



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

STUDENT COURT
OF STELLENBOSCH UNIVERSITY
REPUBLIC OF SOUTH AFRICA

IN THE MATTER BETWEEN
ELECTORAL COMMISSION

Applicant

And

GOLDFIELDS ELECTION COMMITTEE
GOLDFIELDS DISCIPLINARY COMMITTEE
T. MALAZA
M. SITHOLE

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

Neutral Citation: *Electoral Commission v Goldfields Election Committee and Others (Final judgment) 16/09/24*

Judgment: THE COURT (Unanimous)

Heard on: 28 August 2024

Order handed: 2 September 2024

Judgment handed: 16 September 2024

FINAL JUDGMENT

THE COURT

Introduction

[1] This case revolves around the fraught attempts of two candidates, Mr Malaza and Ms Matala, to secure student leadership positions. What will be seen is that both

Mr Malaza and Ms Matale, despite having competed against each other and sitting on opposite sides of this matter, were wronged in different ways by events not attributable to their own fault. Rather, part of the fault falls on the shoulders of student leaders and student structures whose very mandate was to promote and defend these students' rights. A student leadership position is infinitely more than a mere line on a CV. It is more than a popularity contest, a title, or a pretext for power. Student leadership comes with a mandate to serve the students whose interests one has been entrusted to protect. Unfortunately, in this case, both Mr Malaza and Ms Matale were failed by student leadership structures. All of the injury that was suffered in the present matter could easily have been avoided had the sitting student leadership structures diligently discharged their duties. The tragic irony that faces this Court is that this matter simultaneously centres on the fight for a student leadership title on the one hand, and the failure of student leaders to fulfil those responsibilities for which they willingly availed themselves on the other.

Facts

[2] On 1 August 2024, Goldfields Residence held its Prim Election for 2024/25 ("First Election"). Mr Malaza and Ms Matale were the only two candidates running in this election. After all the votes had been tallied, Mr Malaza was announced as the incoming Primarius. Subsequent to this announcement, Ms Matale, made enquiries regarding Mr Malaza's academic fitness to hold office. This was, insofar as the Court can tell, on the basis that she suspected that Mr Malaza had not met the required HEMIS to remain in Goldfields. Ms Matale claims to have taken her issue up with both the Residence Head and the Goldfields Residence Executive Committee ("Executive Committee"). In response, the then-Primaria, Ms Smith, provided Ms Matale with a screenshot that Mr Malaza had presented to the Executive Committee. The screenshot was that of an email Mr Malaza had received from the Residence Head which stated that the Centre for Student Life and Learning ("CSLL") had given Mr Malaza permission to stand for any leadership position in Goldfields and that he'd be entitled to hold said position on the condition that he not fail any modules in the second semester. Mr Malaza provided this screenshot to the Goldfields Election Committee in confidence and for the purpose of allowing him to run in the election.

[3] After being discouraged by the Residence Head from taking the matter further within the Residence, Ms Matale lodged a complaint with the Electoral Commission on 8 August in terms of section 127 of the Student Constitution. Part of the evidence she furnished the Electoral Commission with included the screenshot that was procured through Ms Smith.

[4] The Electoral Commission, satisfied that this complaint, commenced an investigation in terms of section 125(2) of the Student Constitution. Upon their investigation, it became apparent that the Goldfields Election Committee had never independently verified Mr Malaza's HEMIS. Rather, Mr Malaza approached the Residence Head in his personal capacity, who, with the approval of the CSLL approved his candidacy on the condition that he pass all his modules in the second semester of 2024. This was confirmed by the Residence Head in communication to the Electoral Commission on 13 August.

[5] On 14 August, the Electoral Commission directed the Goldfields Election Committee to overturn the First Election, notify Mr Malaza of his disqualification due to noncompliance with HEMIS requirements, and reopen a new election for Prim ("Second Election"). The Electoral Commission held that, as Ms Matale was the only other candidate in the First Election, the Second Election take the form of a simple majority vote in favour of Ms Matale.

