



**BEFORE THE CONSTITUTIONAL TRIBUNAL OF THE UNIVERSITY OF
PRETORIA**

IN THE MATTER BETWEEN:

SASCO UP

Instituting Party

AND

**THE PRESIDENT OF THE STUDENT
REPRESENTATIVE COUNCIL**

First Responding Party

**THE EXECUTIVE COMMITTEE OF THE STUDENT
REPRESENTATIVE COUNCIL**

Second Responding Party

Heard on: 3 May 2018

Decided on: 14 May 2018

Decided by: Johan Coertze Presiding Judge
Tineke Sinovich Judge
Munozovepi Gwata Judge

ADJUDICATION JUDGMENT

Introduction of the issues

This is an adjudication in terms of section 35(2)(c) of the Constitution for Student Governance between SASCO UP and the President and Executive of the SRC.

The Instituting party was represented by Ms. Sattar.
Both the Responding parties were represented by Mr. Moloto.

The facts can be summarised as follows:

- SASCO UP was served with 'A notice of withdrawal of recognition as a society at UP' by the SRC President, Mr Moloto, on behalf of the SRC Executive on the 14th of February 2018'.



- As per the document, President Moloto issued the document in terms of Section 22(3) (g) of the Constitution for Student Governance 1 and section 7.3.6 of the Societies Sub Council Constitution.
- SASCO UP made the following arguments:
 - The SRC President acted ultra vires in issuing the notice of withdrawal of recognition of SASCO.
 - The Societies Officer failed administratively to carry out his duties in terms of the Societies Sub Council Constitution
 - The SRC Secretary and Society officer infringed upon their duty to provide information in terms of section 15(2) of the Constitution of Student Governance.
 - The Societies Officer failed administratively to collect managerial reports in a consistent and accountable manner.

Undisputed facts

These facts will be referred to in the main body of the separate judgments.

Disputed facts

These facts will be referred to in the main body of the separate judgments.

Evidence of the instituting party

The evidence is contained in the Discovery document which is attached to this judgment.

Evidence of the responding party

The evidence is contained in the Discovery document which is attached to this judgment.

Decision on the evidence

The panel found the video which did not form part of the original discovery (of the so-called shutdown) inadmissible and disregarded the contents thereof in reaching its conclusion. The panel decided that the conduct of the responding parties, especially their disregard for time periods set out by the Deputy Chief Justice of the Constitution Tribunal and the unwarranted delay in supplying the Instituting party with this specific video before the adjudication commenced warranted the exclusion of this piece of evidence.

Applicable law and application to the facts

The four main causes of action of the Instituting party will be dealt with in three separate judgments.

6B SRC President Acting Ultra Vires

[1] The first cause of action was based on the issuing of the notice of withdrawal of recognition of SASCO UP as a society by the President of the Student



Representative Council (hereafter “the President”) being an *ultra vires* action and therefore invalid.¹

[2] The facts pertinent to this issue can be set out as follows:

1. The President sent out a notice of withdrawal of recognition as a registered UP Student Society to SASCO UP (known as Annexure 14 in the Instituting party’s documents) (hereafter “the Notice”) on 14 February 2018.
2. The important parts of the Notice reads as follows:

[A] *“This letter serves to inform you that the SRC has investigated your conduct during the 2018 registration period at the University of Pretoria, Hillcrest Campus.*

[B] *I would like to bring it to your attention that Section 59 (1) of the University of Pretoria’s Institutional Statute, establishes the UP SRC and further states, that the UP SRC shall derive its powers from the Constitution for Student Governance.*

[C] *I further wish to state that as President of the UP SRC, it is my Constitutional obligation as contemplated in Section 23(b) (vii) to liaise with student structures...*

[The notice from the SRC member for societies is quoted]

[D] *Your defiance constitutes a section 7.3.6 violation in terms of the SRC Societies Sub-Council Constitution. We came to a conclusion that the violations took place, based on the following actions...*

[reasons 1 – 8 stated]

[E] *Given the aforementioned grounds and after careful consideration with the SRC Member for Societies, the SRC wishes to bring to your attention the following Constitutional grounds:*

[section 22(3) of the CSG and section 7.3.6 of the Constitution of the Society Sub-Council quoted]

[F] *Therefore, after careful consideration and deliberations, it is with regret to inform you that the SRC has withdrawn your recognition as an official society of the UP SRC with immediate effect. This withdrawal will last for a period of (1) one year. You will then be able to register as a society for the 2019 academic year.*

[G] *Kind Regards,*

Kwena Moloto

¹

For the sake of convenience I will refer to the instating party as SASCO UP and responding parties as the President and the Executive respectively.

