

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

In the matter between:

NEIL DU TOIT	First Applicant
ROCHELLE ELLA JACOBS	Second Applicant
MARC RUDOLPH	Intervening Applicant
And	
BERNARD PIETERS	First Respondent
ASHWIN MALOY	Second Respondent
THEA BESTER	Third Respondent
FRANCOIS HENNING	Fourth Respondent
JACOBUS MAASS	Fifth Respondent
NETANJE VAN NIEKERK	Sixth Respondent
SELMIE CROUS	Seventh Respondent
CALUMET LINKS	Eighth Respondent

JUDGMENT HANDED DOWN BY THE STUDENT COURT

INTRODUCTORY REMARKS

[1] The guarantee of free and fair elections is a cornerstone of a democratic community. According to the Preamble of the Student Constitution of the University of Stellenbosch (“the Student Constitution”), students “acknowledge [their] responsibility to participate in the democratic structures recognised by this Constitution.” The Students’ Representative Council (“SRC”) is such a structure. According to section 18 of the Student Constitution, the SRC is “the highest representative and policy-making student body at the University.” Needless to say, the faith of students in the election of this body is integral to its legitimacy.

[2] From the outset, it is worth clarifying a fundamental point: the Student Court, as another democratic structure recognised by the Student Constitution, consists of students (elected in terms of section 56 of the Student Constitution). Section 55 of the Student Constitution states that “[t]he Student Court functions as an administrative tribunal; and is independent and subject only to this Constitution, which the Court must apply impartially and without fear, favour or prejudice.” The Student Court also “determines its own procedure, with due consideration of the rules of natural justice and the need for the Student Court to be accessible”, according to section 65 of the Student Constitution. These functions are fulfilled with objectivity, transparency, and in the utmost good faith.

[3] The matter before the Court has presented various challenges, which have made it particularly difficult for this Court to come to a final order: firstly, the urgent nature of the application; secondly, the fact that Respondents 1 to 7 were neither present at the hearing on 1 August 2016 nor the subsequent return date on 16 August 2016; thirdly, the report submitted by the Eighth Respondent in his capacity as the Election Convenor; and, finally, non-compliance with this Court’s interim order by Respondents 1 to 8.

[4] It is against this background that the Court needs to find an outcome that is in the best interests of the student constituency of Stellenbosch University. This requires a balancing of the rights and responsibilities of Respondents 1 to 7, the Election Convenor, the SRC candidates and the entire body of voters. In order for the Court to do this, it is necessary to consider the facts that gave rise to the interim order and, subsequently, the final order.

[5] It must be pointed out at this stage that the former “Seventh Respondent”, Roderick Leonard, is no longer a party to these proceedings.

JURISDICTION

[6] Section 26(2)(e) of the Higher Education Act 101 of 1997 requires every higher education institute to establish a Students’ Representative Council. Stellenbosch University falls within the definition of “higher education institute”

contained in the Act. Section 35 stipulates that the “establishment and composition, manner of election, term of office, functions and privileges of the students’ representative council of a public higher education institution must be determined by the institutional statute and the institutional rules”.

[7] The Institutional Statute of Stellenbosch University prescribes in section 49 that “[t]he Constitution of the Student Union prescribes the membership, composition and manner of election of the SRC.” Section 2(2) of the Student Constitution confirms that “any references in other documents to the ‘Student Union Constitution of Stellenbosch University’ refer to this document”. The Student Court is a creature of the Student Constitution. In terms of Chapter 3 of the Student Constitution, the SRC is established.

[8] Jurisdiction of this Court is then established in section 62 of the Student Constitution, provides that:

“The Student Court 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;
- (c) 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;
- (d) make a final decision regarding any matter where the parties consent to the jurisdiction of the Court; and
- (e) decide on all other matters which this Constitution places under the jurisdiction of the Student Court.”

FACTS OF THE CASE

[9] On the morning of 1 August 2016 at 00:41 and 00:51 respectively, the Eighth Respondent received complaints from the First Applicant that Respondents 1 to 7 had contravened the SRC election rules. According to the Eighth Respondent in the subsequent Report submitted to the Court, he was asleep at those times. At 04:45 on that same morning, the First and Second Applicants also filed their Founding Papers with this Court.