[6] The very next day, on 15 August, the Electoral Commission received a second complaint that the Goldfields Election Committee had disqualified Ms Matale from the Second Election on the charge of having brought Goldfields Residence and the Goldfields Election Committee into disrepute. Her disqualification was based on the finding that she had, in the view of the Executive Committee and Residence Head, used unauthorised access to confidential information to support her initial complaint.

[7] On the version provided by the First and Second Respondents, this decision was one made solely by the Residence Head at a meeting convened with the Executive Committee. In this meeting, the decision was also made to suspend Ms Smith from her position as convenor of the Goldfields Election Committee. It is noted that although Ms Smith at this meeting was present in her capacity as Prim, Ms Matale was neither present nor informed of its proceedings. Ms Matale was disqualified from

the Second Elections without being given an opportunity to make representations. As there were no longer any viable candidates for the Second Election, the Goldfields Residence Executive Committee restarted the entire election process and opened it up for new candidates to apply (“Third Election”).

[8] The Electoral Commission identified procedural irregularities in Ms Matala’s disqualification, namely, its failure to adhere to the disciplinary process outlined in Chapter 5 of the Goldfields Constitution in line with section 14 of the Student Constitution. This was because, *inter alia*, Ms Matala received a sanction without being afforded a hearing, being informed of the charge against her, the right to be heard, the right to be represented, or being informed of her right to appeal. The Electoral Commission also held that the sanction was substantively defective because Ms Matala, in their view, did not unlawfully secure confidential information. In fact, the information which Ms Matala furnished the Electoral Commission with was provided by the Goldfields Election Committee, the same body which disqualified her for the dissemination of the information which it provided her with. On this basis, the Electoral Commission approached this Court to interdict the Third Election which was scheduled for the week of 19 August.

[9] The Court gave the Goldfields Election Committee an opportunity to give reasons as to why the Third Election should not be interdicted. Unfortunately, cooperation was not forthcoming. Given the weight of the *prima facie* evidence tendered by the Electoral Commission, this Court granted part of the remedy sought by the Electoral Commission, interdicting the Third Election until further direction was made by this Court on the basis of the substantive arguments before it. The reasons for this decision are detailed in *Electoral Commission v Goldfields Election Committee and Another (Urgent interdict)*,¹ and bear no repeating here.

[10] It was after this election was interdicted that Mr Sithole approached this Court as a student with an interest in the matter. Displeased with the interim judgment handed down he sought to, as he saw it, “get the facts straight.” The Court directed him to student legal assistance, and he and Mr Malaza joined the matter in something of a counterapplication against the initial findings of the Electoral Commission.

¹ 20/08/24.

Parties

[11] The Applicant in this matter is the Electoral Commission. It is a student body in terms of sections 1(11) and 3(12) of the Student Constitution, and thus afforded standing in terms of section 88. In terms of sections 125 and 126(1) it plays an oversight role over Residence elections and may monitor, audit and investigate any complaints. In terms of section 125(2), it may intervene where:

- “(a) Consequential irregularities have been noted with the Election process.
- (b) There is prima facie evidence of electoral misconduct.
- (c) When a complaint alleges electoral fraud.
- (d) When the respective Election Committee(s)/Convenor(s) fail to comply with election regulations.”

[12] It is seeking that the decision taken by the Goldfields Disciplinary Committee to sanction Ms Matale be set aside on the basis of being procedurally unfair, substantively unfair, or both. It is also seeking that the decision of the Goldfields Election Committee to disqualify Ms Matale on the basis of said finding be set aside, such that Ms Matale be allowed to run for Primaria.

[13] The First and Second Respondents are the Goldfields Disciplinary Committee and Goldfields Election Committee. The Second Respondent is a body appointed in terms of section 125 of the Student Constitution. Both are represented by Mr Maphutha in his official capacity, who was also the Vice-Primarius when the cause of action arose. He is currently the acting-convenor of the Goldfields Election Committee because the previous head, Ms Smith, was suspended from that position.

