TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

STUDENT COURT
OF STELLENBOSCH UNIVERSITY

REPUBLIC OF SOUTH AFRICA

IN THE MATTER BETWEEN

ELECTORAL COMMISSION	**First Applicant**
KEVA	**Second Applicant**

And

LYDIA LADIES' RESIDENCE	**First Respondent**
LYDIA HOUSE COMMITTEE	**Second Respondent**

Neutral Citation: *Electoral Commission and Another v Lydia Ladies' Residence and Another (Preliminary Judgment) 03/23*

Judgment: 31 March 2023

Heard on: 3 March 2023

Decided on: 24 March 2023

PRELIMINARY JUDGMENT

BEUKES CJ, PAUW J, SIMONIS J *(Lourens J, Braaf DCJ concurring)*

Introduction and factual background

[1] On 18 October 2022, the Applicants approached this Court to declare section 53 of Lydia Residence's Policy on Election of the House Committee during the Covid-19 pandemic (Election Policy) inconsistent with the Student Constitution of Stellenbosch University of 2021 (Student Constitution). This Policy derives its power from the Lydia Constitution of 2018. Notably they do not allege the House Committee elections performed in terms of the Election Policy to be invalid, rather they seek invalidity of the Election Policy to the extent that it prohibits the publication of election results. I take this opportunity to extend my gratitude to my learned Brothers and Sisters for their significant, valuable, and insightful contribution to the adjudication of this matter as well as the writing of this judgment.

[2] Due to the complexity of the case at hand, and the expansive arguments surrounding the merits of this particular matter, the Court decided to deal with the preliminary matters first. This judgment does not speak to the merits or the relief sought and only deals with preliminary issues raised by the parties, each of which will be dealt with in turn.

[3] Before the preliminary issues are considered, it should be noted that the Respondents, contended that the matter should be dismissed, as offensive and prejudicial averments about the propriety of Lydia's elections would otherwise continue to be canvassed in a public forum. Such averments or allusions would certainly be irrelevant to the relief sought by the Applicants; the relief being the invalidation of a provision prohibiting the publication of Lydia's full election results. However, dismissing the application based on this would be grossly inefficient. Instead, this Court ensures procedural fairness by simply basing its findings on the interpretation of the relevant constitutional provisions, rules, and regulations, and making it clear that the matter does not concern the propriety of Lydia's elections in 2022.

The applicability of precedent

[4] During the preliminary hearing, the Respondents submitted that the principle of *stare decisis* is not applicable to this Court, due to it functioning as an administrative tribunal.[1] We disagree with this submission. In *Visage and Another v Electoral Commission* ("*Visage*")[2] this Court held that it has a unique function. Although it fundamentally serves as an administrative tribunal, it "takes its leave from usual judicial practice".[3] Consequently, this Court does indeed make use of the principle of *stare decisis*, as is the practice in domestic courts. It therefore functions as an administrative tribunal, but has certain unique characteristics such as compliance with the *stare decisis* principle.

Amendments

[5] With respect to the efforts of all involved, neither the Student Constitution nor this Court's Rules of Procedure are paragons of legal drafting. We can expect these documents to be inconsistent and even contradictory at times. Accordingly, this Court should content itself with navigating the stormy waters of imperfect provisions and rules with pragmatism at the helm.

[6] The unique facts of this matter have given rise to an array of procedural intricacies. After an Electoral Commission Assistant requested to be sent the Lydia Constitution, a member of Lydia's Polling Committee sent her the 2017 version of this Constitution. This 2017 version contained numerous provisions which the Applicants perceived as incompatible with the Student Constitution, Electoral Act, Residence Rules, and the Constitution of the Republic of South Africa, 1996, and for which Applicants sought a declaration of invalidity.

