



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

**IN THE *EX PARTE* APPLICATION OF
SPHEPHELO MHLONGO**

Applicant

Neutral Citation: *Ex parte Mhlongo 21/02/24*

Judgment: BESTER J (Bryant CJ, Steyn DCJ, Swanepoel J,
Mudzingiranwa J concurring)

Heard on: Decided on papers

Decided on: 21 February 2024

FINAL JUDGMENT

BESTER J

Introduction

[1] The Applicant approached this Court on Monday, 19 February 2024 on an urgent basis seeking a declaratory order in respect of the Rules of the Students' Imbizo ('Rules'). In his application he submitted that the timeline for impeachment proceedings was not immediately clear from the Rules. Rather, he submitted that the Rules contained two particular provisions which are actually contradictory and this uncertainty may hamper these ongoing impeachment proceedings.

Locus standi

[2] I agree with the Applicant that he indeed has standing to approach this Court. In terms of section 86 of the Student Constitution of 2021 ('Student Constitution')

students have *locus standi* in respect of the Student Court. The Applicant is a registered student and has thus been accorded standing.

Jurisdiction

[3] Moreover, I agree that the Court has jurisdiction in the present matter. In terms of section 84(1)(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.” The Student Imbizo is itself one of the two houses which make up the bicameral Student Parliament as confirmed in section 67 of the Student Constitution. Section 3 of the Student Constitution lists ‘student bodies’ constituted by the Student Constitution and in section 3(3) includes the Student Parliament. This read with section 67 confirms that the Student Imbizo is indeed a student body constituted by the Student Constitution.

[4] In terms of sections 70(10) and (11) as read with section 74 of the Student Constitution, the Student Imbizo must adopt measures to ensure it fulfils its functions effectively and set out procedures regulating the exercise of its powers. It is evident that the Rules as adopted by the Student Imbizo give effect to the duties listed in the above provisions. Therefore, the Rules constitute 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 provisions in issue.

The nature and role of the Student Imbizo

[5] Before I turn to the substantive questions relating to the Rules, I find it may be prudent to provide a brief exposition on the Student Imbizo. Prior to 2023, the Student Parliament at the University was unicameral – that is, it consisted of only one house. In 2023, the Parliament operated for the first time in a bicameral fashion, as mandated by section 58(5) of the Student Constitution, consisting of the Student Assembly and the Student Imbizo.

[6] Importantly for the present matter, in terms of section 69(3) of the Student Constitution, it has the vital role of investigating “conduct related to the performance or the lack thereof, of the duties of Student leaders of the Structures established by this Constitution.” Section 70 provides that it has the power to –

(3) To investigate any conduct relating to the performance of the functions of positional Student leader(s), that is alleged or suspected to be improper or result in any impropriety or prejudice and report on that conduct.

(4) To investigate any conduct by positional Student leaders that is alleged or suspected to be a breach of the relevant internal policies, rules, or the Student Constitution and report on that conduct.

...

(7) To impeach members of the SRC, Academic Affairs Council, Societies Council, Prim Committee, Senior Prim Committee, and Tygerberg Student Council, on the grounds that they are not fulfilling their constitutional obligations, subject to review by the Student Court.

[7] It is clear that the Student Imbizo plays a vital role in student governance. Indeed, some of its functions and powers bear resemblance to those of the Public Protector in the national context. The Student Constitution clearly stipulates that it subject only to the Student Constitution and the institutional rules, must act without fear, favour or prejudice, and that all structures of student governance must ensure its impartiality, independence, effectiveness, and dignity.¹ Given that 2024 is only the second academic year in which this key structure of student governance is operating, the provision of a lucid clarification of its powers is a pertinent duty on this Court.

Urgency

[8] The Court was approached on an urgent basis. As held by this Court in *Ex parte Oosthuizen*², in terms of Rule 8(1) of the Rules of Procedure of the Student Court, the onus rests on the Applicant to prove that the application is urgent. The Applicant avers that an ongoing investigation has already been initiated and the question at hand directly concerns the timeline in which such an investigation is to take place. On the testimony of the Applicant, proceedings may need to be concluded as early as within eleven days of the institution of these present application proceedings. When further considering the crucial role that the Student Imbizo plays in promoting accountability, which is indeed a value of the University and the sensitive nature of an investigation

¹ S67 of the Student Constitution.

² *Ex parte Oosthuizen* 8/23 para 3.

which has already commenced, I am of the view that it may lead to a miscarriage of justice should this request for urgency not be granted.

