

**IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH  
(HELD IN STELLENBOSCH)  
ON 3 MAY 2017**

In the matter between:

**Inge Odendaal**

Applicant

and

**Stellenbosch University Student Parliament**

First Respondent

**Stellenbosch University Student Representative  
Council**

Second Respondent

**Reggy Kgatle**

Third Respondent

**Nwabisa Gcilitshana**

Fourth Respondent

**Liana Letabo Maheso**

Fifth Respondent

**Nozamo Ntombela**

Sixth Respondent

**Jeandré Boshoff**

Seventh Respondent

**Maxwell Mlangeni**

Eight Respondent

**Lindokuhle Christopher Mangesi**

Ninth Respondent

**Kamva Somdyala**

Tenth Respondent

**Bevin Davids**

Eleventh Respondent

**Dylan Swigelaar**

Twelfth Respondent

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**JUDGMENT HANDED DOWN BY THE STUDENT COURT**

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[Pagel, A]

**INTRODUCTORY REMARKS**

[1] It is important to note the following from the outset: the Student Court is a democratic structure, comprising of students (duly elected in terms of s 56 of the Stellenbosch University Student Constitution 2014, here on referred to as the “Student Constitution”).<sup>1</sup>

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<sup>1</sup> Chapter 5 of the Stellenbosch University Student Court, 2014.

[2] Section 55 of the Student Court explains the functioning of the Student Court, as an administrative tribunal, which is independent and subject only to the Student Constitution, which the Court must apply impartially and without fear favour of prejudice.

[3] Lastly, the Student Court determines its own procedures with due consideration of the rules of natural justice and the need for the Student Court to be accessible.<sup>2</sup> These functions are to be fulfilled objectively; transparently and in the utmost good faith.

### **FACTS OF THE CASE**

[4] The applicant, a student at Stellenbosch University,<sup>3</sup> approached the court to decide on the constitutionality of two decisions made by the First Respondent (“Parliament”) namely: the appointment of an Interim Speaker; and not to hold any ordinary meetings during the 2016 year.<sup>4</sup>

[5] It is common cause that Parliament was fully functional until it’s 4<sup>th</sup> ordinary meeting of 2015, on 6 October. At that meeting Parliament did not elect a Speaker of Parliament (“Speaker”). The Speaker at the time thought it most appropriate to appoint an Interim Speaker himself, instead of calling for an extraordinary meeting of Parliament.

[6] At the time, the campus (the student body, the Student Representative Council (“SRC”), Parliament and Stellenbosch University (“SU”) Management) was grappling with the #FeesMustFall movement, a body of students who strongly advocates for the importance of access to education, and the adverse effects of fee increases on poor students. It was under the glare of intense political events, that the Interim Speaker’s appointment was overlooked by most.

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<sup>2</sup> Section 65(1) of the Stellenbosch University Student Constitution.

<sup>3</sup> Section 64(1).

<sup>4</sup> Section 62(c).

[7] On 15 February, 2016, the Interim Speaker called for an extraordinary meeting to elect a Speaker. It was at this meeting that the appointment of the Interim Speaker was scrutinized. As a result, this meeting was also adjourned without a Speaker being elected. Parliament has not attempted to meet since. The Interim Speaker has resigned. From that point onwards, no other person had been elected or appointed to represent the office of Parliament.

### **APPLICABLE LAW**

[8] In regards to the surrounding uncertainty regarding the validity of the Student Constitution Version 2.4, the Court finds it unnecessary to decide on this matter since there is no discrepancy between any of the proposed valid constitutions in the sections relevant to this matter. The substance of both versions are the same, and therefore no reason exists to believe that the substance of the sections has changed. For ease of reference, since the both the Applicant and the Respondents, the Court will use the numbering of the 2014 Revision.<sup>5</sup>

### **APPLICATION OF THE LAW TO THE FACTS**

[9] Parliament is responsible for electing its own Speaker.<sup>6</sup> On the facts it is clear that Parliament failed to elect its Speaker at the ordinary meeting on 6 October, 2015, despite the fact that the matter had been tabled for that meeting by the Speaker. Therefore, Parliament, as a forum of students, failed to comply with its constitutional obligation of section 52.