[7] When the Respondents filed their answering affidavit, they clarified that the 2017 version of the Lydia Constitution had been replaced in 2018. Some of the relief sought by the Applicants was moot, as potentially unconstitutional provisions had been omitted from the 2018 version. The Applicants then filed a notice to amend, wherein they sought to change their references to the Lydia Constitution to reflect the 2018

[1] S75(1)(a) of the Student Constitution of Stellenbosch University of 2021.
[2] Preliminary judgment (2020) paras 9 and 10.
[3] Para 9.

version, and the Election Policy. The Rules do not expressly permit such an amendment, so it was necessary for the Court to consider whether to allow it or to dismiss the matter.

[8] Section 87(1) of the Student Constitution enables the Student Court to determine its own procedure with due consideration of (a) procedural fairness, and (b) the need for accessibility. This provision is strikingly similar to section 173 of the Constitution of the Republic of South Africa, 1996, which, *inter alia*, grants superior courts the inherent power to protect and regulate their own process, while taking the interests of justice into account.

[9] Although superior courts must exercise their power in terms of section 173 sparingly, it is accepted that they may use it to fill legislative *lacunae*. In *Parbhoo v Getz*,[4] a High Court judge referred his declaration of constitutional invalidity to the Constitutional Court in line with section 167(5) of the Constitution of the Republic of South Africa, 1996. This was in spite of the fact that legislation and court rules regulating such referral, as envisaged in section 172(2)(c), had not been enacted yet. The Constitutional Court exercised its section 173 power to permit this procedural step, and emphasised that in using this power, "[a superior court] should adopt a procedure which follows as closely as possible the intended purpose of [the relevant legislative provisions]."[5]

[10] Similarly, superior courts have found that the interests of justice may dictate that a matter be treated as an appeal even when no formal application for leave to appeal was made, and that review relief may be granted in an appeal case when review proceedings should have been brought instead. Relevant factors for a court to consider before exercising its discretion include the time and expense that will otherwise be wasted by litigants, for example, if a matter dismissed for procedural non-compliance will simply be reinstituted, and whether any party will suffer prejudice if the court does exercise its discretion.[6]

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[4] 1997 4 SA 1095 (CC).
[5] Paras 4-5 of *Parbhoo v Getz.*
[6] Para 51 of *S v Thunzi* 2011 3 BCLR 281 (CC).

[11] The Student Court's power to determine its own procedure is somewhat limited by section 87(2) of the Student Constitution. This provision requires the Court's adoption of procedural rules to be preceded by consultation with the SRC and approval by the Appeal Court. When one takes subsections (a) and (b) of section 87(2) into account, however, which essentially stipulate minimum standards for procedural fairness and accessibility, it appears that such approval is only required for the adoption of rules which apply in every case, thus, not for temporary deviations and/or the filling of procedural *lacunae*.

[12] Furthermore, Rule 2(4) of this Court's Rules of Procedure of 2020, as approved by the Appeal Court, permits departure from the Rules "at the Court's discretion if it is in the interests of justice to do so." It must be said that this rule does not provide the Court carte blanche to adopt rules without forethought. Each departure from the standard procedure before this Court must pass the 'interests of justice' threshold.

[13] With regard to the interests of justice and the possible wasting of time, it was clear from the Applicants' notice to amend that if the Court did not permit the amendment and dismissed the case, the Applicants would simply reinstitute the matter and cite the correct provisions. Dismissal would not dispose of the dispute before the Court and would merely waste the time of all parties involved.

[14] It is with the above in mind that this Court decided to permit the Applicants' amendments to documents filed. The Respondents were given the opportunity to reply to the Applicants' amendments by filing a supplementary affidavit, thus ensuring procedural fairness.

Allowing of supplementary arguments not contained in the initial filings

[15] The Respondents, in their Supplementary Affidavit, made submissions as to the ripeness of the matter. Furthermore, in their Heads of Argument, they raised a point *in limine* as to the propriety of the matter. Notably, these issues were only raised in the supplementary affidavit and heads of argument. Furthermore, the purpose of the Supplementary Affidavit was to reply to the amendments that were allowed by this Court, and not the submission of new arguments.

