

IN THE STUDENT COURT OF STELLENBOSCH
STELLENBOSCH UNIVERSITY

In the matter:

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| NEIL DU TOIT | First Applicant |
| ROCHELLE ELLA JACOBS | Second Applicant |
| And | |
| BERNARD PIETERS | First Respondent |
| ASHWIN MALOY | Second Respondent |
| THEA BESTER | Third Respondent |
| FRANCOIS HENNING | Fourth Respondent |
| JACOBUS MAASS | Fifth Respondent |
| NETANJE VAN NIEKERK | Sixth Respondent |
| RODERICK LEONARD | Seventh Respondent |
| SELMIE CROUS | Eighth Respondent |
| CALMUNT LINK | Ninth Respondent |

APPLICANT'S FOUNDING PAPERS

INTRODUCTION

[1] This application is brought following what the Applicant will argue has been a pattern of irregularities on the part of the AfriForum Candidates for the SRC which will cumulatively render the upcoming SRC elections unfair. These transgressions climaxed with the display by Respondents 1-8 of posters which were put up during the night on 31 July and this application has therefore been lodged as a matter of urgency.

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1 URGENCY

[2] In terms of section 26(1) of schedule 1 of the Student Constitution of Stellenbosch University (“the SC”), complaints relating to the campaign of a specific candidate must be lodged with the Election Convenor. The Applicants have complied with this provision. However, voting is set to start on Tuesday. Given that the election posters were put up less than 48 hours before the beginning of voting, it is our submission that it is in the interests of justice and convenience to begin court processes as soon as possible rather than to await the result of the section 26(1) complaint relating to the election posters aspect of this application. We therefore seek an order dispensing with the usual processes and allowing this application to be heard on an urgent basis. The decision of the 9th Respondent is required by the SC to be delivered in 19 hours time from the filing of these papers and the Applicants undertake to bring it to the court’s attention as soon as it is received.

[3] For clarity, the Applicant also draws attention to the fact that an application to court regarding the running of the election may be made under section 26(2) of the SC independently of section 26(1). It is submitted that the term “election” should not be construed narrowly here to include only the voting stage of the process. Textual support for this reading is to be found in the heading of section 21, which refers to the “Notice and marketing of the election”, but which deals with the nomination period in section 1(a).

2 JURISDICTION

[4] The Applicant seeks declaratory orders regarding irregularities in the campaigning process for SRC elections. This process is ultimately governed by schedule 1 of the SC (which in turn is empowered to do so in terms of section 49 of the Statute of Stellenbosch University, read with section 2(2) of the Student Constitution of Stellenbosch University). Adjudication over this process is therefore manifestly within the jurisdiction of this court in terms of section 60(b), (c) and (e) of the SC.

3 LOCUS STANDI

[5] The Applicants are students and therefore it is submitted that they have standing in terms of section 62 of the SC.

4 CAMPAIGN POSTERS

[6] At around 9.30 pm on Sunday 31 July First Applicant left the Neelsie and noticed campaign posters for AfriForum candidates being placed on the streetlight poles on Merriman Street. At 11pm he returned in order to photograph the posters (see addendum 1). He photographed 37 posters on the Kayamandi side of the lower half of Merriman. He then stopped photographing halfway up the road when he saw several AfriForum members and sought to avoid confrontation. However First Applicant continued up the road and counted 32 posters on the Kayamandi side of the upper half of Merriman. On the university side, about 7 posters had been put up on the short wooden poles which are placed at 1m intervals along the road adjacent to Simonsberg residence and about 12 on street poles. There was a stack of posters on the ground and it appeared from the scene that one AfriForum member was intent on clothing every such wooden pole outside Simonsberg with a poster. When First Applicant returned to the lower half of the street the AfriForum members had begun to put up posters on the university side of the road and simultaneously were beefing up the Kayamandi side further. He then drove around the university and counted 23 posters on Victoria Road.

