



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY  
Stellenbosch University

## STUDENT COURT OF STELLENBOSCH UNIVERSITY

REPUBLIC OF SOUTH AFRICA

IN THE *EX PARTE* APPLICATION OF:

SPHEPHELO MHLONGO

**Applicant**

**Neutral Citation:** Ex parte Mhlongo 15/04/25

**Judgement:** MULKE DCJ & RISIMATI CJ

**Decided on:** 15 April 2025

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### FINAL JUDGEMENT

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#### *Introduction*

[1] The Applicant is the Convenor of the Student Imbizo for the 2024/25 term. The Applicant seeks a declaratory order, granting Student Imbizo the limited power to assume the role of the Ethical Governance Committee (“EGC”) for the purposes of facilitating the election of the next Speaker and Deputy Speaker for the Student Assembly.

#### *Locus standi*

[2] The Applicant is a registered student at Stellenbosch University and thus satisfies the requirements imposed by section 86 of the Student Constitution, granting him *locus standi* to bring a case before this court.

#### *Jurisdiction*

[3] Section 85 of the Student Constitution empowers the Court to grant an interdict or any interim relief, a declaratory order, and to set aside any decision that is

inconsistent with the Student Constitution or a constitution, policy, regulation or any empowering provision of a student body. Importantly, Section 85(4) empowers the Court to grant any order, inclusive of a combination of the above, that is fair and equitable.<sup>1</sup> The Student Imbizo is one of the two houses which make up the bicameral Student Parliament as stated in Section 67 of the Student Constitution. Section 3 of the Student Constitution lists ‘student bodies’ constituted by the Student Constitution and Section 3(3) includes the Student Parliament. This, read with Section 67, confirms that the Student Imbizo is indeed a student body constituted by the Student Constitution.

### *Factual Background*

[4] On 21 October 2024, the Student Assembly held a caucus for the purposes of electing the Speaker and Deputy Speaker. None of the candidates for these positions secured the requisite simple majority of fifty percent plus one (50% + 1) as required by section 32(2)(a) of the Student Assembly Rules (“Rules”). The conducting of a subsequent election immediately after 21 October 2024 was deemed impractical due to the fact that the examination period was commencing on 28 October. This led to the then Speaker of the Assembly, Ms Dawn Manqoyi, informing Student Governance on 24 October of their failure to elect a new Speaker, and that a new Speaker would need to be appointed before 03 March 2025. No further action has been taken until this application to this Court.

[5] The Applicant alleges that the Rules do not provide for a clear mechanism for resolving the instance where no Speaker or Deputy Speaker has been elected, leaving the Student Assembly without effective and continued leadership. As a result, the Applicant requests that a declaratory order be made to grant the Student Imbizo the limited power to facilitate the elections of a speaker, and in the alternative, that this Student Court itself facilitates such elections.

### *The alleged lacunae within the Rules*

[6] Section 52 of the Student Assembly Rules establishes the EGC, consisting of the following members:

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<sup>1</sup> Student Constitution.

- (a) The Speaker;
- (b) The Deputy Speaker;
- (c) The Accountability Officer;
- (d) The Convenor of the Student Imbizo; and
- (e) A maximum of two (2) additional members appointed by the Speaker.<sup>2</sup>

[7] Currently, all positions are vacant, except (d), being the Applicant himself.

[8] Section 52(1)(c), mandates the EGC to “manage the internal elections of the Students’ Assembly”. It is on this authority, that the Applicant requests a declaratory order, which would grant the Student Imbizo the limited power to assume the role of the EGC for the purposes of facilitating the election of the next Speaker and Deputy Speaker for the Student Assembly.

[9] The rules to follow when there are vacancies make no provision where both the Speaker and Deputy Speaker are simultaneously vacant. The rules state that if the Speaker’s position is vacant, the Deputy Speaker assumes their role.<sup>3</sup> If any officer bearer other than the Speaker is vacant, the Speaker re-assigns the portfolio until the vacancy is filled through an interview process with the EGC.<sup>4</sup> The appointment procedure itself for office bearers presupposes that the EGC exists, requiring the EGC facilitates the elections,<sup>5</sup> and that one of its members shall preside over the caucus and election of the Speaker.<sup>6</sup>

[10] During such ambiguous circumstances, this court might be guided by the election procedures to ascertain whether this one and only member of the EGC being the Imbizo Convenor can/must facilitate the elections himself. However, addendum C, which is said to be the procedure regarding elections, as contained in S31(2) of the Rules, is said by the Applicant to not have been passed, and thus does not exist.

[11] The lack of authority leaves this court stuck between Scylla and Charybdis. The rules themselves do not envision or cover the circumstances before us, and there is

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<sup>2</sup> S52(2) of the Rules.

<sup>3</sup> S38(2)(a) of the Rules.

<sup>4</sup> S38(3)(a).

<sup>5</sup> S32(1)(a).

<sup>6</sup> S32(2).

little interpretive aid, such as that which would have been contained in addendum C, that could have supplemented this court's lack of authority, in how best to interpret any given provision.