[16] However, due to the exceptional circumstances of this matter, in that it has been transferred to the new bench of the Court, we have decided to allow these supplementary arguments for consideration. I emphasise, however, that such supplementary submissions, not contained in the initial filings, are not, and will not, usually be allowed, and is in this case only allowed due to the possible issues that could arise out of the new information that came to light in respect of the review of the Lydia Constitution of 2018 and the alleged impropriety of this matter. We will accordingly consider these arguments in turn. In order to avoid prejudice to the Applicants due to the non-compliance with usual judicial practice by the Respondents, the Applicants were allowed to respond to these arguments and to submit supplementary Heads of Argument.

Point in limine: propriety of the matter

[17] The Respondents, for the first time in their Heads of Argument, raised the point *in limine*. They refer to section 82 of the Student Constitution, which reads as follows:

"82. Current Court Roll

(1) Should there be outstanding judgments or cases, the outgoing Student Court must finalise these outstanding judgments or cases before leaving office; or

(2) The Student Court Rules must provide contingency plans for cases still pending during the transition of Student Court""

Accordingly, the Respondents argue that the matter is currently improperly before this Court as it was not finalised by the previous bench and was allegedly transferred in the absence of contingency plans in the Rules of Procedure of 2020.

[18] Before dealing with section 82, it must first be decided whether the Court is *functus officio* in respect the transference of the matter in the absence of contingency plans in the Rules. If we are *functus officio*, we are unable to consider section 82 as the decision will be binding until such a time that it is set aside.

[19] The doctrine, in its most fundamental form, means that once an official function has been discharged, by means of the decision, the same decision cannot be reviewed or set aside by the same person or body, unless statute allows otherwise.[7] It follows, therefore, that, generally, the only way to set aside such decision would be to have it

[7] C Hoexter *Administrative Law in South Africa* 2 ed 278.

reviewed by another competent body.[8] However, for the doctrine to apply, the decision must be final.[9] Decisions that are made or exercised are therefore binding and enforceable, and must be followed until set aside. In this instance, it is this Court who made the decision, and therefore it cannot, generally, review its own decision. Such decisions can only be reviewed by the Appeal Court if this Court is indeed *functus officio*. From the above, three questions arise: did the Court discharge an official function, if it did, was the decision final, and are there instances where the Court may review the decision if both prior questions are satisfied?

Official function

[20] The official function of this Court includes the resolution of disputes within its jurisdiction, among others, as provided in section 83 of the Student Constitution. Furthermore, deciding on procedure to be followed during the proceedings, as per section 87, is also an official function.

[21] The decision to transfer does not amount to the resolution of a dispute. However, it does determine the procedure, albeit very broadly. In deciding to transfer the case to the new bench, the Court ruled on a procedural issue in that it made a decision as to who will ultimately resolve the dispute. The particulars around the handling of the matter were not elaborated on but the mere transference of the case is a decision which resolves a procedural question. As such, an official function was discharged.

[22] Although the decision to transfer was not a decision by the Court in the usual sense, it is nevertheless still a decision that discharges an official function.

Finality of the decision

[23] As indicated above, a decision will be subject to the doctrine if it is also final. A decision is final once it is published, announced or where those affected by it are informed.[10] The parties involved in the matter were informed of the decision to transfer, and it therefore satisfies the test for finality.

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[8] 278.
[9] 279.
[10] C Hoexter *Administrative Law in South Africa* 2 ed 279.

[24] There does, however, seem to be some authority that where a decision is made, and objection is made immediately after, that the decision-maker may alter such decision. Although I will not delve into the merits of this theory, it is nevertheless true that no party raised any objection at any time after the decision was made. No objection was raised via email in response to the decision, in a meeting held with the parties to discuss the way forward on this matter, or in supplementary affidavits. Suffice it to say that the first and only indication of any objection whatsoever was forthcoming in the Respondents Heads of Argument. As such, this supports the finding of finality.

