

IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH
(HELD IN STELLENBOSCH)

In the matter Ex Parte:

Speaker of Stellenbosch University Student Parliament

Applicant

JUDGEMENT HANDED DOWN BY THE STUDENT COURT

[Frolick, CJ]

INTRODUCTORY REMARKS

[1] The Student Court of Stellenbosch University is constituted by section 3(3) the Stellenbosch University Student Constitution(hereafter referred to as the “Student Constitution”).¹

[2] Chapter 5 of the Student Constitution regulates the Student Court and the Appeal Court. Section 58 states that Student Court functions as an administrative tribunal, which is independent and subject only to the Student Constitution. Furthermore, providing that the Student Court must apply the Student Constitution impartially, and without fear, favour or prejudice.

[3] Student Court determines its own procedure in line with procedural fairness and accessibility, and adopts its own rules which regulate its procedure.²

FACTUAL BACKGROUND

[4] The applicant in this matter, the Speaker of Student Parliament, approached this court on 28 August 2019 for a declaratory order as to the correct interpretation of section 57 of the Student Constitution. Section 57 of the Student Constitution details whom the members of Student Parliament are.

[5] The applicant alleges that section 57 of the Student Constitution cannot be practically interpreted as a quorum provision. The basis of this assertion is that the numbers provided in the provision are unreasonably ambitious as it would render

¹ 2018 Revision, Final version (3.2).

² Section 68 of the Student Constitution.

Student Parliament ineffective and it unduly usurps Student Parliament's independence by the Student Representative Council (SRC).

[6] The applicant further contends that it would be an unreasonable expectation on Student Parliament to enforce attendance at its sittings by the student leaders mentioned in section 57. This is particularly so, it is alleged, as the mentioned student leaders are not obliged to attend Student Parliament by virtue of their respective constitutions.

[7] According to the applicant, the correct interpretation of section 57 is that the reference to numbers mean the maximum number of student leaders from each body who attend Student Parliament in their official capacities.

[8] The applicants notice of motion refer to sections 23(c)(i) – (ii). Since there is no such section provided for in the Student Constitution, the assertion is disregarded and nugatory.

[9] Before this court engages with the application of law to the facts, there are certain points *in limine* which have been raised, and which this court must address.

URGENCY

[10] Items 6(4)-(5) of the Stellenbosch University Student Court Rules ("rules") deal with urgent applications and provide:

"(4) In an urgent application, the Court may dispense with the forms and service provided for in these Rules and may dispose of the matter at such a time and place and in such manner, which shall as far as practically possible, be in accordance with the procedure set out in these Rules.

(5) In every affidavit filed the applicant shall set forth explicitly the circumstances which he/she avers renders the matter urgent and the reasons why he/she claims that he/she could not be afforded substantial redress at a hearing in due course."

[11] The applicant avers that the matter is urgent because the constitutional amendment process of Student Parliament must be completed by 30 August 2019. Thereafter, it must be sent to the Student Court for approval. Furthermore, the applicant contends that the decision of Student Court will have bearing on how the section relating to quorum is to be drafted.

[12] In its founding affidavit, the applicant provides that on 17 August 2019 the Student Parliament Executive Committee convened to determine the constitutional amendment process. This evidence is stupefying given that the Student Constitution came into effect on 17 September 2018 and Chapter 4 of the Student Constitution which governs Student Parliament comes into effect the fourth term of the academic year.³ Furthermore, section 56(3)(a)-(b) of the Student Constitution places a duty on Student Parliament to accept a constitution, which is to be approved by this court, before attaining crucial powers of accountability.

[13] From the aforementioned it is clear that the applicant was aware of this duty before his election as Speaker and if he was not, was able to become aware of such duty after election. It is the opinion of this court that the urgency was self-created and could have been avoided had the applicant fulfilled his duties in this regard.

[14] This court is mindful of the fact that Student Parliament is a cardinal mechanism of student governance and has extensive powers to ensure that all student bodies fulfil their constitutional mandate and to keep them accountable and transparent. To this end, given that Student Parliament is *vox populi*, this court shall provide its assistance.

