

REPORT TO IN TERMS OF APPEAL COURT JUDGEMENT HANDED DOWN ON 9 SEPTEMBER 2016.

1. The Election Convenor (“**EC**”) appointed to execute the Student Representative Council (“**SRC**”) election for 2016 hereby submits the report mandated by student appeals court in paragraph 44 (4) of the appeal judgement handed down on 9 September 2016.
2. As an introductory remark the EC would like to acknowledge that he did not share all of the complaints with the Afriforum affiliated candidates sent to him by the complainants at first, due to an administrative mistake. In an effort to rectify this mistake the information mistakenly not sent to the candidates mentioned above was in fact shared with them. The EC in the interest of fairness also requested an extension on the deadline of the submission of the abovementioned report from the Student Appeal Court so that the candidates in question had sufficient time to respond to the additional complaint information.
3. The EC denies any claims that this demonstrates prejudice since the very acknowledgement of this mistake and subsequent corrective measures shows the non-prejudicial spirit of the EC.
4. The Afriforum candidates also claim that the complainants did not have any rights to lay this complaint. After perusal of the Student Constitution the EC S4 paragraph 26 [1] of does not specify that only SRC candidates can lay campaign related complaints. Moreover, the complainants submitted the complaints to the EC at 13:41 PM on Monday 12 September 2016, well ahead of time.
5. If any party would like to view the evidence considered in this investigation, please do not hesitate to ask.
6. **Complaint:** That the Afriform candidates (Bernard Pieters, Netanje van Niekerk, Ashwin Maloy, Franscois Henning, Selmie Crous, Thea Bester en Jacobus Maass) referred to in the judgement as Respondents 1 to 7 contravened the following rule:

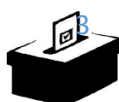
“The Election Committee and prospective candidates (including the SRC Election Convenors) are responsible for the photography, design and distribution of all marketing posters. The candidate will be allowed to choose one of the photos that will be taken by the professional photographer, for his/her campaign posters. No other posters will be allowed [own emphasis]”.
7. Finding with respect to the abovementioned complaint:



- 7.1. The candidate posters and general SRC election posters with the green background and Afriforum logo on it were not approved by the election convenor and was in fact utilised in the election campaigning of the respondents. Despite the fact that an approved template supplied by the convenor was sent to all candidates on 26 July 2016.
 - 7.2. The EC had also requested a written response from the Respondents with respect to this specific complaint on 12 September 2016; however, nowhere in the response received on 13 September 2016 was mention made with respect to approval being granted in terms of this poster.
 - 7.3. The EC can also confirm that no written consent was obtained from his office for these specific posters to be utilised.
 - 7.4. **In this respect it is concluded that the election rule in question was in fact contravened.**
8. **Complaint:** That the campaigns of the AfriForum candidates would have exceeded the monetary limits determined by the EC.
- 8.1. In terms of the expenditure on posters alone the complainants estimate that around 150 posters mentioned in paragraph [3.1] were printed. It must be acknowledged that the monetary limit of R650 set by the EC was not included in the SRC nomination form but was announced in the SRC orientation session conducted on 22 July 2016. The convenor had also stated in this orientation session that candidates may pool election funds if they so choose but that individually the limit of R650 still applies.
 - 8.2. In the process of the investigation the EC also requested that the Afriforum candidates comment on the whether they had contravened the monetary limit rule or not. They denied this but without any supporting documentation. The EC then requested any invoices or slips with respect to the procurement of posters after this unsubstantiated statement. The Respondents subsequently stated in their response received on 14 September 2016 that "*Let wel dat nog die verkiessingsreëls nog die studentgrondwet enige limiet of spanderingsreëls daar stel. Om na die dokument wat ons geteken het toe ons aansoek gedoen het te gebruik as verwysing is dit ook nie daarin genoem nie. Die nominasie vorm noem geen limiet, die limiet is egter eers veel later aangekondig.*"