Exceptions to the *functus officio* doctrine

[25] As we have found the decision to have discharged an official function and that it is final, the *functus officio* doctrine does find application. There are, however, certain instances where a decision may be reviewed even though the doctrine applies. One such exception is where statute expressly allows for it.[11] The Student Constitution only expressly allows the Appeal Court to review decisions made by the Student Court, and therefore this exception does not apply.[12]

[26] The second exception is where there is implied authorisation to review a decision.[13] In this regard, there is a distinction between valid and invalid decisions, however the general position remains that the decision-maker is *functus* officio irrespective of whether the decision is invalid or otherwise.[14] When determining whether implied authorisation exists, consideration must be had to the purpose of the statute and whether it is necessary for the effective operation thereof.[15] The Student Constitution already provides for a mechanism to review decisions made by this Court, although the Court is entitled to regulate its own procedure.[16] Nevertheless, coming to the conclusion that this Court has the implied authority to review its own decisions through a broad interpretation of section 87(1), while there exists another mechanism

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[11] 279.
[12] S91(1)(b).
[13] C Hoexter *Administrative Law in South Africa* 2 ed 280.
[14] 281.
[15] 280 and 281.
[16] S87(1).

to review decisions, is inappropriate. Not only would it undermine the fundamental principles of certainty and procedural fairness, but it has the potential to negatively impact the Court's accessibility. Furthermore, there exists a very stringent test for finding such authority, and it is only in exceptional circumstances. It cannot be said, therefore, that this Court enjoys such authority.

[27] The Court is therefore *functus officio* in respect of the decision to transfer the case and is not entitled to review it. The decision to transfer the matter to the current bench remains valid until, and if, it is set aside. The point *in limine* is therefore dismissed.

Ripeness

[28] The Respondents submit that several residence constitutions, including that of Lydia, is in the process of being reviewed.[17] Further, they argue that it would be improper for this Court to, effectively, pre-empt the proper structure for constitutional review; in my view, they submit that a review of the Lydia Constitution amounts to an infringement of the separation of powers. Conversely, the Applicants argue that the review process neither suspends the Lydia Constitution, nor does it prevent it from being reviewed by this Court.[18]

[29] The Apex Court's finding in *Mazibuko NO v Sisulu and Others NNO* ("Mazibuko")[19] is authoritative in considering the issue of ripeness:

> *"[70] I am, therefore, unable to agree with the contention of the Speaker that because the parties are in the process of remedying the alleged lacuna in the Rules the direct access application should be dismissed. […] Second, once we have found, as we have, that the Rules regulating the business of the Programme Committee are unconstitutional, we must so declare. An order of constitutional invalidity is not discretionary. Once the Court has concluded that any law or conduct is inconsistent with the Constitution, it must declare it invalid.*
>
> *[71] I also do not agree with the submission that a declaration of invalidity would trench upon the separation of powers doctrine. An order of constitutional invalidity would not be invasive because it is declaratory in kind. The Court would not be formulating Rules for the Assembly. The Court would be properly requiring the Assembly to remedy the constitutional defect that threatens the right of members of the Assembly"*

[17] Para 15.
[18] Applicants Supplementary Heads of Argument para 13.
[19] 2013 11 BCLR 1297 (CC).

Before considering *Mazibuko*, it is trite to emphasise once again that this Court is not considering the validity of the provisions under scrutiny. Paragraph 70 of *Mazibuko* is being used only to consider the impact that a process of review of provisions may have, and the impact that a potential declaration of invalidity may have while a process of review is ongoing.

[30] I deal first with the separation of powers issue. It is evident from *Mazibuko*[20] that the process being undertaken to review the Lydia Constitution has no impact on this Court's ability to rule on the validity of the provisions contained therein, nor does it prohibit us from reconsidering the Election Policy. A potential declaration of invalidity would not infringe on the separation of powers, and due to the nature of a declaratory order being sought, it would not frustrate the process of review. This is especially true since it is this Court's prerogative to set aside, or confirm the validity, of a provision under scrutiny. Furthermore, if the provision is found to be inconsistent with the Student Constitution, it must be declared invalid. The Court is not in the business of prescribing to other arms of the student leadership structures how a provision should be formulated, and a declaration of invalidity, or confirmation of validity, cannot be construed as pre-empting the process of review or prescribing how provisions are to be formulated.