The alleged contradictions within the Rules

[9] I now turn to the substance of this judgment. The Applicant avers that Rule 18(3) of the Rules contradicts section 4(a) of Addendum A of the Rules ('Addendum A'). Rule 18(3) reads:

"The impeachment proceeding is to run for no more than 14 days after it was initiated via a process in subsection (1)." (Emphasis added.)

Section 4(a) of Addendum A reads:

"The Accountability Committee must establish its findings of the investigation in a report and deliver it to the Student Imbizo with its recommendations, no later than 3 weeks since the commencement of the investigation." (Emphasis added.)

The nub of the issue is that it is alleged that the above provisions provide two different timelines for the same process. Further, it is alleged that the Rules are internally, irreconcilably contradictory, and it is unclear which of the two provisions is to be preferred. Inherent to what is being alleged is the assumption that when the Rules refers to an investigation, it is encompassed by the broader impeachment proceedings. As I will demonstrate, on my understanding, that is not necessarily self-evident from the text of the Rules. The impeachment proceedings and the investigation are two distinct processes.

[10] Our analysis must begin with the common law presumption of *in pari materia* – that is, that all law is presumed to be consistent, harmonious, and coherent. This Court has on numerous occasions referred to the law of the Republic of South Africa to assist in interpretation and affirmed repeatedly that the same principles which guide the interpretation of ordinary law be applied to interpreting the Student Constitution. The presumption of *in pari materia* was affirmed in the Constitutional Court of the Republic of South Africa (CC) by Theron J in *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society*.³ Thus, I find it appropriate that it must be assumed that if it is possible that the Rules can be interpreted in such a manner that it is internally

³ *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society* 2020 2 SA 325 CC para 38.

coherent, such an interpretation is to be preferred insofar as such an interpretation is consistent with the Student Constitution. As I will endeavour to explain below, a careful analysis not only yields an interpretation in which Rule 18(3) does not contradict section 4(a) of Addendum A in any way but gives effect to the purpose of the Rules in a manner aligned with the Student Imbizo's mandate under the Student Constitution.

[11] It will soon become clear that the provisions in question deal with two separate processes. While Rule 18(3) deals with *impeachment proceedings*, section 4(a) of Addendum A deals with an *investigation* which is to precede such impeachment proceedings pursuant to Rule 18(2). They are not the same process. I provide a number of reasons to support such an interpretation below but for completeness, attentive to the fact that the Student Imbizo is a novel body in our student government, a holistic understanding of the impeachment and investigation processes will first be unpacked.

The investigation

[12] Chapter 4 of the Rules provides for the standing committees which are established by, and as a part of, the Student Imbizo. Rule 13 provides for the creation of the Accountability Committee ('AC') which is the "body responsible for conducting investigations". When a complaint is submitted to the Student Imbizo regarding alleged, impugned conduct of a student leader the Chief Administrator of the Student Imbizo ('Chief Administrator') shall direct the complaint or allegation to the AC.⁴ The Chief Administrator thus acts as the link between the broader Student Imbizo and this committee. After the AC has conducted its investigation it must submit its report to the Chief Administrator. Any investigation conducted by the AC can only commence upon referral from the Chief Administrator and must commence within 5 days of referral.⁵ Moreover, the AC must decide on pursuing an investigation within 3 weeks of the complaint being submitted to the Student Imbizo.⁶ Though not pled by the Applicant, these two provisions may also appear contradictory on the face of it, but they are not. While section 1(c) of Addendum A refers to a *complaint per se*, section 1(2) of

⁴ Rule 15(1) of the Rules of the Student Imbizo ('Rules').

⁵ Ss 1(1) and (2) of Addendum B to the Rules ('Addendum B').

⁶ S1(c) of Addendum A to the Rules ('Addendum A').

Addendum B to the Rules ('Addendum B') speaks to the *referral* of a complaint by the Chief Administrator to the AC.

[13] This is where section 4(a) of Addendum A is relevant. The investigation must deliver its report to the Student Imbizo (via the Chief Administrator) within 3 weeks. The investigation itself requires the AC to conduct a number of interviews in which persons summoned to the AC have up to 5 days to appear. It is evident that an investigation may thus require a not-insignificant amount of time to be conducted and concluded.

The report

[14] After the completion of the investigation, the AC must compile a report which must be submitted to the Chief Administrator.⁷ Such a report must detail the AC's findings and make recommendations to the Student Imbizo.⁸ The AC must further inform the respondent of its findings by means of a hearing, in which the respondent is allowed to deliver comment thereon to substantiate his or her position on why the provisional findings should not be made final.⁹ The AC must consider such comment seriously and may subsequently alter its recommendations to the Student Imbizo.¹⁰

The Student Imbizo meeting

[15] Upon receipt of the report, the Chief Administrator must table a table of the Student Imbizo to discuss and decide on its contents.¹¹ This meeting may *only* occur 7 days after the report has been submitted to the Student Imbizo, presumably such that the members of the Student Imbizo may apply their minds and grapple with the serious contents thereof.¹² At such a meeting, the Student Imbizo must decide whether to accept, amend, or reject the report's recommendation.¹³ Any remedial action taken requires the agreement of 75% of the Student Imbizo.

