of execution, the ANC reinstated the appeal, which was heard early in November and handed down on Friday. [Read the judgment here.](#)



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Judge Gorven, writing for the court, dealt with the stance of the ANC that there had been no verbal agreement between the two officials who negotiated the deal with Ezulweni boss Renash Ramdas, and if there was, the officials had no authority to do so. Judge Gorven said Ramdas, who described himself as a long-standing, loyal member of the ANC, had at a meeting in February 2014 met a Mr Mabaso, the party's finance manager, and a Mr Nkholise, the personal assistant to Fikile Mbalula, who headed the election campaign.

It was at that meeting that an "oral agreement" was concluded for the design, ordering, printing and placing of the banners. Ramdas said he was in constant communication with Nkholise and Mabaso. He sent almost daily WhatsApp messages, including photographs of the banners. He sent three invoices for R87m, R100m and about R2.4m.

In response to one, Mabaso and Mkhohise sent a document bearing the signature of Mbalula, addressed to Paul Mashatile, informing that "comrade Nkholise" has been assigned as the signatory for bookings and money for the duration of the election campaign. Another was a photograph of a letter addressed to Mashatile containing the signature of Mbalula which requested assistance with the payment of the first invoice.

Invoices not paid

The invoices were never paid. The ANC claimed that there had been no agreement, that Ramdas had been told that only Mashatile could authorise election material, and that Mbalula's signature on the document had been "electronic", inserted by Nkholise. Judge Gorven said there were "serious difficulties" with the ANC's version.

He questioned why Ezulweni would have gone to the expense of ordering materials and then printing the banners and why Ramdas had kept the two officials constantly informed, sending photographs and then invoices, if there was no contract. In response to one message, Ezulweni put up a response by Mabaso of a clenched fist.

The judge said the ANC had not rebutted this.

"The ANC's version is not capable of belief in the face of the cascade of communications from Ramdas that were met with deafening silence from the ANC. The only credible response of an entity in its position, if its version were true, would have been to immediately set the record straight so as to prevent Ezulweni proceeding at risk.

“Those responsible for the election were provided with evidence of the work that was being done to produce banners and then install them. How did these officials imagine that this was happening, save on the basis of an agreement with Ezulweni?”

Judge Gorven ruled further that Nkholise did have authority to conclude the agreement as was evidenced by the letter to Mashatile with Mbalula’s signature. He dismissed the appeal, ordering the ANC to pay the costs.

Ezulweni attorney Shafique Sarlie told *GroundUp* his client was now owed just under R150m, including legal costs.

“I have now demanded immediate payment from the ANC, failing which we will execute. This will entail the attachment and sale in execution of assets. If this falls short of what we are owed, we will bring liquidation proceedings against the party.

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