[14] The Third Respondent is Mr Malaza. The Fourth Respondent is Mr Sithole. Both have standing in terms of section 86 of the Student Constitution as registered students. The Third and Fourth Respondents are seeking that the decision of the Electoral Commission be set aside as procedurally or substantively unfair or both and that the First Election be declared valid *ab initio*, with Mr Malaza reinstated as the Primarius for 2024/25. They are represented by Ms Duraan and Ms Cawood, who, in terms of section 88 of the Student Constitution and rules 23(2) and 24 of the Rules of the Student Court, 2024 (“Student Court Rules”) acted as their student legal representatives as part of the Soil Student Firm.

Jurisdiction

[15] The Court has jurisdiction to hear the matter in terms of section 84(3) of the Student Constitution. Section 84(3) grants the Court the power to review any decision of a student body whereby the rights or legitimate expectations of a student are materially affected. There are various rights which may have been infringed in the present matter. They include, but are not limited to, the rights of both Ms Matale and Mr Malaza to participate in residence Prim elections and Ms Matale's right to fair administrative action in terms of section 14 of the Student Constitution. The decisions of the Electoral Commission, Goldfields Election Committee and Goldfields Disciplinary Committee are all under scrutiny in this matter.

Urgency

[16] This Court in *Ex parte Mhlongo and Another ("Mhlongo II")*,² held that the Applicant has the duty to set forth the circumstances which render the matter urgent and why they would be prejudiced should the ordinary rules prescribed in the Student Court Rules be followed. Ms Matale set forth that the Prim Elections were set to take place in the same week as the application was filed, and should this Court not dispense of their ordinary timeline, she would be unable to take part in the elections. The Court agreed with Ms Matale's arguments and, making use of its discretion in rule 8(2) of the Student Court Rules, dispensed with some *dies* requirements in the interests of expediency.

Was Mr Malaza eligible for the First Election?

[17] The genesis of the various disputes can be traced to the results of the First Election. Ms Matale raised her complaint to the Electoral Commission on the basis that Mr Malaza was allegedly ineligible because he did not meet HEMIS. The Electoral Commission relied on section 6(a)(ii) of the Goldfields Constitution which holds that in order for a member to be eligible to stand for House Committee, they must satisfy

² 08/05/24.

“University’s requirements for admission to the Residence (HEMIS- requirements).” It was not disputed that Mr Malaza did not meet HEMIS requirements.

[18] However, the Goldfields Constitution is subject to the Rules for Student Communities in Residences, PSOs and Clusters, 2022 (“Residence Rules”). This is incontrovertible and enunciated in both Rule 1.2.4 of the Residence Rules and the very preamble of the Goldfields Constitution. Rule 2.2.1.2 of the Residence Rules holds that candidates for election to a House Committee must “meet academic criteria for leadership eligibility (as determined by the [Centre for Student Communities]).” It is noted that the Centre for Student Communities has since merged with another entity to form the CSLL. A distinction must be drawn between “academic criteria” on the one hand and “HEMIS requirements” on the other. Since there are conflicting provisions in the Residence Rules and the Goldfields Constitution dealing with the same issue, the Residence Rules must be afforded precedence.

[19] Given that Mr Malaza sought and received, through official means, a condonation to participate in the elections, conditional on him passing all second semester modules, he met the criteria in terms of Rule 2.2.1.2. During the course of the proceedings in this Court the Electoral Commission, who had initially overturned the First Election on this basis, eventually conceded that had Mr Malaza received condonation through official means from the CSLL he would have been eligible to run. This of course raises the question as to whether the Electoral Commission had a substantive basis for overturning the First Election.

Was the Electoral Commission correct in overturning the First Election?

[20] Section 121(2) of the Student Constitution notes that “the Electoral Commission must perform its duties impartially and without prejudice.” Section 127(1) further points out that the Electoral Commission must “properly investigate” complaints. These provisions act as guidelines to the Electoral Commission. Thus, it is apparent from the above that when investigating complaints, the Electoral Commission must act with due diligence and leave no stone unturned.