- 8.3. As admitted earlier the announcement was made after the SRC nomination forms were submitted; however, only two days had passed since the closing of the SRC nominations and candidates were notified in the orientation session held on 22 July 2016 that the monetary limit of R650 applied. The official SRC candidate photos which were necessary for the election campaigning materials, had also only been taken on that day so no extended period of time passed between the actual campaign process and the announcement of the monetary limit. S3 Paragraph 22 [2] of the Student Constitution clearly indicates that the EC must set a monetary limit for campaigns so the claim that the Student Constitution does not make provision for this limit to be set is baseless.
- 8.4. In relation to contravening the rule stated in paragraph [4] the respondents also noted in their response on 14 September 2016 that they were unable to provide documentary proof of expenses on posters since the election process is not yet complete and they will only be able to do so at the completion of such a process. Since, in the EC's opinion, this should not be a difficult task the inability of the Afriforum candidates to comply with the EC's severely obstructs transparency and creates the impression of non-compliance in an effort to hide critical information.
- 8.5. In terms of further contravention, the election rule stated in paragraph 4, continued campaigning was conducted after August 1. This complaint is only dealt with in so far as it deals with the breaching of the monetary limit rule. The campaigning included but was not limited to the handing out of a large array of marketing materials as is mentioned by the complaint. Once again, no information on expenses with respect to this election paraphernalia were provided. Since the Afriforum candidates once again mentioned in their response on 15 September 2016 that they had already answered the query and no supporting documents on expenditure were submitted, the claim that the R650 limit was not breached is unsubstantiated.
- 8.6. The Afriforum candidates' refusal to submit any documentation supporting their case, with respect to whether they breached this rule makes definitively concluding on this matter difficult. However, with the information at the EC's disposal judging by the scope of the marketing activities executed by the Afriforum candidates (150 posters, branded sweets, pamphlets, roses, branded Frisbees etc.) it appears to be highly likely that the Respondents had collectively exceeded the pooled amount of R4550 (7 candidates X R650 limit).**



9. **Complaint:** That Cobus Maass and Bernard Pieters both missed a caucus event and that Thea Bester attended none and that, that was a contravention of the rules.

9.1. In terms of caucus attendance, it must be noted that Mr Jacobus Maass and Mr Bernard Pieters did attend the mandatory caucus arranged by the EC at Irene Residence on 28 July. Photo evidence is available for perusal. This was the only official mandatory caucus held before the election process came to a halt. According to the election rules the Tygerberg Caucus was not mandatory. Mr Maas did ask to be excused during the second portion of the Irene caucus and the EC granted this request since Mr Maass was concerned about his test preparation for a Greek test the next morning. Since, he had attended the majority of the caucus in question and academic commitments takes priority above all else the EC granted this request.

9.2. Ms Thea Bester did not attend the mandated caucus at Irene Residence. She did ask for permission to skip the Tygerberg caucus, however, this was not a compulsory caucus session. Ms Bester did not obtain permission to skip the mandatory caucus at Irene residence. However, after the EC had communicated to Ms Bester on August 1, that missing the mandatory caucuses without a valid reason was a serious matter and that proof had to be provided that she indeed had an academic commitment. Ms Bester did provide proof of a chemistry practical that started on 28 July 2016 and ended on 4 August 2016 as proof of academic commitment. She also noted that she had an assignment due on August 2. It must also be noted that both the EC and Mr Pieters cautioned Ms Bester against not attending any of the official caucuses since this was a breach of the rules. Proof of my correspondence with Ms Bester is available for perusal should it be required by any of the interested parties.

9.3. Ultimately, this reports finds that the election rule with respect to non-attendance of the mandatory caucus was not contravened by Mr Maass and Mr Pieters. In turn, Ms Bester did not have permission to miss the mandatory caucus and is in contravention of the election rule mentioned in paragraph 5. However, note must be made of the fact that Ms Bester did have a host of academic commitments that made attendance difficult. The EC is in no position to argue that Ms Bester could have managed her time better and attended this caucus since different students follow different work regiments and have different abilities.

10. **Complaint:** The posters remained illegal in terms of municipal regulations.

10.1. The complainants have shown that the posters relating to the campaigns of the Afriforum Candidates as at August 1, were put up without the knowledge of the



Stellenbosch local municipality. As such, the posters were put up without the permission of the necessary authorities.

10.2. Nevertheless, in response (on 14 September 2016) to this complaint the Afriforum candidates did inquire on permission for putting up the posters after the fact on August 3. The Municipal official responded on August 4, clearly under the impression that no posters had been put up as yet. Afterward, the Respondents also maintained that they had received and not yet settled the invoice for the putting up of the posters.