Chief Justice: Antonie Kloppe / Deputy Chief Justice: Rethabile Shabalala / Registrar: Marcia van der Merwe / Senior Judge: Shaaheen Omar, Lawrence-John Maralack / Judges: Tebello Mosoou, Kelsey Lorentz, Munozovepi Gwata, Mpho Mogadime, Ashleigh Laurent, Tineke Sinovich, Rebecca Hill, Neo Mokoka, Emma Bleeker, Johan Coertze



SRC President

[H] *For and on behalf of the SRC Executive*

(paragraph numbering added)

3. This decision was ratified by a unanimous decision of the Student Representative Council (hereafter "SRC") at an ordinary SRC meeting on 15 February 2018.

[3] Before elaborating further on the factual background, I wish to set out the legal position. The Constitution for Student Governance (hereafter "CSG") states in section 22(3)(g):

"In exercising its powers and functions the SRC must take reasonable steps ... [,] subject to the provisions of this Constitution, to extend recognition to and withdraw recognition from any Society under its jurisdiction in accordance with the Society Sub-Council Constitution."

[4] This section gives the SRC, as a collective, the explicit responsibility to withdraw recognition from any society under its jurisdiction in accordance with the Constitution of the Society Sub-Council (hereafter "Societies Constitution"), unless this power is delegated to an office bearer of the SRC in the CSG.

[5] I will now deal with the relevant office bearers' responsibilities starting with the Executive Committee of the SRC (hereafter "the Executive"). The Executive, as per section 23(1)(b) and (c) of the CSG, has the following specific responsibilities:

"(b) The Executive Committee meets regularly and conducts the day-to-day management of the SRC and specifically performs urgent duties of an administrative and technical nature, makes all the necessary decisions in this regard and diligently reports back to the SRC. The Executive Committee conducts these functions in accordance with its own internal arrangements, within the parameters of the Code of Conduct and this Constitution and with a view to achieving the greatest measure of efficiency."

"(c) The Executive Committee may be assisted by members of the SRC who do not serve on the Executive Committee."

Section 29(4) of the CSG further requires:

"When the SRC is not in session the Executive Committee of the SRC, in terms of section 23(1) of this Constitution, takes management decisions on the day-to-day technical and operational matters, provided that these are duly minuted and approved by the SRC at the next meeting."

[6] The Executive of the SRC may therefore specifically perform urgent duties of an administrative and technical nature. These terms are not defined in the CSG, but I am willing to accept that the responsibility to withdraw recognition of a society in accordance with section 22(3)(g) of the CSG is a decision that



relates to an urgent duty of an administrative or technical nature. I am supported in this position by SASCO UP party as per part 6E of their instituting of proceedings form, as they only disputed that this meeting was duly minuted, as per section 29(4) of the CSG (a point I will return to shortly), and not that the Executive had the power to make this decision and therefore tacitly accepts the power of the Executive to make this decision.

[7] Decisions taken in accordance with section 23(1) should be duly minuted and approved by the SRC at the next ordinary meeting of the SRC in terms of section 29(4) of the CSG. How minutes should be taken in Executive meetings is not discussed in the CSG (Section 28 deals exclusively with ordinary meetings of the SRC and is therefore not applicable to Executive meetings) or the Code of Conduct for all the Recognized Student Leadership Structures Within the DSA. This point will be discussed under part 6E and I deem it unnecessary to decide that question here. I will however accept that should the SRC have sufficient knowledge of what was discussed at the Executive meeting before ratifying any decision taken at an Executive meeting, the lack of minutes being duly taken will not invalidate decisions taken at the Executive meeting or the ratification of said decisions in an ordinary SRC meeting. This position is supported by the wording of section 23(1)(b) as the Executive can decide how their functions should be executed, and the need for "... achieving the greatest measure of efficiency..." in dealing with urgent matters further outweighs the importance of minutes being duly taken.

[8] The CSG in section 23(2)(b) provides the responsibilities of the President:

"(i) ensures and oversees the execution and implementation of SRC responsibilities, programmes and activities;

...

(vii) liaises with all Student structures as well as Management at the University;"

These sections give the President the responsibility to ensure the responsibilities of the SRC are implemented. He should also keep in contact with all student structures. These powers, in my view, allow for the President to send a notice of withdrawal of recognition as a registered society on behalf of the SRC once such a decision has been made by the SRC or the Executive if the SRC is not in session as explained above.

