



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

IN THE MATTER BETWEEN

Amahle Sityata

First Applicant

And

Electoral Commission

First Respondent

Neutral Citation:

Sityata v Electoral Commission (Urgent interdict)
03/09/23

Judgment:

BEUKES CJ (Braaf DCJ, Pauw J, Simonis J, Lourens J
concurring)

Decided on:

8 September 2023

URGENT INTERIM INTERDICT

BEUKES CJ (Braaf DCJ, Pauw J, Simonis J, Lourens J concurring)

[1] The Applicant approached this Court on an urgent basis on 7 September 2023 disputing her disqualification from running for the Student Representative Council (SRC). She followed the internal appeal process as provided for by the Electoral Commission and after being unsuccessful, approached this Court.

[2] Courts should generally be wary of intervening in the democratic process. In this matter, we are very cognisant of this fact and the decision made is done so with significant circumspection. Section 127(4)(a) and (b) of the Student Constitution of

2021 ('Student Constitution') requires this Court to deal with electoral disputes expeditiously if harm would otherwise result. The complaint must further be considered against the principles of a free and fair election that promotes representativity and participation.

[3] The circumstances however necessitate swift action by the Court to ensure the credibility of the SRC election results, and the protection of the basic tenants of democracy: free, fair, and transparent elections. Section 127(4)(a) of the Student Constitution further requires urgency where harm would otherwise result. The finding of this Court in the current matter has the potential to impact the ultimate composition of the SRC. The resultant harm from not regarding the matter as urgent is therefore clear as the Applicant could feasibly not become a member of the SRC should it not be treated as such. The standard to be demonstrated by the Applicant in terms of Rule 8(1) of the Rules of Procedure, 2023, is therefore met and the matter is declared to be urgent. Furthermore, if this matter were not regarded as urgent, it would result in significant delay in finalising the SRC elections.

[4] Furthermore, since the application was made before the three university day deadline, according to section 128 of the Student Constitution, the results cannot be confirmed as final until such a time that this matter is dispensed with. Accordingly, the SRC Internal Elections, scheduled for today, 8 September 2023, at 15:00 cannot go ahead. This Internal Election further contributes to the urgency of the current matter. Should the Court find in the Applicant's favour, and she possibly becomes a member of the SRC, the validity of the Internal Election could also be negatively impacted.

[5] The Student Constitution in section 127(4)(c) reads as follows:

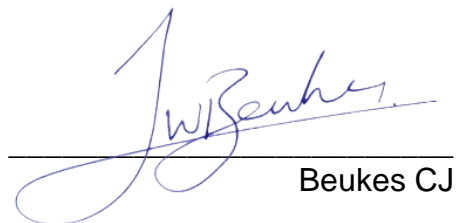
"[The Court] [m]ay follow an investigate approach – which may include the recounting or reevaluation of ballots – if it appears to be necessary in the specific case."

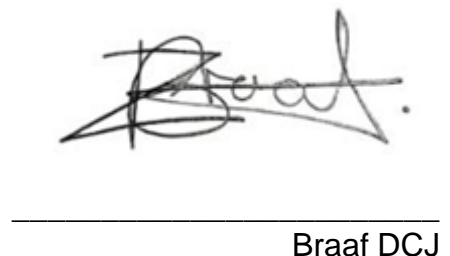
In order to properly consider this matter, we are empowered to follow an investigative approach. In the present matter this is necessary in order to facilitate a speedy resolution of this matter. In this regard, the Electoral Commission is instructed to furnish the Court with all the relevant documentation, findings, complaints, regulations, and all other relevant information and documentation relating to the candidate's disqualification and the proceedings before the Electoral Commission and its internal

appeal processes relating to the candidate. This information provided to the Court shall be treated confidentially to such extent required by the Student Constitution, Electoral Regulations of 2023 and to the extent the Court deems appropriate.

Order

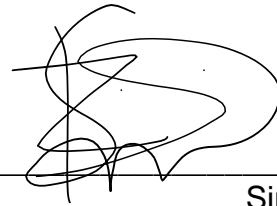
- [6] The following order is therefore made:
- [1] The matter is urgent;
 - [2] The SRC Internal Elections are interdicted and cannot take place before the election results have been confirmed by this Court, or otherwise as this Court finds in the final judgment;
 - [3] The Respondent is to file their Notice of Intention to Oppose by 9 September 2023 at 12:00;
 - [4] The Respondent is to file their Opposing Affidavit(s) by 10 September 2023 at 12:00;
 - [5] This matter will be heard on the papers only, as it is in the interest of the administration of justice to do so and on the recommendation of the members of this Court, as per Rule 20(2) of the Rules of Procedure; and
 - [6] The Electoral Commission is instructed to furnish the Court with the information described in paragraph 5, no later than 10 September 2023 at 12:00.


Beukes CJ


Braaf DCJ



Pauw J



Simonis J



Lourens J