⁷ Rule 15(2) of the Rules.

⁸ Ss1(5) and (6) of Addendum B.

⁹ S (b) of Addendum A.

¹⁰ S4(d).

¹¹ Rule 15(2) of the Rules.

¹² Rule 15(3).

¹³ Rule 15(5).

The impeachment proceedings

[16] The crux of the argument is that the impeachment proceedings are distinct from the investigation into misconduct. Now while Rule 18(2) of the Rules explicitly demands that any investigation must be carried out prior to an impeachment, an investigation need not result in impeachment. An investigation, in reading section 1 of Addendum B, is conducted by the AC which produces a report in which it recommends remedial action to the Student Imbizo. Now, while the remedial action it recommends may be the impeachment and removal of a student leader, it does not follow that an impeachment is the only form of remedial action that the AC is capable of recommending. Moreover, even if the complaint into alleged misconduct called for the impeachment of the student leader, it does not follow that the AC is bound to either recommend impeachment or not recommend impeachment in the absence of any other remedial action.

[17] Now, the trouble comes with the fact that Rule 18(1) of the Rules provides that impeachment proceedings *can begin via* a) the advice of the Student Assembly, b) a submission to the Student Imbizo, c) a failed motion of no confidence, or d) upon a recommendation by the AC. The trouble lies in the words ‘can begin via.’ The language here is incredibly important and may be easily susceptible to misinterpretation. It is my view that Rule 18(1) lists the grounds on which an impeachment proceeding can begin. That is to say, in the absence of the listed grounds, an impeachment proceeding in the Student Imbizo cannot commence. In my view, what Rule 18(1) does *not* say is that following any of the grounds listed, such as a submission to the Student Imbizo as listed in Rule 18(1)(b), that an impeachment proceeding must *immediately* be launched. This is for a number of reasons.

[18] The choice of language in Rule 18(1) is crucial in that it differs from that of Rule 18(3). Rule 18(3) holds that an impeachment proceeding is to “run for no more than 14 days after it was *initiated* via process in subsection (1)” (emphasis added). The use of the word ‘*via*’ which is the Latin word for ‘*through*’ (and not for example ‘*upon*’) suggests that Rule 18(1) refers to *prerequisites* for impeachment and not to *triggers* therefor.

[19] To draw a figurative illustration, the grounds in Rule 18(1) are the passports needed to initiate impeachment, but merely attaining a passport does not immediately transport one abroad – further steps must be taken. And that further step in this instance is that the impeachment proceedings must be ‘initiated’. The AC may recommend in its report that the Student Imbizo, at the meeting tabled by the Chief Administrator, initiates impeachment proceedings. Though these proceedings may run for up to 14 days, circumstances are certainly imaginable where they may be concluded on even the same day that they commence. I believe the possibility of having the longer period allows for flexibility, robust debate and instances where the Student Imbizo may move to call the respondent before it to render an account in respect of the allegations in terms of Rule 15(4). It falls on the Student Imbizo to discharge its duty speedily should it determine it to be in the interests of justice to do so.

Differentiating the investigation from the impeachment proceedings

[20] The fact that Rule 18(3) refers to *impeachment proceedings* while section 4(a) of Addendum A deals with *investigations* is not the only material difference. The difference is not merely in language but in substance. Firstly, investigations are conducted by the AC, not the Student Imbizo as a whole. On the other hand, impeachment requires a meeting and a 75% vote of the Student Imbizo.

[21] Secondly, Rule 18(1)(d) lists a ground for the commencement of impeachment proceedings as a ‘recommendation made by the Accountability Committee.’ In terms of section 1(1) of Addendum B, the AC is powerless to conduct investigations in the absence of a referral by the Chief Administrator. Now if a complaint is lodged with the Student Imbizo and this was to *initiate* immediate impeachment proceedings (as interpreted to encompass the investigation process as well) then it would be redundant for the ground of Rule 18(1)(d) to exist, because any report by the AC must follow a complaint, which itself is a ground listed in Rule 18(1)(b). Another principle of statutory interpretation is that a provision should not be interpreted to have no meaning. This was held in *Keyter v Minister of Agriculture*¹⁴ and by O’Regan J in *Khumalo v*

¹⁴ *Keyter v Minister of Agriculture* 1908 NLR 522.

