

IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH
(HELD IN STELLENBOSCH)

In the ex parte matter of:

STUDENT REPRESENTATIVE COUNCIL ELECTION CONVENOR First Applicant

JUDGMENT

Carroll CJ (Hislop DCJ; Motale J; Swanepoel J concurring)

FACTUAL MATRIX

- 1 The Applicant in this matter approached this court on 6 February 2020 by urgent application seeking relief in the form of a declaratory order that:
 - i. The proposed election of the new Student Representative Council (“SRC”) Chairperson 2019/2020 on 7 February 2020 is constitutional;
 - ii. Sections 100(1) and 101(3) of the Stellenbosch University Student Constitution (“Student Constitution”) accordingly be dispensed with;
 - iii. The Applicant convene the election on 7 February 2020.
 - iv. Any other order, including a combination of the abovementioned, which is fair and equitable.

- 2 The facts behind this application concern the election of SRC members at the end of 2019, the results of which are valid as contemplated by item 27 of schedule 1 of the Student Constitution. Following this the elections of the SRC Chairperson and Executive Committee, as envisioned by sections 100(2) and 101(1) of the Student Constitution respectively, were postponed.

- 3 The cause of this postponement were the investigations being faced by a number of newly elected SRC members, these occasioned by accusations of gender-based violence levelled against the members. At the beginning of the 2020 academic year the investigations were finalised. In light of this, the elections in terms of sections

100(2) and 101(1) of the Student Constitution are scheduled to take place on 7 February 2020.

- 4 Of issue, however, are sections 100(1) and 101(3) of the Student Constitution. Section 100(1) provides that the Applicant convene the first meeting of the newly elected SRC after the validity of the election results is confirmed in terms of item 27 of schedule 1 of the Student Constitution. It is at this first meeting that the SRC Chairperson is elected under section 100(2). Following this, the Executive Council is elected in terms of S 101(1). Section 101(3), however, makes provision for the election of the Executive Council at a later date, provided it is not more than one month after the validity of the election results are confirmed.
- 5 The postponement of the Chairperson and Executive Council elections occasioned by the investigation into the allegations of gender-based violence has resulted in these elections falling outside the timeframe envisioned by sections 100(1) and 101(3) of the Student Constitution. The result is the present application seeking an order of this court declaring the elections taking place on 7 February 2020 to be constitutionally valid.

PROCEDURAL ASPECTS

JURISDICTION

- 6 Under section 65(2) of the Student Constitution, this court is empowered to determine the constitutionality of any action or omission by a student body or member thereof. The Applicant is a duly appointed Election Convenor, deriving their power from Schedule 1 of the Student Constitution, while being an active member overseeing an Election Committee empowered by the same schedule. As such, this court has the competency to determine the application before it.

LOCUS STANDI

- 7 Section 67(1) of the Student Constitution provides that all students and student bodies may bring cases before this court. The Applicant is a registered student, further making application in their constitutionally mandated capacity as Election Convenor, thus enjoying standing before this court.

URGECY

- 8 The Applicant avers the present matter to be urgent due to the SRC Chairperson and Executive Committee elections being scheduled for 7 February 2020 – the day following the filing of this application. Further it is submitted that the urgency of this application is compounded by the gravity of the matter at hand.
- 9 It is noted that under section 20 of the Student Constitution the SRC term of office begins on the first day of the fourth term. Thus the SRC in question came into office on the first day of the fourth term of 2019. The postponement of the SRC Chairperson election occurred from this time therefore. Further this means that the validity of the election results must have been confirmed by the end of the third term of 2019. Therefore, the one month timeframe envisioned by section 101(3) of the Student Constitution for the election of the Executive Committee expired during the 2019 academic year.
- 10 It is accepted that only once the investigations were finalised was the date for the Chairperson and Executive Council able to be scheduled. However, the relief sought by the Applicant is not dependant on the scheduling of the election date, but rather the failure to comply with the timeframe envisioned by sections 100(1) and 101(3) of the Student Constitution. Under section 65(2) of the Student Constitution this court has jurisdiction over both actions and omissions by student bodies or members thereof.
- 11 In light of this, the relief sought by the Applicant in declaring the upcoming elections on 7 February 2020 constitutionally valid could just as easily have been obtained through application, at an earlier time, seeking a declaration of constitutional validity of the failure to hold the Chairperson and Executive Committee elections

within the timeframe envisioned by sections 100(1) and 101(3). Therefore the present urgency is in no small part self-manufactured by the Applicant.

12 Despite this, this court recognises the gravity of the present matter. Further it accepts the difficulty of scheduling a time suitable to all parties to hold the elections of the SRC Chairperson and Executive Council. As such this court shall provide its assistance in the present matter so as not to postpone the elections any further.