[21] In this case, the Electoral Commission's investigative efforts were flawed. Firstly, it appears that the Electoral Commission failed to correctly interpret the rules that guided the CSLL in coming up with its decision to allow Mr Malaza to run. Going through the Residence Rules diligently would have cleared up all the confusion surrounding the circumstances in this matter. Rule 2.1.1.2 of the Residence Rules states that the academic criterion for leadership is determined by the Centre for Student Communities. Therefore, once the CSLL makes the decision that one meets the academic criteria, or extends an exception, one becomes eligible to run and stand for office. In this case, Mr Malaza approached the CSLL to determine whether he met the academic criteria, after which he got approval from the CSLL to run. Therefore, there the First Election was overturned on a misapprehension. It is thus clear that either the failure of the Electoral Commission to investigate properly or its misunderstanding of the Residence Rules led to an incorrect conclusion in its investigation.

[22] The Constitutional Court in *Kham v Electoral Commission* noted that doubts or feelings of discomfort about the freedom and fairness of elections are not sufficient to declare an election invalid. There must be evidence that there are real grounds, which are not merely speculative or imaginary, to conclude that the elections were not free and fair.³ Thus, once again the Court must stress that when dealing with election disputes, the Electoral Commission must engage with the parties involved to obtain material evidence that will result in correct conclusions. The Electoral Commission is also reminded that it ought to proceed with caution when investigating, bearing in mind the power that its decisions carry and the damage that an incorrect finding may cause.

[23] The Court, in light of the above and the recent judgment of *Ex parte Electoral Commission*,⁴ wishes to make the following message quite clear. The Electoral Commission must guard against the impulse of overturning elections on a whim. Elections are not only intensely time-sensitive but are often the culmination of weeks of preparation and labour by candidates and organisers alike. When elections are

³2016 2 BCLR 157 (CC) para 91.

⁴ 27/08/24.

perceived to be flimsy it undermines the entire legitimacy of the electoral process and thus, also the mandate of the Electoral Commission. The Electoral Commission's decision to overturn the election was premature at best – if not negligent.

Procedural fairness of Ms Matale's disqualification

[24] As a starting point, it is essential to determine whether the decision to disqualify Ms Matale constitutes administrative action and, more specifically, whether it was procedurally unfair. This Court has followed the precedent set by the Constitutional Court in *Minister of Defence and Military Veterans v Motau*⁵ (“*Motau*”), which provides key factors for determining whether an action qualifies as administrative. According to the *Motau* judgment, the decision must meet the following criteria: it must be of an administrative nature, taken by an organ of state or a body performing a public function, in terms of an empowering provision that adversely affects the rights of the implicated party and has a direct external legal effect.⁶

[25] In this case, a clear distinction is made that administrative powers involve the application of established policy to specific factual circumstances.⁷ As will become clear, both the Goldfields Disciplinary Committee and the Residence Head are governed by explicit guidelines outlined in Chapter 5 of the Goldfields Constitution. The critical issue is that they failed to adhere to the procedural requirements as mandated by the empowering provisions. Furthermore, the Residence Head is vested with the authority, per the Residence Rules, to address all suspected incidents of residence misconduct in the first instance.⁸ These rules also stipulate the procedures for conducting an inquiry before the House Disciplinary Committee.⁹ As such, both the Residence Head and the Goldfields Disciplinary Committee are the authorised bodies responsible for managing all suspected cases of misconduct within the Goldfields Residence.

⁵ 2014 5 SA 69 (CC).

⁶ Para 33.

⁷ Para 49.

⁸ Rule 12.6.1 of the Residence Rules.

⁹ Rule 12.7.4.5.

[26] The procedure followed by these bodies in disqualifying Ms Matala appears to have been procedurally unfair. Therefore, the only reasonable conclusion is that the decision taken by the Goldfields Disciplinary Committee and the Residence Head constitutes an administrative action.

[27] The Court recognises the importance of the principles of natural justice, specifically *nemo iudex in causa sua* (no one should be a judge in their own case) and *audi alteram partem* (the right to be heard), in ensuring that administrative action is procedurally fair. These principles safeguard fairness by requiring impartiality and giving an opportunity for all parties to present their case. Section 14 of the Student Constitution outlines the rights afforded to a student whose rights or legitimate expectations have been materially and adversely affected by an administrative action. Section 14 reads:

“(1) Every student whose rights or legitimate expectations are materially and adversely affected by any decision taken by a student body or member of a student body has the right to –

- (a) Be notified of the nature and purpose of the proposed action.
- (b) A reasonable opportunity to make representations and a provide written response.
- (c) Adequate notice of any applicable right of review or internal appeal.
- (d) Request reasons for the decision and to be furnished with written reasons within a reasonable time.”

