



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

IN THE MATTER BETWEEN

SRC POLICY OFFICER, STELLENBOSCH

First Applicant

UNIVERSITY

VICE-CHAIRPERSON SRC, STELLENBOSCH

Second Applicant

UNIVERSITY

And

SPEAKER: STELLENBOSCH UNIVERISTY

First Respondent

STUDENT ASSEMBLY

CONVENOR: STELLENBOSCH UNIVERSITY

Second Respondent

STUDENT IMBIZO

Neutral Citation:

*SRC Policy Officer, Stellenbosch University and Another v
Speaker: Stellenbosch University Student Assembly and
Another 02/23*

Judgment:

BEUKES CJ, LOURENS J (BRAAF DCJ, SIMONIS J,
PAUW J CONCURRING)

Heard on:

Decided on papers

Decided on:

19 February 2023

FINAL JUDGMENT

BEUKES CJ, LOURENS J (*Braaf DCJ, Simonis J and Pauw J concurring*)

Introduction

[1] On 9 February 2023, the Applicants launched an urgent application to obtain an interpretation of s 31(1)(h) and (i) of the Student Constitution of Stellenbosch University, 2021 (“Student Constitution”). The First Applicant in his capacity as Policy Officer of the SRC sought such interpretation to obtain clarity on the procedure to be followed in an impeachment process which they could attempt in due course. According to the Applicants, this procedure is absent in the Rules of the Student Assembly.

[2] It is necessary to emphasise that this Court did not consider the merits of the conduct or omissions of the unnamed third party, against whom the impeachment process will seemingly be launched. Similarly, we did not consider the merits, or intentions, behind this impeachment. Our inquiry was limited only to the interpretation of the empowering provisions, and nothing more.

Urgency

[3] Rule 6 of the Student Court Rules of Procedure permits the Court to dispense with certain rules to ensure a matter is dealt with urgently. The Applicants have argued the matter is urgent due to alleged unacceptable conduct by the unnamed third party. The Applicants have further asserted that the unnamed third party is “incompetent” and has created an inhospitable working environment within the SRC. Finally, the Applicants argue that the matter should be deemed urgent on the basis that Parliament (or rather the Assembly) will be having their first sitting in March.

[4] As has been highlighted above, the Court agrees with the Respondents’ contention that the conduct or competency of the unnamed third party is of no relevance to these proceedings. In its interpretation of the relevant provisions, the Court has no interest in ruling on or making pronouncements on the SRC or its leadership. The alleged dereliction of duty or incompetency also has no bearing on

whether this matter should be deemed urgent, although it alludes to a possible leadership crisis within the SRC.

[5] However, the Court notes the fact that the first plenary sitting of the Assembly is scheduled for 2 March 2023, with an emergency meeting scheduled on 22 February 2023. The Court is convinced that this does indeed render the matter urgent. Following the precedent set by this Court in *Ex parte Foster* and *Ex parte Metanoia Residence House Committee and Another*, the Court was willing to decide this matter on an expedited timeline and deliberate on the matter over the weekend. The basis for this decision is, as in the two above-mentioned cases, the certainty and continuity of student leadership. In both these cases, the Court deemed the matter urgent as there was uncertainty surrounding the applicable rules governing the leadership of the respective bodies, especially in the event of the removal of a student leader.

[6] Further, the Court notes that the Assembly is in the process of drafting rules for the facilitation of a motion of no confidence. However, the Court is not convinced that this extinguishes the urgency of the current matter. The interpretation of the relevant provisions by this Court has the potential to influence the current rules being drafted by the Assembly. Furthermore, the interpretation will provide the necessary certainty regarding the rules, as requested by the Applicants.

[7] The Court is not convinced by the Respondents' contention that the Applicants' urgency is self-created. The Applicants in this matter have not requested the Court to provide a specific interpretation of the relevant constitutional provisions or to direct the Assembly to adopt certain rules. The purpose of this judgment is merely to provide clarity in terms s 31(1)(h) and (i) of the Student Constitution and not to impose a specific timeline on the Assembly to adopt new rules.

