

IN THE STUDENT APPEAL COURT OF STELLENBOSCH UNIVERSITY

REPUBLIC OF SOUTH AFRICA

IN THE *EX PARTE* APPLICATION OF

BERNARD JACOBUS HENRY OOSTHUIZEN

Applicant

JUDGMENT

[1] This is an appeal against a judgment of the Student Court dated 25 August 2023.

[2] The essential facts of the matter can be found in the judgment of the Student Court and will not be repeated here, suffice it to state that the Student Court found that the Applicant did not qualify to apply for a position on the Student Court because he is a Cluster Convenor. The Applicant is therefore appealing the judgment of the Student Court for not granting an interpretation of s 77(2) of the Student Constitution that would allow him to apply for a position on the Student Court.

[3] The two provisions of the Student Constitution that are applicable to this appeal are sections 1(6) and 77(2).

[4] Section 77(2) of the Student Constitution provides that “no member of the Student Court may be a positional leader, subject to positions permitted by this Constitution”.

[5] This section therefore permits a carve out – if the Constitution permits. The Constitution, however, does not explicitly mention a positional leader that may not be subject to this rule.

[6] Section 1(6) of the Student Constitution defines “‘Positional Student Leader’ as a student elected or appointed to the following structures: structures established by this Constitution, Faculty Committees, House Committees, Society Executive Committees, **Cluster Convenors**”.

[own emphasis]

[7] Section 1(6) is very clear that a Positional Student Leader can either be elected or **appointed** [own emphasis] as...Cluster Convenor. On the text it appears clear that a Positional Student Leader includes a Cluster Convenor, and that there is no provision that excludes Cluster Convenor from section 77(2).

[8] The Applicant argues that the latter part of section 77(2) must have meaning: that it cannot be meaningless. While the Appeal Court agrees that all provisions should have meaning, it cannot interpret section 77(2) to specifically exclude Cluster Convenors from the definition of Positional Student Leader in section 1(6) for the simple reason that Cluster Convenors were explicitly included in such definition.

[9] The Applicant further argues that the right to vote includes the right to stand for public office and that any restriction on this right must be narrowly construed. While it is accepted that the right to vote includes the right to stand for public office, the Student Appeal Court is not convinced that a position on a judicial bench is a public office in the sense meant by the right to vote.

[10] As such, the Student Appeal Court agrees with the interpretation given to the above by the Student Court.

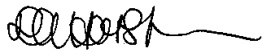
JUDGMENT

[11] The Student Appeal Court **upholds** the finding of the Student Court that the matter in question is urgent.

[12] The Student Appeal Court **upholds** the finding of the Student Court that the right to stand for office is not absolute due to the influence of separation of powers, the need for independence and impartiality, and the *intra vires* limitations placed on this right .

[13] The Student Appeal Court **upholds** the finding by the Student Court that the purpose of section 77(2) is to ensure the independence and impartiality of the bench.

[14] The Student Appeal Court **upholds** the finding by the Student Court that ‘Positional Student Leader’ cannot be interpreted to exclude the Cluster Convenor as the context does not indicate otherwise, and doing such would destroy the efficacy of section 77(2).



Dr Debbie Horsten



Prof Bradley Slade

11 September 2023.