[28] These provisions collectively ensure transparency and fairness in the decision-making process. Chapter 5 of the Goldfields Constitution also provides the guidelines that a disciplinary process must comply with. Section 6(g) provides that the implicated student must receive written notice at least 48 hours before the commencement of the hearing. Section 7 of Chapter 5 of the Goldfields Constitution provides that the implicated student must be fully informed of the case against her, and that it must be proven guilty beyond reasonable doubt. Section 8 further grants the implicated student the right to appeal the disciplinary charge made against her.

[29] Ms Matala was notified of her disqualification after a decision had been taken in her absence via an email sent to her by Mr Maphutha on 15 August. The content of the email further made provision that if anything remained unclear, she would be able

to contact Mr Maphutha as the Chair of the Disciplinary Committee or the Residence Head for further clarification. This was the only correspondence Ms Matale received with regard to her disqualification.

[30] The First and Second Respondent affirmed that the decision to disqualify Ms Matale was made solely by the Residence Head at a meeting with the Goldfields Executive Committee. At this meeting the decision was also taken to suspend Ms Smith from her position as convenor of the Goldfields Election Committee. Ms Matale was not notified of these proceedings nor of her right to request the necessary reasons nor the right to appeal against her conviction and punishment. This led to her being disqualified from the second election without giving her the necessary opportunity to give her reasons.

[31] It is crucial to highlight that section 1 of the Goldfields Constitution specifically emphasises that the disciplinary process is aimed at restoring their relationship with fellow house members, rather than merely being charged and punished. In light of this, the Court is perplexed by the decision of the Goldfields Disciplinary Committee, Executive Committee, and the Residence Head to take the drastic step of disqualifying Ms Matale and levelling the heavy charge of bringing the Residence's name into disrepute against her.

[32] The language of section 1 clearly advocates for a restorative approach rather than a punitive one. Disqualifying Ms Matale without affording her the proper procedural rights appears to reflect punitive intent, contrary to the restorative principles outlined in section 1. The severity of the charge, coupled with the failure to observe procedural fairness and Ms Matale's constitutionally guaranteed right to just and fair administrative action- raises significant concerns. This situation brings into question the power dynamics between university management and students, particularly the students' right to challenge administrative actions taken that appear procedurally unfair.

[33] The Constitutional Court noted in the case of *Psychological Society of South Africa v Qwelane* that the principles of natural justice, in the hallowed phrase requires

that “justice must not only be done, it must also be seen to be done.”¹⁰ The Constitutional Court provides that procedural fairness recognises the subject’s dignity and sense of worth. Furthermore, that the principle of *audi alteram partem* inherently brings about better justice.¹¹

[34] In the present matter, Ms Matala was not given the opportunity to present her reasons or attend her disciplinary hearing. The failure to provide her with a fair opportunity to defend herself represents a serious violation of procedural fairness in the election process. Denying her the chance to make her case undermines the integrity of the process and constitutes a grave injustice. The Court is of the opinion that it is clear that the procedure followed by the Goldfields Disciplinary Committee and the Residence Head in the disqualification of Ms Matala is inconsistent with Chapter 5 of the Goldfields Constitution as well as Section 14 of the Student Constitution.

The role played by the CSLL

[35] According to the Residence Rules, the Residence Head is accountable to the CSC (now the CSLL) for the general management of the residence.¹² The Residence Head is also responsible to manage discipline within the relevant residence or PSO and controls the procedure for the election of the House Committee, within the residence constitution and rules before, during and after the election.¹³

[36] As noted above, the Residence Rules provides for the general procedure of disciplinary proceedings and states that, “if there are any discrepancies between the Residence Rules and the Disciplinary Code for Students of Stellenbosch University (“Disciplinary Code”), the Disciplinary Code will apply.¹⁴ The Residence Rules also acknowledge that when receiving a complaint that constitutes Residence Misconduct,

¹⁰ 2017 (8) BCLR 1039 (CC) para 33.