[7] The up shot of all of this is that a conservative estimate of the number of posters presently flanking the university is significantly upwards of 150. Probably much more. The posters are constructed from standard width cardboard for election posters and affixed with zip-ties. The higher ones were affixed with the assistance of a ladder. Transport for this process was evident in the two cars parked alongside the road near where the posters were being put up. They are all printed in full colour and some include graphic designs. It is therefore submitted that the cost of this endeavour would have dwarfed the allocated budget for campaigning (R650 per candidate) and constitutes election fraud.

[8] In First Applicant's observation about two thirds of the election posters name a specific candidate. The remainder, however, simply send out a generic call to vote for AfriForum candidates.

[9] According to the rules of the Elections Convenor, which gain their power from section 22 of schedule 1 of the SC:

“The Election Committee and prospective candidates (including the SRC Election Convenors) are responsible for the photography, design and distribution of all marketing posters. The candidate will be allowed to choose one of the photos that will be taken by the professional photographer, for his/her campaign posters. *No other posters will be allowed* [own emphasis]” (addendum 3).

[10] Importantly, two additional breaches of the rules have therefore manifested. Firstly, the use of posters that do not feature the photograph by

the professional photographer are clearly contraband. Secondly, the design of the posters which feature a cartoon bearded man with glasses should have been within the responsibility of the Election Committee and not just that of the candidates. In total therefore there are three clear transgressions of the rules relating to elections evident in this conduct.

[11] The publication of the posters at this late stage can hardly be remedied. Students arriving on campus in this morning (1 August) will all see these posters and have their image fresh in their mind when voting begins this week. Indeed the AfriForum candidates are the only ones who will have this large advantage as all other candidates have followed the rules and not put up election posters that exceed their budget.

[12] Furthermore, these three transgressions must be seen in light of the fact that a warning regarding the campaigning rules had already been issued to Respondent 1-8 following the incident in the Neelsie on 19 July referred to below.

5 CAMPAIGNING IN THE NEELSIE

[13] On the afternoon of 19 July a campaigning event for AfriForum took place in the Neelsie. It included a band, large advertisements on the screen in the centre of the Neelsie, and bursary offers. A complaint was lodged that evening. It included that following:

“Not only did they break the rule in regards to their candidacy by announcing they are standing this afternoon in the Neelsie Student Centre, but they also broke other election rules relating to budgets and how money may be spent. It is my understanding that every candidate receives R500 campaign money to spend, and it is furthermore my understanding that today’s event in the Neelsie alone already went over a budget of R3000.

This disregard for election rules not only creates a huge disadvantage for other candidates standing, but also creates the space for other candidates also to contravene the election rules.

I would advise that you request an interpretation from Student Court on this matter as I do believe them contravening the code will be challenged.”

[14] The decision of the Election Convenor was to issue a warning. The following were his reasons:

“At this point Afriform did not mention any student campaign directly. General voter encouragement took place. I do acknowledge that students who stand under the umbrella of Afriform now have a slight advantage in terms of marketing. The event was marketed as a bursary awarding ceremony.

I will issue a warning to Afriforum related students with regard to the marketing materials and state that no such materials as was used before may be used again unless it remains within a candidates allotted budget. I will therefore not be recommending a judgement by student court.[sic]"

[15] It is our submission that the Elections Convenor misdirected himself for the following reasons:

- 1) As can be seen by addendum 2, at least one of the advertisement on the big screen made no reference to the awarding of bursaries, but was a call to vote AfriForum.
- 2) The notion that "general voter encouragement took place" is plainly inconsistent with the fact that voters were being requested to vote *AfriForum*.
- 3) The nexus between the individual candidates and AfriForum is clearly present. The Afriforum website names the candidates. They all wear green ties/scarves to identify themselves in their campaign photographs. Their posters associate them with AfriForum etc. Even if this association only materialised for some students *after the event* (which the 9th Respondent conceded, if only to a small extent), when the candidates become better known, that fact, we submit, is simply not relevant.
- 4) Applicant's are willing to concede that it might be possible for Afriforum to promote itself on campus without necessarily campaigning for the candidates by association, but we submit that this is a narrow line which is definitely crossed at the point at which the screen backdrop to the event implores those present to *vote AfriForum*. No election other than the SRC election could have been the election being referred to and the only reasonable inference is that it constituted campaigning for the candidates.
- 5) The presence of the award of bursaries should not detract from the above inference. On the contrary. This constituted a further incentive to *vote AfriForum* and as such the cost of these burseries ought have been included in the campaigning costs of Respondents 1-8.