*The relief sought before this court*

[12] As discussed above, the Applicant seeks an order where Student Imbizo is granted the ordinary power of the EGC to facilitate the elections of Speaker and Deputy Speaker of the Student Assembly with the alternative being that the Court assumes those powers and facilitates those elections. Before the substance of the order sought by the Applicant is interrogated further, it is important to note the powers of the Court in doing so and in contemplating a final order.

[13] The Student Assembly is a structure created to be primary mechanism through which students can feverously hold their leaders accountable. Section 58 describes this structure as an independent forum that seeks to facilitate discussions on student issues between student leaders and other students and can take the form of public feedback and consultation. The Student Assembly serves to ensure that leadership structures are accountable and transparent in the fulfilment of their constitutional mandates. It further facilitates policy revision and creation and facilitates amendments to the Student Constitution.<sup>7</sup> The Student Assembly is thus an integral mechanism in the maintenance of leadership that is ethical, transparent and accountable.

[14] The election of the Speaker and Deputy Speaker of the Student Assembly is a process that must be carefully scrutinised considering the important role that these portfolios occupy. In considering the main order the Applicant seeks, that being the Student Imbizo be granted the power to assume the role of the EGC, there are two main reasons why it does not pass the careful scrutiny of the Court.

[15] Firstly, the EGC is a statutory structure that is still entitled to the powers and authority it has been granted in terms of the Student Assembly Rules. Whilst it is common cause that there is only one sitting member, this does not negate the independence and autonomy that the EGC is ordinarily entitled to—this includes

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<sup>7</sup> Student Constitution.

independence and autonomy against the overreach of other structures, including the Student Imbizo. As the EGC is still a legitimate statutory structure, there exists only one substantial challenge to its operation and that is, quorum. In terms of Section 52(3) of the Student Assembly Rules, a quorum of two-thirds of its members is required for its meetings to be statutorily recognised.<sup>8</sup> Without this quorum, the EGC cannot lawfully convene, resolve within itself or set about its mandate in any legitimate form. To disregard the independence and the autonomy of the EGC by allowing the Student Imbizo to assume its power would be to undermine its very inception and functionality. This is a line that the Court should not be emboldened to cross under the guise of circumventing the bothersome issue of quorum.

[16] Secondly, the alternative order seeks to allow for the Court to assume the power of the EGC and to facilitate the elections of Speaker and Deputy Speaker of the Student Assembly.

[17] This alternative order also does not pass the scrutiny of the Court for two primary reasons. The first being the separation of powers doctrine. The efficiency and legitimacy of the Court rests upon its separation from the other branches of student governance. For the Court to insert itself within the parliamentary business of the election of a Speaker and Deputy Speaker would be a wilful disregard for the independence of structures created and empowered by the Student Constitution. Even where such structures have failed to execute their mandate within their term of office, the Court cannot intervene by assuming their roles or responsibilities.

[18] The second reason this alternative order does not pass the scrutiny of the Court is the counter-majoritarian dilemma. 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 being that as it is, as can be deduced by the democratic makeup of our student governance, 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. Additionally,

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<sup>8</sup> Section 53(2) of the Student Assembly Rules

should the election not be conducted in a manner that is free, fair and transparent—aggrieved parties would not be entitled to approach the Court for relief as it would be the one responsible for the outcome of the conduct and outcome of the elections. For these reasons, the Court cannot facilitate the elections of the Speaker and Deputy Speaker of the Student Assembly.

[19] Thirdly, noted in Section 85 of the Student Constitution, the Court has wide powers when it concerns granting relief by applicants. The Court is not bound to providing the relief as specifically sought by an applicant before it but it may grant relief that is appropriately suited for the circumstances at hand—equally considering the relief sought and what the law allows. As such, the Court notes that it cannot, in good conscience and in compliance with the law, issue the order sought by the Applicant, as it contradicts fundamental principles in our law developed to protect the autonomy, independence and good governance of our leadership structures. This does not mean that the Court will not engage on the matter to provide the appropriate relief.

*Alternative relief*

[20] As discussed in the analysis of the relief sought by the Applicant above, the EGC is still a statutory body that must remain autonomous and independent—irrespective of whether it is able fulfil its mandate. Considering this, the Court does not wish to venture into any mechanisms that will disrupt the composition and such functionality of the EGC as prescribed in Section 52 of the Student Assembly Rules.

[21] Instead, the Court necessitates the creation of an ad-hoc, substitutionary committee that will perform the mandate of the EGC without interfering with its statutory makeup until such a time where the Speaker and Deputy Speaker are successfully elected and are in a position to revise the Student Assembly Rules to better cater for these unique circumstances.

[22] The Convenor of the Student Imbizo is a sitting member of the EGC and, whilst he cannot convene an ordinary EGC, he may be empowered to constitute and chair an ad-hoc substitutionary committee. This committee must function parallel to the existence of the EGC by mirroring its mandate, powers, and duties but without purporting to disrupt its current dormancy. This must be done for the purpose of electing a Speaker and Deputy Speaker. The committee must comprise of a minimum

of three other members, excluding the Convenor, and a maximum of five members where the Convenor may exercise their discretion to appoint two additional members.