[10] Upon receiving the application and due to the urgent nature of the matter, the Court initiated proceedings by acknowledging receipt of the Founding Papers via e-mail. The Court then notified the Respondents and parties with a material interest in the matter, of the place and the time of a hearing, as per section 65(2)(a) of the Student Constitution. The Court informed the parties via e-mail sent at 12:20 that the matter was set down for urgent hearing on 1 August 2016 at 16:00 in Room 2027 of the Old Main Building.

[11] During the course of these arrangements, the First Applicant – under no instruction of this Court – served the papers on as many of the Respondents as he could physically find, and mistakenly informed them that the matter was going to be heard on 2 August 2016. The First Applicant confirmed to the Court via e-mail at 13:43 that “[he and the Second Applicant] had in error notified the respondents that the hearing would be [on 2 August] but [they were] notifying [Respondents 1 to 7] of the error.” The First Applicant tried to rectify the situation by notifying the Respondents that the date and time of the hearing was, in fact, 1 August at 16:00, as per the e-mail sent to the parties by this Court.

[12] The legal advisers of Respondents 1 to 7 informed the Court at about 14:59 on 1 August 2016 that:

“3. It is our instructions that on or about 12h30 our client was handed a physical copy of a notice of motion indicating that a hearing will be held on 2 August 2016 at 16h00.

4. On or about 13h30 yet another notice was handed to our clients, this time indicating that a hearing will be held on even date at 16h00.

5. Taking the abovementioned into consideration it is clear that our client is not awarded sufficient time to prepare its case and answer to the allegations. Taking the discrepancies in date and time into consideration our client is not in a position to participate in the proceedings and reserves the right to take any decision made on review. Our client will approach court on an urgent basis if need be and will use this correspondence for an appropriate cost order against all concerned, and in their personal capacity if need be.

6. Take note that our client is prepared to attend the proceedings as initially scheduled for 2 August 2016 at 16h00.”

[13] During this time, the Court received an intervening application from the Intervening Applicant.

[14] Owing to the urgent nature of the proceedings, which will be discussed in greater detail later, the matter was heard on 1 August as planned and communicated by the Student Court, but in the absence of Respondents 1 to 7. The Court adopted an inquisitorial approach in the proceedings. Of the Respondents, only the Eighth Respondent (the Election Convenor) was present.

Interim Order

[15] Based on the facts before the Court presented by the Applicants and the Eighth Respondent, an interim order was handed down. The prayer of the Applicants was for the candidature of Respondents 1 to 7 to be declared invalid on grounds of contravention of election rules pertaining to campaign posters, campaigning in the Neelsie and failure to attend caucus events. All of these grounds were discussed at length in the Founding Papers of the Applicants.

[16] A strong case was made to this Court that there had been irregularities relating to the campaigns of Respondents 1 to 7 in the election procedure. However, as fairness to all parties was of the utmost importance, this Court held in its interim order that Respondents 1 to 7 should only be suspended, as opposed to being disqualified, and that the SRC 2016/2017 elections, due to commence on 2 August, should be postponed in the interest of fairness to all.

[17] In terms of the interim order, the recommencement of the SRC election process was made subject to the fulfilment of the following conditions: an investigation into the compliance of Respondents 1 to 7 with Schedule 1 of the Student Constitution by the Election Committee referred to item 2(1) of Schedule 1 of the Student Constitution; a formal report pertaining to, *inter alia*, campaign posters, electioneering, monetary limits and attendance of caucuses, compliance with the Election Rules and the Student Constitution, compiled by the Election Committee and presented to the Court for ratification within 5 (five) academic days; and ratification of this report, to be made public

by the Court. This Court also ordered that all SRC election campaign posters not satisfying the requirements prescribed by election rules should be removed by 17:00 on Tuesday, 2 August 2016.

