

**IN THE STUDENT COURT OF STELLENBOSCH UNIVERSITY
(HELD IN STELLENBOSCH)
26 SEPTEMBER 2017**

In the matter between:

BERNARD PIETERS

APPLICANT

And

STELLENBOSCH UNIVERSITY

FIRST RESPONDENT

STUDENT REPRESENTATIVE COUNCIL

STELLENBOSCH UNIVERSITY

SECOND RESPONDENT

STUDENT PARLIAMENT

SRC ELECTION CONVENORS

THIRD RESPONDENT

JUDGEMENT HANDED DOWN BY THE STUDENT COURT

[Rutgers, J]:

INTRODUCTORY REMARKS

[1] It is important to note that Stellenbosch University's Student Court is a democratic structure, comprising of students that have been elected in terms of section 56 of the Stellenbosch University Student Constitution 2014 (hereafter referred to as the "Student Constitution 2014").

[2] The Student Constitution, in section 55, states that the Student Court functions as an administrative tribunal, which is independent and subject only to the Student Constitution. Section 55 further provides that the Student Court must apply the Student Constitution impartially, and without fear, favour or prejudice.

- [3] Lastly, this court determines its own procedure, giving due consideration to the rules of natural justice and the need for the court to be accessible. These functions are to be performed objectively, transparently and in the utmost good faith.

FACTUAL BACKGROUND

- [4] The applicant has approached this Court alleging, *inter alia*, that the Student Constitution 2014 version 2.4 is invalid and that, as a result, the current Student Representative Council (“SRC”) election process is null and void, as it was conducted in accordance with the provisions of the aforementioned Constitution.

- [5] According to the applicant, in order for the Student Constitution to be valid, it has to be served before the University Council. The basis of this contention is that the Student Constitution 2011 version 2.2 (“Student Constitution 2011”) provides as follows:

“This Constitution was adopted by the Student Representative Council on xx xxxx 2011, adopted by the students in a referendum on xx xxxx 2011 and was approved by the University Council on xx xxxx 2011. The Afrikaans version of this document will take precedence in case of any interpretation disputes”

- [6] In support of his interpretation, the applicant alleges that the previous Registrar of Stellenbosch University indicated that the Council had to approve the Student Constitution 2014, that the aforementioned Constitution had not yet been served before the Council for approval and that, as result, it had no official status. Furthermore, the applicant has asked that all financial decisions taken by, and the funding of, the SRC from 2014 be examined and audited by an independent auditing company.

- [7] The various respondents, however, argue that the Student Constitution 2014 is the valid Constitution and, therefore, the results of the current SRC election, as well as previous SRC elections conducted in accordance with the provisions of the aforementioned Constitution, are valid and binding. The basis of their argument is that nowhere in either version of the Constitution is

it stated that approval by the University Council is a validity requirement for the commencement, repeal or amendment of the Student Constitution.

[8] Before this court engages with the validity of the Student Constitution 2014, there are certain points *in limine* which have been raised, and which this court must address.

URGENCY

[9] Section 6(4) of the Stellenbosch University Student Court rules of procedure (“Rules of Procedure”) provide as follows:

“In an urgent application, the Court may dispense with the forms and service provided for in these Rules and may dispose of the matter at such a time and place and in such manner, which shall as far as practically possible, be in accordance with the procedure set out in these Rules”

[10] The rules of procedure allow the Court to dispense with the generally accepted, and followed, procedure should it not practically be possible to act in accordance with such procedure.

[11] The applicant alleges that because the SRC election process is currently underway (at the time that the application was instituted), and that the election of the Student Parliament Speaker has recently taken place, that the matter at hand, namely the validity of the Student Constitution 2014, is an urgent one. It is the opinion of this court that, although the SRC elections, which were being conducted according to the Student Constitution 2014, were underway at the time of this application, the urgency of the applicant’s case was self-created.

[12] The evidence that the applicant provided, i.e. the Notes of the meeting of the University Council, the term report of the Renita van Zyl, and the email from the Registrar of the University, were all dated 28 November 2011, June 2014, and 19 February 2016 respectively. The applicant has waited, with evidence in hand, for the election to proceed. The applicant was therefore in a position to bring this application at an earlier date.

LOCUS STANDI

[13] The Student Constitution 2014 provides, in section 64, that all students and student bodies, and only students and student bodies, can bring cases before this court. Pagel A correctly held, in *Walker v Jooste and Others* that “While the Student Constitution only refers to bringing an application, it must be understood that those who cannot bring cases, cannot have cases brought against them”.¹

[14] In his application, the applicant cited the Senior Director of Student Affairs and Chairperson of the Stellenbosch University Council are not students or members of a student body and as a result, cannot be respondents in this matter.

[15] The applicant also cited Summer van Hagt as a respondent solely “for not having furnished, despite repeated requests, any proof of the legitimacy of this student constitution”. This averment does not set out a case against the cited party. Furthermore, the order sought has no bearing on the rights or interests of the party. Therefore, she is also removed from the matter.

