

**IN THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH
(HELD IN STELLENBOSCH)**

30 August 2017

In the matter between:

Kerwin Cameron Jacobs

Applicant

And

2016/2017 Huis Visser Primarius

1st Respondent

2016/2017 Huis Visser Vice-Primarius

2nd Respondent

2016/2017 Huis Visser House Committee

3rd Respondent

2016/2017 Huis Visser Residential Head

4th Respondent

JUDGEMENT HANDED DOWN BY THE STUDENT COURT

[van Hagt, S]

INTRODUCTORY REMARKS

[1] It is important to note that Stellenbosch University's Student Court is a democratic structure, comprising of students that have been elected in terms of section 56 of the Stellenbosch University Student Constitution 2014 (hereafter referred to as the "Student Constitution").

[2] The Student Constitution, in section 55, states that the Student Court functions as an administrative tribunal, which is independent and subject only to the Student Constitution. Section 55 further provides that the Student Court must apply the Student Constitution impartially, and without fear, favour or prejudice.

[3] This Court determines its own procedure, giving due consideration to the rules of natural justice and the need for the Court to be accessible. These

functions are to be performed objectively, transparently and in the utmost good faith.

[4] The Student Court, as per section 62 of the Student Constitution, has the power to:

“(a) give an interpretation, or to confirm the interpretation of a party before the Court, regarding –

(i) this Constitution; or

(ii) any empowering provision in terms of which a student body or a member of a student body exercises power;

(b) decide on the constitutionality of any action or omission of a student body or a member thereof...”

[5] In addition, in section 63 of the Student Constitution, it states:

“The Student Court can –

a. grant an interdict or any other interim relief if material injustice would otherwise result;

b. grant a declaratory order;

c. set aside any decision or action that is inconsistent with this Constitution, or a constitution, policy, regulation or any empowering provision of a student body, in so far as it is inconsistent with it, provided that in case of setting aside –

(i) the retroactive effect of the order must be limited as far as possible; and

(ii) the order can be suspended for a fixed time or on any conditions so as to allow the person or body in question to rectify the fault; or 17

(d) grant any order, including a combination of the abovementioned remedies, that is fair and equitable.”

[6] Thus the Student Court will be using its powers afforded to it by the Student Constitution to make the following order.

FACTUAL BACKGROUND

[7] A temporary interdict was requested after the first respondent sent out an email calling for an extraordinary house meeting. The meeting was set to take place on Monday 7 August 2017 at 18:45 “to eliminate the requirement that a house member needs to attend 2/3 of critical engagement sessions to be eligible to stand for HK.” In the email, Mr Strydom explains that, in an effort to allow as many candidates as possible to run for House Committee, the requirement that a candidate, in order to qualify for election onto the House Committee, must attend two out of three [2/3] of these critical engagement sessions must be abolished. As only two critical engagement sessions were held prior to the election, Mr Strydom suggested the abolition of the requirement so that candidates need not attend both sessions in order to qualify.

[8] It was also set out in the application for the temporary interdict that the caucus for the election of the House Committee was set to take place directly after the meeting held on Monday 7 August.

[9] Mr Jacobs contended that the 2/3 attendance of the critical engagement sessions was required in accordance with the rules of Huis Visser. He requested that the meeting for the abolishment of the rules be interdicted. He also requested an interdict preventing the caucus for the election of the House Committee. He further requested that the Court order Huis Visser to hold a third critical engagement session (perhaps more than three) in order for potential candidates to be able to meet the 2/3 requirement; and that the caucus for the election of the House Committee should continue only after this session has been held. He argued that the requirement that candidates must attend 2/3 sessions should remain in place.

[10] Mr Jacobs further contended that since the SRC election period had begun, holding a caucus during this period was in direct conflict with section 92(5) of the Student Constitution, which provides that “The election of any of the direct or indirect constituent bodies and members of the Academic Affairs Council, Prim Committee, Societies Council, Faculty Student Committees and

House Committees must take place after the Student Representative Council election.”

[11] Pursuant to the above contentions, the Student Court granted a temporary interdict in favour of Mr Jacobs until such time as the Respondents had filed their papers in order for the Court to hear both sides in line with the *audi alteram partem* principle. The temporary interdict was not complied with and the meeting and caucus went ahead as scheduled. The Respondents have since filed their Answering Affidavits. The content of which is summarised below.

[12] The Respondents allege that because the period during which 2/3 attendance was required was not stipulated, this requirement is vague and therefore invalid. They also allege that no requirement to hold a minimum of three meetings was in place; only that 2/3 of the meetings held must be attended. In addition, the Respondents raise three points *in limine* regarding the jurisdiction of the Court; the mandate of the Court; and the urgency of the matter on which the temporary interdict was granted. In summary, should the Court not uphold the points *in limine*, the Respondents request the court to find that requiring 2/3 attendance of the critical engagement sessions, and requiring Huis Visser to hold a third session would not be in the interest of the House and would have far-reaching, unjust consequences on the student body as a whole.

POINTS IN LIMINE

[13] The rule *nisi* handed down by the Student Court was decided on after only hearing the case of one of the parties to the matter. This judgment may therefore differ from the rule *nisi* on the basis of the Respondents’ arguments.