[8] Even if the Applicants' urgency is deemed self-created, this Court has ruled on multiple instances that this does not preclude the matter from being dealt with on an urgent basis. In the preliminary judgment of *Visage and Another v Electoral Commission*, this Court held the following:

"While it is established practice in domestic courts to reject urgent applications where the cause for urgency was self-created, that same practice is not carried out by this Court. It is important

to note that while this is a judicial body which takes its leave from usual judicial practice, this Court forms part of the greater student governance structures. It seeks to resolve issues within student governance wherever possible. As much was made clear in the 2020 judgement in the matter of the Student Representative Council Election Convenor. The Court there held that the urgency underpinning that application was self-made given the Applicant in that matter's failure to seek judicial relief from this Court earlier. However, the Court went on to hold that given the gravity of the matter at hand and the difficulty relating to the scheduling of SRC elections, the matter could still be heard on an urgent basis so as not to further jeopardise the SRC elections."

[9] In this matter, the Court is again conscious of its role within the greater student governance structures. One of the Court's most important functions is assisting student governance bodies in interpreting the provisions of the Student Constitutions, their individual constitutions, and the rules and regulations enacted in terms thereof. Therefore, the Court elects to deal with this matter urgently in the interest of certainty and future accessibility of the Court.

Locus standi

[10] It should be noted that *locus standi* was not in dispute in this matter. It is common cause that all Applicants and Respondents are acting in their representative capacity of student bodies. S 86 of the Student Constitution gives standing to all students and student bodies; standing is therefore not at issue.

Jurisdiction

[11] The Applicants, in their submissions, noted that this Court has jurisdiction in terms of s 84(1)(a) of the Student Constitution in that it may interpret the Student Constitution. This is a submission that was agreed to by the Respondents.

[12] However, the Respondents argued that the Applicants, "in a roundabout fashion", requested this Court to impose a set of interim rules to regulate the proceedings contemplated in s 31(1)(h) and (i) of the Student Constitution. We disagree with this notion as interpretation is not equivalent to the imposition of rules, interim or otherwise. The process of interpretation involves the elucidation of that which the drafters of the Student Constitution intended, and that which is already contained in the Student Constitution - not the creation of new rules. The conflation of

interpretation with the imposition of rules is neither tenable nor representative of what the Applicants requested this Court to do.

[13] The Respondents argue that it is the Presiding Officer of the Student Assembly who has the discretion to determine rules of procedure in motions of no confidence. Thereafter, they refer generally to s 64 of the Student Constitution. This averment mischaracterises the contents of the Student Constitution. The Student Constitution in s 66 empowers the Assembly to adopt rules, among others, subject to approval by the Court. Nowhere in s 64, as referred to by the Respondents, is the Speaker granted the discretion to unilaterally determine the rules to be followed. The power to determine rules falls within the purview of the Assembly as a whole, i.e., not solely to the Speaker. Furthermore, as it pertains to discretionary powers, the allegation is made that this Court may not provide an interpretation, since the separation of powers would be infringed should discretionary powers be interpreted. We disagree - discretion is confined to the prescripts of the Student Constitution and those Rules that the Assembly may choose to adopt. This Court, as the authoritative body on interpretation is, however, empowered to determine the meaning of constitutional provisions, the Rules that the Assembly adopts, as well as the prescripts contained therein. The Assembly's discretion, since it is confined to the prescripts of the Student Constitution and the other relevant policies I outlined, is therefore also required to be compliant with the interpretation of this Court.

[14] Although this Court is empowered in s 85(1) of the Student Constitution to grant any interim relief, if material injustice would otherwise occur, it does not have the authority to prescribe procedure to another student body, such as the Assembly, interim or otherwise. The Court, in this regard, has the power of review to determine the validity of procedures such body chooses to adopt. We therefore take exception to the Respondent's submission, in *para 4* of their Answering Affidavit, that this Court's commentary on the Rules were silent on the omission to regulate motions of no confidence. It is within the Assembly's purview to determine their rules, as per s 66(1) of the Student Constitution. Furthermore, it is this Court's mandate to review such rules as determined by s 66(2) of the Student Constitution, in terms of which the Court may decline to ratify the rules in the event of procedural unfairness or incompatibility with the applicable mandate or constitutional framework.

Interpretation of s 31(1)(h) and (i)

[15] As was outlined at length above, it is within the power of the Assembly to determine its own procedure, subject to the approval of this Court. However, this does not serve as a barrier to the Court's power to interpret the Student Constitution.