¹¹ Para 34.

¹² Rule 3.1 of the Residence Rules.

¹³ Rules 3.1.7 & 3.1.9.

¹⁴ Rule 12.2.

the Residence Head may consult with the Director of CSLL to ensure uniformity in handling residence misconduct.¹⁵

[37] All suspected Residence Misconduct shall be dealt with in the first instance by the Residence Head in authority over the Residence in which the incident arose.¹⁶ The Residence Head may also order a student, pending an investigation, to refrain from participating in any leadership position within the residence.¹⁷ The Residence Rules also provide for the procedure relating to an enquiry before the House Disciplinary Committee (“HDC”) and states that persons appearing before the Committee will be given written notice of the time, date and place of the hearing at least five days prior to the hearing.¹⁸

[38] The notice referred to above must contain the option to respond to the allegation(s), with a clear statement that the student is under no obligation to do so; and a list of potential sanctions which may be imposed.¹⁹ In the present matter, the evidence, provided by Mr Maphutha and the Electoral Commission on behalf of Ms Matale, suggests that none of these required proceedings were adhered to by either the House Disciplinary Committee, nor by the Residence Head. The House Disciplinary Committee met for an urgent meeting whereafter Ms Matale was summoned by the Residence Head that night to inform her that she would not be allowed to run for House Primarius in the upcoming elections. As noted above, she was not afforded a hearing, nor was she afforded the opportunity to respond to the allegations.

[39] When a Residence Head is presented with a matter dealing with Residence Misconduct, they have the choice to either refer it to the House (Goldfields) Disciplinary Committee, where it will be dealt with as a residence matter, or to refer it to the Chairperson of the Central Disciplinary Committee of Stellenbosch University (“CDC”). In the current matter the Goldfields Residence Head elected to deal with it as a Residence Matter, but on the testimony of the Goldfields Disciplinary Committee, failed to adhere to the correct procedures in this regard. It seems the Residence Head

¹⁵ Rule 12.3.4.

¹⁶ Rule 12.6.1.

¹⁷ Rule 12.6.2.6.

¹⁸ Rule 12.7.4.5.

¹⁹ Rule 12.7.4.6(c) & (d).

consulted with members of CSLL on the matter, which they may do, but failed to provide CSLL, the Goldfields Disciplinary Committee or Ms Matala with the required written notice pending a hearing and merely decided that she would not be allowed to run in the Second Election.

[40] This is a clear violation of the Residence Rules, the Disciplinary Code and quite possibly the Constitution of the Republic, 1996 ("Constitution"). Section 34 of the Constitution provides for the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.²⁰

[41] Furthermore, every accused person has the right to a fair trial, which includes the right to be informed of the charge with sufficient detail to answer it and to be present when being tried.²¹ Essentially, Ms Matala's constitutional rights were infringed by the actions (or rather inaction) by the Residence Head, CSLL and the HDC. The importance of procedural fairness in instances of alleged misconduct is of the utmost importance to uphold the values of Stellenbosch University.

The Fourth Election

[42] After the Third Elections were interdicted, the Residence Head approved for the Goldfields Prim Elections to take place on 28 August 2024 ("Fourth Elections"). The candidates in this election were to be both Mr Malaza and Ms Matala, as well as a handful of new candidates.

[43] In a somewhat poetic way, this entire tortuous affair seems to have come full circle with the same conditions as the First Election, after all was said and done, effectively being re-run. In terms of rule 2.2.3 of the Residence Rules, the Residence Head is the final arbiter in the election. The Residence Rules are given their powers in terms of the Disciplinary Code for the Students of Stellenbosch University ("Disciplinary Code").

²⁰ S34 of the Constitution of the Republic of South Africa, 1996 ("Constitution").

²¹ S35(2)(a) & (b) of the Constitution of the Republic of South Africa, 1996 ("Constitution").