[18] The rationale of the suspension of the candidature of Respondents 1 to 7 in the 2016/2017 SRC elections ordered by this Court in paragraph 7 of its interim judgment was to give the Election Convenor an opportunity to fully investigate the allegations brought by the Applicants in respect of the election campaigns of all candidates, whether or not they had at that point contravened any election rules. The reason for the Court ordering this investigation by the Election Convenor is due to the fact that the EC is in a better position to investigate, due to his integral knowledge of the election process. A further aim of this investigation was to give the Respondents 1-7 the opportunity to state their case. The Court fully understood that such a report would be crucial to enable it to make a final order.

Report by the Election Convenor

[19] The Eighth Respondent (the Election Convenor) submitted his report to the Student Court on 5 August 2016 at 14:20. In it, the Eighth Respondent acknowledges that no investigation was conducted.

[20] The Eighth Respondent thus failed to follow the interim order of the Court, which ordered that he produce a formal report pertaining to, *inter alia*, campaign posters, electioneering, monetary limits and attendance of caucuses, compliance with the Election Rules and the Student Constitution. Without this report, the Court acknowledged the pressing need to give all parties a final opportunity to make submissions and have their side heard before a final order was handed down, as this was not addressed at all by the Eighth Respondent. It must be emphasised that this was the reason for setting down a return date, which was communicated to all parties via e-mail as being 12 August 2016 at 16:00.

[21] The Court called for submissions from all interested parties. and consequently received submissions from four of the 2016/2017 SRC candidates whose election campaigns were also put on hold, as well as

further submissions from the Applicants. No submissions were made by Respondents 1 to 7.

[22] However, with all set for proceedings to commence on the afternoon of 12 August, the Student Court received an urgent, detailed letter at 11:24 from the legal advisers of Respondents 1 to 7, stating that “[their] clients [would] not afford these unlawful proceedings any semblance of legitimacy by attending the further ‘hearing’ [that] afternoon”. The aim of the second sitting was specifically to enable the Court to hear both sides before making a final order. As this letter conflicted with the aim of the Court, this Court then made the decision to postpone the proceedings scheduled for 16:00 that afternoon in order to consider the letter and its implications.

Return date

[23] On the afternoon of 12 August 2016 at 15:56, the Student Court communicated to all parties via e-mail that the return date had been postponed to 16 August at 17:15.

[24] In response to the Court’s call for submissions, the Applicants brought to the attention of the Court further alleged violations of the electoral rules by Respondents 1 to 7, as well as alleged breaches of the interim order. Examples of the alleged procedural irregularities include insults to the Rector’s Management Team, failure to remove contraband posters, continued campaigning and contempt for this Court and the Electoral Convenor.

[25] At this hearing, the Student Court again adopted an inquisitorial approach in order to unpack properly the submissions presented related to procedural irregularities.

CLARIFICATION OF THE INTERIM ORDER HANDED DOWN BY THIS COURT

Urgent nature of proceedings

[26] Complaints pertaining to SRC elections must be lodged with the Election Convenor, according to item 26(1) of Schedule 1 of the Student Constitution

of Stellenbosch University. The Convenor then has 24 hours to announce their decision.

[27] In this instance, the First and Second Applicants lodged such complaint with the Eighth Respondent on 1 August 2016. Owing to the fact that the SRC 2016/2017 elections were due to commence on 2 August, the First and Second Applicants then also sent an urgent application to the Student Court in accordance with item 26(2) of Schedule 1 of the Student Constitution. This item states that:

“Any complaint about the running of the election, including any aspect that may jeopardise the freedom or fairness of the election, and any decision or failure to make a decision by the Election Convenor(s), must be lodged with the Student Court –

- (a) within a reasonable time;
- (b) before the third (3rd) University day (inclusive) after the announcement of the results; and
- (c) in accordance with the results of the Student Court.”

[28] The Court is obliged under item 26(3)(a) to “handle such complaint with necessary speed if harm will otherwise result”. Item 26(3)(b) then directs the Court to “consider the complaint against the principles of a free and fair Student Representative Council election that promotes representivity and participation.”

[29] An analysis of item 26(2) states that the Student Court may be approached in two situations. The first is where the complaint has to do with “any aspect that may jeopardise the freedom and fairness of the elections”, and the second is where the complaint is against “any decision or failure to make a decision by the Election Convenor(s).” It is thus clear that this court has jurisdiction over matters that are in the interest of free and fair elections.