Point *in limine* – jurisdiction

[14] With regard to the jurisdiction of the Student Court over the Huis Visser Residence and the House Committee of Huis Visser, the Court finds that it possesses jurisdiction. The First Respondent argues, in paragraphs 39-48 of his Answering Affidavit, that the House Committee is not a Student Body that

is constituted by the Student Constitution and therefore that the Student Court lacks jurisdiction to hand down a binding judgment on Huis Visser or the House Committee. The Court respectfully disagrees with this statement. As per section 62(a)(i) of the Student Constitution, the Student Court “has the power to – give an interpretation, or to confirm the interpretation of a party before the Court, regarding – this Constitution. Therefore the Court must interpret the work “constituted” in section 3 of the Student Constitution. The Court finds that the meaning of “constituted” is to mean “establish by law” or to “give legal form” to the institutions that are listed in that section. The Court does not find that the list of bodies in section 3 is indicative of the bodies that are bound by the Constitution. It merely serves to show which bodies are created in terms of the Constitution. This Court shall follow the definition of “student body” in section 1(5) of the Student Constitution. This definition therefore includes Huis Visser and the House Committee as both are regarded as an “organized group of students formally associated with the University.” In addition, although Huis Visser and its House Committee are subject to the Disciplinary Code for Students of Stellenbosch University, this does not exclude the Court’s jurisdiction over the matter at hand, which is an inter-student dispute and not necessarily a disciplinary matter. To exclude the jurisdiction of the Court would be to leave the Applicant without a body to approach for recourse, this would be against the purpose and object of the Student Court and the Student Constitution as a whole. Therefore this point *in limine* is dismissed.

Point *in limine* – mandate

[15] The Court wishes to remind the Respondents that this judgment replaces the temporary interdict judgment, as the Court had not heard the arguments of both parties when handing down the first temporary judgment. Therefore the point *in limine* regarding allegations of the Court acting *ultra vires* and going above and beyond its mandate is dismissed. This judgment in any case will repeal the previous temporary judgment.

Point *in limine* – urgency

[16] The points raised by the Respondents in this point *in limine* can be answered in the same way as the previous point *in limine*. The temporary interdict only stands in the interim period before final judgment is handed down, which is after hearing arguments from both parties. Thus, the issue brought by the Respondents regarding hearing only the applicant's case is moot. At the time when the application for the interdict was received, the Court considered it a matter of urgency and therefore dealt with it as such without arguments from the Respondents. A matter where twenty-four hours notice is given for an extraordinary meeting is an urgent matter. But the Court no longer sees it as an urgent matter, because this is no longer an application for an urgent temporary interdict. The Court is currently handing down final judgment without an urgent time restraint; therefore urgency is not at issue.

APPLICATION OF THE LAW TO THE FACTS

[17] The Student Court is of the opinion that since the applications for a position on the SRC only close on the 7th of August 2017, the period of election had not yet begun at the time the meeting and caucus were conducted. The election period only commences on the 8th of August 2017. Thus this argument by Mr Jacobs cannot be upheld.

[18] The Court would like to remind the parties that it is fully entitled to alter or overrule a temporary interdict granted before both parties' cases were heard and considered.

[19] Regarding the failure to communicate with the Respondents prior to the temporary interdict, or send them the interdict by email, the Court notes the following. The Student Court apologised to the Respondents for the failure to send the temporary interdict to the Respondents at the time when it was sent to the Applicant. As noted in paragraph 30 of the First Respondent's Answering Affidavit, the Chairperson of the Student Court stated, "It seems you have not received the judgment, and so you may not be liable for any deliberate non-compliance." This does not mean that the Respondents are not bound by the temporary interdict, merely that, on account of their lack of

knowledge of the interdict, they cannot be held in contempt of the Court's order. Therefore the Student Court does not see the failure of the Respondent's knowledge of the order as any hindrance to the matter at hand, the Respondents are still bound by the consequences of non-compliance with the interdict and the current judgment in so far as it replaces the interdict. The Court notes that the temporary interdict was not complied with. It was held in the interdict that should the meeting and election continue, both would be invalid. This statement binds the Court and respective parties, as the Respondents should have complied with the interdict at the time it was granted. Furthermore their excuse for non-compliance is weak; the Applicant presented a printed copy of the order of the Court, the Respondents had no *bona fide* reason to ignore this order. Thus the order stands and the meeting and election of the caucus is invalid.

[20] Having said this, the Court finds that it is in the interests of justice and fairness to permit the abolishment of the requirement of 2/3 attendance of the critical engagement sessions. It is within the prerogative of the House Committee to decide which amendments they want to pass and those they do not. However, the Court must ensure compliance with prescribed procedures so that the residents and student body as a whole are protected. In addition, the Court notes that it is not a requirement to hold a minimum of three critical engagement sessions. The Court finds that it is in the interest of the Applicant and Respondents that the process of election is not delayed, as the results may have far reaching consequences. The Court accepts that the four candidates who met the attendance requirement will be slightly disadvantaged if the requirement is abolished. However, their disadvantage is minor, as they will still be allowed to stand as candidates, albeit alongside the other fifteen candidates who will be eligible once the requirement is abolished. It is in the best interests of all concerned that Huis Visser has as varied a choice as possible in the election of their House Committee.

ORDER

[21] The result of non-compliance with the temporary interdict stands. The results of the meeting held on 7 August 2017, and the caucus, which directly followed the meeting, are invalid.

[22] However, the Court declares that it is the prerogative of the House Committee to change the requirements, providing the stipulated procedures are met. Therefore the Court will not stand in the way of changing the requirement that 2/3 critical engagement sessions must be attended in order to qualify as a candidate for election onto the House Committee.

[23] Thus the Respondents must hold another meeting to change their current rules, and another caucus in order for the requirement to be validly changed and candidates to be validly elected, as their first meeting and caucus are invalid.

By Order of the Court,

[Concurring: Pagel, A; Macfarlane, A; Naidu, S; and Rutgers, J]