



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY  
Stellenbosch University

**STUDENT COURT  
OF STELLENBOSCH UNIVERSITY**

**REPUBLIC OF SOUTH AFRICA**

**IN THE MATTER BETWEEN**

**R. FEBRUARIE**

**First Applicant**

And

**ELECTORAL COMMISSION**

**First Respondent**

**J. LE ROUX**

**Second Respondent**

**Neutral Citation:** *Februarie v Electoral Commission and Another 05/10/24*

**Judgment:** Bester J (Bryant CJ, Steyn DCJ, Mudzingiranwa & Swanepoel JJ concurring)

**Heard on:** 01/10/2024

**Decided on:** 05/10/2024

---

**FINAL JUDGMENT**

---

BESTER J

*Factual background*

[1] This matter concerns the 2024/25 Student Representative Council (“SRC”) Election. Among the candidates who put themselves forward for election was one Ms Le Roux, who is the Second Respondent in the matter. At the time, Ms Le Roux was also the chairperson of AfriForum Jeug Maties – a registered student society. In the matter at hand, the source of the dispute arose on 8 August when Ms Le Roux, with other members of AfriForum Jeug engaged in what was characterised as an event to celebrate Women’s Day. It is common cause that those in the group handed out

flowers to women on campus with a card which read “Gelukkige Vrouedag”<sup>1</sup> in bold. The bottom of the card also said “Stem vir jou SR, 19-27 Augustus 2024.”<sup>2</sup> The card further contained overt branding with the AfriForum Jeug logo.

[2] Following this, a post was made by AfriForum Jeug’s official Instagram account on 9 August which contained an image of Ms Le Roux beside another girl, both holding these cards. It is noteworthy that the account in question belongs to the broader AfriForum Jeug organisation and is not limited to affairs at Stellenbosch University. The caption of the Instagram post read:

“AfriForum Youth's Maties branch gave a bouquet of flowers to every lady in the Neelsie on Thursday, August 8, 2024, during lunch in celebration of National Women's Day. They also used the opportunity to remind students to vote for their [SRC] from August 19 to 27.” (Translated from original)

[3] On 28 August 2024, another candidate in the SRC Election, Ms Februarie, the Applicant in the matter, launched a complaint with the Electoral Commission (“Commission”). In the main, the complaint alleged that Ms Le Roux’s conduct breached certain provisions of the Student Electoral Act<sup>3</sup> and compromised the integrity of the SRC Election by giving her an unfair advantage. This complaint was based on the allegation that Ms Le Roux had made use of extra monetary funds and the endorsement of a third party.

[4] The Commission concluded its investigation on 4 September. In its report to the complainant, it held that only the Commission is authorised to design and distribute marketing materials. It further found that in having submitted her Nomination Form on 2 August, Ms Le Roux had acknowledged familiarity with the Election regulations, rules and directives of the Commission. The Commission further found that there was a direct link between Ms Le Roux and AfriForum Jeug and that her conduct indeed contravened the election rules. The Commission thus concluded that there were substantive reasons to disqualify Ms Le Roux.

---

<sup>1</sup> Translates to: “Happy Women’s Day.”

<sup>2</sup> Translates to: “Vote for your SR, 19-27 August.” “SR” is an abbreviation for “studenteraad” which refers to the SRC.

<sup>3</sup> Schedule 1 of the Student Constitution.

[5] However, section 127(1) of the Student Constitution 4.4 (“Student Constitution”), holds:

“A complaint about the campaign of a specific candidate must be lodged with the Electoral Commission, who must properly investigate the complaint and must announce their decisions within twenty-four (24) hours after the complaint was lodged.”

[6] On this basis, the Commission concluded that its power to render a binding decision had prescribed as the 24-hour deadline had long passed. Therefore, despite finding Ms Le Roux substantively guilty of misconduct justifying disqualification, the Commission no longer had the authority to do so. Thus, on 5 September, the nine successful SRC candidates were announced, with Ms Februarie and Ms Le Roux clenching eighth and ninth places respectively.

[7] The Commission provided several reasons for this delay. Its Director of Oversight and Compliance averred that the Commission was inundated with complaints (seven to be precise) and that it was not feasible to properly deal with all of them in the limited 24-hour period. The Commission further held that it was strongly influenced by the judgments of this Court in *Ex parte Electoral Commission*<sup>4</sup> and *Electoral Commission v Goldfields Election Committee and Others*<sup>5</sup> which both emphasised the need for thorough and proper investigations. To this end, the Commission said it was swayed by consideration for the rights of accused candidates to being afforded hearing in terms of the principle of *audi alteram partem* in line with section 14 of the Student Constitution. In the present matter, the Commission also needed to engage with external attorneys representing Ms Le Roux and, accordingly, further needed to procure its own legal advice through the University to deal with this. All this being considered, the Commission argues that, practically speaking, the 24-hour period is hardly workable.

[8] Therefore, the Commission advised the complainant to approach this Court. This was in terms of section 127(3) of the Student Constitution which holds that –

“Any unresolved complaint under subsection (2) about the running of any student leadership election and any decision or failure to make a decision by the Electoral

---

<sup>4</sup> 27/08/24.

<sup>5</sup> 16/09/24.

Commission or respective Election Committee(s)/Convenor(s), must be lodged with the Student Court.”

[9] Thus, on 6 September 2024, the Applicant approached this Court on an urgent basis. The Applicant’s claim also claimed that the Commission, in allowing the 24-hour period to lapse without rendering a binding decision, had failed in its constitutional duties. The Applicant further alleges that as a result of the Commission’s failure to fulfil their constitutional duties, the Second Respondent was allowed to remain an SRC candidate, despite the Commission’s finding in its initial investigation that she was substantively guilty of misconduct.

[10] The Applicant alleges that the Second Respondent violated items 2(3), 3(1), 3(7)(a), 3(8), 5 and 6 of the Student Electoral Act, in turn also affecting the freeness and fairness of the whole electoral process.

#### *Locus standi and jurisdiction*

[11] The Applicant and Second Respondent are both currently registered students at Stellenbosch University and thus have standing before the Student Court in terms of section 86 of the Student Constitution. The Commission is a student body in terms of sections 1(11) and 3(12) of the Student Constitution and also has standing in terms of section 86.

[12] The Court has jurisdiction to hear this matter. In the general sense, section 84(3) of the Student Constitution ascribes the Court the power to “review any decision of a student body or a member thereof.” The Court also has jurisdiction in respect of section 127(3) which holds that any unresolved complaint under subsection (2) must be lodged with the Court. In terms of section 127(4)(d), the Court may grant any remedy which is fair and equitable in the circumstances.

#### *Urgency*

[13] In terms of section 127(4)(a) of the Student Constitution, the Court must handle any complaint dealing with the freedom and fairness of an election with necessary speed if harm may otherwise result. The complaint must be evaluated against the values which undergird student elections; specifically free and fair elections,

democracy, and transparency. The current circumstances necessitate swift action by the Court to preserve the credibility of the SRC Election.

