

IN THE STUDENT COURT OF STELLENBOSCH UNIVERSITY

REPUBLIC OF SOUTH AFRICA

In the matter between:

PHILIP VISAGE

First Applicant

VIWE KOBOKANA

Second Applicant

And

ELECTORAL COMMISSION

First Respondent

FINAL DECISION

INTRODUCTION

[1] On 1 July 2022 this Court handed down a preliminary judgment in the matter of *Philip Visage v Electoral Commission*. The preliminary judgment dealt with various points in limine raised by the Respondent in the matter and the Court held over deciding on the merits of the application pending receipt of written submissions from the parties.

[2] On 4 July 2022, the Respondent submitted their written submissions as requested by the Court. The Court is grateful for the Respondent's continued assistance in the matter. The Applicant failed to provide the Court with written submissions by the required deadline.

MOOTNESS

[3] The Respondent's written submissions provided the Court with an important insight that changes the ability of this Court to decide the matter at hand. At para 34 the Respondents note that they have changed the final deadline of the nomination extension period to 20 July 2022. This date is importantly 3 days after the term starts. As a consequence thereof, it can no longer be said that the nomination period in its entirety commences and closes within the exam and holiday period.

[4] Both orders sought by the Applicant pertain to a nomination period that starts and ends during the exam and holiday period. They sought to have the Respondent's initial decision to close the nomination period on 18 July declared invalid and sought a declaratory order providing that no nomination period can commence and end during the exam and holiday period.

[5] The timing at which a matter comes before a court plays an important role in a court's determination of whether or not they can hear a matter. This is because it is important to ensure that courts do not decide a matter in the hypothetical. The Court is of the opinion that the Respondent's decision to change the deadline for the second period of nominations to 20 July 2022 has had the effect of invalidating the Applicant's cause of action. The decision to close nominations on 18 July 2022 which they sought to challenge no longer exists and the need for the declaratory order they sought to obtain has been rendered moot by the Respondent's change in position. In *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs*,¹ the Constitutional Court noted that were an application no longer presents a live controversy.² This matter no longer provides the Court with a live controversy. As such, it cannot be considered justiciable. In para 26 of their Replying Affidavit, the Applicants themselves admitted that their concern would be mitigated by extending the nomination period to include "at least a few days" of the academic term.

[6] An exception to the doctrine of mootness does exist. A court may still decide on a matter that is in effect moot where it is convinced that it is within the interests of justice to do so.³ There are a variety of considerations a court must take into account when deciding whether a matter falls within the interests of justice. Two considerations are relevant here. Firstly, the fullness of the argument presented,⁴ and the complexity of the issue.⁵

[7] With regards to the first factor, this matter is being decided without a hearing and on the basis of an urgent application brought by Applicants. It cannot be said that this Court has been presented with full arguments by both parties on the matter at hand.

¹ 2000 (2) SA 1 (CC).

² Fn 18.

³ *MEC for Education, KwaZulu-Natal v Pillay* para 32.

⁴ Para 32, *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) para 11.

⁵ *Id.*

As such, it would be irresponsible for the Court to render a decision on the matter unless it is required to do so.

[8] Secondly, the correct interpretation of the Student Constitution as it relates to electoral regulations is an inherently contextual consideration. The suitability of any nomination period is something that is inherently variable. A decision from the Court on the basis of a nomination period that no longer presents an issue to the Applicants would again be an irresponsible undertaking.

[9] This Court is of the opinion that it is not in the interests of justice to provide a declaratory decision in the abstract in this matter. As such, the Court concludes that this matter is no longer admissible before it.