

IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH

(HELD IN STELLENBOSCH)

28 August 2017

In the matter Ex Parte:

Speaker of Stellenbosch University Student Parliament

Applicant

JUDGEMENT HANDED DOWN BY THE STUDENT COURT

[Rutgers, J]

INTRODUCTORY REMARKS

[1] It is important to note that Stellenbosch University's Student Court is a democratic structure, comprising of students that have been elected in terms of section 56 of the Stellenbosch University Student Constitution, 2014 (hereafter referred to as the "Student Constitution").

[2] The Student Constitution, in section 55, states that the Student Court functions as an administrative tribunal, which is independent and subject only to the Student Constitution. Section 55 further provides that the Student Court must apply the Student Constitution impartially, and without fear, favour or prejudice.

[3] Lastly, this Court determines its own procedure, giving due consideration to the rules of natural justice and the need for the Court to be accessible. These functions are to be performed objectively, transparently and in the utmost good faith.¹

FACTUAL BACKGROUND

[4] In *Odendaal v Stellenbosch University Student Parliament and Others* ("Odendaal") this court set out a process to be followed in order for a new Speaker of Stellenbosch University's Student Parliament ("Student Parliament") to be elected.

¹ Section 55 of the Stellenbosch University Student Constitution 2014

This was done to ensure the rebirth of an important student structure that had been non-existent for almost two years. It was against this backdrop that the applicant in the matter, currently before the court, was elected.

[5] The process to be followed for the election of Student Parliament Committee (“parliamentary committee”) is set out in section 5 of the Student Parliament Constitution, 2013, read with Addendum J1. The procedures set out in the aforementioned provisions operate on the basis that there was a fully functioning Student Parliament, and parliamentary committee, in the term preceding the election of the new parliamentary committee. This was, however, not the case.

[6] As a result of the strange circumstances that Student Parliament finds itself in, regarding the election of the parliamentary committee, the applicant has approached the court for an order confirming the powers of appointment of the Speaker of Student Parliament, where the prescribed election procedures have become inoperable.

APPLICABLE LAW

[7] It is important to note, from the outset, that section 63(b) and (d) of the Student Constitution state that the court can grant a declaratory order, and any order that is fair and equitable.² Furthermore, section 62(a) provides as follows:

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

[8] As previously mentioned, section 5 of the Student Parliament Constitution, read with addendum J1, sets out the procedures for the election of the Parliamentary Committee. Section 5 provides:

“ ... a minimum of five (5) persons aside from the Speaker and Tygerberg Speaker will be elected following the process as set out in Addendum J1 to fulfil the

² Section 63(b) & (d) of the Student Constitution.

portfolios as indicated in section 8 (compulsory portfolios of SPC) The number of Student Parliament Committee members may not exceed a total of fifteen (15).”³

Addendum J1 sets out, *inter alia*, the persons required to review the parliamentary committee applications and conduct interviews. Addendum J1 states as follows:

“3. Incoming Speaker, outgoing Speaker, outgoing Accountability Chairperson, and outgoing Secretary-General reviews applications

4. Interviews by Panel consisting of

a. Incoming Speaker;

b. Outgoing Speaker;

c. Outgoing SPC Exec members;

d. One student selected by Student Parliament Committee from attendance lists;

e. Coordinator of Student Governance, in advisory capacity

f. Committee may also include two additional members if they choose to do so

i. These two will not have any voting rights but will have participation rights;

ii. These may be either students and/or staff as determined by Panel;”⁴

Furthermore, Addendum J1 sets out certain parties who will act as election conveners. These persons are:

“2. Election Convenors:

a. Outgoing Speaker

b. Outgoing Deputy Speaker Internal

c. Outgoing Deputy Speaker External

d. One student selected by Student Parliament Committee from attendance lists

e. Tygerberg Speaker (if possible)”⁵

[9] The applicant is, without a doubt, correct in his assertion that the rules of the Student Parliament Constitution, regarding the election of the parliamentary

³ Section 5 of the Student Parliament Constitution, 2013.

⁴ Student Parliament Constitution, Addendum J1.

