**IN THE STUDENT COURT OF STELLENBOSCH**

**STELLENBOSCH UNIVERSITY**

In the matter:

**BERNARD PIETERS** First Applicant

**ASHWIN MALOY** Second Applicant

**THEA BESTER**  Third Applicant

**FRANCOIS HENNING** Fourth Applicant

**JACOBUS MAASS** Fifth Applicant

**NETANJE VAN NIEKERK** Sixth Applicant

**SELMIE CROUS** Seventh Applicant

And

**THE ELECTION CONVENOR 2016/2017 SRC ELECTIONS**

**CALUMET LINKS**  Respondent

**FOUNDING AFFIDAVIT**

I the undersigned

**BERNARDUS LAMBERTUS PIETERS**

do hereby make oath and state as follows:

1. I am the First Appellant in this matter, an adult full time male student enrolled in my final year MSc Geology at the Faculty of Nature Sciences of the Stellenbosch University ("the SU").

1. The facts contained herein are, unless otherwise indicated, within my personal knowledge and are to the best of my knowledge and belief true and correct.
2. I am duly authorised to depose to this founding affidavit and to prosecute this application for review of the Respondent’s decision to disqualify the applicants, as made in his report (attached to the Notice of Motion marked “**A**” and herein after referred to as “the report”) in terms of the Student Appeal Court judgment, as handed down on 9 September 2016 and ancillary relief.

*IN LIMINE*

1. I draw this court’s attention to the Convenor’s earlier, report dated 5 August 2016 regarding essentially the same complaints wherein the Convenor at the outset expressed his concern at this Court’s premature and *ultra vires* interference with the functions of the Convenor.
2. I attach a copy of that report, marked PBCC 1 wherein the Convenor *inter alia*  states as follows in relation to the charges:

5.1  *Due to the Applicants submitting their complaint to the Student Court before the Convenor had sight of the complaint, the Convenor was deprived of the opportunity to investigate the matter and to hear both sides (without his judgement [possibly] being influenced by an interim court order).*

5.2 No finding made by the EC at this stage will be deemed as objective in light of the court having already been convinced “on a balance of probabilities” and without the Convenor being adequately informed, as he was not provided with an opportunity to hear the other side (before and/or during the Student Court hearing). The EC is not in a position to make any recommendation as envisaged in section 22 (3) of Schedule 1 of the SC.

1. The Convenor then makes the following finding:

*“In the view of the EC the only way to remedy this (contaminated) process is to start the election process (referred to in the interim order handed down on 1 August 2016) afresh”.*

1. This finding is materially and substantially different from the decision to disqualify the applicants. It is inconsistent with the reasons advanced for the conclusion reached in the 5 August report that the “contaminated” process could be cured by disqualifying the applicants, instead of starting the election afresh. These conclusions – that of 5 August concerning the status of the election and the remedial steps considered adequate by the convenor and the decision to now disqualify the applicants are irreconcilable and irrational .

THE REPORT

1. Applicants contest the findings and conclusions made by the Convenor in paragraph 8.6 of his report. We deny that we exceeded the pooled amount. The convenor, in reaching this conclusion relies on no factual proof of budgetary overspending, but apparently subjectively satisfies himself with the speculation that “it appears highly likely” that the applicants collectively exceeded a budgetary limit.
2. I submit that the convenor’s reasoning in this paragraph fails to stand up to scrutiny as it does not follow the same logic he employs in the preceding paragraph wherein he contends that the Applicants’ denial of the R650 budget breach is, unsubstantiated.. Put differently the convenor’s contention that applicants did breach the budget is equally unsubstantiated and it is accordingly submitted that the convenor erred in accepting as fact an unsubstantiated allegation, whilst rejecting the opposite thereof for being unsubstantiated.
3. Applicants contest the findings and conclusions made by the Convenor in paragraph 12.4 of his report viz the use of posters which were not approved.
4. The convenor makes a fundamental error by stating that applicants did not offer any explanation to this complaint. We point out that in applicant’s answer to the further complaints (attached hereto marked “**BPR-5**”), , applicants specifically address the issue of alleged substantial advantage obtained from publishing and distributing posters to the alleged severe disadvantage of the other candidates.
5. In paragraph 34 and 36 of annexure BPR-5, Applicants answer this supposition as follows:

“This is the factual situation of which all students were aware of and provides the context for interpretation by which students would view AfriForum’s conduct. (As that of the Respondents, in as much as these events involved them personally.)

It therefor is illogical (and patently disingenuous) to maintain that the candidate’s achieved any advantage (over the non-suspended candidates) or could influence the student bodies opinion, whatever it may have been, about the integrity of the elections. There were no elections at that time and everyone knew it. The Respondents were suspended, and everyone was aware thereof. That this has been overturned does not alter the reality thereof, nor the perception thereof at the time.”

1. The applicants therefor have answered this issue. The mere assertion that there was a marketing impact that allegedly disadvantaged the other candidates, poignantly overlooks the fact that no election has started and that applicants were suspended until 9 September. The Convenor failed to take these relevant facts into consideration.
2. The other candidates were not required to prove their expenses to date, yet the applicants are disqualified for not doing so despite advancing cogent reasons for their inability to do so now.
3. To conclude that the applicants thereby show disregard for the authority of the EC, is unfair and not commensurate with the facts, at all. Throughout the applicants have demonstrated their respect for the EC and Mr. Links, in particular, in recognition of his office. This is borne out by the correspondence exchanged between the applicants and Mr Links.
4. If our candidates have to account for our budget before the election, or be disqualified, the same should apply to the other candidates. What if someone else too may be found to have transgressed some arbitrary value judgement on marketing impact made by Mr Links? Should they then also be disqualified?
5. The facts are that our posters were up in circumstances where it was known that we were disqualified at the time and the election was postponed. What possible benefit could be derived therefrom?