[44] Now, despite this Court having interdicted any further Goldfields Prim elections, the Residence Head, in flagrant disregard of this Court's order scheduled the Fourth Elections without any communication with the Court. This Court acted in terms of section 85(1) of the Student Constitution. The Residence Head acted in terms of the Residence Rules and Disciplinary Code. The crux of the issue is thus whether the Disciplinary Code or the Student Constitution should be followed. This is an issue which has plagued this Court for quite some time as this Court has no powers in terms of the Disciplinary Code and thus has no power over issues dealt with under the Disciplinary Code.

[45] Both the Student Constitution and the Disciplinary Code are given their power in terms of the Institutional Statute of Stellenbosch University ("Institutional Statute"). The Student Constitution is in terms of sections 26, 27, and 28 and the Disciplinary Code is in terms of section 57. Furthermore, the Institutional Statute is adopted in compliance with the Higher Education Act 101 of 1997 ("HEA"). Section 35 of the HEA provides the requirement for rules to govern the Students' Representative Council. The Student Constitution is thus adopted pursuant to section 35 of the HEA. Section 36 of the HEA provides the requirement for rules to govern disciplinary measures, which is complied with in terms of the Disciplinary Code. Never is one placed in more importance than the other.

[46] Therefore, in terms of the Institutional Statute and the HEA, the Disciplinary Code and the Student Constitution are afforded equal footing. It is in fact the Student Constitution itself which limits it to the extent that it is consistent with the Disciplinary Code. In the Preamble of the Student Constitution it is stated that the Student Constitution is "Subject to the provisions of the Constitution of the Republic of South Africa, the Higher Education Act, the Statute of Stellenbosch University, and University regulations..." Furthermore, section 15(1) of the Student Constitution states "The rights in this chapter may only be limited in terms of legal rules of general application, which, for the purposes of this section, are deemed to include University regulations, rules, and policies." The Disciplinary Code is a University regulation and as such the Student Constitution is subject to and limited by the Disciplinary Code. The Student Constitution does not have to make this provision, but it does. Therefore, the Residence Head acted within their competence when calling for the Fourth Election.

[47] The Fourth Election took place immediately after the hearing, and Mr Malaza once again was victorious in his campaign. While the Court must emphatically express its displeasure at the disregard of its processes and orders, from a pragmatic position, it would not make sense to invalidate the Fourth Elections just to order new elections to be held on practically the same terms. Nonetheless, the Court must caution against the casual disregard of any procedures prescribed by the Student Constitution and the constitutions of any student leadership structure. If procedures can be bypassed on a whim they need not exist at all. All these documents would be reduced to nothing more than pieces of paper and all student leadership positions to nothing more than titles. It undermines the very foundation of the notion of student governance.

Conclusion

[48] In the national context, the Constitutional Court has recognised that “[t]he Constitution does not require government to be held to an impossible standard of perfection.”²² Likewise, in the student context, this Court does not seek to hold student structures to any impossible standard. However, the sad reality, on which this Court must remark, is that both Mr Malaza and Ms Matale, despite having been rivals in campaigning and sitting on opposite sides in this matter, suffered harm due to the wrongful conduct of student leadership structures.

[49] The fact remains, had the Electoral Commission conducted a proper investigation and not been so trigger-happy to invalidate the First Election, none of the subsequent harm would have transpired. At the hearing, Mr Malaza conceded that the harm which he sustained, in his view, was ultimately due to the fact that the entire Goldfields community was made aware of the fact that he failed to achieve HEMIS when the election was overturned. Mr Malaza’s contention with Ms Matale was that the Electoral Commission’s decision flowed from her initial complaint. In the Court’s view, though Ms Matale’s complaint was a factual cause of the alleged harm which transpired, the decision to overturn the First Election on dubious grounds was

²² *Mazibuko v City of Johannesburg* 2010 4 SA 1 (CC) para 161.

