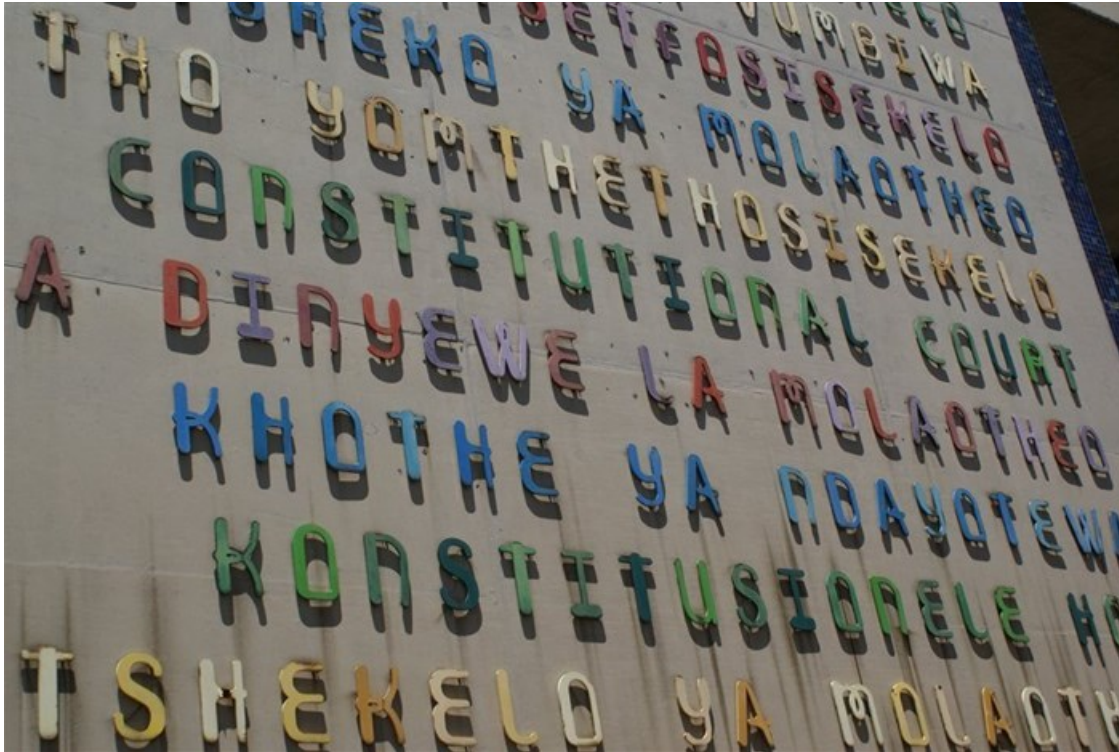


Constitutional Court accused of taking too long to rule on crucial election case

By [Tania Broughton](#)

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“I fear a further delay may begin to jeopardise the election process itself,” says independent candidate Zackie Achmat.



The Constitutional Court has not yet issued judgment on a crucial case about next year's election. The case was heard in August. Archive photo: Claran Ryan | GroundUp

- The Constitutional Court heard a case in August that will have vital implications for independent candidates in next year's election.
- It has still not delivered judgment.
- Zackie Achmat, who is standing as a candidate in next year's election, has written a letter to the Chief Justice expressing concern about the time the court is taking over the judgment.
- Mbekezeli Benjamin from Judges Matter told *GroundUp* the court could issue a ruling and give its reasons later.
- The Office of the Chief Justice did not respond to our request for comment.

Activist Zackie Achmat, who is contesting the 2024 general election as an independent candidate, has sounded the alarm on the Constitutional Court's failure to hand down a judgment in a crucial challenge to election laws. If not resolved soon, it could jeopardise the election process.

In a letter to Chief Justice Raymond Zondo, Achmat said while he was not a litigant in the challenge to sections of the Electoral Amendment Act, which was enacted in April this year, it could not be denied that the matter was of immense public importance.

The 2024 election will be the first time independent candidates will be allowed to run for office.

The court heard arguments in the matter at the end of August. The application was brought by the Independent Candidates Association and Build One SA which argued that the Act was unconstitutional because it unfairly restricted the participation of independent candidates in the elections and their representation in the National Assembly, compared to political party candidates.

The applicants claimed the playing field was not equal and independent candidates would require more votes to obtain a seat.

The application was opposed by Parliament and Minister of Home Affairs Aaron Motsoaledi.

Independent Electoral Commission (IEC) chair Mosotho Moepya recently told a Home Affairs parliamentary hearing that the fact that the court judgment was outstanding was creating anxiety.

He said the IEC could only finalise plans for the elections once the judgment had been handed down. It had been hoped that this would happen before the end of September.

In his letter to the Chief Justice dated 23 November, Achmat requested an estimated timeframe within which the judgment - or even an order without reasons - could be expected.

"I am currently collecting the roughly 13,000 signatures required by the impugned statute to obtain nomination in the Western Cape region.

"I am also, to the best of my knowledge, the only independent candidate nationwide to have made public their candidature. I understand that other prospective candidates are awaiting the court's ruling before deciding whether or not to declare themselves."



President signs Electoral Amendment Bill into law

17 Apr 2023



Achmat said the court had directed on 11 August 2023 that the matter would be heard on 29 August and this was taken as an indication that the ruling could be expected "with similar alacrity and that the country would have certainty about the contours of this crucial election".

"I appreciate that the court is faced with an immensely difficult task which is not to be rushed," he said, noting though that it had been almost three months since the argument was heard.

"With the dates for nomination and election drawing every closer, the lack of certainty exacerbates what is already a venture into uncharted waters. Aside from the impact that this decision has on me and my campaign, and on would-be candidates whose time to gather the necessary signatures is ticking by, I fear a further delay may begin to jeopardise the election process itself."

Achmat asked that the court provide the public with an estimated date by which the judgment can be expected or that an order without reasons be issued in the interim.

He also suggested that the “most pressing” issue of the signatures required for nomination by independent candidates could also be dealt with separately by the court “if only to allow independent candidates some certainty in respect of the nomination process”.

The Office of the Chief Justice has not yet responded to a request for comment by *GroundUp*.

Mbekezeli Benjamin from Judges Matter told *GroundUp*: “While a judgment of this gravity understandably takes time to deliver, the circumstances of the 2024 election do require the Constitutional Court to act with some urgency.”

“Ahead of the 2021 elections under Covid the Court handed down an order with reasons later. There’s no reason why a similar approach can’t be taken. It would strike a fair balance between giving the judges time to deliver a reasoned judgement, while giving both the Independent Electoral Commission and independent candidates time to prepare,” said Benjamin.

In the past, the Constitutional Court has ruled quickly on electoral questions. For example it heard a case in which the IEC was the first respondent on 19 March 1999. It handed down its judgment on 1 April 1999. It heard another case against the IEC on 4 March 2009 and ruled on 12 March 2009.

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