LOCUS STANDI

[15] The Student Constitution provides, in section 67, that all students and student bodies can bring cases before this court.⁴ Student Parliament is such a student body⁵ and thus the Speaker and Deputy Speakers are competent to have standing before the court *in nomine officio*.

APPLICABLE LAW

[16] Section 65 of the Student Constitution expounds upon the jurisdiction of this court and sections 65(1)(a)-(b) provides:

“The Student Court has the power to –

³ Section 104 of the Student Constitution.

⁴ The applicant incorrectly relies on section 64(1) of the Student Constitution which deals with the Student Court term of office. Accordingly, the Court advises the applicant to comply with section 4(1)-(2) of the Student Constitution to protect and promote the rights contained in the Constitution, which is particularly relevant for a body such as Student Parliament.

⁵ Section 3(2) of the Student Constitution.

- (1) give an interpretation, or to confirm the interpretation of a party before the Student Court, regarding –
- (a) this Constitution; or
 - (b) any empowering provision in terms of which a student body or a member of a student body exercises power;”

[17] The applicant in this matter is a constitutional being and enjoys standing before this court. Accordingly, this court is conferred with jurisdiction in terms of the abovenamed subsections of the Student Constitution.

[18] It is of import to note that section 66 of the Student Constitution empowers this court to grant a declaratory order and any order that is fair and equitable.⁶ The section reads:

“The Student Court can –

- (1) grant an interdict or any other interim relief if material injustice would otherwise result;
- (2) grant a declaratory order;
- (3) set aside any decision or action that is inconsistent with this Constitution, or a constitution, policy, regulation or any empowering provision of a student body, in so far as it is inconsistent with it, provided that in case of setting aside –
 - (a) the retroactive effect of the order must be limited as far as possible; and
 - (b) the order can be suspended for a fixed time or on any conditions so as to allow the person or body in question to rectify the fault; or
- (4) grant any order, including a combination of the abovementioned remedies, that is fair and equitable.”

[19] Section 28 of the Student Parliament Constitution, 2014 version, provides:

“28. Ordinary Meetings

- a. The first ordinary meeting of the Student Parliament shall be held in the first academic term;
- b. Ordinary meetings of the Student Parliament shall be held at least once per academic term;
- c. The Speaker shall give at least seven (7) days” notice of the date, time and venue of such a meeting with disclosure of agenda;
- d. Students shall be granted a reasonable opportunity to put matters on the agenda of a meeting for a period of not less than four (4) working days, but closing no later than seven (7) days before the final agenda is sent out to students.”

⁶ Section 66(2) & 66(4) of the Student Constitution.

[20] It is clear from the section above that currently there is no quorum requirement for Student Parliament meetings.

[21] The section which is in contention before this court is section 57 of the Student Constitution and, which comes into operation on the fourth term of 2019, reads:

“57 Members of Student Parliament

(1) Student Parliament consists of –

- (a) All SRC members;
- (b) Eight (8) members of the Academic Affairs Council;
- (c) Eight (8) members of the Prim Committee;
- (d) Eight (8) members of the Societies Council;
- (e) Two (2) House Committee members from each cluster;
- (f) Two (2) House Committee members from Senior Prim Committee
- (g) One (1) member from the Cluster Executive;
- (h) One (1) member of the Tygerberg Student Parliament;
- (i) One (1) member from each faculty committee;
- (j) Ten (10) members of society committees appointed by the Societies Council; and
- (k) all students who attend a meeting of Student Parliament.

(2) No person can fill more than one seat at any time.

(3) If a member of Student Parliament can no longer fulfil their duties, the Student Parliament Committee must ensure the vacancy is filled.”