[9] The CSG in section 23(7)(f) provides the responsibilities of the SRC member for Societies, which are to:

"(i) Serve as chairperson of the Societies Sub-Council

(ii) Meet with the Societies Sub-Council once a quarter.

(iii) Must manage all the administrative work of registering societies.

(iv) Promotes the projects pool applications for community development



(v) Receive management reports at the end of the year from the chairpersons of registered societies.”

This section does not indicate that the power to withdraw recognition from societies is delegated to the SRC member for societies. This power cannot be read into (iii) as the responsibility to manage the administrative work of registering societies does not include the power to withdraw recognition of societies.

[10] The CSG does not delegate the power to withdraw the recognition of societies to the SRC member for societies and he would only have that power if it is stated in the Societies Constitution. The relevant section, section 7.3.6 of the Societies Constitution states:

“A society forfeits its status as a registered society for a period of one (1) year if:

- Such a society grossly fails to adhere to the criteria as set out in this Constitution or to the requirements and instructions set by the SRC Member for Societies.*
- Such a society failed to hand in the necessary application forms for the reregistration of the society on time*
- Such a society was disaffiliated by the Constitutional Tribunal.*
- Failed to hand in their Management Report in the preceding year.*

Such a society will forfeit any funds allocated to them by the SRC.”

This section only states the grounds on which a society may forfeit their status as a registered society. It does not elaborate on who has the power to make the decision, that a society has for example “...grossly [failed] to adhere to the criteria as set out in this Constitution or to the requirements and instructions set by the SRC Member for Societies...” and therefore forfeits their status as a registered society or the process that should be followed if such a decision should be made.

[11] I turn now to the arguments made by both parties:

Firstly, with regards to who has the power to withdraw a society’s recognition and who in fact made the final decision on the facts:

SASCO UP read section 7.3.6 of the Societies Constitution as giving the sole power to register and withdraw recognition of societies to the SRC member for Societies. When probed on where exactly in these sections this power is vested in the SRC member for societies, Ms. Sattar explained that this power can be inferred from section 7.3.5 read with section 7.3.6. The President accepted the interpretation of the sections set out by the instituting party, but Mr. Moloto could not provide any guidance as to where the Societies Constitution vests the power to withdraw a society’s recognition in the SRC member for societies and rather argued that the SRC member for societies had made the decision to withdraw SASCO UP’s recognition as a registered society. This argument is



however peculiar as in part 6E the President states that the Executive made the decision. This discrepancy was however adequately explained by Mr. Moloto in his evidence as he confirmed that the Executive took the decision on a social media platform after consultation with the SRC member for societies.

[12] I am not persuaded by the various arguments made by the parties and is of the opinion that both parties erred in their interpretation of the relevant sections. As stated above the power to withdraw recognition from societies cannot be read into sections 7.3.5 and 7.3.6 as section 7.3.5. deals exclusively with the suspension² of societies and section 7.3.6 cannot be read to delegate this power to the SRC member for societies.³

[13] On the proper reading of the applicable sections set out above, the SRC has the explicit power to withdraw the recognition of a society in terms of the CSG. The CSG does not delegate this specific power to the SRC member for societies or any other member. This power cannot be read into any of the responsibilities given to the SRC member for societies in section 23(7)(f) as laid out above and no support for this proposition can be found in the Societies Constitution as section 7.3.6 only states the grounds on which a society forfeits their status as a registered society and by extension on what ground recognition of a society can be withdrawn. The responsibility to withdraw recognition of a society in accordance with section 22(3)(g) of the CSG is further a decision that relates to an urgent duty of an administrative or technical nature and can therefore be taken by the Executive, if the SRC is not in session as long as the meeting on which this decision is made is duly minuted and the decision is ratified by the SRC at an ordinary meeting.⁴

[14] Having regard to the Notice, the minutes from the ordinary SRC meeting held on 15 February ((Annexure 13 O of the Instituting party's documents) and the evidence given by Mr. Moloto, it is clear that neither the President nor the SRC member for societies made the decision to withdraw SASCO UP's recognition as a registered society. The Notice is sent for and on behalf of the Executive (paragraph H of the Notice) and in the minutes from the ordinary SRC meeting held on 15 February (Annexure 13 of the Instituting party's documents) the President states that "...the SRC Executive and member of societies banned SASCO for one (1) year...". From the evidence I find that on a balance of probabilities that the Executive made the final decision to withdraw SASCO UP's recognition as a registered UP society and that this decision was taken in consultation with the SRC member for societies. This decision was ratified by

² "7.3.5 If societies fail to adhere to any of the duties and regulations as set out in this Constitution or as determined by the SRC Member for Societies, this may lead to the temporary suspension of the said society or the funds and any other benefits normally applicable to societies, can be suspended until restored at the discretion of the SRC Member for Societies."