***Posters****.*

1. None of the other candidates asked for or received written permission or approval for their posters from the convenor. It was not required nor asked that candidates present them for written approval.The convenor only issued a template for everyone to use and adopt for themselves mere days before voting was scheduled to commence18.3 The only difference to ours is the back ground and a different photo.
2. The applicants were suspended for over a month, unlawfully, and were held to ridicule by having their photos published in the Matie with the word “Suspended” superimposed over their faces. This does not even allow for the negative publicity on social media and on campus generated by the suspension.
3. These are factors completely ignored by the convenor in reaching his conclusion.
4. What public interest would it serve to disqualify us now?
5. A value judgement on significant advantage to the injury to others, made by the convenor with no reference to any data or attempt thereto in order to justify this conclusion, employing different rules between candidates as basis therefor is why we are disqualified. Nothing tangible or real is evinced to support this conclusion, merely conjecture.
6. It hinges on a unqualified value judgment with no substantiation.
7. In the circumstances we contest the conclusion made therein, that we, somehow, gained an advantage thereby over the other candidates.
8. Applicants submit that conclusion, as above in paragraph 12.4 of the report is irrational and the process followed to reach it flawed and that it should be set aside.
9. The applicants ask this court to suspend the effect of the disqualification. We submit that it in the interest of justice and fairness to all parties concerned, voting for the elections commence immediately, as it would establish some gauge as to the veracity of the findings that the effect of the posters was an unfair advantage seriously detrimental to the other candidates, rather than the unqualified assertions on the subject contained in the report. There is no objectivity thereto at all.
10. A vote now could do that, if we were allowed to be judged by the voting students of this campus. Should this “unfair advantage” best not be tested at the polls, testing the electorate’s opinion as the measure thereof?
11. It is a far less arbitrary value judgment than one person’s subjective opinion.
12. The applicants disagree with the findings and conjecture contained in paragraph 12.5 of the report and require that the Court take cognisance thereof that although the report itself states the budgetary control assessment of the candidates would occur after the elections were held, the applicants are alone subject to this pre-election assessment. These are not the same terms and for allegedly transgressing them, the applicants are disqualified to partake in what is essentially a separate and new election.
13. In terms of section 63 of the Student Constitution this court can
    1. Grant an interim interdict to prevent material injustice from resulting
    2. And grant a declaratory order;
    3. Set aside any decision that is inconsistent with the constitution

(Section 63 (a), (b), (c) and 64 (c) (ii) read with (d))

That the order made by this Court can suspend for a fixed time or on any condition as to allow the person or body in question to rectify the fault… that is fair and equitable.”

1. Given the considerable negativity associated with the delay of the election process so far, is it not fair and equitable for everyone who was running to just recommence their campaigns and this election be held with all participating? This court can certainly feel far more secure on taking into account, on a value question, the *vox popoli* of the student electorate than an unqualified assertion on the issue.
2. It would be far more equitable and objective a unit of measure for substantial and severe advantages or not derived from posters, that have been removed over a month ago, than an opinion without any attempt to quantify the value concerned, despite the severe consequences of making such a determination has to the applicants.

**Assumptions made regarding non production of receipts**

1. The Convenor had not once indicated or conveyed to the applicants, that he considered their answers regarding the campaign receipts to be, in his mind, to be giving “the impression of non-compliance …to hide critical information” to paraphrase paragraph 8.4 thereof or that this perceived conspiracy is a disqualifying offence in and of itself.
2. He never disclosed this thought to any of the applicants, an adverse consideration of decisive importance, despite regular correspondence between the applicants and himself on many questions arising from his investigation. (See the attached line of email correspondence between the convenor and applicants regarding the complaints and our supplied answers thereto as exchanged between 12/09/2016 and 15/09/2016 attached hereto as Annexure “**BPR-1**” to “**BPR-5**”)
3. As is evinced by the exchange between us on 14 September (annexures BPR-3 and BPR-4) I specifically asked the convenor to revert to me should he not be satisfied with our answer and his reply later that day was “Please not that you have answered my questions regarding the first two documents and I thank you”.
4. Not a single mention was made that he considered our answer to be a disrespectful gesture to his office or that he intends to invent a disqualification ground just to address it as he does in paragraph 12.5.
5. This itself, reasonably considered appears to be punishment and not an administrative action taken in public interest. (see JSE Witwatersrand Nigel Ltd 1988 (3) SA 132 (A) for the view that such exercise of discretionary power was not as contemplated by the drafter and therefor improper, to be set aside on review)
6. For these reasons we ask for the setting aside, or temporary suspension of the Convenor’s decision in paragraph 12.6 of the report.
7. In the accompanying notice of motion we request that the Court declares that voting continue at the earliest practical date, that the applicant’s disqualification to the SRC election process of 2016 be suspended pending the review to set it aside.
8. We submit that we have made a proper case for the setting aside of the convenor’s decision to disqualify us and and humbly pray for the relief sought in the accompanying Notice of Motion.

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**BERNARDUS LAMBERTUS PIETERS**

*I certify that the abovementioned person appeared before me and that he acknowledged to me that he knows and understands the contents of the aforegoing Affidavit which was signed and attested to at the undermentioned address on this day of 2016 in accordance with the provisions of Regulation R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977 and further amended by Regulation 1428 dated 11 July 1980.*

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**COMMISSIONER OF OATHS**