



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

**IN THE MATTER BETWEEN
ELECTORAL COMMISSION**

First Applicant

And

**GOLDFIELDS ELECTION COMMITTEE
GOLDFIELDS DISCIPLINARY COMMITTEE**

**First Respondent
Second Respondent**

Neutral Citation: *Electoral Commission v Goldfields Electoral Committee and Another (Urgent interdict) 20/08/24*

Judgment: Swanepoel & Bester JJ (Bryant CJ, Steyn DCJ & Mudzingiranwa J concurring)

Decided on: 20 August 2024

URGENT INTERIM INTERDICT

SWANEPOEL & BESTER JJ

[1] The Applicant approached this Court on an urgent basis on Monday, 19 August 2024, seeking to set aside a decision taken by the Goldfields Election Committee to disqualify a candidate, Ms Matale, from the Goldfields Residence Primaria/us election. This disqualification was based on certain findings by the Goldfields Disciplinary Committee which, according to the Applicant, were irregular.

[2] In terms of section 125(1) of the Student Constitution, House Committees must appoint electoral committees or convenors to facilitate their internal elections. In terms of section 125(2), the Electoral Commission exercises an oversight role with the power to intervene *inter alia* where consequential irregularities have been noted, where there is *prima facie* evidence of electoral misconduct, and where the appointed committee or convenor fails to comply with election regulations.

[3] In the instant matter, we are of the opinion that the facts averred by the Electoral Commission's Director of Compliance and Oversight create a *prima facie* inference of irregularities, potential electoral misconduct and noncompliance with election regulations.

[4] In the present matter, the Respondents were given an opportunity to furnish reasons as to why the election should not be interdicted. Further, the Court offered the Respondents the assistance of one of the Court's trained student legal representatives. However, the Respondents failed to take up such an offer and provided no further substantive context. The reason proffered by the Respondents for this is that they were awaiting communication from the Centre for Student Life and Learning. Nonetheless, the Respondents have failed to place any arguments before this Court at the time of this judgment as to why the election should not be interdicted.

[5] We recognise that section 127(3)(a) holds that any unresolved complaint which deals with the freedom and fairness of elections must be placed before this Court within a reasonable time. The Applicant approached this Court in the same week that the election was scheduled. However, in the circumstances we find that the Applicant attempted to deal with the matter as promptly as possible. The Electoral Commission only received the relevant complaint on 15 August 2024 and completed its investigation the very next day, on Friday, 16 August. It is commended for the comprehensiveness with which the Commission placed its evidence and arguments before this Court. Moreover, this application was made on Monday, 19 August, the very next court day. We further note that Ms Matala, the complainant who lodged the complaint with the Electoral Commission, appears to have, on the account of the Applicant, exhausted various other remedies and attempted to resolve the matter with the Residence before approaching the Commission.

Urgency

[6] In terms of section 127(4)(a), the Court must handle any complaint dealing with the freedom and fairness of an election with necessary speed if harm may otherwise result. The complaint must be evaluated against the values that support our election season specifically free and fair elections, democracy, and transparency. The current circumstances necessitate swift action by the Court to preserve the credibility of the Goldfields election for Primaria/us.

[7] In terms of rule 3(4) of the Rules of Procedure of the Student Court, the Court may depart from its ordinary rules in two instances. First, where a party shows cause in terms of rule 8. Second, the Court has a discretion to dispense with rules on its own accord where it is in the interests of justice to do so such that foreseeable harm may be avoided. In the present matter, the potential resultant harm is that Ms Matala may not be given the opportunity to participate in the Primaria/us election as would be her right in terms of section 6 of Chapter 4 of the Goldfields Residence Constituion.

Interdict

[8] It would be materially unfair if this Court were to reinstate Ms Matala in participating in the election without fair hearing from the Respondents. Likewise, it would also undermine the freedom and fairness of the election to allow it to continue while there is substantial evidence of irregularities in the process which led to Ms Matala's disqualification. We note that in the ordinary course of events, it will not always be appropriate for a Court, merely on the complaint of a disqualified candidate, to intervene and even interdict an election. This is extraordinary. We recognise the *dictum* of Beukes CJ in *A.S. v Electoral Commission (Urgent Interdict)*¹ where he held that interference by this Court in the democratic process must be approached with caution. However, in the present matter, the allegations made by the Applicant are of so serious a nature, evincing a potential disregard of due process, the only appropriate remedy is that the election be interdicted.

¹ 03/09/23 para 2.

[9] It is trite that the requirements for an interdict are that there is 1) a clear right; 2) a breach or threat of breach of the right; and 3) the absence of any other effective remedy. The Applicant approaches this Court seeking to vindicate the right of Ms Matala to stand for election.² There is also a right to fair administrative action which may have been undermined by the alleged procedural irregularities.³ It is clear that these rights may have been threatened if not breached. No allegations were made by the Respondents to neutralise the claim of the Applicant. Therefore, the Court will accept the Applicant's version as genuine for the time being. The Court notes that it would have been to the benefit of all parties if the Respondent had proposed alternative relief and furnished the Court with relevant information pertaining to the election timelines. However, in the present matter, we see no reason why the election should not be interdicted given the extent of *prima facie* evidence of irregularities.

[10] Therefore, in terms of the Court's powers in terms of section 86(1) of the Student Constitution, the Goldfields Residence Primaria/us election is hereby interdicted pending a final judgment or other direction by this Court. Although it would be expeditious for the substantive matter on the validity of Ms Matala's disqualification to be heard on the papers, the facts alleged in the Applicant's founding affidavit are of so complex a nature that this Court must have the matter set down for hearing.

Conclusion

[11] We must express this Court's displeasure at the Respondents' failure to participate in the proceedings before this Court thus far. It is noted that should any election continue in contravention of the interdict, the Court reserves its powers under section 127(4)(d)(4) of the Student Constitution to declare the "invalidation of the entire election."

Order

[12] The following order is made:

[1] The matter is urgent;

² S6 of Chapter 4 of the Goldfields Residence Constitution.

³ S14 of the Student Constitution.

[2] The Goldfields Residence election is interdicted and cannot take place until directed to by this Court;

[3] The Respondent is instructed to file its Notice of Intention to Oppose by Thursday 22 August at 12:00;

[4] The Respondent is instructed to file its Answering Affidavit(s) by Friday 23 August at 17:00;

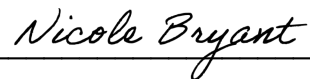
[5] The Applicant is instructed to file its Replying Affidavit by Monday 26 August at 12:00.



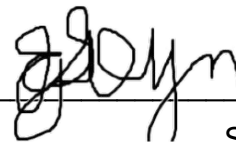
SWANEPOEL J



BESTER J



BRYANT CJ



STEYN DCJ



MUDZINGIRANWA J