⁵ Student Parliament Constitution, Addendum J1.

committee, do not envisage a situation where there has not been a functioning Student Parliament for well over a year.

[10] According to the applicant, the remedy to this particular situation lies in Addendum I of the Student Parliament Constitution. The aforementioned Addendum gives the Speaker of Parliament the ability to appoint an acting speaker, should the speaker be physically absent from the Stellenbosch campus, from within the parliamentary committee or, should this not be possible, to appoint any student who would not be ineligible to serve on the parliamentary committee. The aforementioned provision, without a doubt, gives the Speaker a power of appointment should a particular circumstance arise, namely his absence from the Stellenbosch campus for more than 24 consecutive hours. According to the applicant, the reading of Addendum I can be extended, to allow the Speaker to appoint the members of the parliamentary committee.

[11] There are various theories of statutory interpretation that operate within South Africa's legal system, namely, *inter alia*, *literalism* and *intentionalism*. 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. If Addendum I is read, and understood, in terms of the ordinary meaning of the words, as it stands, there is no way it can be understood to confer on the applicant the power to appoint the parliamentary committee. The literal interpretation of Addendum I only gives the Speaker the power to appoint an Acting Speaker should a certain situation arise, namely the Speaker's physical absence from the Stellenbosch campus for more than 24 consecutive hours.

[12] *Intentionalism*, as a theory of interpretation, focuses on giving effect to the intention of the drafters of the statutory provision, which in this case is the Student Parliament Constitution. It is highly unlikely that the drafters of the Student Parliament Constitution intended to give the Speaker of Student Parliament a *carte blanche* power of appointment, as the provision clearly limits the extent of the Speaker's power of appointment to a situation where there is a temporary absence of the Speaker's physical presence on the Stellenbosch campus. Furthermore, the

purpose of the provision is to give the Speaker the power to make an appointment in a specific situation, not for any situation he, or she, sees fit.

[13] Therefore, to extend the power of appointment, set out in Addendum I, to allow the Speaker to appoint his own parliamentary committee, would result in a situation which the drafters of the Student Parliament Constitution could not have intended (regarding the specific provision). To suggest that simply because Addendum I confers a power of appointment on the Speaker, and is aimed at ensuring the functioning of Student Parliament, it can thus be extended to the present circumstance is, in the opinion of this court, ludicrous. Furthermore, this would undermine the entire parliamentary committee election process set out in Addendum J1, which envisages as process of review, and interview, by a group of panellists, regarding applications for the parliamentary committee.

[14] Due to the fact that the Student Parliament Constitution does not envisage a situation where there has not been, for a substantial period of time, a fully functioning Student Parliament, it was unlikely that the answer to the current problem would be found in the Student Parliament Constitution itself. A fair and equitable solution, which facilitates the transparent operation of Student Parliament, is thus required.

[15] In the alternative, the applicant asked the court to confirm the speaker's powers of appointment to establish an alternative review panel. The members of the review panel would then also serve as election conveners, in terms of section 5, read with Addendum J, of the Student Parliament Constitution. This is, in the opinion of the court, an effective solution to the problem at hand. The appointment of the review panel would, however, still have to be subject to the parliamentary committee eligibility requirements set out in Addendum J1. Furthermore, this would ensure that the review, and interview, process would be conducted by a body of panellists, which was the intention of the drafters of the Student Parliament Constitution, and not solely by the Speaker of Student Parliament. This would ensure that the election of the parliamentary committee is kept as close as practically possible, in light of the current circumstances, to the election process set out in the Student Parliament Constitution.

ORDER

[16] The court orders as follows:

[16.1] In order to ensure the appointment of the parliamentary committee, and the return of a fully functioning Student Parliament, the speaker has the power to appoint a review, and interview, panel who would then subsequently act as election conveners as contemplated in Addendum J1 of the Student Parliament Constitution. Furthermore, the persons appointed to the review panel must comply with the eligibility requirements, for the parliamentary committee, set out in Addendum J1.

By Order of the Court,

[Concurring: Pagel, A; Macfarlane, A; Naidu, S; and van Hagt, S]