[16] Inge Odendaal was also cited as a respondent in the matter “for her role in establishing an unconstitutional student parliament”. If it is assumed that Student Parliament was established unconstitutionally, it would still not be clear why she would be a party to *this* matter. As above, no case has been made out against her, nor is the order sought against her. She is also removed from the matter.

JURISDICTION

[17] Section 62 of the Student Constitution 2014 (Section 60 of the Student Constitution 2011) sets out the jurisdiction of the Student Court. The aforementioned sections state the following:

“The Student Court has the power to –

¹ *Walker v Jooste* para 12.

- (a) give an interpretation, or to confirm the interpretation of a party before the Court, regarding –
 - (i) this Constitution; or
 - (ii) any empowering provision in terms of which a student body or a member of student body exercises power;
- (b) decide on the constitutionality of any action or omission of a student body or member thereof;
- (c) review any decision of a student body or a member thereof whereby the rights or legitimate expectations of a student or group of students are materially and adversely affected;
- (d) make a final decision regarding any matter where the parties consent to the jurisdiction of the Court; and
- (e) decide on all other matters which this Constitution places under the jurisdiction of the Student Court.”

[18] Section 62 of the Student Constitution 2014 gives this court jurisdiction over student bodies as well as members of those student bodies. A student body is defined, in the Student Constitution 2014, as “an organized group of students formally associated with the university”.² The fourth respondent is an employee of Stellenbosch University, while the fifth respondent is chairperson of Stellenbosch University’s Council. Neither the fourth or fifth respondent is a student, student body, or member of a student body, and this court therefore does not have jurisdiction to grant any order against the aforementioned respondents.

APPLICATION OF THE LAW TO THE FACTS

[19] The applicant’s main contention is that the Student Constitution 2014, which the SRC, this court, as well as various student governance structures recognize as valid, is invalid, and that the Student Constitution 2011 is in fact the valid Student Constitution of Stellenbosch University. According to the applicant, in order for the Student Constitution to be valid, it must be approved by the Stellenbosch University Council.

² Section 1.

[20] The Student Constitution 2011, on the very first page, states that the Constitution was approved by the University Council in 2011. Reference to such approval by the University Council is also found on the Student Constitution of 2014. There is, however, no provision in the 2011 or 2014 version of the Student Constitution, or the Statute of Stellenbosch University, which states that approval by the University's Council is required before the Student Constitution is deemed valid.

[21] Therefore, in the absence of any provision stating that approval by the University Council is a direct requirement; it is the opinion of this court that the University Council's approval of the Student Constitution 2011 can only be seen as an act of good faith. The Council's approval of the aforementioned Constitution merely shows that they were in agreement with the provisions of the Student Constitution, and not that such approval was in fact a validity requirement.

[22] Thus, in order for the Constitution to be amended, the amendment procedures set out in the 2011 Student Constitution would have had to be followed. The amendment process is set out in section 96 and 98 of the 2011 Student Constitution, which provides that in order for an amendment to be valid it must be accepted by ten (10) members of the SRC and by students in a referendum. The aforementioned provisions, as well as the other provisions of the Student Constitution 2011, do not require the University Council to approve, or consent to, such amendments.

[23] The amendments were proposed by the SRC and were accepted by students, 1141 votes to 240, in a referendum. The amendment process set out in 2011 Student Constitution was followed and the amendments set out in the 2014 version of the Student Constitution are therefore valid.

[24] Furthermore, even if approval by the University Council was a requirement for validity, which it is not, then, as Page 1 highlighted in his minority Judgement in *Mlangeni v SRC Executive Committee and Others*, "...Council approved the amendment process outlined in the 2011 version. The question

simply becomes whether that process – which was endorsed by Council – was complied with”.³

[25] The Student Constitution 2014 is thus the valid Constitution and, therefore, the results of the SRC election that recently took place are valid and enforceable. In addition, previously held SRC elections that were conducted according to the provisions of the 2014 Student Constitution are also valid. There is thus no need for a new election to be conducted.

REMEDY SOUGHT

[26] The Court now turn its attention to the applicant’s request that all financial decisions by, as well as the University’s funding of, the SRC, from 2014, be examined and audited by an independent auditing company. The applicant has not provided any substantial or compelling evidence to suggest that there has been a misappropriation or misuse of funds, or any financial wrongdoing by the SRC. There is no basis for the examination of the SRC’s financial decisions, by an independent auditing company, and the request is thus denied.

ORDER

[27] The Court orders as follows:

[28.1] Approval by the University Council is not required for the Student Constitution to be valid.

[28.2] The Student Constitution 2014 version 2.4 is the valid and enforceable Student Constitution of Stellenbosch University.

[28.3] The results of SRC elections that were recently held, for 2017/2018 term, are valid and enforceable.

[28.4] The applicant’s request to have the financial decisions of the SRC examined, and audited, is denied.

[Concurring: Naidu, S; Van Hagt, S; Macfarlane & Pagel, A]

³ *Mlangeni v SRC Executive Committee* para 19.