[30] The first jurisdictional ground is not triggered only after the Election Convenor has made a decision, but is a self-standing jurisdictional ground. If it is shown to the court or is clear from the facts of the case that the complaint pertains to any aspect that may jeopardise the freedom and fairness of the elections, the Student Court may hear the matter, regardless of the stage that

a complaint with the convenor is at. Even though the Eighth Respondent was not afforded a full twenty-four hours in which to conduct an investigation in terms of item 26(1) of Schedule 1 of the Student Constitution.

[31] The written and oral submissions made by the Applicants dealt with issues that are in their very nature against the freedom and the fairness of the election. Therefore, this Court is of the view that it does have jurisdiction over this matter.

Audi alteram partem

[32] The phrase *audi alteram partem* (which can be translated from Latin to mean “let the other side be heard as well”) is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to evidence against them.

[33] The rule of *audi alteram partem* exists to ensure that proceedings do not unfairly disadvantage a party against whom claims are brought or evidence led. It is the belief of this Court that a “fair hearing” must under the circumstances of this case be interpreted in line with rules of natural justice to mean “having had a fair chance to be heard and make submissions”. If this were not so, then a party who simply refused to appear before a court on more than one occasion would be guaranteed an outcome in their favour. Applicants 1 to 3 should not be denied an opportunity to have their side heard at Student Court simply because Respondents 1 to 7 refrained from attending the hearings on both 1 and 16 August.

[34] The urgent first hearing held on 1 August 2016 at 16:00 gave rise to the interim order. The purpose of the interim order handed down was to afford this Court an opportunity to be presented with detailed facts of the case. The Student Court has gone to great lengths to ensure the presence of all parties at a subsequent hearing. All of the parties cited in this matter were informed of the return date for this matter via e-mail on Wednesday, 10 August at 15:00.

[35] At 11:24 on the return date, the Student Court received an e-mail from the legal advisers of Respondents 1 – 7 stating that “[their] clients [would] not

afford these unlawful proceedings any semblance of legitimacy by attending the further ‘hearing’ [that] afternoon”. The consequent postponement of the return date to 16 August at 17:15 served the very important purpose of enabling the Court to hear Respondents 1 to 7.

[36] To have postponed proceedings beyond 16 August would have delayed a final order from this Court even further, and would thus have been disadvantageous to all candidates in the SRC 2016/2017 elections. It is important to note that the very existence of this administrative tribunal centres on hearing university-related procedural disputes and providing relief, as seen in Chapter 5 of the Student Constitution.

FINDING OF THE STUDENT COURT ON 16 AUGUST 2016

Contravention of election rules prior to the interim order of this Court

[37] In their Founding Papers, on which the Applicants relied in the hearing held on 1 August, Applicants 1 and 2 brought to the attention of the Student Court the fact that Respondents 1 to 7 had allegedly contravened election rules relating to campaigning in the Neelsie, campaign posters, and failure to attend caucus events. There was also evidence brought before this Court to show that monetary limits placed on candidates’ individual campaigns were exceeded. The Intervening Applicant presented evidence to this Court in connection with further allegations that, firstly, the erection of posters for the election campaigns for Respondents 1 to 7 had contravened municipal regulations and that, secondly, the cost of the posters had exceeded the monetary limits placed on campaigns. The Eighth Respondent (the Election Convenor) confirmed the allegations summarised below.

(i) Campaigning in the Neelsie

[38] On the afternoon of 19 July 2016, a campaigning event for AfriForum took place in the Neelsie Student Centre. It included a band, advertisements on the

screen in the centre of the Neelsie, and bursary offers. At least one of the advertisements on the big screen was a call to vote for AfriForum.

[39] A complaint was lodged that evening, which included allegations that Respondents 1 to 7 had broken the rule regarding their candidature by announcing in the Neelsie that they would be running in the SRC 2016/2017 elections. The complaint also stated that Respondents 1 to 7 had contravened election rules relating to budgets, as the event alone had cost in excess of R3 000.