[14] In terms of rule 3(4) of the Rules of Procedure of the Student Court, 2024, the Court may depart from its ordinary rules in two instances. First, where a party shows cause in terms of rule 8. Second, the Court has the discretion to dispense with rules on its own accord where it is in the interests of justice to do so such that foreseeable harm may be avoided.

[15] We agree that the matter is urgent. In terms of section 19 of the Student Constitution, after confirmation of the validity of the SRC results, the newly elected members of the SRC will internally vote in the SRC Chairperson, and thereafter the Executive Committee. The newly elected SRC members are also scheduled to be sworn in by this Court on Friday 4 October, thus making it in the interest of justice that this matter be handled urgently. It was put to the Court that the harm which may otherwise result is that the election of the SRC Chairperson and Executive Committee would either need to be postponed or may be tainted should a candidate who be allowed to participate in the internal vote and subsequently be disqualified.

### *Issues*

[16] The issues before the Court are:

1. Did the Commission fail in its constitutional obligations under section 127(1) of the Student Constitution?
2. Is the matter *res judicata*?
3. Did Ms Le Roux contravene any rules?
4. If Ms Le Roux did contravene any rules, is disqualification the appropriate remedy?
5. Is a prohibition on sponsorships an unconstitutional limitation on the right to freedom of association?

### *The Electoral Commission's investigation*

[17] The Commission is cited as the First Respondent as the Applicant alleges that it failed in its constitutional duty to ensure that the elections were free and fair by allowing the 24-hour period to lapse without making a binding decision. To this end, although counsel for the Applicant conceded that the 24-hour period is unreasonable,

she argued that the Commission could have approached this Court to request an extension of this timeline due to extraordinary circumstances. Alternatively, relying on a *dictum* in *Ex parte Electoral Commission*, the Applicant asserts that if the Commission was overburdened that it should have approached the Students' Imbizo which has specialised investigative powers to assist it.<sup>6</sup> Additionally, the Applicant contends that at the very least, the Commission should have communicated with her earlier, especially after it had become clear that its power over the matter had lapsed. The Applicant holds that the Commission created a false impression by stating "that the usual 24-hour period for concluding such investigations was extended under extraordinary circumstances."

[18] We do not think that the Applicant's contentions here are well-founded. We find that the reliance on the *dictum* in *Ex parte Electoral Commission* is misplaced. The Students' Imbizo is empowered in terms of section 70 of the Student Constitution to, *inter alia*, investigate positional leaders.<sup>7</sup> Prospective candidates are not positional student leaders yet. The Commission has specialised jurisdiction over investigating election-related conduct and specifically in managing the SRC Election.<sup>8</sup> What the Court in *Ex parte Electoral Commission* intended to communicate must be understood in the context that that case came mere days before the SRC Election period was due to end. In such a case, if the jurisdiction of the Commission were to lapse and the implicated candidates were elected and inaugurated, it would not automatically be the end of the story. The Students' Imbizo would then have sufficient jurisdiction to investigate and render remedial action in respect of any election misconduct retrospectively on the basis that the candidates would then become positional student leaders.

[19] It cannot be said that the Commission failed in its constitutional obligations. Section 127(3) of Student Constitution expressly caters for the eventuality that a complaint may remain unresolved after 24 hours, in which case it *must* be referred to the Student Court. The peremptory language of section 127(3) makes it clear that this is the natural progression of any complaint related to elections. The entire scheme of section 127 read as a whole, shows that it is not an aberration that election-related

---

<sup>6</sup> 27/08/24 para 25.

<sup>7</sup> S70(2), S70(3) and S70(4) of the Student Constitution.

<sup>8</sup> S126 of the Student Constitution.

complaints end up at the Student Court. What section 127 envisages is that the Commission, due to its specialised nature, is more well-placed than the Court to take speedy action where it is needed. As has been noted in previous judgments of this Court, the Commission is also more well-placed for the task of investigations.<sup>9</sup>

[20] We are of the view that section 127(1) of the Student Constitution is indeed rational; that is to say, it is connected with a legitimate purpose. The legitimate purpose in question is to ensure that election complaints are dealt with in an efficacious and timely manner. Given the formal and sometimes protracted procedures of the Student Court, it makes sense that it will not serve as the optimal first port of call in all instances.

[21] On this point, the Applicant's contention that the Commission should have approached the Court to extend its 24-hour period is without merit. What the Applicant is seeking to argue is that by not seeking an order to exercise extraordinary powers, the Commission failed in its ordinary duties. This is illogical. In line with section 127(3), the natural next step in the complaint procedure was for it to be lodged with the Court. This is what occurred. Therefore, to the extent that the Commission did not render a binding order within 24-hours, it did not fall short of its constitutional obligations. It cannot be that the Commission *has to* come to a final and binding decision in the short period of 24 hours for all complaints. For exceedingly complex matters, this will undoubtedly lead to a miscarriage of justice. This is why section 127(3) envisages that jurisdiction is transferred to the Court with the appreciation that it is the arena well-suited for complicated disputes of law and fact to be adjudicated.

[22] There is, however, something to be said on the fact that the Commission, seemingly erroneously, initially communicated that it had extended the normal 24-hour period *mero motu*. What possessed the Commission to lead itself to believe that it could extend its constitutional timelines is unclear to this Court. Nonetheless, we are of the view that the lapse of the 24-hour period should not mean that the jurisdiction of the Commission to investigate the complaint has lapsed. Rather, only its competence to deliver a binding order prescribes. In this case, the Commission should have notified the Applicant when it became apparent that it would not be able to give a binding order within 24-hours and that upon the expiry of said period, the matter would be referred

---

<sup>9</sup> *Ex parte Electoral Commission* 27/08/24 par 10.

to this Court. However, thereafter it could still continue and conclude its investigation and present its findings to this Court as an interested party. The investigative capacity of the Commission remains a useful aid to this Court.

[23] In our view, the Commission is correct in pointing out the difficulty of balancing the interests of the student body in free and fair elections on the one hand, and the rights of candidates to a thorough and impartial investigation on the other. The Commission raises an incisive point in arguing that the 24-hour period is not feasible when considering a student's right to fair administrative action as enshrined in section 14 of the Bill of Student Rights. Section 14 reads:

“Every student whose rights or legitimate expectations are materially and adversely affected by any decision taken by a student body or member of a student body has the right to –

- a. Be notified of the nature and purpose of the proposed action
- b. A reasonable opportunity to make representations and a provide written response.
- c. Adequate notice of any applicable right of review or internal appeal.
- d. Request reasons for the decision and to be furnished with written reasons within a reasonable time.” (Emphasis added.)