[31] The fact that review proceedings for residence constitutions, such as that of Lydia, are underway, has no impact on the status of the Lydia Constitution. The Lydia Constitution remains valid and in force until such a time that it is replaced by another version, repealed or is set aside by this Court. We therefore retain the ability to scrutinise the Lydia Constitution. Thus, the Respondents argument in respect of ripeness is dismissed.

Joinder

[32] The Applicants believe that allowing the joinder would limit access to this Court, as the number of potential parties are too numerous. The Respondents showed that the parties are indeed determinable, albeit cumbersome to include. They submit the

[20] Para 70 and 71.

other parties should be joined as they too have allegedly not published their election results.

[33] In the specific context of the case, however, it would be inappropriate to allow a joinder for several reasons. Firstly, the Applicants brought this case specifically against the Lydia Constitution, and the Election Policy, as they allege it is in contravention to their own regulations. To have other residences join in on a case concerning the validity of provisions applicable to Lydia only would, therefore, be ineffective as an order against Lydia in these circumstances would not have an impact on the other non-joined parties. If this case concerned a provision that all residences were allegedly in contravention with, the joinder would perhaps be appropriate, but in this case the dispute centres around a specific provision only applicable to Lydia.

[34] The second reason joinder would be inappropriate is the fact that it is not contained in the current Court Rules. Rule 2(4) does allow the court a discretion regarding the rules when it is the interest of justice to do so, however, allowing a joinder would amount to the introduction of a significant number of rules to regulate it. Joinder requires a complete set of rules, regarding timing, notice, and so forth. Therefore, to allow joinder, and thereby introducing such vast rules to regulate it would not be in the interest of justice and could result in this Court acting *ultra vires.* Ultimately, it would negatively impact accessibility to this Court.

[35] The Respondents have raised issue with the *locus standi* of both the applicants and respondents. I will deal with each alternatively below.

Locus standi: Applicants

[36] Section 86 read with section 3 of the Student Constitution empowers certain persons standing before the court. The relevant section reads:

> ***"86. Applications to and standing before the Student Court***
> *All students and student bodies can bring cases before the Student Court, and only students and student structures can bring cases, unless […]"*

[37] Section 3(12) of the Student Constitution specifically refers to the Electoral Commission as a student body. Despite the above provisions, the Respondents raised

the argument that the First Applicant does not have standing beyond the term of office of those occupying the positions within the Electoral Commission. To contextualise this: the Electoral Commission is unique in that it does not have clearly outlined term dates, possibly suggesting that the structure only comes into existence when a people are elected to fill the required positions. The Court, however, finds that the Electoral Commission as a structure is not destroyed and created anew every year, rather it becomes dormant for the period no one is occupying the positions within the Commission.

[38] I will use the analogy of an unmanned ship to illustrate. A ship without a captain, or after it loses its captain, does not sink, or cease to exist. It still exists and remains the same ship it was while being manned, but for the period without its captain and sailors it cannot sail. Such a ship cannot set its direction, and therefore cannot make any decisions about its destination. The ship is therefore dormant for this period. Once the ship is populated with new sailors and a captain it can sail again. Similarly, the Electoral Commission as a structure cannot sail or make decisions without its proverbial sailors and captain. It therefore remains dormant until new members populate its decks. Counsel for the Applicant is currently acting on the instruction from the Second Applicant in his personal capacity, but also as the previous chairperson of the Electoral Commission, despite not being empowered to do so anymore. Therefore, the First Respondent does not have standing, since there is no one who is properly authorised to direct the actions of the Electoral Commission.