*Holomisa*¹⁵. Thus, to interpret the impeachment proceedings to include the investigation would be untenable because it would render certain provisions of the Rules to be of no effect.

[22] It is further noted that when the Student Constitution refers to the powers of the Student Imbizo it lists the powers to investigate in sections 70(3) and (4), separate and distinct from its power to impeach, which is listed in section 70(7).

[23] Thirdly, impeachment and remedial action resulting from an investigation are not always interchangeable. It is evident from the fact that Rule 15(5) of the Rules requires any remedial action taken in terms of a report following an investigation conducted by the AC into misconduct of a student leader requires a 75% vote by the Student Imbizo. On the other hand, Rule 18(4) holds that a vote of impeachment passes with a mere simple majority of the Student Imbizo. Thus, the AC may recommend in its remedial action that impeachment proceedings commence, pursuant to Rule 18(1)(d). However, the AC does not commence impeachment proceedings – this is a role of the Student Imbizo in general.

[24] Another example of how these processes differ materially is that the investigations *require* the respondent to be summoned and questioned in terms of section 2(a)(ii) of Addendum A, and section 4(b) further *requires* the AC to give the respondent hearing after it has completed its report. Conversely, in terms of Rule 15(4), the impeachment proceeding holds that the Student Imbizo (not the AC) *may* request the implicated student leader to appear before it. It is evident that while the investigation requires the student leader to be questioned and given hearing by the AC, the impeachment process gives the Student Imbizo the discretion to call the student leader before it. The purposes of these appearances are also manifestly different. While the mandatory ‘hearing’ occurs before the AC submits its report to the Student Imbizo to give the respondent a right to be heard (in terms of *audi et alteram partem*), Rule 15(4) has an inquisitorial purpose. The rule reads that the student leader may be “requested to attend and account for the allegations.”

¹⁵ *Khumalo v Holomisa* 2002 5 SA 401 CC para 32.

[25] Finally, and likely most relevant, if the two processes were to be considered one, other internal provisions within the Rules would be rendered hardly workable. During the investigation the AC must summon the complainant, respondent, staff coordinator (if they consent), any person interested and any person with expert knowledge before it.¹⁶ Moreover, such persons must be given up to 5 days' notice.¹⁷ Additionally, the Chief Administrator may only table a meeting *at least 7 days after* the AC has compiled its report. Should the impeachment proceedings be seen to include the investigation, and thus be concluded within 14 days of being initiated¹⁸ – and, I remind you, commence immediately upon a complaint being lodged – this would leave the AC with effectively 7 days to complete its investigation including the 5 day notice periods to persons it summons. This would require the AC to summon persons at latest, 2 days after the Student Imbizo receives a complaint. Such an interpretation would strain the bounds of practicality to the point of ridiculousness.

Conclusion

[26] For all the above reasons, I conclude that not only is it a reasonable interpretation that the impeachment proceedings are separate from the investigation process conducted by the AC, but that it is the only reasonable conclusion which is consistent with the Student Imbizo's constitutional mandate.

[27] Now, it is worth mentioning that the Applicant proposed that there is a trade-off to be had in preferring one timeline to the other. While a shorter timeline would have the benefit of removing a student leader engaged in misconduct to pre-empt any further prejudice to any stakeholders, a longer timeline may be more thorough and practical. This second point is to be remembered in light of the fact that members of the AC are students engaged in full-time academic degrees. An additional consideration, not proffered by the Applicants is that impeachment has inherent tensions in relation to the conventional democratic process in that democratically elected student leaders may be removed. In this line of thinking it follows that such a drastic procedure must be thorough and proper. Fortunately, it does not fall on this

¹⁶ S2(a) of Addendum A.

¹⁷ S3(b).

¹⁸ Rule 18(3) of the Rules.

Court to make value judgments on these terms. In fact, the responsibility rests squarely on the AC, and Student Imbizo more broadly, in determining the appropriate lengths of time to conduct the investigation and subsequent impeachment proceedings. It need not take 5 weeks in total (14 days plus 3 weeks) – in certain circumstances, such a prolonged period may even result in a miscarriage of justice. Moreover, section 74 of the Student Constitution grants the Student Imbizo the power to fashion its own rules, regulations and procedures. In the absence of any constitutional challenge, it is inappropriate for this Court to intervene or ‘tinker’ in this regard.

The issue of representation

[28] I now turn to a second question which was raised in the Applicant’s founding affidavit. It appears that in the hurried panic to lodge an urgent application with this Court this second question was added on top as an afterthought as it was neither mentioned in the Applicant’s notice of motion nor in the relief sought in the founding affidavit.