[24] Now, rights in the Bill of Student Rights are not absolute and can be limited in terms of legal rules of general application, including University rules, regulations and policies, provided such limitation is necessary, reasonable and proportionate.<sup>10</sup> The difficulty is that section 127(1) is not entrenched in some ordinary rule or regulation, but the Student Constitution itself. In accepting the *ex visceribus actus* rule that a legislative text must be studied as a whole, this Court cannot find that a portion of the Student Constitution is itself unconstitutional. This makes nonsense of the entire exercise of constitutional interpretation. However, although the limitation cannot be said to be unconstitutional, there is a limitation of section 14, nonetheless. Section 127(1), as noted above, also does not cater for situation where the Commission is inundated with various complaints. As held by this Court in *Ex parte Mhlongo* (“*Mhlongo I*”), “the major engine for law reform should be the legislature and not the judiciary.”<sup>11</sup> To this end, the Court advises that the Students' Imbizo and Student Assembly seriously consider whether the section needs amendment.

---

<sup>10</sup> S15 of the Student Constitution.

<sup>11</sup> 21/02/24 para 35; see also *Carmichele v Minister of Safety and Security* 2001 4 SA 938 CC para 36.



*Point in limine: Res judicata*

[25] Before continuing with the substance of the allegations against Ms Le Roux, we must address the point *in limine* raised by counsel for the Second Respondent. Counsel contended that the matter was *res judicata*, and as such, this Court was not competent to pronounce on a matter whose cause of action it had previously ruled on, namely in *Ex parte Electoral Commission*. This contention was misplaced, but we see that it is important to clearly distinguish the matter at hand from the one mentioned above.

[26] In *Ex parte Electoral Commission*, the Commission approached the Court seeking the invalidation of the entire SRC Election while it was still ongoing. This was on the allegation that certain candidates had procured and received endorsements from third parties rendering the election so unfree and unfair that it justified a complete invalidation. Bryant CJ, Mudzingiranwa and Bester JJ, writing for the Court, denied the relief sought by the Commission for a number of reasons which are detailed in the judgment. Among the key considerations were, first, that the invalidation of an entire election is an extreme remedy whose onus of justification the Commission failed to discharge.<sup>12</sup> Second, the Commission provided no evidence of any link between the third parties in question and the implicated candidates nor any evidence of fault on the part of the candidates themselves.<sup>13</sup>

[27] The matter at hand is entirely different. First, although there are similar questions as to the alleged rules which have been contravened, the cause of action is entirely different. *Ex parte Electoral Commission* concerned endorsements by two social media organisations, namely “StelliesStaanOp” and “Studenteplein.” The present matter concerns an alleged endorsement by a different organisation, AfriForum Jeug. As will be discussed below, unlike in *Ex parte Electoral Commission*, where the Commission tendered no evidence as to any link between the implicated students and the third parties or any culpability on their part, here there is, at the very least, a *prima facie* link between Ms Le Roux and AfriForum Jeug because she was the Stellenbosch chapter’s chairperson. Additionally, while the conduct complained of

---

<sup>12</sup> 27/08/24 paras 8-17.

<sup>13</sup> Paras 18-24.

in *Ex parte Electoral Commission* pertained solely to the conduct of third parties which the Court has no jurisdiction over, here there was at least some conduct on the part of Ms Le Roux herself when she engaged in handing out the cards and flowers on 8 August. Furthermore, AfriForum Jeug is a registered student society and thus a student body which falls under the jurisdiction of this Court. The same cannot be said with the organisations mentioned in *Ex parte Electoral Commission*.

[28] Moreover, the remedy sought by the Applicant is entirely different. While in *Ex parte Electoral Commission* the invalidation of the entire SRC Election was sought, here it is specifically the disqualification of Ms Le Roux which is prayed for. Albeit a serious remedy, it is not as extreme as that sought previously.<sup>14</sup> Finally, the direction of the Court in *Ex parte Electoral Commission* was for the Commission to properly investigate complaints before approaching the Court. Even if the matter at hand concerned the same cause of action (which it does not), it would be illogical for the Court to make such an order only to, upon completion of a thorough investigation, deny the Commission a hearing.

*Did Ms Le Roux contravene the Electoral Act?*

[29] Item 3(7)(a) of part S1.3 of the Student Electoral Act holds that all persons bound by the Act during the electoral period may:

“(7) Spend no money on any marketing.

(a) As a candidate cannot use their own money, this includes Facebook, Instagram, Twitter sponsored pages, any sponsorship cannot be utilised.”

[30] This must be read with item 8 of part S1.5 which holds:

“Any infringement of these rules will render the perpetrator liable for an investigation by the Electoral Commission and if found guilty, will be disqualified.

(1) A candidate will be held liable for any mass communication that violates this act if such means were to endorse them or to help them with their campaign.

(a) Unless a candidate can prove that they had nothing to do with such violation.”

[31] On the facts, there was conduct in respect of three actions. The first was the conduct pertaining to Ms Le Roux’s participation in handing out the cards and flowers which promoted participation in the SRC Election on 8 August. The second occurred

---

<sup>14</sup> Para 17.

on 9 August when the Instagram post was made by AfriForum Jeug's account. The third form of conduct was Ms Le Roux's failure to, subsequent to the post, take any steps to have it removed. Although it is, in some respects, conceptually useful to analyse both incidents separately, it would be facile to ignore the fact that they are also necessarily linked.

[32] The words "sponsorship" and "endorsement" are often used interchangeably in common parlance. However, in our view, the word "sponsorship" in the context of the item 3(7)(a) does not bear the same meaning as "endorsement." Reading item 3(7), as a whole, it is evident that the mischief which the provision seeks to deal with is the use of monetary funds on marketing for the election campaign of a candidate. The first reference to sponsored pages on social media accounts makes this clear. What item 3(7)(a) does not seek to do is limit the use of social media for marketing purposes *per se*. Indeed, item 6 of part S1.4 holds that "[m]aximum usage of social media platforms like Facebook, Instagram, and Twitter are *encouraged*." Additionally, item 2 of part S1.2 holds that all students have the right to "[u]se social media platforms to advertise their campaign". What item 3(7)(a) prohibits is the expenditure of funds on *sponsored* social media pages. Just so, item 3(7)(a) does not prohibit endorsements *per se*, but rather sponsorships on social media and elsewhere. It is taken that a sponsorship must be understood as an endorsement coupled with financial or other patrimonial support. It is the incurring of expenditure on the part of a benefactor which transforms an endorsement into a sponsorship.

[33] The test for whether there has been a sponsorship in contravention of item 3(7)(a) is thus three-fold. First, it must be established that the conduct in question promotes the campaign of the candidate. Second, there must be some expense incurred. Although item 3(7) specifically references "money", due to evidentiary burdens, it is sufficient that it be shown that some expense must reasonably have been incurred. It would be too great a burden to place on a complainant to hold that they need access to the financial records of the benefactor in question to prove that money was used in support of a candidate's campaign. This broader interpretation also gives effect to the underlying purpose of the rule, which is to prevent any candidate from, through disproportionate access to resources, gaining an unfair advantage over another. Third, the candidate in question must be culpable. For example, on the facts

of *Ex parte Electoral Commission*, while the Commission could satisfy the first leg of this test, it failed on the final two.