³ Even if this incorrect interpretation is accepted, Paragraph E of the Notice clearly states that the SRC, after consultation with the SRC member for societies, withdraws SASCO UP's recognition as a registered UP society and states the grounds on which the decision is made. That the SRC member for societies was involved in this decision is clear from the minutes of the ordinary meeting of the SRC on 15 February 2018 (Annex 13 O of the Instituting party's documents) and no evidence could be produced to disprove his part in taking this decision.

⁴ See paragraph 6 and 7.



a unanimous decision of the SRC at the ordinary SRC meeting held on 15 February (Annex 13 O of the Instituting party's documents), which make this a valid decision taken by the SRC.

[15] SASCO UP further averred that the President was incorrect in his reliance on section 23(2)(b)(vii) of the CSG to justify the Notice being sent by the President in consultation with the SRC member for societies. They argued that on the correct interpretation of the above sections, and by applying the principle of subsidiarity the Notice should have been sent by the SRC member for Societies in consultation with the President. The President refuted SASCO UP's arguments that he acted outside the scope of his powers by stating that the Notice does not refer to the President withdrawing SASCO UP's recognition and that the SRC member for societies made this decision in consultation with the SRC.

[16] I find SASCO UP erred in their interpretation of the Notice and section 23(2)(b)(vii). The responsibilities of the President as stipulated in the CSG are wide enough to encompass sending a letter of withdrawal of recognition of a registered society if a valid decision to withdraw recognition from a society had already been taken.⁵ The President was therefore within the scope of his responsibilities to issue the Notice for and on behalf of the Executive as a valid decision (as explained in paragraph 14) had already been taken by the Executive in consultation with the SRC member for societies.

[17] I conclude that the President did not withdraw SASCO UP's recognition as a registered society. This decision was taken by the Executive, which decision was valid. Secondly, he was within the scope of his responsibilities to issue the notice on behalf of the Executive as a valid decision had been taken.

[18] The President's actions were therefore *intra vires*.

[19] The second cause of action was based on section 11(2) of the CSG which states that "... Every Student society has the right to fair and equitable treatment by the SRC and the Management of the University.". SASCO UP argued that the President has a personal vendetta against SASCO UP resulting from their part in the events that unfolded at the 2015 SRC elections, where he was removed as SRC President for the 2015/2016 academic year and therefore treated them unfairly. This argument in this regard was poorly laid out in the institution of proceedings form and only clarified to some extent by Ms. Sattar at the hearing, which made determining the merits thereof difficult.

[20] SASCO UP relied heavily on various social media posts and messages sent and posted by the President on his personal social media accounts labelled Annexure 12 in the Instituting party documents. No substantive law was relied on to substantiate these arguments and I therefore felt it unnecessary to conduct an in-depth discussion on what unfairness would mean as it relates to section 11(2) of the CSG. I will therefore accept that unless SASCO UP was treated differently than any other registered society based on

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See paragraph 8.

Chief Justice: Antonie Klopper / Deputy Chief Justice: Rethabile Shabalala / Registrar: Marcia van der Merwe / Senior Judge: Shaaheen Omar, Lawrence-John Maralack / Judges: Tebello Mosoou, Kelsey Lorentz, Munozovepi Gwata, Mpho Mogadime, Ashleigh Laurent, Tineke Sinovich, Rebecca Hill, Neo Mokoka, Emma Bleeker, Johan Coertze



the evidence or that the President had undue influence in the decision taken by the Executive to withdraw SASCO UP's recognition as a registered society, this cause of action would fail.

[21] There was some suggestion that the EFF student command (hereafter "EFF") and DASO also engaged in activities that contravened the instructions of the SRC member for societies. I deal firstly with the EFF. Both witnesses called by SASCO UP averred that the EFF were also present on campus on the occasions stated in the Notice (which were used as grounds for withdrawing SASCO UP's recognition) and they were not disciplined therefore. The President and his witnesses were all in agreement that the EFF were either outside the gates of the University or they were helping students through the SRC which was allowed by the SRC.