10.3. It must be mentioned here that if the municipal correspondence received from the Respondents is utilised (which includes a tariff of R550 for the first 50 posters), thereafter charging R30 per additional poster if the number of posters exceed 100. If the complainants estimate of 150 posters is taken and these costs are brought into consideration with all the other campaigning expenses, it becomes questionable as to whether the pooled R4550.00 amount was in fact adhered to. The EC notes that this is a speculative conclusion and that the invoice has not been settled. However, this matter seriously brings into question the candidates claims that they did not breach the R650.00 threshold.

10.4. Nevertheless, since the EC has not seen any charge sheet or punitive measure instituted against the Respondents for breaching Municipal by-laws this complaint cannot be dealt with. The EC is not a court of law and it is not in a position to find the respondents guilty of breaking the laws of the land.

10.5. As such, I find that the Respondents did not contravene election rules by breaking the law.

11. Complaint: Insult to the Rector's Management Team.

11.1. In this regard the EC does acknowledge that the remarks made by the organisation linked to the Respondents were derogatory and towards the Rector's Management Team, which is an organ of the university. This is quite unacceptable and is viewed in quite a serious light.

11.2. Nevertheless, the EC does take cognisance of the comments made by the Respondents in paragraphs 25 to 28 in the response sent on 15 September 2016. Here the Respondents' right to "*free speech, free media and rights to equality, respect and dignity*" is duly noted.



11.3. In conclusion, although the comments were derogatory and violated the rules of campaigning during the election process, the EC sees this as a misdemeanour infringement that does not warrant outright disqualification, but a stern second warning. In the modern media, especially in South Africa, similar satirical cartoons are published on various platforms on a regular basis, with little or no legal backlash. The onus ultimately lies with university management if they wish to proceed with a disciplinary hearing.

12. **Conclusion of this report:** It must be stated that coming to this conclusion was quite a complex decision and it was not taken lightly. Furthermore, the EC finds the following:

12.1. That Bernard Pieters and Jacobuss Maas did not contravene any rules with respect to caucusing. Moreover, despite the fact that Ms. Thea Bester did not provide an excuse beforehand for missing the compulsory caucus on 28 July 2016, the academic reasons cited by her after the fact are seen as mitigating circumstances and do not constitute grounds for disqualification of this candidate.

12.2. The EC also finds that although the candidates had only requested the permission for putting up posters in Stellenbosch town from the municipality after the fact, the fact that none of the respondents have been found guilty in a court of law or has received any punished up to date does not contravene any of the election or campaigning rules. Thus there are no grounds for disqualification here.

12.3. In terms of the complaint made with respect to the of derogatory remarks toward the Rector's Management Team. The EC finds that despite this being a matter for serious concern, it is not a serious enough infringement that it warrants outright disqualification on its own. It does however, constitute a case for a warning.

12.4. That said, the candidates in question obtained a substantial advantage from publishing and distributing posters that were **NOT** approved by the EC's office. Nowhere in any of the correspondences received from the Afriforum affiliated candidates was this fact disputed. Despite the candidates noting that the posters were taken down, the marketing impact of these posters severely disadvantage any of the other candidates. This constitutes a disqualifiable offence in the opinion of the EC since the scale of the circulation of the unapproved posters are significant.

12.5. Moreover, it has been quite difficult to obtain any information from the Afriforum candidates with respect to campaigning expenditures. Although this request was directed to the Afriforum candidates twice no such information was provided. However, considering the sheer scope of activities and paraphernalia distributed for



SRC election campaigning process, there is a very high likelihood that the campaign limit of R650.00 set in the SRC candidate orientation session was significantly exceeded. The Afriforum candidate's refusal to supply information shows a blatant disregard for the authority of the EC. This contravention is a disqualifiable offence.

12.6. In essence, taking into account the warning and the disqualifiable offences committed the EC disqualifies the Afriforum affiliated candidates from the SRC election process of 2016.

**THE CONVENOR: C LINKS
ELECTION COMMISSION OF STELLENBOSCH UNIVERSITY
5 AUGUST 2016**