[16] It is appropriate, before delving into the interpretation of the provisions in question, to reiterate s 66(1) and (2) of the Student Constitution. The "Assembly may adopt any constitutions, rules, or regulations to organise its activities", subject to the Court's approval. This provision is not peremptory, and therefore does not impose a duty on the Assembly to adopt rules to govern its activities, and they are free not to adopt any rules to govern these proceedings, should they choose to do so.

[17] s 31(1)(h) of the Student Constitution reads as follows:

"The Students' Assembly adopts a motion of no confidence in the member and the Student Imbizo accordingly resolves to impeach the member."

While the Assembly may determine the procedure for motions of no confidence, it must be noted that s 31(1)(h) requires compliance with s 29(1) and (2) of the Student Constitution, before s 31(1)(h) proceedings may be instituted. I outline the relevant provisions below:

"29. Fulfilment of duties

(1) SRC members must comply with the provisions of this Constitution and the policies and regulations of the SRC.

(2) If an SRC member contravenes s29(1), or if reasonable grounds exist to believe that a member will contravene s29(1), then –

(a) The Student Court may grant an appropriate order at the request of any student, and if that order is not complied with, the member concerned can be discharged from office in terms s31(1)(h)."

As such, upon a holistic reading of the Student Constitution, only after an order to comply with the Student Constitution and SRC policies and regulations is granted by this Court, and such order is not complied with, can s 31(1)(h) proceedings be instituted. Importantly, this is not a limitation on the Assembly's power to regulate the procedure of motions of no confidence. Rather, this provision outlines a prerequisite for the institution of proceedings in terms of s 31(1)(h), whereafter the procedures as determined by the Assembly will come into effect. With regard to the Imbizo's

resolution to impeach the implicated member, and the associated procedures, this Court is satisfied that there are rules to govern these proceedings as contained in s 16 of the Rules of the Student's Imbizo, 2022.

[18] s 31(1)(i) of the Student Constitution reads as follows:

“The Student Imbizo adopts a resolution to impeach a member, for failure to fulfil their constitutional duties.”

S 31(1)(i) of the Student Constitution provides an avenue for the Student Imbizo to impeach a SRC member. There is no mention of the Assembly in this provision, and as such, the Assembly need not necessarily be involved when applying it. The power to make rules for this section therefore falls to the Imbizo. However, s 17 of the Rules of the Student Imbizo, 2022 already makes provision for the procedure governing the process to impeach a member. The Court therefore declines to delve deeper into the interpretation of this provision as it is satisfied that there are rules to govern proceedings. Notably, however, s 29 of the Student Constitution is not a prerequisite for institution of proceedings in terms of s 31(1)(i).

Conclusion

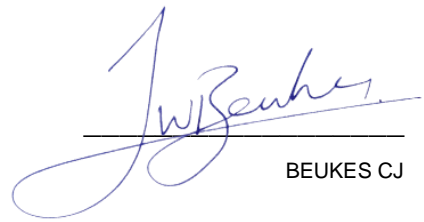
[19] It is within the sole discretion of the Assembly to adopt rules to govern its proceedings, subject to the approval of the Court; however, there is no obligation on them to adopt any rules to govern these proceedings. Importantly, the Court maintains the power of review as the authoritative body on the interpretation of the Student Constitution and the rules which the Assembly may adopt. We are satisfied that the Imbizo has adopted procedures to regulate s 31(1)(i) proceedings and leave it to the Assembly to determine procedure to govern s 31(1)(h) proceedings, should they choose to do so. However, for s 31(1)(h) proceedings to be instituted, s 29 of the Student Constitution must first be complied with.

Order

[20] We therefore hand down the following Order:

- (1) The matter is deemed to be urgent;
- (2) The Assembly has the authority to determine its own procedure, subject to the Court's approval;

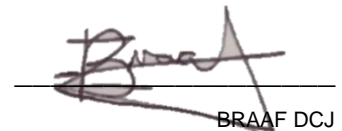
- (3) Compliance with s 29 of the Student Constitution is a prerequisite for institution of s 31(1)(h) proceedings;
- (4) The Imbizo has already adopted rules to govern their part of s 31(1)(h) proceedings, and this Court is not enquiring into the interpretation of those provisions *per se*; and
- (5) The Imbizo has adopted rules to govern s 31(1)(i) proceedings, and this Court is not enquiring into the interpretation of those provisions.



BEUKES CJ



LOURENS J



BRAAF DCJ



PAUW J



SIMONIS J