IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH

(HELD IN STELLENBOSCH)

ON 1 SEPTEMBER 2017

In the matter between:

PETER WALKER	First Applicant
EDWARD JACOBS	Second Applicant

and

CALEB JOOSTE	First Respondent
ANUSHCA JOSEPH	Second Respondent
CURTLEY SOLOMONS	Third Respondent
GALEN DAVIDS	Fourth Respondent
PULENG MOTENE	Fifth Respondent

JUDGMENT HANDED DOWN BY THE STUDENT COURT

[Pagel, A]

INTRODUCTORY REMARKS

[1] It is important to note the following from the outset: the Student Court is a democratic structure, comprising of students (duly elected in terms of s 56 of the Stellenbosch University Student Constitution 2014, here on referred to as the "Student Constitution").[1]

[2] Section 55 of the Student Court explains the functioning of the Student Court, as an administrative tribunal, which is independent and subject only to the Student

[1] Chapter 5 of the Stellenbosch University Student Court, 2014.

Constitution, which the Court must apply impartially and without fear favour of prejudice.

[3] Lastly, the Student Court determines its own procedures with due consideration of the rules of natural justice and the need for the Student Court to be accessible.[2] These functions are to be fulfilled objectively; transparently and in the utmost good faith.

FACTS OF THE CASE

[4] On 11 August 2017 the Aurora Private Student Organisation (PSO) held a Primarius/Primaria and Vice-Primarius/Primaria (POP) caucus, as required in terms of the Aurora PSO Constitution, in Chapter 3, section 7. The House Committee (HC) of 2016/2017 (the outgoing HC) and the HC 2017/2018 (the newly elected HC) were present in terms of Chapter 3, section 7. There was one candidate for prim at this caucus, and she did not attain the required two-thirds majority. Nor did she attain the simple majority required in a subsequent vote.

[5] Because the first POP caucus yielded no result, the Election Committee arranged a second POPs caucus on 16 August 2017. The newly elected HC, the Election Committee, including the Visiting Head of the PSO attended the second POP caucus. Two candidates had availed themselves for the position of Prim, including the sole candidate from the first POP caucus.

[6] At this second POP caucus, convened by the Election Committee, it was decided that only the new HC will vote. After three rounds of voting, neither candidate attained a simple majority, let alone a two-thirds majority.

[7] The applicant brought an application to set the decision to elect the Prim set aside on the basis that the procedure followed was not in accordance with the Aurora PSO Constitution.

[8] Before addressing this issue, there are certain *in limine* points raised by the respondents that must be addressed.

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[2] Section 65(1) of the Student Constitution.

URGENCY

[9] The Student Court determines its own procedure.[3] Rule 6(4) permits the Court to dispense with certain formalities if the matter is urgent.

[10] In accordance with Rule 6(5), the applicants brought the matter on an urgent basis because of the POPs camp – an important leadership event for future POPs – which is to take place on 2 September 2017. The court is satisfied that this is reason enough to consider the matter on an urgent basis. The court will bear in mind the hastened nature of the respondent's reply when deciding the matter.

LOCUS STANDI

[11] The Student Constitution is clear with regards to who has *locus standi* before the court. Section 64 reads:

"All students and student bodies can bring cases before the Student Court, *and only student and student bodies* can bring cases unless… all the parties before the Court consent". (my emphasis)

[12] 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. According, the Visiting Head of Aurora cannot be cited as a respondent in this matter.

[13] Furthermore, certain persons were cited as applicants or respondents by the first applicant, but have been removed from this order. They have not contributed to the litigation, nor has an order been made against them.

JURISDICTION

[14] The jurisdiction of the Student Court is conferred in section 62 of the Student Constitution. This includes the power to "decide on the constitutionality of any action or omission of a *student body or a member thereof*".[4] (my emphasis)

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[3] Section 65.

[4] Section 62(b).

[15] The term “student body” is defined in section 1(5) of the Student Constitution as “an organised group of student formally associated with the University”. The respondents, who act in their capacity as HC members, are undoubtedly an “organised group”, and they are undoubtedly “formally associated with the University”.

[16] The respondents submitted that the HC and members thereof are not within the Court’s jurisdiction because they are not mentioned in section 3 of the Student Constitution.[5] This submission fail. Such an understanding equates the definition of “student bodies” to mean only student bodies that are constituted in the Student Constitution. Not only is this contrary to the plain meaning section 1(5), but it ignores the fact that the Student Constitution deliberately refers to “student bodies constituted by Section 3” when it intends to do so.[6]

[17] Thus, it cannot be said that when section 62 refers to a “student body” that it means to refer to a “student body constituted by section 3”.