*Did the conduct promote Ms Le Roux's candidacy?*

[34] We begin by dealing with the first alleged infraction involving the campaign to hand out flowers and cards on 8 August. Ms Le Roux maintains that the campaign was undertaken in her capacity as a member and chairperson of AfriForum and not in her capacity as a candidate for the SRC Election. She places emphasis on the fact that her name was never mentioned when handing out the cards, nor indeed in the Instagram post which followed it. Rather, it is contended, AfriForum engaged in a general campaign to encourage all students to exercise their democratic rights and vote in the SRC Election. It is argued that the fact that Ms Le Roux was personally involved in the activity is merely incidental to her membership of AfriForum Jeug.

[35] On her version, Ms Le Roux (and other members of AfriForum Jeug) handed out the flowers and cards to female students. To the extent there was verbal communication, Ms Le Roux holds that this amounted to no more than repeating that which was said on the cards – that is: “Happy Women’s Day. Vote for your SRC.”

[36] Counsel for the Second Respondent argued that the campaign amounted to no more than a celebration of Women’s Day. The Court is not convinced by such an argument as there is no obvious *nexus* between Women’s Day and the SRC Election. Although the occasion of Women’s Day was used, it is clear that one of the purposes of the campaign, if not its primary purpose, was to encourage students to vote in the SRC Election. The question at hand then is whether the event constituted one which marketed the campaign of Ms Le Roux. Even though none of the evidence suggests any direct reference to Ms Le Roux by name, the entire context of the situation must be considered as a whole.

[37] It is customary that when students vote in the SRC Election, they are presented with both the candidate’s name and a photograph depicting their visage. Our common law recognises that a person’s visage is a component of his or her identity.<sup>15</sup> Thus, even though Ms Le Roux was not mentioned by name in the Instagram post, by virtue

---

<sup>15</sup> *Kumalo v Cycle Lab (Pty) Ltd* [2011] ZAGPJHC 56.

of the fact that it prominently bears her image, it can hardly be said that her persona was not referenced by the post. It bears mentioning that she is not pictured in an unidentifiable mass of AfriForum Jeug members. Rather, her visage is displayed prominently.

[38] To make this point clear we propose the counterfactual scenario where a hypothetical rival candidate, posted an image of Ms Le Roux to their social media with defamatory remarks without mentioning her by name. In such a scenario, it is probable Ms Le Roux would contend that such a post indeed referenced and defamed her, and thus unfairly prejudiced her campaign. This serves to show that the absence of her full name on the post is not enough to dissociate her identity from it. Therefore, it is clear that the conduct referenced Ms Le Roux. But this is not the end of the enquiry. The question at hand is not only whether the conduct referenced Ms Le Roux, but whether it promoted her campaign.

[39] Counsel for the Second Respondent contended that even if the post referenced Ms Le Roux, that it only referenced her in her capacity as chairperson of AfriForum Jeug and not in her capacity as a candidate. In our view, although the law may appreciate the veil between official and personal capacity, the reasonable observer in this instance would not be able draw a distinction merely by reference to her visage. Indeed, in *Sindani v Van Derr Merwe*, the Supreme Court of Appeal recognised that the reasonable observer does not interpret meaning with the same scrutiny as a lawyer or person of special discipline.<sup>16</sup> In the context of a news article, Brand AJA said that a reasonable observer, “if he read the article at all, would be likely to skim through it casually and not to give it concentrated attention or a second reading.”<sup>17</sup> The ordinary observer on Instagram would probably view the post for no more than a few seconds, read the short caption, and continue scrolling. However brief this action, it would likely still create links between Ms Le Roux, AfriForum Jeug and the events of 8 August in the mind of a reasonable observer.

[40] In the context of the SRC Election, a candidate’s visage is inextricably linked to his or her campaign. In the weeks leading up to the election, candidates’ posters

---

<sup>16</sup> [2001] ZASCA 130 para 11.

<sup>17</sup> Para 11.

containing their visage are plastered all across campus. What is more, both the cards and the Instagram post specifically reference the SRC Election. It is true that the reasonable observer who is unaware of the SRC Election may not immediately infer that Ms Le Roux (nor indeed the other girl pictured) were candidates. However, the reasonable observer has regard not only for what is expressly stated, but also what is implied. It would be reasonable from the picture to that Ms Le Roux was associated with AfriForum Jeug in some form or another.

[41] Here, it is useful to adopt the concept of secondary meaning (also called “innuendo”) which is accepted in the common law of defamation. A secondary meaning is where a meaning other than the ordinary meaning is conveyed on the basis of special facts known both to the communicator and the person to whom the message is being communicated.<sup>18</sup> A reasonable observer who was aware of the special fact that Ms Le Roux was a candidate would infer from the picture, also having regard to its caption, some association between AfriForum Jeug and Ms Le Roux’s candidature.

[42] Furthermore, counsel for the Second Respondent placed great emphasis on the fact that since both the cards and Instagram post contained the phrase *Stem vir jou SR* (“Vote for *your* SRC”) as opposed to merely saying “Stem vir SR” (“Vote for SRC”), beyond merely being associated with AfriForum Jeug, the phraseology implied that Ms Le Roux was endorsed by AfriForum Jeug. The Court finds that although this argument borders on tenuity, its validity should not be disregarded outright. It is not the decisive feature of this case but adds to the cumulative effect of all the other facts considered.

[43] The cards which Ms Le Roux handed out, and which she is photographed holding in close proximity to her visage, clearly displayed AfriForum Jeug branding. The common law indeed holds that the reasonable observer has regard not only for what is expressly said, but for what is implied.<sup>19</sup> The inclusion of the word “your” can reasonably imply that the action which the card and post encourage is not merely to vote in the SRC Election, but to vote for those candidates whose values are aligned with AfriForum Jeug and the observer. This is all encompassed in the ordinary

---

<sup>18</sup> *Le Roux v Dey* 2011 3 SA 274 (CC) para 87.

<sup>19</sup> Para 89.

meaning as understood by the reasonable observer who was not aware of Ms Le Roux's candidacy.

[44] It may indeed be too much to say that the reasonable observer would infer from the post that Ms Le Roux, or the other girl pictured, were running as candidates in the SRC Election. It is equally likely that they are just ordinary members of the student society. However, the reasonable observer with knowledge of the fact of Ms Le Roux's candidacy would associate her with not only AfriForum Jeug, but the campaign to hand out the flowers. It is noted that by this point in time, Ms Le Roux's candidacy was no secret to the outside world. In terms of item 5(4) of Schedule 2 of the Student Constitution, she needed to procure at least 200 signatures to submit the Nomination Form, which had already been submitted on 2 August. While there is nothing prohibiting candidates from engaging in the activities of recognised student societies, the matter entered murky waters the moment there was reference to the SRC Election.

[45] The Instagram account in question was also a topic of contention. The Applicant and the Commission both sought to rely on the fact that the account had a significant reach of over some three-thousand followers. Counsel for the Second Respondent, on the other hand, argued that the account was AfriForum Jeug's official account which deals with matters regarding all its university chapters and not only its Stellenbosch branch. She contended that the event was part of a national drive to promote participation in SRC elections across the country. To this end, evidence was tendered of similar activities by the branch at the University of Pretoria.