SUBSTANTIVE ASPECTS

IMPORTANCE OF INTEGRITY

13 The SRC is the highest policy making student body,¹ mandated to represent student interests and promote student rights.² Further it must comply with the provisions of the Student Constitution.³ It follows from this that its members must uphold student rights as contained in the Bill of Student Rights, while being persons of the utmost integrity.

14 The Bill of Student Rights enshrines the rights to equality⁴ and human dignity.⁵ Further, every student is provided the right to an environment enabling student success.⁶ It is undeniable that the gender-based violence suffered by those at Stellenbosch University strips them of the enjoyment of these rights. Not only is their inherent human dignity impaired in the most invasive manner, and on the basis of their gender, but the environment in which they are situated is far from enabling for student success.

15 Rather, gender-based violence breeds an environment of discomfort and fear – an environment unwelcoming to the humanity of a victim, and one that disempowers those targeted. This is never more so than when those in positions of power

¹ Section 18 of the Student Constitution.

² Section 21(1).

³ Section 23 (1).

⁴ Section 5.

⁵ Section 6.

⁶ Section 8(1).

themselves perpetuate this violence. Thus it is imperative that the members of the highest policy making student body – the SRC – are of the utmost integrity, themselves not perpetuating gender-based violence. For the effective functioning of the SRC within its constitutional mandate, it is thus recognised that the investigations into the allegations against newly elected members thereof were of the utmost importance.

INTERPRETATION OF THE STUDENT CONSTITUTION

16 What appears inescapable in this matter, however, is the timeframe envisioned by sections 100(1) and 101(3) of the Student Constitution. It is the interpretation of these sections to which attention must be turned.

17 The rules relating to legal interpretation have been set out in the case of *Natal Joint Municipal Pension Fund v Endumeni Municipality* where it was established that the point of departure is to read a provision having regard to the language used, the context in which it is found, its purpose and the context of its production.⁷ It is this approach that must therefore be followed.

18 The ordinary meaning of the language used in sections 100(1) and 101(3) of the Student Constitution appears to envision a specific timeframe for the election of the SRC Chairperson and Executive Committee. The latter can only be elected once the former has been elected under section 101(1) of the Student Constitution. Therefore, the one month time period applicable to the Executive Committee election under section 101(3) would constrain within it too the meeting to be convened under section 100(1) for the purposes of electing the Chairperson under section 100(2).

19 The purpose of this time limit must, however, be ascertained so as to interpret correctly the provisions in question in light of the current matter. The duties of the Executive Committee are set out under section 35 of the Student Constitution, and from these it becomes apparent that this group of SRC members is imperative for

⁷ *Municipal Pension Fund v Endumeni Municipality* 2012 4 SA 593 (SCA) para 18.

the daily functioning of the SRC. Contextually viewed, therefore, the timeframe contained in sections 100(1) and 101(3) can be seen to be for the purpose of the SRC's effective functioning. It is simply deduced that a swift assumption of role by the Executive Committee would facilitate a smooth transition between the outgoing and incoming SRC members, thus allowing for as little interruption as possible in the daily functioning of the SRC.

20 Taking a contextually purposive approach to interpretation therefore renders an understanding of sections 100(1) and 101(3) as facilitating effective functioning of the SRC. However, as pointed out earlier, given the circumstances prevalent in the present matter, the investigation of the newly elected SRC members was paramount in ensuring the effective functioning of the SRC if it were to uphold its constitutional mandate of protecting student rights and interests.

CONCLUSION

21 The importance of the circumstances surrounding the present application cannot be underestimated. It is precisely these circumstances that align an understanding of the role of integrity in the effective functioning of the SRC with a contextually purposive interpretation of sections 100(1) and 101(3) of the Student Constitution.

22 The SRC cannot fulfil its constitutional mandate to promote and protect student rights and interests if the integrity of its members cannot be assured. Further, the nature of the accusations levelled against certain newly elected SRC members would have rendered the SRC's governance damaging if it were to have continued its election procedures before the conclusion of the investigations. To have elected a Chairperson and Executive Committee at a time when allegations of gender-based violence were unresolved would have been to create an environment in direct opposition to the one envisioned by section 8(1) of the Student Constitution.

23 In light of this, the postponement of the SRC Chairperson and Executive Committee elections facilitates the effective functioning of the SRC. Through this postponement, the precise purpose of the timeframe envisioned by sections 100(1)

and 101(3) of the Student Constitution is achieved. Therefore, rendering a contextually purposive understanding of sections 100(1) and 101(3) align their function with deviation from the timeframe envisioned therein due to the particular circumstances of the present matter.

ORDER

24 This court orders as follows:

- i. The timeframe envisioned in sections 100(1) and 101(3) of the Student Constitution be dispensed with in the present matter;
- ii. The proposed election of the new SRC Chairperson 2019/2010 on 7 February 2020 is constitutional.