



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

STUDENT COURT OF STELLENBOSCH UNIVERSITY

REPUBLIC OF SOUTH AFRICA

IN EX PARTE APPLICATION OF
ANDRI MALAN

Applicant

Neutral Citation: *Ex Parte Malan 4/24*

Judgment: BRYANT CJ (Bester J, Mudzingiranwa J, Swanepoel J, Steyn DCJ concurring)

Decided on: 4 March 2024

FINAL JUDGMENT

BRYANT CJ (Bester J, Mudzingiranwa J, Swanepoel J, Steyn DCJ concurring)

Introduction

[1] The Applicant approached this Court on an urgent basis on Friday, 1 March 2024 for a declaratory order relating to the Prim Committee's disciplinary powers, more specifically the sanctions imposable by the Prim Committee's disciplinary committee. In her application, she submitted that the Prim Committee *ad hoc* disciplinary committee has disciplinary powers grounded in the Prim Committee Constitution, however, the sanctions imposable by the Prim Committee disciplinary committee are not specified in the Prim Committee Constitution. Furthermore, the Applicant wants this Court to declare that the Prim Committee's disciplinary committee has the power to impose the following sanctions:

- “a. A written apology to the Prim Committee;*
- b. Full/ partial suspension of the Primarium/House Committee from Prim Committee recreational events/activities;*
- c. A reduction of honorarium of the Primarium;*
- d. A reduction of honorarium of House Committee Members;*
- e. A monetary fine by the community;*
- f. Removal from office via resignation;*
- g. Referral of the matter to the Central Disciplinary Committee.”*

I deal with this matter in accordance with how the Applicant outlined her submissions in her filings.

Locus standi

[2] I agree with the Applicant’s submission that she has standing to approach this Court. She is a registered student of Stellenbosch University and thus falls within the category of ‘all students’ that have standing in terms of section 86 of the Student Constitution of 2021 (‘Student Constitution’). I also agree that the Applicant has a ‘direct and live interest in the matter’ as she is the Prim Committee Chairperson.

Urgency

[3] Firstly, the Applications submit that the matter is urgent. As held by this Court in *Ex Parte Oosthuizen*,¹ the onus is on an applicant to prove why their application should be regarded as urgent as is evident from the Rules of Procedure of the Student Court, 2023 (‘Rules’) in paragraph 8(1):

“An applicant must explicitly set forth the circumstances which render the matter urgent, if at all, as well as reasons why the applicant will be prejudiced if there is no deviation from the Rules.”

Thus, what is required from the Applicant is to outline the circumstances creating urgency and why an applicant would be prejudiced should no deviation be made.

[4] In my view, the Applicant satisfied both these requirements. She outlined the limited timeline in which the *ad hoc* disciplinary committee of the Prim Committee will be appointed. She indicated that the appointment of the *ad hoc* disciplinary committee

¹ *Ex Parte Oosthuizen* 8/23 para 3.

would take place during the week of the 4th of March, and at the time of writing this judgement it is the 1st of March. This indicates that there are less than seven days left in which this *ad hoc* disciplinary committee will be appointed.

[5] When further considering the important role of the *ad hoc* disciplinary committee in assisting with a minor disciplinary matter or assisting with investigating a disciplinary complaint without fear, favour, or prejudice,² I am of the view that it would lead to a miscarriage of justice should the request for urgency not be granted.

Jurisdiction

[6] Moreover, I agree that the Court has jurisdiction in the present matter. In terms of section 84(2)(b) of the Student Constitution, this Court has the power to give interpretation to “[A]ny empowering provision in terms of which a student body or a member of a student body exercises power.” Section 3(7) of the Student Constitution confirms that the Prim Committee is included in the list of student bodies which is constituted by the Student Constitution. This read with section 100 of the Student Constitution further substantiates this finding.

[7] In terms of section 101(1) of the Student Constitution “[T]he Prim Committee constitution is binding on all House constitutions of Houses that form part of the Prim Committee.” Furthermore, section 101(2) of the Student Constitution confirms that the Prim Committee may accept any constitutions, regulations, or rules, or amendments thereto, that organises its activities, subject to approval by the Student Court. Therefore, the Prim Committee Constitution is an empowering provision in terms of which a student body exercises power and it is thus within the jurisdiction of the Student Court to grant an authoritative interpretation to the provision in issue.