[40] The Applicants submitted in their founding papers that a nexus was created between the individual candidates and AfriForum by linking the AfriForum website with names of the candidates.

[41] This event could be seen as a campaigning event, and one which would have cost over R4 000, according to the 2016 Rates for Promotions in the Neelsie Student Centre, as presented to the court as documentary evidence.

[42] The Eighth Respondent reacted to this complaint by issuing a warning, and included in his reasons for not taking more drastic measures the fact that AfriForum did not mention any student campaign directly and rather that general voter encouragement had taken place. The Eighth Respondent did, however, acknowledge that “students who stand under the umbrella of AfriForum [had] a slight advantage in terms of marketing.”

[43] This court accepts that the EC’s remedy, the warning, was just under the circumstances. This decision is based on the facts that was before the EC at that point in time and is not evaluated *ex post facto*.

[44] However, the Eighth Respondent put to the Court at the hearing on 16 August that a meeting was held to address financing of election campaigns by external parties subsequent to the abovementioned event in the Neelsie. That specific meeting was attended by all candidates, including Respondents 1 to 7. In this meeting, it was agreed upon by candidates, including Respondents 1 to 7, that costs of campaigning had to be absorbed by candidates themselves and not by political institutions or other external parties.

(ii) Campaign posters

[45] The Applicants substantiated allegations with photographic evidence that posters had been put up on campus on the evening of 31 July 2016 and that, owing to the combined cost of materials used, the high quality of the print of the posters and the transport used to complete the task of distribution, this endeavour would more likely than not have exceeded the allocated budget for campaigning agreed to by all candidates and the Election Convenor (R650 per candidate) in terms of item 22(2) of Schedule 1 of the Student Constitution.

[46] Although evidence was presented to the Court that the majority of these posters depicted Respondents 1 to 7, there were also posters put up on 31 July that simply sent out a generic call to vote for AfriForum candidates. All of these posters were displayed on campus after both the warning issued by the Eighth Respondent and the agreement by all candidates, including Respondents 1 to 7, that campaigning costs were to be absorbed by candidates themselves and restricted to R650.

[47] The rules of the Election Convenor, which gain their power from section 22 of schedule 1 of the SC, state that:

“The Election Committee and prospective candidates (including the SRC Election Convenors) are responsible for the photography, design and distribution of all marketing posters. The candidate will be allowed to choose one of the photos that will be taken by the professional photographer, for his/her campaign posters. No other posters will be allowed.”

[48] Over and above the breach of the agreed budget limit, the use of posters that do not feature the photograph by the stipulated professional photographer are not permitted. Posters featuring additional graphic designs are also not permitted and evidence presented to the Student Court showed that some of the abovementioned posters included graphic designs. This Court is convinced that, on a balance of probabilities, the campaign posters of Respondents 1 to 7 exceeded the allocated budget for campaigning and contravened the election rules.

[49] It was also brought to this Court’s attention, by the intervening Applicant, that no permission was granted by the Stellenbosch Municipality for the erection of these posters on campus, rendering the posters illegal in terms of

municipal regulations. Furthermore, posters that were found by this court to have contravened election rules in its interim order were not removed within the time limit set by this Court. This *prima facie* constitutes an unfair advantage for Respondents 1 to 7 in the SRC 2016/2017 elections, especially as the elections were originally scheduled to commence on 2 August 2016.

(iii) Irregularity of attendance at caucus events

[50] In terms of the rules of the Election Convenor, all caucus events are compulsory for SRC candidates. However, it was the submission of the Second Applicant that, as at 1 August, the First and Fifth Respondents had both failed to attend all of the caucus meetings, whereas the Third Respondent had not attended any. The Eighth Respondent accepted these absences in good faith and acknowledged that there was no procedure to follow up on candidates' absence from caucus events, nor were there any consequences for non-attendance.

[51] Caucuses are an opportunity for SRC candidates to present themselves to campus and to answer questions posed to them, and are a vital aspect of transparent, democratic, participatory and accountable student governance. In light of the importance of this element to candidates' campaigns, it is viewed by this Court as a considerable irregularity in the SRC 2016/2017 election process that any candidate's absence at caucus events be permitted without valid reasons.