[39] Section 86 read with section 16(1) of the Student Constitution empowers any student to approach the court. Section 16(1) of the Student Constitution notes that the party approaching the Court may do so in the interest of another class or group of students. The argument presented by the Respondents, requiring the applicant to have suffered harm to have standing, therefore, cannot not succeed as the Second Applicant is allowed to approach the Court in the interest of another class or group of students. He represents a class of students whose rights were affected and is therefore acting in his personal capacity. As such, the Second Applicant has standing.

Locus standi: Respondents

[40] The Respondent raised the argument that a Residence cannot be cited as a party as it is merely a place where people stay. They submit that it is also not a juristic person and is run by the University. Therefore, there is no one that will be able to comply with an order made by this Court, and if there is, it would be someone that the court does not have jurisdiction over, such as University staff. It is true that Lydia is not a separate legal entity, but rather forms part of Stellenbosch University itself. However, the external legal status of the residence has no impact on this Court's ability to make orders for or against it. All university structures, including this Court, fall under the one juristic person that is Stellenbosch University. In *Jacobs v Huis Visser Primaria and Others* [2017] para 14, this Court found that the residence and the house committee are student bodies in terms of the Student Constitution. As we have reaffirmed the applicability of the *stare decisis* principle to this Court, the Lydia Residence has standing before this Court.

[41] The Second Respondents have standing before the court for the same reasons the First Respondent has standing. Section 86 read with the definition of "student body" in section 1(11) of the Student Constitution affords "an organised group of students formally associated with the university" the power to approach the court.

[42] Alternatively, the definition of "Positional Student Leader" in section 1(6) of the Student Constitution refers to students elected as leaders for a list of structures recognised by the university. Structures established by the Student Constitution are used in the same sentence as "House Committees". A *prima facie* interpretation would be that items listed in the same sentence are not necessarily the same but bear a similar power. The definition is shown below:

> ***(6) "Positional Student Leader:*** *means a student elected or appointed to the following structures: structures established by this constitution, Faculty Committees, House Committees, Society Executive Committees, Cluster Convenors."*

[43] Therefore, both the First and Second Respondents have standing.

Jurisdiction

[44] The Jurisdiction of the Student Court is outlined in section 84 of the Student Constitution. This provision reads as follows:

> ***"84. Jurisdiction of the Student Court***
>
> *The Student Court has the power to –*
>
> *(1) Give an interpretation, or to confirm the interpretation of a party before the Student Court, regarding –*
>
> *(a) This Constitution.*
>
> *(b) Any empowering provision in terms of which a student body or a member of a student body exercises power.*
>
> *(2) Decide on the constitutionality of any action or omission of a student body or a member thereof.*
>
> *(3) 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.*
>
> *(4) Make a final decision regarding any matter where the parties' consent to the jurisdiction of the Student Court.*
>
> *(5) Decide on all other matters which this Constitution places under the jurisdiction of the Student Court."*

[45] The Applicants aver that this Court has jurisdiction in this matter for the following reasons. Firstly, in terms of section 84(1), they seek declaratory relief pertaining to the vindication of rights in the Student Constitution. Secondly, they seek the invalidation of the Lydia Constitution and election policies, as is contemplated in section 2(1) of the Student Constitution. Thirdly, they note that the Lydia Constitution itself, in its section 17, subordinates itself to the Student Constitution and thereby invites this Court's jurisdiction.

[46] The Respondents dispute this Court's jurisdiction for the following reasons. Firstly, the Student Court does not have jurisdiction over a residence head and its orders cannot override the Residence Rules. As the residence head is tasked with controlling the election procedure, it is said that this Court's order will have no effect on whether the full results of elections are published. Secondly, the Respondents aver that Lydia Residence is not a student body but a place, and thus section 84 does not grant this Court jurisdiction over it. Thirdly, the Respondents argue that this Court is

not empowered to declare a provision in a residence constitution invalid, because that power is now conferred on the Prim Committee.

