

**IN THE STUDENT COURT OF STELLENBOSCH UNIVERSITY  
REPUBLIC OF SOUTH AFRICA**

**In the ex parte application of:**

**Metanoia Residence Committee  
Nina Holling**

**First Applicant  
Second Applicant**

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**JUDGEMENT**

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**PRELIMINARY ISSUES**

[1] On 21 September the Applicants launched an urgent application before this Court asking the Court to declare that it is constitutional for the Second Applicant to step down from their position as Vice-Primarius but remain a member of the Metanoia House Committee.

**Urgency**

[2] Rule 6 of the Student Court Rules of Procedure allows for the Court to dispense with certain rules to ensure a matter is dealt with urgently. The Applicants argued the matter was urgent to ensure stability and certainty regarding their residence leadership.

[3] The Court is convinced that this does indeed render the matter urgent. Following the precedent set by this Court in *Ex parte Foster*, this Court was willing to decide the matter on an expedited timeline which involved the Court deliberating on the matter over the weekend and a public holiday. Similarly, it also decided to condone the Applicants' failure to plead in terms of the most current version of the Student Constitution, as was done in *Ex parte Foster*. As the provisions regarding the jurisdiction of the Student Court cited by the Applicants from the old Student Constitution are substantively the same as the provisions regarding jurisdiction in the current Student Constitution, the application was not prejudiced in any way by this oversight by the Applicants.

## **Jurisdiction**

[4] The Court was of the opinion that both Applicants clearly have standing before this Court in terms of section 86 of the Student Constitution.

[5] The matter calls on this Court to decide on the constitutionality of a particular course of action involving the Second Applicant and grant a declaratory order allowing the Second Applicant to remain on the House Committee. The Court is empowered to decide on the constitutionality of any act or omission of a student body or member thereof in terms of section 84(2) and is empowered to grant declaratory orders in terms of section 85(2) of the Student Constitution. This matter thus clearly falls within the Court's jurisdiction.

## **SUBSTANTIVE ISSUES**

[6] According to the Founding Affidavit lodged with this Court, the Second Applicant resigned from their position as Vice Primarius at Metanoia and wished to remain on the Metanoia House Committee.

[7] It is important to note the Metanoia House Committee is governed by its constitution. All actions and procedures followed by the House Committee must thus be sanctioned by the Metanoia Constitution. To act outside of the constraints of the Metanoia Constitution would be to act unlawfully and thus unconstitutionally. In order for the House Committee to act constitutionally – it must comply with the substantive and procedural requirements of its own constitution.

[8] This has been confirmed by the Constitutional Court in *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd.*<sup>1</sup> Cameron J writing for the majority noted that conduct taken by a decision-maker must be lawful, which requires it to comply with whatever jurisdictional facts the relevant empowering statute requires for a lawful exercise of power.<sup>2</sup> Failure to do so means that the subsequent decision can be brought for review.<sup>3</sup>

[9] The Applicants argued that the Metanoia Constitution was silent on whether the Second Applicant could remain on as a member of the House Committee upon resignation from their position as Vice Primarius. It is important to note that the silence

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<sup>1</sup> 2014 (3) SA 481 (CC).

<sup>2</sup> Para 98.

<sup>3</sup> Para 99.

of the Metanoia Constitution would not in fact allow for such a course of action. Given that the House Committee is only empowered to act in so far as they are granted the power to do so by the Metanoia Constitution, where the Metanoia Constitution does not grant them the power to follow a particular course of action, simply speaking they cannot do so.

[10] However, their argument is incorrect. Section 5 of the Metanoia Constitution provides for the process to be followed to replace or re-elect members of the House Committee and section 5.3 deals with what happens when the Vice Primarius specifically is removed from office. As such, this is the process that should be followed following the Second Applicant's resignation.

[11] The procedure outlined in section 5.3 does not support the conclusion that following the Applicant's resignation from the position of Vice Primarius, they may remain on the House Committee. Section 5.3.1 provides that a member of the House Committee must be elected to fill the position of Vice Primarius. Sections 5.3.3 and 5.3.4 provide for what must then happen to the House Committee to replace the person elected to fill the vacant position of Vice Primarius. Should the resignation of the original Vice Primarius take place prior to the commencement of mid-year exams, the now-vacant House Committee position must be filled following the process outlined in section 5.4 in terms of section 5.3.4. However, should the vacancy arise after mid-year exams, section 5.3.3 provides that the House Committee duties of the now Vice Primarius must be split amongst the remaining House Committee members.

[12] The text of these provisions makes it impossible to conclude that the Second Applicant is empowered to stay on as a member of the House Committee. In fact, they imply the opposite. To allow the Second Applicant to remain on the House Committee would then be unconstitutional.

[13] This position is understandable given that the Vice Primarius is elected to the position of Vice Primarius specifically and not as a general House Committee member. In larger residences, it will often be that the House Committee elections would be the more competitive elections with far smaller margins. Allowing someone elected in a less-contentious election to bypass the election process for House Committee entirely would not be fair nor reasonable.

[14] As such, this Court cannot conclude that it would be constitutional for the Vice Primarius to stay on as a member of the Metanoia House Committee following their resignation as Vice Primarius. In fact, it would be unconstitutional to do so. As such, a declaratory order cannot be issued.