[52] The allegation of irregularity of attendance at caucus events is mentioned here to substantiate the finding of this Court that the SRC 2016/2017 election procedures have been tainted and should start *de novo*. This allegation has not, however, played a role in this Court's decision to disqualify Respondents 1 to 7 from SRC 2016/2017 elections.

Contravention of election rules subsequent to the interim order of this Court

[53] In the Applicants' response to the Election Convenor's report, which was submitted by the Applicants in preparation for the hearing held on 16 August,

it was brought to the attention of the Student Court that Respondents 1 to 7 seemed to have contravened certain further election rules after the interim order had been handed down. The Eighth Respondent (the Election Convenor) confirmed the allegations summarised below.

(i) Insults to the Rector's Management Team

[54] On 2 August 2016, members of AfriForum distributed a pamphlet on the Stellenbosch University campus. The pamphlets featured an illustration of Stellenbosch University Rector Professor Wim de Villiers's head appearing on the end of a tube labelled "Wimpie kondensmelk". He is depicted regurgitating the contents of the tube. A man personifies the student movement 'Open Stellenbosch'. The vomitus being discharged by the Rector's head is seen to progress directly into the mouth of the personification, whose hand appears to be squeezing the vomitus from the bottle. The text proceeds as follows:

"Wimpie is unwilling. Wimpie is a naughty little boy. Wimpie doesn't want Afrikaans friends playing at Maties. Wimpie only wants to be friends with OpenStellenbosch. Solution? Come share in the sweet taste of victory: Vote AfriForum! [...]"

[55] The Electoral Code of Conduct, which applies to all students, grants candidates the right to, *inter alia*, "distribute the election and campaign materials designed and provided by the convenors." The Applicants maintained that this rule has been contravened.

[56] Over and above this, the rules state that "[m]arketing may not be discriminatory or derogatory towards other candidates, any existing student body or university organ." According to the Applicants, the Rector's Management Team is the highest management university organ, and the Rector is at its head. It was the submission of the Applicants that the graphic display of the Rector retching into a man's mouth is clearly derogatory. According to the Applicants, the Rector is placed in a compromising position that denigrates his authority, and is referred to in the diminutive as "Wimpie".

[57] This Court is convinced that a sufficient nexus exists between the election campaigns of Respondents 1 to 7 and the distribution of the publication

containing to the cartoon of the Rector. However, it is not within the jurisdiction of this court to make a finding on whether or not these marketing materials are “discriminatory or derogatory” as it constitutes a substantive issue.

(ii) Failure to remove contraband posters

[58] The interim order handed down by this Court ruled in paragraph 9 that all SRC election campaign posters not satisfying the requirements prescribed by the election rules had to be removed by 17:00 on Tuesday, 2 August 2016.

[59] Evidence was submitted to the Court by Applicants 1 to 3 as proof that at 18:11 on Tuesday, 2 August, many of the posters remained. Note is taken of the fact that even by 6 August the bulk of the posters had not been removed.

[60] The Electoral Code of Conduct grants candidates the right to, *inter alia*, “distribute the election and campaign materials designed and provided by the convenors” and to “put up the posters designed and provided by the convenors”. In addition, the rules section declares that:

“The Election Committee and prospective candidates (including the SRC Election Convenors) are responsible for the photography, design and distribution of all marketing posters. The candidate will be allowed to choose one of the photos that will be taken by the professional photographer, for his/her campaign posters. No other posters will be allowed”.

[61] The Student Constitution stipulates in item 22(1) of Schedule 1 that “[c]andidates may campaign in any way that does not violate the law.” The Electoral Code of Conduct furthermore grants candidates the right to “conduct election campaigns in all legal ways”. Due to the fact that the Stellenbosch Municipality stated in writing that it had neither received any application from respondents 1-7 nor AfriForum to put posters up on campus, this Court finds that the posters are thus illegal in terms of municipal regulations.