[47] This Court agrees with Applicants that it has jurisdiction in this matter. As is discussed in para 41 above, a university residence and its House Committee are both considered student bodies/structures in terms of the Student Constitution. Accordingly, the Lydia Constitution is indeed subordinate to the Student Constitution and will be invalid if and insofar as its provisions are inconsistent with the Student Constitution. Section 84(1) vests this Court with the power to interpret the Student Constitution, but also any empowering provisions in terms of which a student body or a member of a student body exercises power. The provisions in the Lydia Constitution and related policies which prohibit the publication of full election results are therefore also within this Court's jurisdiction. This is supported by section 17 of the Lydia Constitution.

[48] As is discussed under *Ripeness*, the current Student Constitution vests the Prim Committee with the power to approve new residence constitutions. However, this does not dispose of the Student Court's powers to interpret and declare invalid provisions in residence constitutions that are already in force. Such interpretive and declaratory powers are not granted to the Prim Committee. Construing this Court's jurisdiction so narrowly would, therefore, not only go against the plain meaning of the Student Constitution but deprive students of a crucial accountability mechanism.

[49] The Respondents correctly stated that this Court does not have jurisdiction over a residence head and cannot order him or her to act or refrain from acting in any way. This Court is also not empowered to pronounce on the validity of the Residence Rules. However, this does not render the relief sought by the Applicants moot. As is shown below, a declaration of constitutional invalidity pertaining to the provisions in the Lydia Constitution and Election Policy which prohibit the publication of full election results may indeed have an effect.

[50] Rule 2.2.3(vii) of the Residence Rules states that the residence head, *inter alia*, *"controls the procedure for the election of the HC,* ***as prescribed by the University and the relevant residence constitution and rules****, before, during and after the*

election." (Emphasis added.) The bounds of a residence head's control over an election and whether a residence head stays inside those bounds are not for this Court to determine. However, insofar as the residence head must derive the election procedure from *"the relevant residence constitution and rules,"* the relief sought by the Applicants is clearly germane.

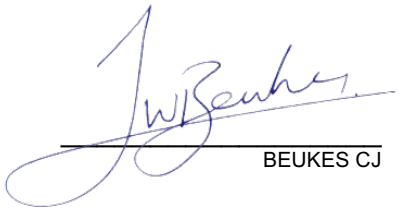
[51] Currently, the decision of Lydia's residence head not to publish candidates' vote totals would be informed and perhaps even mandated by the Policy on the Election of the House Committee, enacted in terms of the Lydia Constitution. If the pertinent provisions of this constitution and policy do indeed contravene the Student Constitution or related regulations, and are consequently declared invalid by this Court, the residence head will not be able to base his or her justification for non-publication on "the relevant residence constitution and rules" but will have to get it elsewhere. Thus, although this Court has no jurisdiction to order a residence head to act in any way, it is empowered to interpret the provisions of a residence constitution, and such interpretation *may* in fact have some bearing on how a residence head decides to exercise their powers. Ultimately, the relevant constitutions and rules are drafted by students, for students and may therefore be regarded as an expression of the students' will, although this is still subject to the overarching frameworks, rules, regulations, and policies of this University, such as the Student Constitution.

Order

[52] Judgment is therefore handed down and the following is so ordered:

1. Precedent is applicable to this Court;
2. The amendment by the Applicants is allowed;
3. The Court is *functus officio* in respect of the point *in limine*. The decision to hear the matter before the current bench is therefore valid and enforceable until it is set aside;
4. The matter is ripe for consideration;
5. Joinder is not allowed;
6. The First Applicant does not have standing;
7. The Second Applicant has standing;
8. The First Respondent has standing;
9. The Second Respondent has standing;

10. The Court has jurisdiction to hear the matter;
11. A date for the hearing of the merits of the matter will be set by the Court in consultation with the parties.

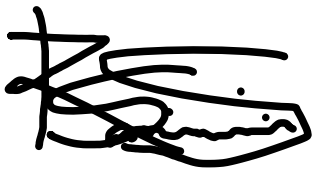


BEUKES CJ

LOURENS J

BRAAF DCJ

PAUW J



SIMONIS J