



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

STUDENT COURT OF STELLENBOSCH UNIVERSITY

REPUBLIC OF SOUTH AFRICA

IN THE *EX PARTE* APPLICATION OF:

NQOBILE GOBA

Applicant

Neutral Citation: *Ex parte Goba* 29/04/25

Judgment: VAN DER WATT J (Risimati CJ, Mülke DCJ, Laker J, and Zimri J concurring)

Heard on: Decided on papers

Decided on: 29 April 2025

JUDGMENT

[1] The Applicant approached this Court on 7 April in her capacity as interim Convenor of the Tygerberg Student Imbizo (TSI), seeking a declaratory order to the effect that she, in the capacity of interim Convenor, may elect the convenor for the 2024/2025 term.

[2] The factual situation before this Court is principally similar to the matter of *Ex parte Mhlongo* 4/25 ("*Mhlongo III*"), where failed elections and timing difficulties, with examination season looming, culminated in a leadership vacuum.

Factual background

[3] On 26 August, 26 September, 3 October and 17 October 2024, the TSI attempted to hold elections to appoint the convenor for the 2024/2025 term. Despite adhering to the Tygerberg Assembly Rules (“the Rules”) and timeously giving student leaders notice of the elections, various student leaders were absent without excuse, which meant quorum was not met in any of the abovementioned elections, and the elections were accordingly invalid.¹

[4] The Applicant – and TSI – accordingly finds itself in a Catch-22, where there is no remaining outgoing TSI that can elect the incoming convenor, as required by rule 8 of the Rules, and no Accountability Officer that can temporarily take up the role of convenor to allow the vacancy procedures as provided for in Rule 10, to be followed.

[5] Accordingly, she approaches the Court seeking a declaratory order to the effect that she, in her position as interim convenor, may appoint the new convenor for the 2025 term in the absence of the outgoing TSI.

Locus standi and jurisdiction

[6] I agree with the Applicant that, as a registered student at Stellenbosch University, she has the requisite *locus standi* to bring this matter before the court, as required by section 86 of the Student Constitution, 2021.

[7] I also agree that the Court has jurisdiction to hear the matter, as it concerns a matter “which [the] Constitution places under the jurisdiction of the Student Court”.² The matter concerns the TSI, which is a body created by the Tygerberg Student Constitution³ and therefore falling within the Court’s jurisdiction.

Structure and composition of the TSI

[8] Before commencing with an analysis of the Applicant’s relief sought, I find it necessary to set out the structure of the TSI and Tygerberg Student Imbizo Committee (“TSIC”), as it sheds light on the function of elections, the manner leaders are elected, and the requirements of transparency and fairness.

[9] Rule 7 of the Rules sets out the procedure for electing a Convenor, and requires that the Convenor be elected by the outgoing TSI, in conjunction with two other

¹ Para 12 of the Applicant’s Founding Affidavit.

² S84(5) of the Student Constitution, 2021.

³ S61 of the Tygerberg Student Constitution, 2021 (2023 revision).

students that must be appointed by the outgoing Convenor.⁴ The position of Convenor is the only one that is elected by the TSI, as the other portfolios are appointed by the newly-elected Convenor.⁵ It is important to note that there is a distinction made between composition of the TSI, whose composition is found in the Tygerberg Student Constitution, and the TSIC, the composition of which is found in rule 8 of the Rules.

[10] The TSI is comprised of one delegate from the Tygerberg SRC (TSRC), one delegate from the Tygerberg AAC (TAAC), one from the Tygerberg Prim Committee (TPC), one from the Tygerberg Societies Council (TSC), one from the Tygerberg Postgraduate Student Council (TPSC), and one from the Tygerberg Student Assembly (TSA). The appointments are made at the discretion of the relevant structures, who may choose which eligible student leader will represent them on the TSI.⁶

[11] The TSIC consists only of four mandatory portfolios – the Convenor, accountability officer, chief administrator, and speaker of the TSA.⁷ Should a vacancy in respect of the position of Convenor arise, the accountability officer is tasked with fulfilling the role, until elections are held for a new Convenor.⁸ Any vacancies in the other three portfolios are filled by means of an appointment by the Convenor.

Relief sought

[12] The Applicant finds herself in a deadlock, where there is no outgoing TSI to elect a Convenor, nor any other mandatory portfolios and, as such, neither the ordinary election procedures nor the vacancy procedures can be relied on.

[13] The Applicant seeks a declaratory order to the effect that she, in the capacity of interim Convenor, may appoint the incoming Convenor in the absence of the outgoing TSI, who are no longer available.⁹ For the reasons that will follow, the Court cannot, in good faith, grant this order.