[10] The Speaker of Parliament is responsible for calling Parliament meetings.<sup>7</sup> Parliament's failure to elect a Speaker at the ordinary meeting on 6 October 2015 did not excuse the Speaker from his obligation. The duty of a Speaker extends until his or her

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<sup>5</sup> Sections 32, 51, 52, 64, 65 in the 2014 Revision, version 2.4 are exact copies of 32, 51, 52, 62, and 63 in the 2011 Revision, version 2.2.

<sup>6</sup> Section 52.

<sup>7</sup> Section 52(a).

successor is elected. This is the only way to ensure an uninterrupted functioning of Parliament. The Speaker's obligation to call an extraordinary meeting continued after that meeting which failed to elect a successor. These obligations were never fulfilled by the Speaker; this failure is held to be unconstitutional.

## **REMEDY**

[11] The appropriate remedy in this instance should ensure that the proper, independent functioning of Parliament is restored. This can be done if a Speaker is elected, since the Speaker carries the duty of ensuring that Parliament takes place.<sup>8</sup> However, a difficulty arises since only Parliament can elect its Speaker. Thus, both Parliament and the Speaker are based on the pre-existence and proper functioning of the other. The Speaker can only be elected at a meeting of Student Parliament, which can only be called for by the Speaker.

[12] Chapter 4 of the Student Constitution (nor any other proposed version of the Constitution) does not contemplate the facts or an event of this nature. In the absence of an express regulation, the court may – and must – make an order which gives effect to the democratic rights in Chapter 2 of the Constitution.

[13] Section 32(1) of the Student Constitution confers the SRC the power to call mass meetings to “consolidate its mandate, as a platform for debate and to ensure accountability”. Parliament's function is to keep the SRC *accountable*.<sup>9</sup> In my mind, the facts of this case fall squarely on section 32(1).

[14] Section 32(2) of the Student Constitution confers a right to each student who attends a mass meeting contemplated in s 32 of the Student Constitution to vote in such a meeting. The Student Constitution clearly contemplates that a such a mass meeting will have decision making-powers.

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<sup>8</sup> Section 52(a)

<sup>9</sup> Section 51(2).

[15] However, it would be counter-productive and inappropriate to have the SRC to in any manner or form appoint Parliament, or the Speaker of Parliament. This would undermine the separation of powers envisaged in the Student Constitution, and the impartiality of such a Speaker cannot be guaranteed. It would also not be appropriate for the Student Court to appoint or elect a Speaker. The Speaker must be elected in a democratic way, without the direct interference of the SRC – the body that Parliament keeps accountable.

[16] It is for the reasons above that the following order is made:

[16.1] The SRC must call a mass meeting in accordance with section 32 of the Student Constitution, within 10 university days. The purpose of this first mass meeting is for all the attending students to elect an independent convener for a second mass meeting.

[16.2] The SRC will report to this court within a 5 university days after the meeting whether a successful election was held, and the outcome of the such an election.

[16.3] Any student may ask the court to set aside the nomination of such a convener, if it can be shown that the elected convenor will not fulfil their duties set out in paragraph [16.4].

[16.4] The SRC must call a second mass meeting in accordance with section 32 of the Student Constitution, within 5 university days of the conclusion of the first mass meeting. The purpose of this second mass meeting is for all the attending students to elect an independent, impartial, and competent Speaker of Parliament. This meeting will be directed by, and under control of the elected convener.

[16.5] The elected convener will report to this court within 5 university days after the second mass meeting whether a successful election was held, and the outcome of such an election.

[16.6] The elected Speaker of Parliament will be under an immediate obligation to call a meeting of Parliament in terms of section 52 of the Student Constitution.

[16.7] The Speaker must report to this court the arrangements of such a meeting, within 5 university days after being elected.

[Van Hagt, S; Macfarlane, A; Rutgers, J; and Naidu, S concurring]