[16] It is therefore submitted that the 9th Respondent materially misdirected himself in making an error of fact or gross error of interpretation and that his decision ought be set aside on review. The event was clearly a campaigning event which would have cost well over R4000 (see "promotional tariffs" attached). This amount must of course be seen in conjunction with that spent on the posters, as the campaigning budget is for the entire duration of campaigning.

6 FAILING TO ATTEND CAUCUS EVENTS

[17] In terms of the rules of the Election Convenor, all caucus events are compulsory (see the section on caucus' in addendum 3). It is the submission of the Second Applicant that to the best of her knowledge, the First and Fifth

Respondent both failed to attend a caucus meeting and the Third Respondent attended exactly none of them.

[18] The Applicants submit that the importance of these caucus meetings cannot be gainsaid. They are not simply an opportunity for candidates to advertise their own benefits. But they are also an opportunity for doubtful students to put challenging questions to them, indeed even to attack their arguments and publicly declare their failures. This must all be met with an answer, and the candidates risk losing not only the vote of the questioner but their peers as well should their retorts be found wanting. For this reason non-attendance cannot merely be viewed as a missed opportunity for the candidates. It is submitted that it must also be regarded as an encroachment into a vital aspect of transparent, democratic, participatory and accountable student governance.

7 APPROPRIATE REMEDY

[19] The transgressions of the campaigning rules described above must be seen firstly within the context of the fact that AfriForum candidates have associated themselves with a political organisation and consistently draw on the resources of that organisation to promote their candidates (AfriForum is a political organisation. See *AfriForum v Johannes Pienaar WC* case no 4357/16 unreported para 6 and 7, attached, addendum 4). The rules of the Election Convenor sought to minimise the potential prejudice that may result from this association by forbidding, eg, political rallies on campus where candidates are promoted. In relation to the online promotion the decision of the 9th Respondent was that he would decide the matters casuistically, and drew attention once again to the R650 limit. Despite this implicit injunction to evince caution when associating with political organisations, as well as an explicit warning following the event on 19 July, Respondents 1-8 have eagerly placed over 150 contraband AfriForum posters up the two most frequented roads in the university less than 48 hours before the initiating of the voting process. Respondents 1, 3 and 5 have furthermore shown little respect for the caucusing process.

[20] It has already been conceded by the 9th respondent that there has been some irreparable advantage to Respondent 1-8 as a result of 19 July. It is respectfully submitted that the advantage resulting from being the only candidates to have posters up on street lamps will be grave and irreparable.

[21] The Applicant therefore seeks an order declaring that

- 1) The use of campaign posters fitted on 31 July by Respondents 1-8 violates the rules laid down by the Election Convenor in terms of section 22(1) of the Student Constitution in so far as Respondents 1-8 would have exceeded their budget significantly, and used posters that do not feature any particular candidate and used posters that were not under the responsibility of the election committee and that the use of these posters has been seriously detrimental to other candidates in terms of section 22(3).

- 2) That Respondent 9 materially misdirected himself in deciding only to grant a warning in respect of the campaigning of Respondent 1-8 in the Neelsie on 19 July and that this decision accordingly be set aside.
- 3) That Respondent 1-8 contravened the rules of the Elections Convenor in terms of section 22(1) of the Student Constitution in so far as Respondents 1-8 held an event in the Neelsie which would have exceeded their budget significantly. In addition, in so far as candidacy was prematurely announced.
- 4) That Respondent 1, 3 and 5 contravened the rules of the Elections Convenor in terms of section 22(1) of the Student Constitution In so far as they failed to attend all of the caucus discussions.
- 5) That the candidature of Respondents 1-8 be declared invalid.
- 6) Such further or alternative relief as this Court deems fit.