[46] In our view, this contention is also baseless. Both the Instagram post and the card specifically referenced the dates of the Stellenbosch University SRC Election. Moreover, the flowers and cards were handed out on Stellenbosch campus. It is neither here nor there that similar activities were conducted at another institution. As correctly pointed out by counsel for the Applicant, the rules governing SRC election campaigns at the University of Pretoria are entirely different to those at Stellenbosch University. Therefore, the fact that many, if not the majority, of the viewers of the Instagram post, by not being Stellenbosch students, neither knew anything about Ms Le Roux's candidature nor were eligible to vote in the SRC Election, is irrelevant. It is

clear from the post that it was directly *targeting* the portion of AfriForum Jeug's followers who were able to vote in the SRC Election.<sup>20</sup>

[47] It is important to note here that the question at hand is not whether any students were *actually* swayed to vote for Ms Le Roux by the conduct in question. The question is whether there was an violation of the rules; that is whether unauthorised monetary funds were used for the promotion of Ms Le Roux's candidacy. Considering the fact that Ms Le Roux was directly implicated through both her active participation in the activities on 8 August and by reference to her visage in the Instagram post, that both the post and the cards directly referenced the SRC Election, it is clear that the conduct promoted the candidacy of Ms Le Roux. Even if the primary consequence of the conduct was not the promotion of Ms Le Roux's candidacy, it still had the ancillary feature of benefiting it.

[48] We do not for a moment seek to suggest that any conduct which promotes the reputation of a person who happens to be a candidate in an SRC Election should, by itself, be considered an endorsement. Nor do we suggest that where monetary or other expense is incurred to this end that it is necessarily a sponsorship and thus prohibited. There may be legitimate actions undertaken by persons who are candidates in respect of any other part of student or extra-curricular life which indeed enhance their standing in the public esteem. These actions may also be connected to their position in societies, residence or any other feature of student life which are totally unrelated to the SRC Election. What occurred here is manifestly different because there was overt reference to the SRC Election. The link to Ms Le Roux being established, the conduct in question not only promoted her in her personal capacity, but promoted her campaign as an SRC candidate. Therefore, the first leg of the three-fold test is satisfied.

*Were expenses incurred in the promotion of the candidacy?*

[49] It is uncontentious that some expense must have been incurred to procure the cards and flowers for the events on 8 August. Even in the unlikely scenario that the expense was not monetary in nature – and the roses were grown in some or another student's garden and the cards were written on homemade, hand-pressed papyri –

---

<sup>20</sup> In *HRH King Zwelithini of KwaZulu v Mervis* 1978 2 SA 521 (W), the Court also held that reasonable observer is ascribed the attributes of the target market.



expense was incurred by a third party. There must be a *nexus* between this expenditure and Ms Le Roux's campaign. The difficulty in separating the infractions on 8 and 9 August as distinct conduct is that there was clearly some expenditure on the roses and flowers, but not necessarily on the Instagram post. It is evident that part of what item 3(7)(a) prohibits is clearly the paid promotion of marketing material on social media. There is no evidence that this occurred in this case. However, the Instagram post on 9 August cannot be divorced from the events of the day before, chiefly because it references the events directly.<sup>21</sup> The events being considered as a whole, expenditure was incurred in the promotion of Ms Le Roux's candidacy.

### *Fault*

[50] Above, it has been established that the conduct in question both promoted the candidacy of Ms Le Roux and some expense was incurred in doing so. Therefore, there was a sponsorship in the meaning of item 3(7)(a).<sup>22</sup> Counsel for the Second Respondent contended, however, that she does not control the Instagram account but rather that it is managed by the AfriForum Jeug head office. This is not enough to absolve a candidate.

[51] Item 8 of Part S1.5 of the Student Electoral Act holds:

“Any infringement of these rules will render the perpetrator liable for an investigation by the Electoral Commission and if found guilty, will be disqualified.

(1) A candidate will be held liable for any mass communication that violates this act if such means were to endorse them or to help them with their campaign.

(a) Unless a candidate can prove that they had nothing to do with such violation.”

[52] There are three important features to note regarding the above provision. First, it is peremptory to the extent that should the Commission come to a finding of guilt, it is afforded no discretion as to whether the candidate will be disqualified or not. Second, a candidate can be liable where mass communication endorses them in a manner which violates the Act.<sup>23</sup> Third, a candidate can only escape liability by proving that

---

<sup>21</sup> The post reads: “AfriForum Youth's Maties branch gave a bouquet of flowers to every lady in the Neelsie on Thursday, 8 August, 2024 during lunch in celebration of National Women's Day. They also used the opportunity to remind students to vote for their [SRC] from August 19 to 27.” (Translated from original.)

<sup>22</sup> Part S1.3 of the Student Electoral Act.

<sup>23</sup> It bears repeating that item 8(1) does not bar endorsements *per se*. It must be read in the context of item 8 which refers to endorsements which violate the Act.

they had nothing to do with the violation. The implication of this is that upon a factual violation of the Act being proved, the *onus* shifts onto the implicated candidate to show that, on a balance of probabilities, they had nothing to do with this violation.<sup>24</sup>

[53] On this last point, counsel for the Applicant and Second Respondent sparred on the issue of whether the burden could be discharged by showing the absence intention (*dolus*) only, or whether both the absence of intention and negligence (*culpa*) was needed. Counsel for the Second Respondent argued that placing the heavier burden on the candidate to show both absence of intention and negligence would be unduly severe and have a “chilling effect” on student participation in SRC elections. This cannot be sustained. At the very least, a candidate for student leadership must be held to the standard of a reasonable person in their position. Here, that is the reasonable candidate for the SRC Election. To hold otherwise would be to condone unreasonable conduct which may violate election rules and integrity. It would mean that a candidate could escape liability, even where conduct was grossly unreasonable, only on the fact that they were subjectively unaware of the rule in question. This creates the pernicious incentive for candidates to actively avoid apprising themselves of the relevant rules, to claim want for consciousness of wrongfulness. Especially given the position which candidates in the SRC Election are seeking, this would be totally inappropriate. Beyond this, counsel for the Applicant correctly pointed out that just because a candidate does not intend to contravene the Student Electoral Act, does not mean they “have nothing to do with such violation” as contemplated by item 8.<sup>25</sup> On an ordinary reading, a candidate may indeed, through negligent conduct, associate themselves with a violation.

[54] Here, the Applicant contended that Ms Le Roux had fault, at least, in the form of *dolus eventualis*. Alternatively, it was argued that she was negligent. Since we agree that Ms Le Roux was negligent, it is unnecessary for us to consider *dolus* here as well. While *dolus* is concerned with the law’s disapproval of a person’s state of mind, negligence is based on its disapproval of their conduct, regardless of their actual state of mind. The traditional test for negligence contains three sub-questions. First, would

---

<sup>24</sup> This Court held *A. S. v Electoral Commission (Final judgment)* 17/09/23 at para 16 that the burden of proof of a balance of probabilities is appropriate in respect of disqualifications pursuant to section 127 of the Student Constitution.