(iii) Continued campaigning

[62] Following the interim order of this Court, evidence was submitted to the Student Court that the Respondents' campaigning continued. This included dressing in the green overalls and handing out sweets, Frisbees, publications ("KampusKreet") and roses. In addition, the LED screen in the Neelsie continued to be used. This again calls into question the total cost expended by Respondents 1 to 7 on their campaigns.

[63] In consideration of the evidence presented to support these allegations, it was not proved to this Court that Respondents 1 to 7 personally engaged in the specified campaigning activities of AfriForum. Even if the aforementioned respondents did not partake in this campaigning endeavour, the nexus between the said respondents and AfriForum is sufficiently strong to constitute a breach of this Court's interim order. By marketing AfriForum and encouraging students to vote for candidates linked to the organisation, a nexus is established in terms of which respondents 1 to 7 draw considerable benefit.

Effect of all of the abovementioned contraventions of election rules

[64] It is important to note that the effect of the abovementioned contraventions of election rules by Respondents 1 to 7 pertaining to campaign posters cannot be undone. These contraventions, in conjunction with irregularity of attendance at caucus events, have thus tainted the SRC 2016/2017 election process. It is also clear to this Court that, by continuing their election campaigns even after the interim order was handed down, Respondents 1 to 7 gained unfair advantage over the other candidates whose campaigns were halted.

IN CONCLUSION

[65] The outcome of the interim judgment was dependent on the findings of the Eighth Respondent in his report. The report offered the Student Court no guidance and showed no engagement with SRC candidates or their compliance with the SRC election rules. The interim order of the Student Court stated in paragraph 10 that:

“Non-compliance with this interim order will result in the Court invoking section 26(3)(d)(iv) of the Student Constitution, with the implication that the election process as a whole will be invalidated.”

[66] This Court is convinced that none of the conditions contained in paragraph 8 of the interim order were met: no investigation into the compliance of Respondents 1 – 8 with Schedule 1 of the Student Constitution was conducted by the Eighth Respondent, neither was a formal report submitted to the Student Court pertaining to, *inter alia*, campaign posters, electioneering, monetary limits and attendance of caucuses, and compliance with the Election Rules.

[67] After the meeting with the Eighth Respondent at which SRC 2016/2017 candidates agreed that the R650 permissible for campaigning could only be absorbed by candidates themselves, and less than forty-eight hours before the SRC elections were set to commence, a significant number of posters appeared on the Stellenbosch University campus. These posters not only connected Respondents 1 to 7 with AfriForum in their campaigns as candidates of the 2016/2017 SRC elections, but also did not adhere to specifications prescribed by election rules, and also more likely than not exceeded the campaign budgets of Respondents 1 to 7. As neither AfriForum nor respondents 1 to 7 applied to the Stellenbosch Municipality for these posters to be erected on campus, the posters were also illegal.

[68] Paragraph 9 of the interim order of this court, which ordered that all SRC election campaign posters not satisfying the requirements of the election rules had to be removed by 17:00 on 2 August 2016, was not complied with, and Respondents 1 to 7 benefited from continued campaigns in breach of order of this Court when their fellow SRC candidates had halted theirs. This was most unfair towards the other SRC candidates.

[69] It has thus been proved to this Court that, on a balance of probabilities, that there were contraventions of election rules by Respondents 1 to 7, which have all been discussed above. These contraventions, along with the irregularity of attendance at caucus events, constitute irregularities that have

tainted the entire election process. The abovementioned contraventions have also given Respondents 1 to 7 an unfair advantage over the other SRC 2016/2017 candidates, that cannot be undone. It is indeed a great pity that the Court never had the opportunity to hear Respondents 1 to 7 as fellow students.

FINAL ORDER

[70] The final order of this Court is thus as follows:

- (a) The 2016/2017 Student Representative Council elections pertaining to the members as referred to in section 19(a) of the Student Constitution of Stellenbosch University, is hereby declared void *ab initio*, and must commence *de novo*; and
- (b) Respondents 1 to 7 are disqualified from standing in any further Student Representative Council 2016/2017 elections as referred to in (a) above.

DE VILLIERS K, with COLEMAN E, GOUWS C, OOSTHUIZEN A and ZEVENBERGEN I concurring.