

IN THE STUDENT COURT OF STELLENBOSCH UNIVERSITY

In the matter between:

Mr JD Blanckenberg

Applicant

And

**The 2014/2015 Student Representative Council
of Stellenbosch University**

Respondent

Declaratory order re: point in camera at the SRC meeting of 20 August 2015

This matter deals with an in camera agenda point during a Student Representative Council Meeting on the 20th of August.

Mr Blanckenberg, the applicant, has applied to the Student Court contending that the SRC chair, Mr Laing, (“the first respondent”) violated section 41(4) of the Student Constitution (“the Constitution”) by adding a point in camera which was inconsistent with the abovementioned section.

Section 41(4) states as follows:

The Chair can rule the discussion of a specific point on the agenda *in camera* if he or she believes it to be in the best interests of students, provided that –

- (a) the Chair must do it before the agenda is set;
- (b) the point must still appear in the agenda and abbreviated agenda;
- (c) the discussion of the point must still be minuted, while the relevant part of the minutes need only be made available internally to the Student Representative Council; and
- (d) the Student Representative Council can decide to overturn the decision of the Chair.

However, it appears from the facts that the first time that the point in camera was raised was at the meeting itself. While the respondent contends that it has the

constitutional right to do so, and it undoubtedly does, there can be no escaping the fact that there are procedural requirements that have to be followed in order to pass constitutional muster. These requirements include that the point must be set before the agenda and appear on the agenda, and not merely be decided on during the meeting.

The content of the point is irrelevant at this stage of the enquiry and the Court feels obliged to focus on the procedure in which it was added. If it had been procedurally correct then there could be no contention about this point having been raised.

The Court therefore declares that the point was added in contravention of section 41 of the Constitution, and in future the proper procedures must be followed when deciding to add such a point. This applies to all present and future Student Representative Councils that may sit.

The applicant further requests a declaration as to whether the first respondent had the ability to allow certain non-SRC members to be present during the in camera point, even though the applicant was asked to leave. There is nothing in the section of the Constitution dealing with in camera points which prevents the SRC chair from allowing such observers and it thus seems unreasonable to say that to do so was unconstitutional, and in the efforts of giving an purposive interpretation to the matter we would hold in favour of the chair being permitted to exercise his discretion in this regard (especially considering, on the facts, that the non-SRC members were in fact that newly elected/ incoming SRC members, and that the in-camera point specifically related to them). Thus, on this point, the Court cannot grant a favourable order to the applicant.

As far as the applicant joining the SRC, and its members, as the second respondent to this matter, it is worth noting that the Constitution does not place any positive duty on the SRC body to prevent or attempt to prevent the chair making an incorrect decision. Section 41(4) only says that the members can overturn the decision of the chair, and not that they are obliged to do so if they feel that the decision is incorrect. It is the understanding of the Court that the exercising of this power is thus a discretionary one, fully within the powers of the SRC body, allowing them to regulate the decisions made by the chair. Therefore the Court would be overstepping its constitutional jurisdiction by obligating the SRC body to overturn the chair's decision in this matter.

Herbig D (Fischer K; Gasela A; Potgieter J; Van Rensburg D concurring)