The nature and role of the Prim Committee’s ad hoc disciplinary committee

[8] When considering the substantive matters of this case, I find it essential to set out a brief exposition of how the *ad hoc* disciplinary committee is appointed and what their role entails. In terms of section 4(3)(a)(i)-(ii) of Addendum D of the Prim Committee Constitution an *ad hoc* disciplinary panel may be appointed by the Vice Chairperson

² Ss 4(3)(a)(i), (ii) and (v) of Addendum D of the Prim Committee Constitution.

of the Prim Committee (“Vice-Chairperson”) to assist the Executive Committee of the Prim Committee (“Executive Committee”) when dealing with a minor disciplinary matter or to assist with the investigation of a disciplinary complaint.³ Although the Applicant refers to a disciplinary “committee”, this court will assume that the Applicant uses the terms “committee” and “panel” interchangeably.

[9] Furthermore, section 4(2) of Addendum D of the Prim Committee Constitution stipulates that “[T]he mandate and specific role of the relevant Subcommittee must be drafted by the Vice-Chairperson of the Prim Committee.” It is clear from reading these provisions together that the *ad hoc* disciplinary committee constitutes a special subcommittee and derives all its powers from the mandate drafted by the Vice-Chairperson. The question to be answered by this Court is which, if any, imposable sanctions the *ad hoc* disciplinary committee may impose.

Who has the power to impose a disciplinary action?

[10] The crux of the issue before this Court is that neither the Student Constitution, nor the Prim Committee Constitution, provide a definition of what constitutes “disciplinary action”. Depending on the purpose for which the disciplinary committee was established, it seems that the power to impose disciplinary actions upon the party in question lies either with the Executive Committee or with the Vice-Chairperson. This is evident when interpreting the ordinary meaning of the word “assist” as contained in Addendum D.⁴

[11] It seems that the Applicant was under the impression that the disciplinary committee has authoritative powers to impose disciplinary sanctions. In explaining this Court’s reasoning I am reminded of the *ex visceribus actus* principle (all parts of the legislation must be studied), which requires that legislation must be read as a consistent whole. When reading section 4(2)(a)(iii),⁵ together with section 4(3)(a)(iii) of Addendum D it is clear that the disciplinary committee’s powers extend to submitting a report of its findings to the Vice-Chairperson for tabling at the next Executive meeting.

³ Ss 4(3)(a)(i),(ii) of Addendum D of the Prim Committee constitution.

⁴ Ss 4(3)(a)(i), (ii).

⁵ S4(2)(a)(iii).

[12] Furthermore, in terms of section 44(1)(k),⁶ the Executive Committee is the main decision-making body of the Prim Committee and has the power to resolve disciplinary matters. Though the Court is of the opinion that the issue before us may well raise interesting and substantial questions, it is hesitant to provide an authoritative interpretation on what disciplinary actions the Executive Committee may impose as this is not what was sought in the Applicant's Notice of Motion.⁷

[13] This Court was also not provided the mandate and specific role of the disciplinary committee which is to be drafted by the Vice-Chairperson.⁸ It is not the role of courts to make rules, but rather to scrutinise its constitutionality.

[14] However, seeing as this Court has found that this constitutes an urgent matter, it may dispense with any of the Student Court Rules of Procedure ("Rules of procedure"), to the extent provided for in Rule 3(5).⁹ This Court will now consider whether the proposed sanctions which the disciplinary committee can recommend is constitutional and in line with the Prim Committee's own constitution.

The proposed sanctions

[15] The Applicant proposed certain sanctions as is set out in para 1 above of this judgment. As already indicated, the Applicant erred in assuming that the disciplinary committee has sanctioning powers. This Court will thus determine whether these proposed sanctions are instead proposed *recommendations* which the disciplinary committee may submit to the Prim Committee in its assisting role.¹⁰

[16] In this regard I will refer to the Disciplinary Code for Student of SU, 2021 ('Disciplinary Code'), specifically para 7.4 which provides that "[I]n each case, the relevant person must decide how to deal with the matter, taking into account the seriousness of the misconduct, the importance of the issues raised, the evidentiary or

⁶ S44(1)(k) of the Prim Committee constitution.

⁷ Notice of Motion 01/03/2024 para 1(A)(a).

