

IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH

(HELD IN STELLENBOSCH)

In the ex parte application of

STUDENT REPRESENTATIVE COUNCIL

First Applicant

STUDENT REPRESENTATIVE COUNCIL ELECTION CONVENOR

Second Applicant

JUDGMENT

Hislop DCJ (Carroll CJ; Motale J; Swanepoel J; Janse van Vuuren J concurring)

FACTUAL MATRIX

- 1 The Applicants in this matter approached this court on 5 June 2020 seeking relief in the form of a declaratory order that:
 - i) Schedule 1 of the Student Constitution is not a fundamental provision as contemplated by sections 105(1) and 105(2) of the Student Constitution
 - ii) Schedule 1 of the Student Constitution may be amended in terms of section 105(3) of the Student Constitution;
 - iii) Or grant any order, including a combination of the abovementioned remedies, that is fair and equitable.
- 2 The facts behind this application are informed by the COVID- 19 pandemic and the decision to close Stellenbosch University as of 16 March 2020.

- 3 Subsequent to this decision, Stellenbosch University (hereafter referred to as SU) opted to present online classes as an alternative to contact-learning. While these restrictions have been largely relaxed, the vast majority of students continue with virtual learning.
- 4 The ramifications hereof, are that elections and other functions generally performed by mass meetings are no longer possible in the manner prescribed by the Student Constitution.
- 5 Schedule 1 of the same constitution prescribes the process which should be followed in conducting elections. This process is not possible in light of COVID.
- 6 The SRC are thus compelled to amend their constitution to accommodate the impossibility of gatherings.
- 7 Section 157 of the Student Constitution prescribes the procedure for constitutional amendments. This provision specifies a list of sections requiring referenda for amendment.
- 8 Schedule 1 is not included amongst this list and can be amended in the form of a vote by the SRC.
- 9 The SRC have nonetheless approached student court for a declaratory order confirming the constitutionality of an amendment to schedule 1.

PROCEDURAL ASPECTS

JURISDICTION

- 10 Under section 65(2) of the Student Constitution, this court is empowered to determine the constitutionality of any action or omission by a student body or member thereof. The first applicant is a duly appointed members of the SRC while the second applicant is the duly appointed Election Convener. Both

parties derive their powers from the Student Constitution. This court is subsequently competent to determine the application before it.

LOCUS STANDI

- 11 Section 67(1) of the Student Constitution provides that all students and student bodies may bring cases before this court. The Applicants are both registered students. Moreover, this application has been made in their constitutionally mandated capacities as SRC member and SRC election convener respectively. Both applicants therefore enjoy standing before this court.

SUBSTANTIVE ASPECTS

THE IMPORTANCE OF TRANSPARENCY

- 12 The SRC is the highest policy making body of student governance. As such, they are obligated to function transparently and openly in order to ensure an accountable student body. In light of this mandate, the SRC approached the Student Court to ratify a decision to amend schedule 1 of the Student Constitution.
- 13 This application is pertinent for two reasons. Firstly, while the schedule in question avails itself to be amended by a vote within the SRC, the gravity of such a decision cannot be gainsaid. Decisions affecting elections directly impact the ability of the SRC to function in a democratic manner. As such, despite the prima facie clear-cut nature of section 157 and its implications on constitutional amendments, a decision with such far-reaching implications demands review to curb an over-extension of power.

- 14 Having regard to the gravity of the amendment proposed by the SRC, this court upholds the decision to amend the Student Constitution. This decision is weighed against the context created by COVID-19, which necessitates a constitutional amendment. As such, because the converse to a constitutional amendment regarding elections would imply no election at all, this court holds that schedule 1 can be amended in the manner prescribed by section 157 of the Student Constitution.
- 15 A further consideration pertaining to the amendment posited, is that while schedule 1 itself demands no special voting procedure, it may impact on sections of the constitution which do. This court rejects this argument on the following basis. Section 157 of the Student Constitution was drafted to explicitly exclude certain sections from special voting procedures. While we acknowledge that the constitution must be seen as a unitary document with all sections interlocking and impacting one another, to argue as much in this context would undermine the intention of the drafters of this constitution. Theoretically one could argue that any section impacts another, which would have the unfortunate effect of rendering the specific exclusions of section 157 null and void. Moreover, this would impose a weighty burden on the SRC which encumbers functionality.

CONCLUSION

- 16 While the gravity of an amendment to election processes is noted, the amendment to schedule 1 requires no special process. This conclusion is drawn in light of two factors.
- 17 Firstly in accordance with the inescapable ultimatum which COVID has placed on the SRC, an amendment to schedule 1 is necessitated. This, in turn outweighs concerns pertaining to the gravity of such an amendment.

- 18 Secondly, schedule 1 amendments require no special procedures as stipulated in section 157 of the Student Constitution. To interpret this section differently would be to undermine its purpose.
- 19 This court thus holds that the amendment proposed is both constitutional and in accordance with the principles of accountability and transparency.

ORDER

- 20 This court orders as follows:
- i) Schedule 1 of the Student Constitution is not a fundamental provision as contemplated by sections 105(1) and 105(2) of the Student Constitution;
 - ii) Schedule 1 of the Student Constitution may be amended in terms of section 105(3) of the Student Constitution;