[22] Interpretation of this section is necessary to determine whether there is a quorum requirement or not. Justice Rutgers in *Ex Parte Speaker of Stellenbosch University Student Parliament*⁷ provided a useful summary of the theories of statutory interpretation – *literalism* and *intentionalism*. Justice Rutgers explains:

“According to the *literalism* theory of interpretation, words should be interpreted according to their ordinary meaning, unless this would lead to absurdity, repugnancy or inconsistency. According to this approach, the exact wording of the relevant statutory provision should be followed.”

Section 57, in this context, refers to *members* of Student Parliament and as such can only denote that the stipulated student leaders and all ordinary students who attend a meeting of Student Parliament [Section 57(1)(k)] constitute the membership of Student Parliament. Therefore, a literal interpretation of the section at-hand cannot be read as

⁷ 28 August 2017, Stellenbosch University Student Court. Available: <https://www.sun.ac.za/english/students/student-court/Documents/Ex%20Parte%20Speaker%20of%20Student%20Parliament.pdf>.

to constitute quorum of a Student Parliament meeting. To contend that it does would be inane.

[23] Justice Rutgers further describes the second theory interpretation:

“Intentionalism, as a theory of interpretation, focuses on giving effect to the intention of the drafters of the statutory provision.”

The drafters of the Student Constitution in this case could not have sought to prescribe a quorum requirement for Student Parliament. If this was the case the drafters would have done so explicitly.

[24] The drafters of the Student Constitution have in section 56(1) determined a numerical threshold of 80 percentage points of 100 votes in order for decisions of Student Parliament to have a binding effect on student leadership bodies. This is important to note as here, the drafters clearly draw a distinction between binding power and non-binding power of Student Parliament. To this end, the Student Constitution can be read as to introduce a quorum requirement of at least 100 votes, in this event the decision would bind the student leadership bodies.

[25] Having reflected on the two theories of interpretation it can be said with certainty and confidence that section 57 does not introduce a quorum requirement for Student Parliament in respect of its functions and meetings.

[26] This does not mean that the student leaders who are stipulated in section 57 do not have to attend Student Parliament and, as alleged by the applicant, are not obliged to attend Student Parliament. The purpose of specifically naming student leaders as members of Student Parliament is so that they attend Student Parliament *in nomine officio* which facilitates accountability and transparency.

[27] Furthermore, the prescribed student leadership bodies must mandate a certain number of their student leaders (as stipulated in section 57) to attend Student Parliament. Once they attend Student Parliament *in nomine officio* they cannot act as ordinary students, in terms of section 57(1)(k), read with section 57(2). They represent their respective leadership bodies at Student Parliament.

[28] Section 52 of the Student Constitution would be served by such an interpretation to ensure discussion of student issues between student leaders and students occur as well as holding the student leaders accountable and transparent.

[29] The relevant stipulated bodies, as identified in section 57 of the Student Constitution, can have no resistance to acting *in nomine officio* as this is what leadership demands in accordance with the Bill of Rights, Chapter 2 of the Student Constitution. Furthermore, section 4(2) imposes a constitutional duty on the student bodies and student leaders to engage with one another and take reasonable steps to protect and promote the Bill of Student Rights. The relevant student leaders identified in section 57 of the Student Constitution may be excused from attending such Student Parliament sitting by tendering a *bona fide* excuse to Student Parliament to that effect. However, such excuse should not be abused so as to subvert accountability and transparency.

[30] The extensive powers of Student Parliament, notwithstanding recourse in Student Court, in relation to section 56 of the Student Constitution would be greatly watered down should section 57 not impose a duty on those members (student leaders) to attend Student Parliament.

ORDER

[31] The court orders as follows:

[31.1] Section 57 of the Student Constitution does not denote quorum requirements in relation to Student Parliament meetings.

[31.2] The student Bodies stipulated by section 57 are obligated to mandate, in the prescribed number and manner, such members to attend Student Parliament *in nomine officio*.

[31.3] Section 56 of the Student Constitution confers binding power on Student Parliament, subject to meeting the threshold of 80 percentage points of 100 votes.

[Concurring: Basson DCJ; Engelbrecht J; Molefe J; O'Brien J]