[22] No evidence could be deduced to prove that the EFF was indeed on campus in contravention of the instructions of the SRC member for societies. The lack of persons in EFF regalia in the video evidence (the video taken under the SRC tent and the video of the flag) and Prof. Mosia's remarks, at the meeting held on 11 January 2018 between the SRC, SASCO UP and the Vice-Principal: Student Affairs and Residences, at paragraph 2.15 (The correctness of the minutes of this meeting, which Ms. Sattar attended, was confirmed by her and I will therefore accept it as correct) that other student structures like the EFF were active outside of the Hillcrest campus, referring student cases to the SRC leads me to the conclusion that there was no EFF presence on campus in contravention of the SRC member for societies' instructions on the occasions referred to on the Notice.

[23] I turn now to DASO. The only evidence produced that suggested DASO contravened the SRC member for societies' instructions were Annexure 12E 1 and 2 of the instituting party documents. The date on which Annexure 12 E 1 was posted was disputed by Mr. Moloto as he stated it was posted in 2017. Neither Ms. Sattar or her witnesses could adequately refute this and I am therefore inclined to agree that this post was made in 2017 and is therefore irrelevant to this dispute. The context of Annexure 12 E 2 was disputed by Mr. Moloto as he stated that the students pictured were active outside of campus and not members of DASO UP. The pictures are unclear and no evidence produced by Ms. Sattar could put them sufficiently in context to refute Mr. Moloto's arguments and to find that DASO was on campus and contravened the SRC member for societies' instructions.

[24] Other posts (specifically Annexure 12 C 1 and 2) and the evidence from SASCO UP witnesses alluded to the President on more than one occasion stating that he is going to end SASCO UP. He also referred in some posts to March which is indicative of the registration period. This gave some indication that Mr. Moloto has some animosity towards SASCO UP. In response Mr. Moloto pointed out that most of these posts were not dated (specifically Annexure 12 C 1 and 2) which made their context a lot more obscure. Mr. Moloto further denied he said these words to the witnesses and he stated that the posts in this context only meant he was going to end SASCO UP politically. Other evidence also pointed to the President attempting on various occasions



to reach an amicable settlement with SASCO UP (The first being during the meeting between the SRC and SASCO (Annexure 13 B of the Instituting party documents) and the second being the ordinary SRC meeting held on 15 February 2018 (Annexure 13 O of the Instituting party's documents) whereby the President was on both occasions prepared to reach a settlement with SASCO UP in regard to the suspension and the later withdrawal of recognition. If these attempts at a settlement were made in good faith was disputed by SASCO UP but no evidence could be produced to support their arguments in this regard.

[25] The social media posts (annexure 12) were an attempt to establish that the President had a premeditated intention to withdraw SASCO UP's recognition as a registered society and therefore treated them unfairly. They are however in their entirety unconvincing as proof that SASCO UP was indeed treated unfairly as stated in section 11(2) of the CSG, as it could not be shown on a balance of probabilities that the President had any undue influence on the decision taken by the Executive in consultation with the SRC member for societies to withdraw SASCO UP's recognition as a registered society or that SASCO UP was treated differently than other societies. I conclude therefore that SASCO UP was not treated unfairly in terms of section 11(2) of the CSG.

[26] For these reasons Part 6B in its entirety must therefore fail.

Johan Coertze Judge

Tineke Sinovich and Munozovepi Gwata J agreed with the Decision of Johan Coertze J

6C Grounds of Expulsion

[27] In regard to part 6C of the Institution of Proceedings regarding the grounds of Expulsion of SASCO, the instituting party contested reasons 1, 2, 3 and 6 for expulsion, as given to SASCO by the SRC President, Mr. Kwena Moloto in the 'Notice of Withdrawal of SASCO as a registered UP SRC Student Society' (Annexure 14 in the discovery of instituting party).

[28] With regard to reason 1 provided, regarding an ANC flag being placed in front of the SRC's gazebo during registration week I find that SASCO acted contradictory to the requests of the SRC. S14(1) of the Constitution for Student Governance (CSG), dealing with freedom of expression, is subject to limitation in terms of S17(3) of the CSG which states that:

“(3) the impact of any limitation must be proportionate to its objective”

As the objective of the SRC was to create an 'apolitical space'⁶ at the gazebo, this limitation of the right to freedom of expression is reasonable.