[29] The question pertained to sections 2(c) and 4(c) of Addendum A which provide that the respondent is allowed representation at his or her interview, during the investigation, and thereafter again at the hearing which occurs after the AC has concluded its investigation report. The question posed is whether only students may act as representatives or whether other persons may. There was no submission made as to whether either interpretation would be inconsistent with the Student Constitution.

[30] Though the Court is of the opinion that this issue may well raise interesting and substantial questions for this Court to settle, it must decline to provide an authoritative interpretation for the following reasons.

[31] Rule 8 of the Student Court Rules of Procedure, 2023 (‘Rules of Court’) provides:

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

(2) If the Court deems the matter urgent, it may dispense with any of the Rules to the extent that is provided for in Rule 3(5), including condoning non-compliance with the Notice requirement in Rule 6(1).”

It is clear from Rule 8(2) that this Court, bound by its own rules (which are adopted after consultation with the Student Representative Council and approved by the Appeal Court¹⁹), is only empowered to deviate from said rules if the Court deems the matter urgent. I reference again *Ex parte Oosthuizen* as authority that the onus lies on the Applicant to aver that a matter is urgent.

[32] Rule 19 of the Rules of Court provides that a request for an advisory opinion must be in the form of a notice of motion. In the present matter, the Applicant’s notice of motion made no reference to the issue of representation mentioned in the founding affidavit. Thus, there is clear noncompliance with the Rules of Court. Now, in terms of Rule 8, the Court can only condone noncompliance where a matter is deemed to be urgent. In the present matter, neither the Applicant’s notice of motion nor founding affidavit averred that the question of representation is urgent. In light of the fact that the Applicant did not discharge his onus in terms of Rule 8(1) as defined in *Ex parte Oosthuizen*,²⁰ the court must exercise its powers outlined in Rule 3(5) and dismiss the submission for its failure to comply with the Rules of Court. Moreover, there is no extant evidence that this issue requires urgent attention. Unlike the issue of the timeline of investigation and impeachment proceedings which is urgent because an investigation into a student leader has already started, no student leader has yet requested to be represented by someone who is not a student.

[33] The Court is of the opinion that the question of whether a representative for the purposes of sections 2(c) and 4(c) of Addendum A is limited to student representatives is a complex question. A single paragraph in the founding affidavit (which is ostensibly concerned with an entirely different matter) does not do the question justice. Moreover, it is remembered that no averment was made by the Applicant or any other party that either of the interpretations of these provisions would be inconsistent with the Student Constitution. The Court thus dismisses the submission.

¹⁹ S87 of the Student Constitution.

²⁰ 8/23 para 3.

[34] As an aside, the Court finds it incumbent to remind the Student Imbizo that sections 70(10), 70(11) and 74 of the Student Constitution give it the power to determine its own rules, regulations, and measures, subject only to the Student Constitution, the institutional rules and review by this Court. Should the Student Imbizo prefer one possible interpretation of sections 2(c) and 4(c) of Addendum A, it is empowered to amend its rules to give effect to such an interpretation. Courts have often referred to the dictum offered by the CC in *Carmichele v Minister of Safety and Security*,²¹ which states that “the major engine for law reform should be the legislature and not the judiciary.”

Order

I therefore make the following order:

- [1] The matter is urgent;
- [2] Rule 18(3) of the Rules of the Student Imbizo does not contradict section 4(a) of Addendum A to the Rules of the Student Imbizo.
- [3] For the purposes of the Rules of the Student Imbizo impeachment proceedings are not deemed to encompass the separate investigation into misconduct. Rather, in terms of Rule 18(2), such an investigation is a prerequisite for an impeachment.
- [4] Rule 18(1) is deemed to list grounds for impeachment proceedings to begin but the existence of such grounds does not immediately initiate impeachment proceedings. Rather, there must merely be at least one ground present before impeachment in order for impeachment proceedings to commence.



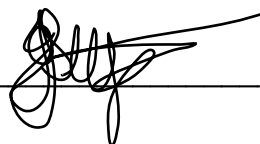
A handwritten signature in black ink, appearing to read 'Bester J', is written over a horizontal line. The signature is stylized and cursive.

BESTER J

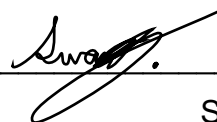
²¹ *Carmichele v Minister of Safety and Security* 2001 4 SA 938 CC para 36.



BRYANT CJ



STEYN DCJ



SWANEPOEL J



MUDZINGIRANWA J