[23] The appointment of the three other members required must be from the student leadership structures that would ordinarily be eligible to send delegates to the Student Assembly. The Convenor, in seeking to appoint these members, must communicate clearly to the respective student leadership structures the necessity for these appointments as well as the criteria upon which applicants will be shortlisted and appointed. This criteria must be fair, reasonable and rationally connected to the purpose of the appointments. Whilst the Court does not wish to be over-prescriptive with the authority it grants the Convenor to appoint members to the substitutionary EGC, it must stress the need for a process that is rational, fair and transparent. Where the Convenor is successful in the appointments it has made, the final outcome must be communicated to the respective student leadership structures and the student population at large.

[24] The mandate of this substitutionary EGC must be formally terminated once the Speaker and Deputy Speaker of the Student Assembly are successfully elected and have so composed an ordinary EGC in terms of Section 52 of the Student Assembly Rules.

[25] The Court has opted for the creation of this mechanism to serve four objectives. Firstly, the Court is able to circumvent the interference of the Student Imbizo with the legitimacy and functioning of the EGC. By using the proposed mechanism, the EGC remains dormant but functionally intact. Secondly, the Court does not unduly violate the separation of powers doctrine. Even though it is particular on the power that the Convenor has and the execution thereof insofar as it pertains to the establishment of a substitutionary EGC, it does not involve itself with the actual mechanics of the elections of the Speaker and Deputy Speaker. It is also important to note that the degree of separation between the Court and the final outcome of the elections allows for the Court to still adjudicate on any dispute involving the freeness, fairness and procedure of the elections themselves without legitimate conflict. Thirdly, the appointment of student leaders, from the various leadership structures, ordinarily eligible to be Student Assembly delegates to the EGC allows for indirect student participation through their elected representatives. This means that students' voice is

still represented in contrast to circumstances where those that are unelected and not direct representatives of the students participate in the election of the Speaker and Deputy Speaker. Lastly, this mechanism allows for there to be continued transparency and accountability as the substitutionary EGC is held to the same standard of governance and ethics as the ordinary EGC.

[26] It is important for the Court to emphasise that the composition of a substitutionary EGC is unique to these circumstances and it is a mechanism crafted only to facilitate the election of a Speaker and Deputy Speaker who, in office, will amend the Student Assembly Rules to address the lacunae created by the non-existence of Addendum C in election and vacancy procedures.

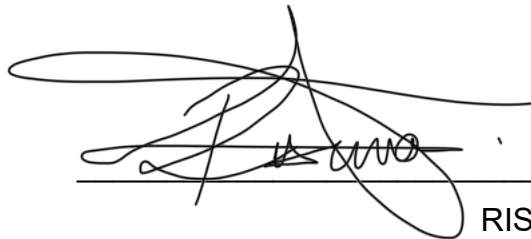
#### Order

The Court therefore makes the following order:


- [1] The Applicant's initial request for the Student Imbizo to be granted the limited authority of the EGC to facilitate the elections of the Speaker and Deputy Speaker of the Student Assembly is denied.
- [2] The Applicant's alternative request for the Student Court to facilitate the elections of the Speaker and Deputy Speaker of the Student Assembly, is denied.
- [3] The Applicant is required to appoint three other members of the substitutionary EGC, from the leadership structures eligible to send delegates to the Student Assembly.
  - a. The Applicant must use a process that adequately notifies potential candidates and provides them with sufficient information on the criteria to be considered for the appointments.
  - b. The Applicant must announce the appointments to the leadership structures eligible to send delegates and to the student population at large.
  - c. The Applicant must conduct the substitutionary EGC in the same manner in which an ordinary EGC would be conducted, observing all the applicable rules and guidelines with reasonable exception.



- d. The Applicant must ensure that the elections for the Speaker and Deputy Speaker are free, fair and compliant with all applicable constitutional and regulatory rules.
- e. The Applicant, together with the newly elected Speaker and Deputy Speaker, must formally disband the substitutionary EGC on the successful election of the Speaker and Deputy Speaker.



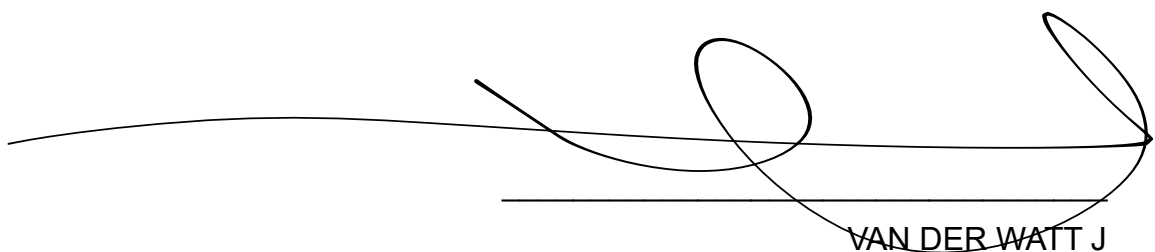
RISIMATI CJ




MÜLKE DCJ



LAKER J



VAN DER WATT J



ZIMRI J