<sup>25</sup> Part S1.5 of the Student Electoral Act.

a reasonable person in the position of Ms Le Roux have foreseen that a prohibited consequence would occur? Second, would such a reasonable person have taken steps to prevent the prohibited consequence from occurring? Third, did Ms Le Roux take such steps?

[55] On the first question, it must be noted that the reasonable person in question is not an ordinary student, but a reasonable candidate in the SRC Election. In submitting her signed Nomination Form on 2 August, Ms Le Roux expressly confirmed familiarity with the election regulations, rules and directives of the Commission and undertook to adhere thereto. The common law presumption of *caveat subscriptor* holds that where a person signs a document, they may be bound thereto regardless of whether they have *actually* read its entire contents. The reasonable candidate, before signing the Nomination Form, would have apprised themselves with the election rules, particularly the Student Electoral Act.

[56] The Court's attention was drawn specifically to the fact that item 3(8) of the Student Electoral Act, which prohibits SRC candidates from "any attempt at misusing power or resorting to privileges or influence or using any form of coercion intended to persuade someone to vote for any candidate." In this provision, consideration must be had to the terms "influence" and "privilege". It is clear that the Second Respondent, as chairperson of Afriforum Jeug Maties, had some influence by virtue of her position.

[57] Indeed, it is undisputed that on 12 August, Ms Le Roux attended an information session hosted by the Commission at Nerina Ladies' Residence which was organised for the purpose of further guiding candidates in respect of election related conduct. At this session, the Commission specifically emphasised that the use of influence by virtue of any position in a society, residence or other structure for the purpose of campaigning is strictly prohibited. Section 118(3) of the Student Constitution specifically empowers the Commission to promulgate additional rules to ensure proper conduct during elections. Moreover, in signing the Nomination Form, candidates submitted to adhere not only to rules and regulations, but also *directives* of the Commission and item 3(1) of part S1.3 of the Student Electoral Act holds that candidates must adhere to instructions of the Commission. While it can hardly be said that the Commission promulgated new rules as such at the Nerina information session,

it is clear that greater clarity and interpretation of existing rules were provided by the authority best placed, and constitutionally empowered, to do so.<sup>26</sup>

[58] At the Nerina information session, the Commission gave a number of specific hypothetical scenarios and asked the candidates whether such conduct constituted a violation of the rules or not. It was undisputed that a hypothetical with facts eerily similar to those in the matter at hand was specifically presented and expressly communicated to constitute a violation. It is true that this information session was hosted some days after the flowers were handed out and the post was disseminated on social media. However, to the extent that the Instagram post posted on 9 August constituted a violation of the rules, the infraction did not start and end on 9 August. Rather, as long as the post remained up, there was a continuous contravention of the rules. It is held that a reasonable candidate, after coming to such particular knowledge as to the nature of prohibited conduct after the information session, would at the very least have made attempts to remove the Instagram post. Failing this, the reasonable candidate, if uncertain, would have consulted with the Commission. Indeed, candidates were urged to err on the side of caution.

[59] In this regard, none of the above steps were taken. Ms Le Roux noted that she was not the account manager of the Instagram account. This is not enough. It is undisputed that she not only posed for the photograph, and consented to it being posted, at the very least by tacit ratification, and still took no action to inform the Commission. The Court's attention was drawn to item 15 of Part S2.2 of Schedule 2 of the Student Constitution, which specifically deals with SRC elections. It holds:

“(1) Candidates may campaign in any way that does not violate the law, University rules, this Constitution, SRC regulations, or such rules as may be laid down by the Electoral Commission.

(2) If a candidate or the helpers or supporters of a candidate act in violation of subsection (1), the Electoral Commission may instruct said candidate to remove or destroy election material or to abandon the activities in question, or, where the conduct constitutes a misdemeanour or is seriously detrimental to another candidate(s), declare the candidature of said candidate invalid.” (Emphasis added.)

---

<sup>26</sup> See also S126(1) of the Student Constitution.

[60] Again, this case differs from *Ex parte Electoral Commission* where there was no evidence to show that the candidates there knew anything of the endorsements in question. The same cannot be said of Ms Le Roux. Indeed, she did try to contact the manager of the social media account, but this was only after the complaint had been lodged with the Commission. The fact that counsel for the Second Respondent maintained to the very end that there was no infraction at all, militates against the notion that Ms Le Roux made every effort to rectify the infraction after becoming conscious of its wrongfulness because consciousness of wrongfulness was never conceded.

[61] Moreover, the rules of statutory interpretation, endorsed in *Natal Joint Municipal Pension Fund v Endumeni* hold that when interpreting a provision, one must from the outset have consideration for the context of the legislation.<sup>27</sup> This includes the internal context of reading the Act as a whole. The various provisions cannot be read in isolation, and the holistic exercise of reading the provisions together can more clearly draw out the spirit behind the law. It is clear from the general scheme of the Student Electoral Act that the Commission is responsible for managing the marketing and distribution of election materials. For example, item 2(1) of part S1.2 which holds that all students and candidates have the right to “put up the posters designed and provided by the relevant election authority” must be read with item 4 of part S1.4 which holds that “the Electoral Commission or the relevant election authority is responsible for the photography, design, and distribution of all marketing posters.”<sup>28</sup> Candidates must comply not only with the rules as enunciated in the Act, but any instruction and just decision of the Commission.<sup>29</sup> Further, while items 2(9), 6 and 7 of the Student Electoral Act all clearly allow candidates to make use of social media platforms, this is still subject to “stringent adherence” to the other rules.<sup>30</sup>

[62] We mention this not to imply that a reasonable candidate would have interpreted the rules with the same scrutiny as a domestic court, but rather to demonstrate that items 3(7)(a) and 3(8) cannot, and would not, be understood in isolation. There is a clear impression that the general scheme of the Student Electoral Act significantly regulates the manner in which elections are conducted and marketed,

---

<sup>27</sup> [2012] ZASCA 13 para 18.

<sup>28</sup> Emphasis added. See also item 2(3) of part S1.2.

<sup>29</sup> Item 3(1) of part S1.3 of the Electoral Act.

<sup>30</sup> Item 6 of part S1.4.

also being subject to the directions of the Commission. This would be apparent in the mind of the reasonable candidate. This impression would have been clear not only after the Nerina information session on 12 August, but after apprising oneself with the relevant rules, as Ms Le Roux purported to do on 2 August when she submitted her Nomination Form. With such impression in mind, the reasonable candidate would take steps to guard against campaigning in a prohibited manner. Such steps would have included consulting with the Commission if there was any doubt as to the lawfulness of any conduct. This became especially true after the Nerina information session expressly warned candidates against using positions of influence in other student bodies to promote their candidacy.

