

IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH
(HELD IN STELLENBOSCH)
3 May 2016

In the matter Ex Parte:

Executive Committee of 2017 Student Representative Council	First Applicant
Maxwell Mlangeni (SRC Vice-Chair)	Second Applicant
Jeandré Boshoff (SRC Policy Officer)	Third Applicant

JUDGMENT HANDED DOWN BY THE STUDENT COURT

[Naidu, S.]

INTRODUCTORY REMARKS

[1] It is important to note the following from the outset: the Student Court is a structure of Student governance, comprising of students that are recognised by the Student Constitution of Stellenbosch University ("Student Constitution").¹

[2] Section 55 of the Student Constitution explains the functioning of the Student Court as an administrative tribunal, which is independent and subject only to the Student Constitution. The Court must apply the Student Constitution impartially and without fear, favour or prejudice.

[3] Lastly, the Student Court determines its own procedure 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.

¹ Chapter 5 of the Student Constitution of Stellenbosch University, 2014.

² Section 65(1).

FACTS OF THE CASE

[4] The Student Representative Council ("SRC") was elected on 21 February 2017, and their term commenced on that date. According to section 21 of the Student Constitution, student representatives for various institutional bodies must be elected as soon as possible, to ensure that the voices of students are heard in matters which affect them. This constitutional obligation was not fulfilled as the 2017 Election process had been marred with protracted litigation. In addition the process to appoint the Election Convener had to be reviewed according to the inherent powers of the SRC in section 18 of the Student Constitution. Due to contextual challenges, the SRC failed to appoint an Election Convener by 31 March 2017 as prescribed under section 92(6) of the Student Constitution.

APPLICABLE LAW

[5] There is current uncertainty regarding the validity of the Student Constitution (Version 2.4). The Court, however, finds it unnecessary in this matter to decide whether Version 2.2 or 2.4 of the Student Constitution is applicable. The reason provided by the Court is that there is no discrepancy, in the sections relevant to this matter, between either of the proposed constitutions. The substance, relating to the current matter, of both versions is the same. As a result no reason exists to believe that the substance of the sections has changed. For ease of reference, the Court will use the numbering of the 2014 Constitution (Version 2.4).

APPLICATION OF THE LAW TO THE FACTS

[6] The Executive Committee of the SRC is responsible for appointing an Election Convener and must, with the Office of the Directory of the Centre of Student Structures and Communities or his or her nominated alternative, appoint an Election Convener before the end of March in terms of section 92(6) of the Student Constitution. This constitutional obligation was not fulfilled within the prescribed time period and remains, to date, unfulfilled.

REMEDY SOUGHT

[7] With regards to the separation of powers doctrine, the court is limited in its scope to grant a just and equitable order to extend the period of appointing an Election Convener until the end of the second term. The Court has no discretion in choosing which laws to enforce, which laws to ignore and which laws to substitute for what it deems fit. Therefore, the court is not empowered to extend any deadline by substituting another date. Furthermore, this is a constitutional and not an administrative law issue therefore the court will solely focus on the constitutionality of the matter at hand.

[8] The reason for appointing an Election Convener before the end of March is to ensure impartiality and independence. Furthermore, non-compliance by the SRC with its own prescribed processes is not in line with the values and rights enshrined in Chapter 2 and as well as section 21 of the Student Constitution. The required process in section 92(6) has not been followed. Any action or omission inconsistent with the Student Constitution is invalid.³

ORDER

[9] In light of the considerations above, the court declares the omission of not appointing an Election Convener by 31 March 2017 invalid and inconsistent with section 92(6) of the Student Constitution.

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

³ Section 2(1).