[18] Furthermore, the preamble read “We, the students of Stellenbosch University…”. It has not been qualified in a manner that suggests that members of House Committees are exempt from this Constitution. In fact, the Student Constitution directly refers to House Committees.[7] The narrower interpretation of “student body” would contract the scope of the Student Constitution to such an extent that could not have been intended, having due regard to the rights in Chapter 2 which are conferred to “every student”.

[19] The respondents further submitted that because they are subject to the Residence Rules found in the Disciplinary Code for Student of Stellenbosch University, that the Court’s jurisdiction is excluded. This submission must also fail. Whether or not a student body, or member thereof is subject to another regulation or code is of no concern to the jurisdiction of this court. Section 62 does not qualify the court’s jurisdiction to “where no other rule or remedy is applicable”.

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[5] Section 3 is titled “Bodies constituted by this Constitution”.

[6] Section 4(2).

[7] Section 92(5).

[20] Thus, the argument that the Student Constitution is ignorant of matters within residences must fail on a technical understanding of the Student Constitution.

APPLICATION OF LAW TO THE FACTS

[21] The applicant's principal complaint is that the procedure followed at the POP caucus on 15 August 2017 was not in accordance with chapter 3, section 5.1, in that the outgoing HC were not present at the caucus.[8]

[22] The respondents contend that the provision was complied with on 11 August, and yielded no result. Furthermore, the Aurora Constitution is silent on what procedure should be followed in the event that section 5.1(c) has been exhausted. Again, the applicants did not contest the validity of the procedures followed at the caucus on 11 August.

[23] Therefore, the applicant's contention relies on the assumption that in the event that the procedure set out in the Aurora Constitution has been exhausted, that the procedure to be followed must be the one stipulated in the Constitution. In this case, the procedure that created the impasse must be followed again, because they are at an impasse. The effect of such an understanding would be to revisit the procedure in the Aurora Constitution in perpetuity, potentially never resolving itself.

[24] It must be borne in mind that the Aurora Constitution contemplates the position if a candidate does not reach a two-thirds majority.[9] After several more rounds of voting, the requirement is lowered to a simple majority. This did not aid the process on 11 August. Even then, no Prim was elected. It is from this point on that the Aurora Constitution no longer stipulates a prescribed procedure.

[25] Once again, the facts are that the Election Committee exercised its discretion and decided it would be best to have the new HC take the matter forward. The HC decided that another POP caucus should be held and only the new HC will vote. They followed a procedure similar to that prescribed in the Aurora Constitution –

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[8] Although the applicants erroneously refer to section 2.1.

[9] In Chapter 3, section 5.1(c).

that being three rounds of voting with the last round reduced to simple majority – but were still left without a new Prim. The HC then, motivated by the importance of electing a Prim, asked the Visiting Head to cast a deciding vote.

[26] It is the applicants' contention that this process was unconstitutional. However, for the reasons above, the constitution does not regulate the procedure as strictly as the applicants suggest. If the Aurora Constitution were to be understood as proposed by the applicants, then they themselves would not have been allowed to stand for Prim.[10] The question then becomes whether the procedure was procedurally fair.

[27] The Aurora Constitution becomes relevant again, but in an indirect manner. It gives an indication of what may be required in certain circumstances. For example, Chapter 3, section 3.1(c) provides that "In the event of all other options having been exhausted, then and only then the Election Committee may use their discretion in consultation with the Visiting Head to allow first years to run". What is instructive here, is that the Election Committee obtains a discretion to exercise in the event that all other options have been exhausted. This is what happened when the Election Committee granted the new HC the prerogative to elect its new Prim.

[28] Furthermore, the process was a result of the consultation between all stakeholders, the applicants included. In a similar vein, the argument that the third applicant did not have sufficient time to prepare for the caucus must fail, because the reason he did not have the time to prepare is because he chose not to stand for Prim when applications were initially made open.

[29] For the reasons above, the court finds that the process followed was not in contravention of the Aurora Constitution and that is was procedurally fair.

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[10] Chapter 3, section 3.2, paragraph 2: "The applicants binds themselves to the positions indicated on the application forms. This means that… he/she may not run for the position of [Prim] if this was not indicated on his/her application form.

ORDER

[30] The application is dismissed.

[Van Haght, S; Macfarlane, A; Rutgers, J; and Naidu, S concurring]