[14] As noted, the Rules provide under Rule 7 that the incoming Convenor must be appointed by the outgoing TSI, as well as 2 students appointed by the outgoing Convenor. Since the TSI consists of 6 members appointed by the various Tygerberg

⁴ Rule 7(1) of the Tygerberg Student Imbizo Rules (“the Rules”).

⁵ Rule 7(2).

⁶ S65(1) of the Tygerberg Student Constitution.

⁷ Rule 8 of the Rules.

⁸ Rule 10.

⁹ Para 19 of the Applicant's Founding Affidavit.

student leadership structures, as well as the Committee – with a minimum of 4 mandatory portfolios – the election of the Convenor is overseen by no less than 12 student leaders.

[15] The reasons for requiring such a large and varied body to elect the Convenor are not difficult to fathom: it ensures bias is eradicated, and promotes the democratic process by giving all students a voice through their elected leaders, who are, in turn, tasked with electing the Convenor. As an independent body of the Tygerberg Student Parliament, it is subject only to the Tygerberg Student Constitution and its institutional rules, and mandated under section 61 of the Tygerberg Student Constitution to “be impartial and must exercise its powers and perform its responsibilities without fear, favour or prejudice”.¹⁰

[16] Section 62 of the Tygerberg Student Constitution sheds light on some of the reasons for its independence: its responsibilities include monitoring and advising on matters relating to constitutional adherence, as well as assessing whether leaders and student bodies are observing University rules, guidelines and the Tygerberg Student Constitution. As part of its jurisdiction and powers, the TSI may investigate alleged misconduct of student leaders, and make orders for remedial action which binds the TSRC, TAAC, TSC, TPC and TPSC.¹¹ It may review a motion of no confidence against a student leader and determine whether the motion must be upheld or not,¹² and can impeach members of the TSRC, TAAC, TSC, TPC and TPSC for not fulfilling their constitutional obligations.¹³

[17] These powers do not have trivial consequences, but are matters of substance with potentially severe effects on the functioning of student leadership structures and their leaders. The TSI can be classified as similar in function to the Office of the Public Protector, established as an independent body under Chapter 9 of the Constitution of the Republic of South Africa, 1996. Its importance cannot be understated.

[18] Indeed, in *Ex parte Mhlongo* (“*Mhlongo I*”), this Court recognised the vital role of the Imbizo in student governance. Bester J noted that:

¹⁰ S61 of the Tygerberg Student Constitution.

¹¹ S64.

¹² S64(6).

¹³ S64(7).

“...some of its functions and powers bear resemblance to those of the Public Protector in the national context. The Student Constitution clearly stipulates that it subject only to the Student Constitution and the institutional rules, must act without fear, favour or prejudice, and that all structures of student governance must ensure its impartiality, independence, effectiveness, and dignity”.¹⁴

[19] An order granting the Applicant the power to unilaterally appoint a Convenor is a stark contrast to the diverse body that is envisioned for electing the process. Not only does it open the door for (unconscious) bias to cloud the transparent and trustworthy functioning of the TSI; it also undermines the democratic process envisioned by rule 7, under which all students may have a voice in the election through their chosen leaders, who, in turn, help elect the Convenor.

[20] It was set out in depth in *Mhlongo III* why a structural separation between leadership structures must be maintained. In *Mhlongo III*, the Court refused to grant an order allowing the Imbizo to elect the incoming Speaker and deputy Speaker of the Student Assembly, or, alternatively, that this Court oversee the election. The Court reasoned as follows:

[18] It is difficult to rationalise the Justices of the Court, who were not elected by the student population, taking over the functions of a committee comprised wholly by student leaders who were directly elected by the student population—the unelected fulfilling the role of the elected. The purpose of the EGC’s composition [...] is to ensure that elections are run by representatives of the students who will ensure the fair and democratic election of their Speaker and Deputy Speaker. The implications of the Court facilitating these elections is that the democratic purpose of having elected student leaders undertake this role is usurped.¹⁵ (My own emphasis)

[21] The above *ratio decidendi* applies to the independence of the TSI as well: the TSI is empowered with the functions set out in Part 4.3 of the Tygerberg Student Constitution, with the aim of holding student leaders accountable, facilitating disputes and ensuring the proper functioning of these leadership structures. The diverse body tasked with electing the TSI Convenor in terms of rule 7 promotes the democratic process, and the TSI’s functional separation from other bodies such as the TSA and TSRC enhances its ability to hold leaders accountable and fulfil its mandate. Granting the Applicant the power to unilaterally appoint the new Convenor, thereby usurping a

¹⁴ *Ex parte Mhlongo* 2/24 para 7 (“*Mhlongo I*”).