⁶ In the words of Mr Owen Kubeka, witness on behalf of SASCO.

Chief Justice: Antonie Klopper / Deputy Chief Justice: Rethabile Shabalala / Registrar: Marcia van der Merwe / Senior Judge: Shaaheen Omar, Lawrence-John Maralack / Judges: Tebello Mosoau, Kelsey Lorentz, Munozovepi Gwata, Mpho Mogadime, Ashleigh Laurent, Tineke Sinovich, Rebecca Hill, Neo Mokoka, Emma Bleeker, Johan Coertze



With regard to the SRC failing to 'remove(ed) the flag themselves'⁷, the panel finds that the SRC did take reasonable steps to ensure the removal of the flag. In his sworn testimony, Mr. Owen Kubeka stated that the SRC did instruct security to ask him to remove the flag from the tent, which he did not.

[29] Furthermore, it is found that it was indeed members of SASCO, specifically a Mr. Andile Zulu,⁸ that were in possession of the flag on campus⁹ Due to the above, I find that SASCO unreasonably acted against the request of the SRC to maintain an apolitical space. Reason 1 of the Notice of Withdrawal of Recognition of SASCO as a Registered UP SRC Student Society is upheld.

[30] In reason 2 provided, regarding the actions of alleged SASCO member, Mr. Andiswa Mthethwa, it is held that he is not a member of SASCO UP. As shown in the SASCO Database of members^{10 11}, SASCO has adequately proven that Mr. Andiswa Mthethwa is not a member of SASCO UP and SASCO can therefore not be held accountable for his actions on campus. Reason 2 of the Notice of Withdrawal of Recognition of SASCO as a Registered UP SRC Student Society is dismissed

[31] In reason 3 provided, regarding the alleged 'shutdown' of the Hillcrest campus the panel has used its discretion to disregard video evidence provided by Mr. Kwena Moloto as it was submitted late and would unduly prejudice the instituting party.

On this matter, Ms. Mishkah Sattar of SASCO, argued that there was no shutdown of the campus. In sworn testimony of Ms. Tholithebehlihle Ngwenya confirmed that SASCO members, including herself, did approach the gate without standing in the appropriate line, where the gate was closed by security.

[32] Mr. Kwena Moloto on this fact confirmed the closing of the gate due to the arrival of SASCO members and alleged that a 'shutdown' was caused by the presence of SASCO in regalia. On this fact, the onus of proof is on SASCO to show that such a 'shutdown' did not, on a balance of probabilities, occur, which it failed to do. Reason 3 of the Notice of Withdrawal of Recognition of SASCO as a Registered UP SRC Student Society is upheld.

[33] In reason 6 provided, regarding the obstruction at the SRC Help Desk, I find that SASCO did obstruct the SRC in performing its duties. It was stated by Ms. Tholithebehlihle Ngwenya¹² that she, along with other SASCO members were seated under at the SRC Help Desk and did not leave when asked, although they were allegedly present to deal with her own matters.

[34] In the defence by Mr. Kwena Moloto it was stated by Mr. Kyle Goosen, in his sworn testimony, that he filmed the video admitted into evidence by Mr. Kwena Moloto, showing various SASCO members in regalia sitting under the

⁷ As stated in Annexure 14 of the Discovery of the Instituting party.

⁸ As found in the Database of SASCO members, in annexure 6 of the discovery of the instituting party.

⁹ As stated in the sworn testimony of Mr. Kwena Moloto and Mr. Kutluwano Mositi.

¹⁰ Annexure 6 of the discovery of the instituting party.

¹¹ Along with sworn testimony of Mr. Owen Kubeka.

¹² In her sworn testimony

Chief Justice: Antonie Klopper / Deputy Chief Justice: Rethabile Shabalala / Registrar: Marcia van der Merwe / Senior Judge: Shaaheen Omar, Lawrence-John Maralack / Judges: Tebello Mosoeru, Kelsey Lorentz, Munozovepi Gwata, Mpho Mogadime, Ashleigh Laurent, Tineke Sinovich, Rebecca Hill, Neo Mokoka, Emma Bleeker, Johan Coertze



SRC Help Desk gazebo. He furthermore attested that these individuals did not leave when asked by the SRC and obstructed the Help Desk by removing forms. Mr. Owen Kubeka stated that Mr. Goosen did not ask him personally to vacate the gazebo but cannot attest for other SASCO members.