⁸ S4(2) Addendum D.

⁹ Rule 8 of the Student Court Rules of Procedure, 2023 ('Rules of Procedure')

¹⁰ S21 of the Prim Committee Constitution. See also S99(2) of the Student Constitution which further confirms this.

conceptual complexity of the matter, the broader interests which the University have in its outcome, and any other relevant consideration.”¹¹ Even though the Disciplinary Code makes no express mention of the Prim Committee and its various constituents, it confirms that it applied to “All Students of the University...agreeing to represent the University on or away from Campus in academic, sport, cultural or other official activities.”¹²

[17] The Disciplinary Code does expressly make reference to House Disciplinary Committees and Residence Disciplinary Committees in dealing with disciplinary matters. When considering the close relationship between the Prim Committee and the various House Committees, as well as the fact that decisions of the Prim Committee are binding on all House Committees which form part of it,¹³ This Court finds that the disciplinary committee is empowered to recommend the same sanctions which the relevant Residence Disciplinary Committee (“RDC”), is empowered to impose.

[18] These powers are set out in para 38.10 of the Disciplinary Code and reads as follows:

“38.10 The RDC has a discretion to impose one or more of the following sanctions if it finds that a Disciplinary Misconduct has been committed:

38.10.1 The payment of reasonable compensation for any damage, loss or costs caused by the Student to the University or to any other person as a result of the misconduct.

38.10.2 A final written warning.

38.10.3 The submission of an apology in writing or in person to anyone affected by the misconduct.

38.10.4 The imposition of an appropriate restorative, rehabilitative or punitive assignment, including community service, of not more than 100 hours in a Residence or PSO ward, on Campus, or at an appropriate organisation or body.

¹¹ Para 7.4 of the Disciplinary Code for Students of SU (‘Disciplinary Code’).

¹² Para 5.1.5.

¹³ S99(3) of the Student Constitution.

38.10.5 The deprivation of such position of leadership as the Student may occupy in the University Residence or PSO ward concerned, or in the Student Union.

38.10.6 The Suspension of certain privileges enjoyed by the Student as a member of the relevant Residence or PSO ward, or as a Student of the University, but excluding Expulsion from the relevant Residence, PSO ward or University.

38.10.7 Any combination of the sanctions listed immediately above.”¹⁴

[19] When considering para 38.10 of the Disciplinary Code together with section 101(1) of the Student Constitution, the only reasonable possible interpretation is that the Prim Committee, and its various subcommittees, should at the very least have the same level of authority as that of the House Committees and Residence Committees who are subject to the Prim Constitution. One must also bear in mind that section 99(2) of the Student Constitution confirms that the Prim Committee is an autonomous structure and “has the powers necessary for the performance of its duties.”¹⁵

Conclusion

[20] For all the reasons above, I conclude that the recommendations the Applicant submitted are all in line with the Student Constitution, Prim Committee Constitution and the Disciplinary Code, except that part which concerns the reduction of honoraria. This finding sufficiently balances the separation of powers principle, as it ensures this Court does not change or add to existing provisions, but rather applies existing rules, codes and regulations together in a holistic manner.

[21] Before I make the order I also find it prudent to remind the Prim Committee of section 101(2) of the Student Constitution which empowers them to determine their own rules, regulations or amendments thereto, subject to approval by the Student Court.

Order

I therefore make the following order:

[1] The matter is urgent;

¹⁴ Para 38.10 of the Disciplinary Code.

¹⁵ S99(2) of the Student Constitution.

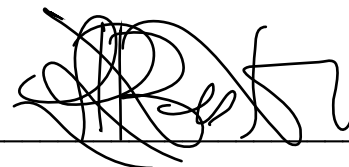
- [2] The *ad hoc* disciplinary committee of the Prim Committee does not have any sanctioning powers and merely makes recommendations to the Executive Committee who has the authoritative power in disciplinary matters.
- [3] The *ad hoc* disciplinary committee may recommend all the sanctions prayed for in their Founding Affidavit, except those suggestions concerning a reduction in honorarium;
- [4] The *ad hoc* disciplinary committee may recommend all the sanctions as set out in para 38.10 of the Disciplinary Code.



BRYANT CJ



STEYN DCJ




BESTER J



MUDZINGIRANWA J

BRYANT CJ



SWANEPOEL J