

**IN THE STUDENT COURT OF STELLENBOSCH UNIVERSITY
REPUBLIC OF SOUTH AFRICA**

In the ex parte application of:

EMMA SWART

Applicant

JUDGMENT

PRELIMINARY ISSUES

[1] On 8 November 2022 the Applicant launched an urgent application to obtain a declaratory order regarding the correct interpretation of section 2.3.5.7 of the Constitution of the Education Student Committee (OSK), and for such an interpretation to be in favour of the Applicant. The applicant, in her position as Chairperson of the Academic Affairs Council, sought the declaratory order to have clarity on whether the OSK has complied with its constitutional duties, especially regarding inviting non-BEd IV students to the final year's dance.

Urgency

[2] This Court was convinced that the matter was sufficiently urgent to decide on an urgent basis. The final year's dance in question is due to happen on the 18th of November. It is necessary for the OSK to have certainty on who may attend the dance and whether there has been compliance with the constitutional duties set out in OSK Constitution. To this end, the Court was happy to receive the application from the Applicant and provide attention to it during the examination period. Similarly, the Court was willing to condone the Applicant's failure to plead jurisdiction in terms of the correct version of the Student Constitution given that there is no substantive change to the provisions relied on from a previous version and the provisions regarding this Court's jurisdiction under the current Constitution.

Jurisdiction

[3] The Court was satisfied that the Applicant had the required *locus standi* as provided for in section 86 of the Constitution. As the Applicant is a registered student at the University, she is clearly entitled by section 86 to approach this Court.

[4] The Court was also satisfied that the matter fell within its material jurisdiction. Section 84(1)(b) of the Constitution clearly entitles the Court to interpret any empowering provision in terms of which a student body or a member of a student body exercises power. Similarly, the remedy requested by the Applicant, a declaratory order, is one that this Court is competent to grant in terms of section 85(2) of the Constitution.

SUBSTANTIVE ISSUES

[5] According to the Founding Affidavit lodged with this Court, Nerisha Jagwanth (OSK events portfolio holder) arranged the final year dance. She invited staff members and student leaders, who are not all BEd IV, and allowed for any BEd IV to purchase a ticket and decide who to bring as a date. Section 2.3.5.7 of the OSK Constitution provides that: *“The final year’s dance invite should only be extended to the BEd IV students.”*

[6] The importance of the inclusion of the phrase *“should only”* in Section 2.3.5.7 must be noted. The interpretation favoured by the Applicant is that that the clause allows the events portfolio holder to extend invitations to persons outside of BEd IV students, such as staff members, final year students who are not BEd IV students, student leaders who are not BEd IV students, and dates to the event who are not BEd IV students themselves. Such an interpretation, according to the Applicant, will allow the OSK to arrange the final year’s dance appropriately and will allow the events portfolio holder to attend the event herself to ensure that everything goes to plan.

[7] This Court’s view is that relevant provision should be interpreted textually as providing discretion to the events portfolio holder on who to invite to the final year’s dance. On a purposive interpretation, section 2.3.5.7 clearly attempts to restrict those invited to the dance to BEd IV students, but not necessarily to place a restriction on

which staff members and dates may attend the event. Within the context of a faculty's final year dance, staff members are clearly important attendees. The provision cannot purposively be interpreted to intend the opposite. Who the BEd IV students may bring to the dance as dates, should be left open to the discretion of the events portfolio holder, in order to allow her freedom to discharge her constitutional duties as effectively as possible in the particular context. The provision stipulates that the "invite should only be extended to the Bed IV students". Allowing a BEd IV student to purchase a ticket with the intention of bringing a date is not a contravention of the plain meaning of this provision as, regardless of whether or not the student is entitled to bring a date, the invite has only been extended to the student. The student then has the opportunity, after having received the invite, to buy an "admit two" ticket. The invite in this scenario was never directly extended to the date, only to the BEd IV student.

[8] It is clear from the wording of section 2.3.5 as a whole, that the attendance of the events portfolio holder at the final year's dance is essential to ensuring the event runs smoothly. With regards to other student leaders, such as the other non-BEd IV OSK members, section 2.3.5.8 indicates that attendance of these members are dependent on the role they fulfil at the event. These members may only attend the dance if they fulfil a role in assisting the events portfolio holder in organising or running the event. Similarly to the case of a Bed IV student's date, there is not per se the extension of an "invite" to the student leader. Rather, the student leader's attendance is a necessary incident of the fulfilment of their duties.

[9] The Court also wishes to mention in passing that it must agree with the sentiment raised by the applicant in the founding affidavit and that the provision operates in a troublesome and overly-prescriptive manner. A constitutional amendment might assist a future OSK by affording them more freedom in organising the dance within the context and restrictions of a particular year.