*Ms Le Roux's disqualification*

[63] Therefore, Ms Le Roux's conduct fell short of that of the reasonable candidate. Thus, in terms of item 8 of part S1.5, the burden to prove that she had nothing to do with the violation of the rule was not discharged. Considering again the peremptory language of the provision, the conclusion is that she should have been disqualified. Therefore, in terms of section 127(4)(d)(2), the Court orders that Ms Le Roux's candidature and election to the SRC be invalidated. In terms of section 127(4) read with section 85(4), the candidate who received the next highest vote tally is retrospectively instated as the ninth member of the SRC, subject to their assent. Should this candidate decline, the candidate who follows her will be instated, and so forth.

[64] On this point, the Student Court is enjoined to apply the Student Constitution "impartially, and without fear, favour, or prejudice."<sup>31</sup> Although it is difficult to feel no sympathy for Ms Le Roux, it is clear that she contravened the Student Electoral Act in a manner which demands disqualification. Additionally, there were indeed rumours of litigation in domestic courts which shrouded this matter since the first complaint was lodged. It would have been easy for this Court, to simply remit the matter to the Commission to confirm its finding or refer it to an internal vote of the SRC so as to shirk what the Student Constitution demands of it. However, the Court will not allow the threat of looming litigation to hang as a *damocles* over its head to sway it in one way or another. Moreover, although the Court is certainly not without sympathy for Ms Le Roux, election rules exist for a reason, and the Court must apply them without

---

<sup>31</sup> S75(1)(b) of the Student Constitution.

partiality, fear, favour, or prejudice. In the words of the former Deputy Chief Justice of the Constitutional Court, Dikgang Moseneke:

“The role of those of us in the judiciary is clear; the same goes for politicians and those in government. One cannot impose their own preferences on the judiciary – the Constitution constrains our agency for the greater good of the people.”

[65] It must be made clear that Ms Le Roux’s disqualification is due to contravention of the Student Electoral Act, not on the basis that it rendered the election unfree or unfair. The question is not whether her conduct caused injury, but whether it contravened the rules. This being said, these rules exist in order to give effect to free and fair elections. It is certainly possible that the acts in question indeed gave Ms Le Roux an unfair advantage. The fact that no other candidates engaged in similar conduct, aside from serving as additional evidence that her conduct was unreasonable, rendered the playing field uneven. This is especially acute when one considers the fact that nine candidates were elected to the SRC, of which, Ms Le Roux received the ninth highest number of votes. In fact, her tally surpassed that of the next runner up by a mere fourteen votes.<sup>32</sup> That is to say that her election was incredibly close.

#### *Constitutionality of the rule*

[66] Counsel for the Second Respondent, aside from asserting that no rule prohibited sponsorships, held that to the extent that a such a rule existed, it was an infringement of the right to freedom of association as enshrined both in section 12 of the Bill of Student Rights and section 18 of the Constitution of the Republic of South Africa, 1996 (“Constitution”).

[67] First, it must be noted that there is no rule which strictly limits freedom of association as such. There is no general rule which prohibits members of societies, residences or other committees from applying as candidates for the SRC. There is no suggestion that upon running for the SRC that one must resign immediately from all other positions. Ms Le Roux was perfectly entitled to remain a member of AfriForum Jeug, or any other student body for that matter, and engage in their ordinary activities. The issue arose where third party expense was incurred for the purpose of advancing

---

<sup>32</sup> Ms Le Roux attained 1 071 votes. The candidate who received the tenth highest number received 1057 votes.

her election campaign. Thus, it is clear that SRC candidates remain free to associate according to their will and consciences.

[68] To the extent that there is a limitation on the right to freedom of association, it is only to the extent that third parties may not incur expenses in the promotion of a candidate's campaign. This rule is clear.<sup>33</sup> No right in the Bill of Student Rights, nor the Bill of Rights in the Constitution is absolute. The question is whether such a limitation is permissible.

[69] We deal first with the right as enshrined in the Bill of Student Rights. Section 15 of the Student Constitution holds that –

“(1) The rights in this chapter may only be limited in terms of legal rules of general application, which, for the purposes of this section, are deemed to include University regulations, rules, and policies.

(2) Limitations must be designed to achieve objectives that are consistent with the values of an open and democratic community based on human dignity, equality, and freedom.

(3) Limitations may not limit the rights in this chapter more than necessary, and the impact they have on the rights of students must be proportionate to their objectives.”

[70] The Student Electoral Act is not only a legal rule of general application for the purpose of section 15(1) but is also found in Schedule 1 of the Student Constitution itself. The limitation is aimed at the objective of ensuring free and fair elections, in at least two ways. First, it seeks to set a level playing field for candidates to contend on the basis of merit and not access to monetary or other resources. This is closely aligned with item 3(8) of part S1.3 of the Student Electoral Act which provides an injunction for students and candidates alike to refrain from “resorting to privilege or influence ... to persuade someone to vote for any candidate.” The spirit behind these provisions emanate from the values of equality and democracy, in line with section 15(2) of the Student Constitution. Second, it seeks to minimise the interference of external organisations on internal student democracy through the leveraging of their financial weight. This is also a worthy goal in the spirit of student-body democracy.

[71] AfriForum Jeug, as a society, is reminded that the very same rules which apply in respect of it in the instant matter, apply in respect of every other student body and

---

<sup>33</sup> Item 3(7)(a) of item S1.3 of the Student Electoral Act.



external organisation equally. This is worthy of mention because the point was raised by counsel for the Applicant that Ms Februarie bears no personal animosity toward Ms Le Roux. Rather, she approached the Commission, and later the Court, on a matter of principle. This is so, because if all other candidates abided by the directives of the Commission, Ms Le Roux, in not doing so, created an unlevel playing field. Ms Februarie notes that she is a member of the South African Students Congress (“SASCO”) and could very easily have conducted similar activities in the promotion of her own election campaign.

[72] Now, as far as the value of freedom is concerned, there is no limitation on a candidate’s freedom to associate with any student body. However, there is a limitation on the freedom to instrumentalise the financial wherewithal of the society for the advancement of one’s SRC election campaign. In the student context, such a limitation may well enhance the broader freedom of election process as a whole. There is something to be said on the fact that an educational institution is not the appropriate locus for external proxy wars between sectional interests with deep pockets. Indeed, the inherent risk associated with the introduction of financial interests into the democratic process has even been noted in respect of the national context. Mogoeng CJ, writing for majority in *My Vote Counts NPC v Minister of Justice and Correctional Services*, writes: “[C]orruption that flows from secret private funding could otherwise stealthily creep into our political and governance space, toxify it and fossilise itself to our detriment.”<sup>34</sup>

[73] Indeed, there is no prohibition on private funding of political campaigns in the national context. However, the student context differs markedly. Importantly, the right to participation in SRC elections in terms of section 13 of the Student Constitution is not as broad as its counterpart in section 19 of the Constitution. While section 19(1)(c) expressly enshrines the right for both candidates and non-candidates to campaign, there is no such analogue in section 13 of the Student Constitution. This is not to say that the absence of any express enshrinement implies the absence of such a right in the student context. Certainly not. However, such a right, by not being enshrined in section 13 of the Student Constitution, is not so strong as to alone justify additional monetary funds and sponsorships to be used in campaigning. We are thus of the view

---

<sup>34</sup> 2018 5 SA 380 (CC) para 4.

that item 3(7)(a) of S1.3 of the Student Electoral Act does not limit the right to freedom of association more than what is necessary.