¹⁵ *Ex parte Mhlongo* 4/25 para 18 (“*Mhlongo III*”).

task that an entire committee is envisioned to fulfil, is incompatible with these democratic aims.

[22] As such, I cannot grant the order sought, as it would go against the spirit of the Rules, which aim to maintain a diverse and separate committee that appoints a Convenor in a fair, unbiased, democratic and transparent manner, with no single voice singing louder than the others.

Alternative remedy

[23] Let this not be the hill on which the Applicant's case dies. As noted in *Mhlongo III*, this Court is empowered under section 85(4) of the Student Constitution to grant a wide range of remedies, including one which is "fair and equitable". I believe this matter is one which warrants such an order.

[24] The crux of the Applicant's problem is the absence of the outgoing TSI, in conjunction with whom she would have elected the incoming Convenor, who would then be tasked with filling the rest of the TSIC. This can be compared with *Mhlongo III*, in which there was a duly elected Convenor, but no EGC that could, together with the Convenor, elect the rest of the Imbizo. In *Mhlongo's case*, the Court found it was just and equitable to empower the applicant, being the Convenor, to appoint an ad-hoc committee that would function parallel to the EGC, in instances where it is impossible to meet the quorum required for the EGC. The ad-hoc committee has a narrow functioning, applicable only to instances where the EGC is inoperative as a result of quorum not being met, and automatically dissolves once the Speaker and Deputy Speaker of the Assembly are elected. This prevents the ad-hoc committee from being used to usurp the functioning of the EGC.

[25] Considering the stark parallels between this matter and *Mhlongo's case*, I am of the opinion that the creation of an ad-hoc committee ("the election committee") to appoint the new TSI is apposite.

[26] I hereby declare that the Applicant, in her capacity as interim Convenor, is empowered to appoint an election committee for purposes of appointing an incoming Convenor for 2025. This committee will fulfil the function of the body indicated in rule 7 of the Rules, and must therefore adhere to the same principles of democracy and transparency required for the election of the Convenor.

[27] Student leaders must be elected from structures which would ordinarily be empowered to nominate a delegate to sit on the Convenor election committee, as is required by section 65 of the Tygerberg Student Constitution, read with rule 7(1)(ii) – that is, one student from each of the following structures: the TSRC, TAAC, TPC, TSC, TPSC and the Tygerberg Student Assembly; as well as two other students appointed by the interim Convenor.

[28] Appointments must be made according to set criteria, to be determined by the Applicant, that enhances the democratic election process, as well as mitigates any bias that may arise in the election of a Convenor.

[29] Once appointments have been made to create the election committee, the names must be published in a manner accessible to all Tygerberg students, granting them the option and ability to object. Upon the successful election of a new Convenor, the election committee shall terminate automatically.

[30] Lastly, it must be noted that, irrespective of the ad-hoc nature of this election committee, any potential disputes arising from the committee or subsequent election may be scrutinised and adjudicated by this Court, as with any student structure created by the Tygerberg Student Constitution.

Some final remarks

[31] Before commencing with the order, the Court wishes to express its disapproval of the conduct of student leaders who, without giving notice, were absent from the TSI elections, preventing a quorate meeting and accordingly giving rise to this situation, where the TSI was inoperative for months. Had timeous notice been given by the students who were required to be present at the election, as required by the Rules, it is highly likely that alternative arrangements such as proxies could have been made use of.

[32] It is also noteworthy that the court has observed a worrying rise in failed elections – whether due to practical difficulties of holding elections too close to the exam season, in *Mhlongo III*, or quorum not being met, as in this case. It is therefore advisable to all student bodies in charge of making and promulgating their respective student body rules to consider these implications and perhaps create alternative

constitutional procedures for electing leaders, to prevent the headaches that such situations cause – to students and student leaders alike.

The order

[33] Accordingly, I make an order in the following terms:

1. The Applicant, in her capacity as Convenor of the TSI, must appoint an ad-hoc election committee consisting of members who would ordinarily be eligible to sit on the TSI, to facilitate and oversee the election of the new Convenor, which will automatically terminate on the successful election of the Convenor;
2. The appointments must be done according to set criteria, to be determined by the Applicant, which uphold and promote the democratic process and transparency in leadership elections; and
3. The appointed leaders who will sit on the election committee must be published in a manner accessible to all Tygerberg students.

RISIMATI CJ

MÜLKE DCJ

LAKER J

VAN DER WATT J

ZIMRI J