[35] With regard to the letter regarding 'Disturbances at the SRC Helpdesk'¹³ sent to SASCO from Mr. Kwena Moloto and Mr. Obakeng Sepeng¹⁴, Ms. Sattar, on behalf of SASCO, failed to prove that there was indeed no interaction between SASCO and SRC members after it was sent.

[36] I also considered the social media post of Ms. Sattar¹⁵ as intention to obstruct the SRC during the registration period, despite the communication sent to all societies by Mr. Sepeng¹⁶ that no activation was to take place.

[37] Due to the above I find that SASCO UP did obstruct the SRC Help Desk, despite being requested to stop. Reason 6 of the Notice of Withdrawal of Recognition of SASCO as a Registered UP SRC Student Society is upheld.

[38] As Ms. Sattar did not contest the validity and contents of the remaining reasons for expulsion in the Notice of Withdrawal of Recognition of SASCO as a Registered UP SRC Student Society¹⁷ (4, 5, 7 and 8), the panel accepts that they are tacitly agreed to by SASCO UP and they are upheld.

[39] In matter 6C, SASCO has failed to show adequately that seven of the eight reasons for expulsion laid out by the SRC are invalid. The panel therefore finds that, in regard to the grounds for expulsion, the expulsion of SASCO as a registered UP society is reasonable and valid.

Tineke Sinovich Judge

Johan Coertze and Munozovepi Gwata J agrees with the Decision of Tineke Sinovich J

6D Societies Officers Administrative Flaws: Managerial Report Collection, Plan of Action and Communication and;

6E Administrative Issues Regarding the SRC Executive

[40] The following judgement is made in response to claims presented by the instituting party, SASCO in respect to 6D and 6E made in the proceeding forms on behalf of the instituting party. The instituting party in 6D presented to the court two arguments. The first argument that they made was pertaining to the submission of their managerial report. SASCO alleged that their managerial

¹³ Annexure 7 in the Discovery of the Instituting party.

¹⁴ SRC member for societies.

¹⁵ Annexure P.3 of the discovery of the defending party.

¹⁶ Annexure 8 in the discovery of the instituting party.

¹⁷ Annexure 14 in the discovery of the instituting party.

Chief Justice: Antonie Klopper / Deputy Chief Justice: Rethabile Shabalala / Registrar: Marcia van der Merwe / Senior Judge: Shaaheen Omar, Lawrence-John Maralack / Judges: Tebello Mosoou, Kelsey Lorentz, Munozovepi Gwata, Mpho Mogadime, Ashleigh Laurent, Tineke Sinovich, Rebecca Hill, Neo Mokoka, Emma Bleeker, Johan Coertze



report was mishandled by the Society officer of the SRC. The second argument that they presented in terms of 6D was that their plan of action, which discussed their right to learn campaign was accepted in 2017 by the university management, and therefore was tacitly accepted by the 2018 SRC. The court found that they could not hear this matter as a result of administrative flaw, this is because the matter raised in 6D was mainly aimed at the Society Officer, who was is not cited as a party in this case. Therefore, it would be procedurally incorrect to hear allegations against the Society Officer in this case, as he was not cited as a party to the case nor was he present as a witness.

[41] Furthermore, the court did not find the matter of 6D relevant to the case at large. The matter of 6D was about a dispute pertaining to the submission of the managerial report, which was subject of the suspension of SASCO. However, the suspension was lifted, and therefore disputes about the managerial report is not relevant to the case concerning explosion because the managerial report is not one of the ground stated for the expulsion. If SASCO wishes to further investigate what happened in regard to their managerial report they will have to follow the necessary channels in order to do so, however hearing the matter pertaining to the managerial report made in 6D is not in relevant in the scope of this case.

[42] In regard to the second argument that was presented in terms of 6D, which was that the plan of action had been accepted by the University management meant that the SRC tacitly accepted it, has not been sufficiently proven to the court. Kwena Moloto (SRC president), as well as witnesses of SASCO party acknowledge that the message from the SRC, Society Officer (shown in annexure 5 page 3 of the SRC document package) stating that “*no society will be allowed to provide any form of assistance in their official capacity during the registration period, welcome week and orientation week*”, was issued by the SRC and received by both parties.