[74] Much of the same considerations would apply in respect of the limitation of section 19 of the Constitution in terms of section 36(1). However, the test for limitation of rights differs from that found in the Student Constitution, so some additional remarks are appropriate. The first important difference is that the Student Constitution does not constitute a law of general application as contemplated by section 36(1) of the Constitution.<sup>35</sup> Rather, the law of general application here is the Stellenbosch University Statute (“Institutional Statute”).<sup>36</sup>

[75] The duty for every institution of higher education to establish an SRC comes directly from the Act 101 of 1997 (“Higher Education Act”).<sup>37</sup> Importantly for the present matter, in terms of section 35, the manner of election of the SRC is determined by the institutional statute and institutional rules. In terms of section 33(1) of the Act, the institutional statute comes into operation upon approval of the Minister of Higher Education and after being published in the Government Gazette. The Institutional Statute is thus a form of delegated legislation in respect of the Higher Education Act, which is the primary legislation. Delegated legislation qualifies as laws of general application.

[76] In terms of section 26(1) of the Institutional Statute, the SRC functions in terms of the rules of the Student Constitution. Of more particularity, section 26(1) holds that the Student Constitution prescribes both the “manner of election” and “procedure of election” of office bearers of the SRC. On section 36(1), constitutional scholars Rautenbach and Venter, write:

“The requirement that a right may only be limited “in terms of law of general application” means that any limitation must be authorised by law. In the general limitation clause of the Interim Constitution the expression used was “by” law of general application. The constitution-makers changed it to “in terms of”, and to the extent that it can be argued that they wanted to change something, “in terms of” cannot be interpreted to mean “by”. In section 36(1) of the Constitution, “in terms of” means “as authorised in.””<sup>38</sup>

---

<sup>35</sup> *Taylor v Kurstag* 2005 1 SA 362 (W) para 45.

<sup>36</sup> GN R1062 in GG 42636 of 16-09-2019.

<sup>37</sup> S26(2)(e) of the Higher Education Act.

<sup>38</sup> IM Rautenbach & R Venter *Rautenbach-Malherbe Constitutional Law* 7 ed (2018) 311.

[77] The balancing exercise at hand concerns the limitation of the right to freedom of association by the procedures prescribed by the Student Constitution. With regard to the above, it is clear that while the SRC Election is regulated *by* the Student Constitution, it is regulated *in terms of* the Institutional Statute. The Institutional Statute is therefore the law of general application.

[78] A court will have consideration for the nature of the right, the nature and purpose of the limitation, the extent of the limitation, the relation between the limitation and its purpose, and whether less restrictive means are capable of achieving the purpose.<sup>39</sup> The right which is subject to limitation here is the right to freedom of association. Freedom of association is a fundamental right. Its importance of this right cannot be doubted. In *New Nation Movement v President of the Republic of South Africa*, the Constitutional Court quoting De Tocqueville held that the right of association “appears to [be] almost as inalienable in its nature as the right of personal liberty.”<sup>40</sup> It is notable that the section 19 rights to political participation in election activities and campaigning are not of application here because they pertain specifically to “elections for any legislative body established in terms of the Constitution [of the Republic of South Africa]”.<sup>41</sup>

[79] The purpose of the limitation, and the relation between the limitation and its purpose have already been discussed above in respect of the Bill of Student Rights and will apply similarly here. The extent of the limitation is also not particularly severe. As noted above, there is no rule which bars SRC candidates from associating with student bodies or interest groups, nor *vice versa*. What exists is a limitation on the freedom to associate in the very particular form of lending monetary support to promoting a candidate in an SRC election. To the extent that this limits the right of freedom of association, it is at its *penumbra* and not at its core. What is more, the limitation is temporary in nature and only applicable to the election. Given that the limitation of the right is so marginal, when considering that the purpose of the limitation is ostensibly concerned with ensuring equality and fairness in the context of a

---

<sup>39</sup> S36(1) of the Constitution.

<sup>40</sup> 2020 6 SA 257 (CC) para 23.

<sup>41</sup> S19(2) and S19(3) of the Constitution.

university SRC election, the limitation is reasonable and proportional to a legitimate purpose.

### *Conclusion*

[80] In summary, on the Applicant's first contention, the Commission did not fail in its constitutional obligations by not rendering a binding disqualification within 24 hours. As concerns the substantive allegation against Ms Le Roux, when due regard is given to all the facts, with consideration to the information available to Ms Le Roux and the entire legislative scheme of the Student Electoral Act, it is clear that she contravened item 3(7)(a) of part S1.3 when read with item 3(8) to the extent that her campaign benefited from the sponsorship of a third-party. The infractions, though not referencing her by name, were sufficiently closely linked to not only her identity, but her SRC Election campaign. She failed to discharge the onus to show that she had nothing to do with the infraction in terms of item 8(1)(a) of part S1.5 of Student Electoral Act. Her conduct fell short of that of a reasonable candidate.

[81] Thus, Ms Le Roux's disqualification is to be retroactively effected and the vacant position on the SRC is to be filled by the next runner-up, subject to their assent. Although the Court is not without sympathy for Ms Le Roux, the fact remains that rules were contravened and thought must also be had to the other candidates. These candidates were disadvantaged not only through the potential benefit Ms Le Roux's campaign received, but also through the fact that they could not engage in the same conduct that she did by abiding by the rules and directions of the Commission.

### *Order*

[82] The Court hereby makes the following order which replaces the Interim Order which was handed down on 3 October 2024:

- [1] This Court has jurisdiction;
- [2] The matter is urgent;
- [3] The Electoral Commission did not fail in its constitutional duties;
- [4] The Students' Imbizo and Student Assembly are directed to consider whether section 127 of the Student Constitution is in need of amendment;
- [5] The matter is not *res judicata*;
- [6] Ms Le Roux contravened item 3(7)(a) read with item 3(8) of part S1.3 of the Student Electoral Act;

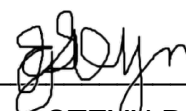
- [7] Ms Le Roux is retrospectively disqualified as an SRC candidate;
- [8] The candidate who attained the next-highest number of votes is hereby instated in the position left vacant on the SRC, subject to their assent;
- [9] Item 3(7)(a) is constitutionally valid.



BESTER J



BRYANT CJ



STEYN DCJ



MUDZINGIRANWA J



SWANEPOEL J

Appearances:

**For the Applicant:**

A Maartens and D Duraan,  
Instructed by Soil Student Firm

**For the First Respondent:**

S Manyifolo

**For the Second Respondent:**

C Folwer and C Bruce,  
Instructed by Wine Red Student Firm