ultimately the decision of the Electoral Commission. In this way, its conduct constitutes a *novus actus interveniens*, breaking the chain of legal causation in respect of Ms Matale. Ms Matale merely acted within her rights afforded by section 127 of the Student Constitution to query election results. The responsibility to verify the grounds averred in any complaint falls on the Electoral Commission, and thus, if any harm was flowed from overturning the First Election, the responsibility falls on the Electoral Commission. The Electoral Commission is charged to uphold the integrity of elections in which it intervenes. The legitimacy of any electoral process on campus will be infinitely imperilled if it is seen that they may be overturned on a whim. This being said, it is the Court's view that the Electoral Commission acted in good faith, and is to be commended for its professionalism in cooperating with the Court. On the facts, however, it erred, and in future, the Electoral Commission must vigilantly guard against such missteps.

[50] Unfortunately, the same cannot be said for the Goldfields Disciplinary Committee and Goldfields Election Committee. The Goldfields Disciplinary Committee pleaded no fault in the wrongful disciplinary action taken against Ms Matale on the basis that it had no involvement in the process. Unfortunately, it is not enough for a leadership structure to avoid culpability by saying that it did nothing. On their own account, members of both committees were present at the *ad hoc* meeting where the Residence Head took the decision to disqualify Ms Matale and charge her with bringing the Residence and the Goldfields Election Committee into disrepute. Of the great many student structures on campus, the Goldfields Disciplinary Committee is one body expected to be the most familiar with the disciplinary procedures in the Residence Rules and Goldfields Constitution in the first instance, and to advocate for the interests of *all* its residents in the second. When Ms Matale's rights were being disregarded, there is an expectation that those familiar with the procedures, having been present at the meeting, would have given thought to said rights. From the evidence and conduct before the Court, the Goldfields Election Committee and Goldfields Disciplinary Committee were minimally cooperative at best in their dealings with both the Electoral Commission and this Court. It is grossly unsatisfactory that when posed questions of fact or the applicable rules the answers which were most forthcoming were "I don't know" or "I wasn't there." What is clear is that the relevant

positional student leaders did not discharge their duties admirably and there is great doubt as to whether they took them seriously – let alone knew about them at all.

[51] Here, the Electoral Commission is once again to be commended. Had it not brought Ms Matala's case to this Court, there is nothing to say that her rights in the instant matter would have been vindicated. While the committees seemed to place heavy emphasis on the alleged reputational harm sustained by Mr Malaza, no similar appreciation was apparent for similar reputational harm to Ms Matala due to the serious charge of bringing the Residence into disrepute which was levelled against her. Section 85(4) of the Student Constitution empowers the Student Court to grant "any order ... that is fair and equitable." In this instance, it is fair and equitable that the Court order that the Goldfields Election Committee and the Goldfields Disciplinary Committee formally apologise to Ms Matala.

[52] To conclude, the Court seeks to bring the following point into sharp focus for positional student leaders. The legitimacy of student leaders and their structures is derived from two places. First, the authority they purport to exercise flows from the Student Constitution, and where applicable, the Residence Rules and residence constitution. These documents and the rights and procedures they enshrine cannot be disregarded without undermining the very foundation of a student leader's position. Second, insofar as they are democratically elected, their legitimacy is derived from the electorate. Student leaders exercise no authority in their own right other than that which they are charged with by their mandate to diligently serve their constituency.

Order

[53] In the premises, the following order is made:

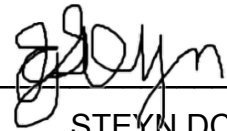
- [1] Any sanction which has thus far been imposed on Ms Matala in respect of her complaint to the Electoral Commission is hereby set aside to the extent that such decision was procedurally unfair;
- [2] The Goldfields Disciplinary Committee and Goldfields Election Committee are ordered to personally apologise to Ms Matala;

THE COURT

[3] The results of the Fourth Election are upheld as valid (contingent on them having been procedurally fair).



BRYANT CJ




STEYN DCJ



BESTER J



MUDZINGIRANWA J



SWANEPOEL J

Appearances:

For the Applicant:

S Manyifolo

For the First and Second Respondents:

K Maphutha

For the Third and Fourth Respondents:

D Duraan and A Cawood,

Instructed by Soil Student Firm