[43] Evidence was presented to the court from both sides that showed that the SASCO society wished to proceed with the right to campaign in spite of the communication sent out by the SRC. SASCO witness Owen Kubeka (president of SASCO) was asked why the SASCO did not reach out to the SRC in response to the communications made pertaining to no activities to be conducted by societies, his argument presented to the court was that it would of been pointless to reach out to the SRC because they have such a strong bias against SASCO. I believe that by SASCO refusing to reach out to the SRC, they put their political interests ahead of student interests. I believe that if SASCO had asked to SRC to accommodate their right to learn campaign and demonstrated that their intention was to further help the mandate of the SRC which is to help students register, and subsequently their request was declined it could have helped them prove a case of negative bias of the SRC towards SASCO. Therefore, in regard to the content that was submitted in terms of 6D the court did not find anything that would convince the court to be lift the expulsion of SASCO.

[44] Now I will proceed with the matter that was presented to the court in terms of 6E of the proceeding forms of the instituting party. The matter which was



brought before the court is that the right administrative procedure was not followed by the SRC in regard to the expulsion of SASCO. The argument presented was that the SRC failed to follow the administrative process laid out in section 29(1)(4) of the Constitution of Student Governance. However, SASCO failed to convince the court that the procedural requirements were not followed through. It was very clear in the SRC minutes that were submitted that the SRC in annexure 6 page 1 of the SRC documentation package, that in the SRC meeting of 15 February the minutes show that the discussion to expel SASCO was rectified, as the whole SRC voted on the decision. From the meetings it was recorded that it was a unanimous decision in favour of the expulsion of SASCO. Therefore, the requirements set out in section 29(1) (4) of the Constitution of Student Governance were met. In regard to the content that was presented in terms of 6E the court did not find the content to be persuading to the extent that the expulsion should be lifted off of SASCO.

[45] I find that SASCO failed to convince the court for substantial reasons in which the expulsion should be lifted off SASCO. I find it particularly interesting that SASCO never mentioned in their arguments before the court how SASCO being expelled as society on campus would affect the thousands of students that SASCO represents on campus, as well as how it could affect the interests of the student body at large.

Munozovepi Gwata Judge

Tineke Sinovich agrees with the Decision of Munozovepi Gwata J

[46] I agree with the conclusion reached by my learned colleagues that Part 6E must fail, I would just like to add reasons I feel are pertinent to this issue.

[47] The main point of contention in part 6E, as I understand it, is whether the Executive failed in their duties to provide minutes of the relevant meetings where it was decided to withdraw SASCO UP's recognition as a registered society and if there therefore existed a lack of transparency in their decision making. I refer to paragraph 5-7 above where the relevant legal principles are outlined.

[48] Decisions taken in accordance with section 23(1) of the CSG by the Executive should be duly minuted and approved by the SRC at the next ordinary meeting of the SRC in terms of section 29(4) of the CSG. How minutes should be taken in Executive meetings is not discussed in the CSG (Section 28 deals exclusively with ordinary meetings of the SRC and is therefore not applicable to Executive meetings) or the Code of Conduct for all the Recognized Student Leadership Structures Within the DSA. The wording of section 23(1)(b) dictate that the Executive should execute their duties (including taking minutes of their meetings) in accordance with their own internal arrangements with a view to achieving the greatest measure of efficiency...".

[49] I am therefore of the opinion that the need for efficiency in dealing with urgent matters outweighs the need for taking proper minutes, and should the SRC have sufficient knowledge of what was discussed at an Executive meeting before ratifying any decision taken at an Executive meeting, the lack of minutes



being duly taken will not invalidate decisions taken at the Executive meeting or the ratification of said decisions in an ordinary SRC meeting as long as the minutes of the ordinary SRC meeting where the decision is ratified is made available to the public.

[50] I conclude therefore that there was not a lack of transparency in the manner in which the Executive decided on withdrawing SASCO UP's recognition as a registered society as the minutes of the SRC meeting held on 15 February (Annexure 13 O of the Instituting party's documents) and the Notice clearly state the reasons whereon SASCO UP's recognition is withdrawn.

Johan Coertze Judge

Relief to be granted

All the Instituting party's causes of action are dismissed, and no relief is granted.

Judgment is therefore granted for the Responding parties

Details for the possibility of appeal / review

This judgment is subject to review and/or appeal by way of an application made to that effect, in the manner set out in schedule B6 of the Constitution of the Constitutional Tribunal, within 5 university days (excluding public holidays as well as Saturdays and Sundays) from the date on which the judgment is read.

Thus decided on the 14 day of May 2018 by:



**JOHAN COERTZE
PRESIDING JUDGE**



**TINEKE SINOVICH
JUDGE**



**MUNOZOVEPI GWATA
JUDGE**

