

APPEAL COURT

In the matter between:

LIHLE BALEKA

Appellant

and

BEN ANDERSON

First Respondent

STUDENTS' ELECTORAL COMMISSION

Second Respondent

JUDGMENT (delivered on 13 January 2026)

Introduction

- 1) This is an appeal against the unanimous judgment of the Student Court delivered on 21 November 2025, in which the Court set aside the appellant's disqualification from the 2025/2026 Student Representative Council elections. The appeal is brought on six grounds.
- 2) For the reasons that follow, we dismiss the appeal.

Ground 1: alleged willful blindness to bad faith

- 3) The appellant's first ground is that the Student Court ignored evidence of the first respondent's "calculated deceit" in editing his Substack article after giving an undertaking not to do so. This ground is without merit.
- 4) The Student Court expressly addressed this issue at paragraphs [71] and [72] of its judgment. The Court found that the first respondent "did not act in good faith" but also found that "the SEC did not explicitly bar the Applicant, or any other candidate, from editing their articles after publication" (paragraph [15]). This was a finding of fact based on the evidence, including the SEC's own admissions.

- 5) The appellant has not demonstrated that this finding is unsupported by the evidence. On the contrary, the record shows that while concerns about editing were discussed, no explicit prohibition was imposed. The appellant's characterisation of this as a "solemn undertaking" is inconsistent with the Student Court's factual findings, which we have no basis to disturb.
- 6) Furthermore, the principle of *ex turpi causa non oritur actio*, which the appellant invokes, is inapplicable. The first respondent's application was not founded on any breach of an undertaking. It was founded on the SEC's misinterpretation of Rule 3(8) and the disproportionality of the sanction imposed. Even if the first respondent acted improperly in editing the article, this does not render lawful the SEC's separate and independent errors of law.
- 7) This ground of appeal fails.

Ground 2: interpretation of rule 3(8)

- 8) The appellant contends that the Student Court erred in its interpretation of Rule 3(8) of the Electoral Rules by imposing a "narrow, formalistic" reading that "disarmed" the SEC. We disagree.
- 9) Rule 3(8) provides that candidates must "refrain from any attempt at misusing power or resorting to privileges or influence or using any form of coercion intended to persuade someone to vote for any candidate." The Student Court held that this provision applies where a candidate has existing, disproportionate power or influence that they then misuse.
- 10) The appellant argues that the SEC's interpretation (that the rule prohibits all candidate-to-candidate endorsements) should be upheld as a "purposive" reading. However, the Student Court correctly applied the unitary approach to interpretation mandated by *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 2 All SA 262 (SCA), which requires consideration of text, context, and purpose.

- 11) The text of Rule 3(8) uses specific, qualified language: “misusing power”, “resorting to privileges or influence”. These words connote the abuse of existing advantages. Had the drafters intended to prohibit all endorsements, they could and would have said so explicitly, as they did in Rule 10(3) of the Code of Conduct, which provides in absolute terms that “no political party [...] may endorse or campaign for a candidate”.
- 12) The Student Court was therefore correct to hold that the SEC’s blanket prohibition on all candidate-to-candidate endorsements “cannot flow from a valid and sensible interpretation of rule 3(8)” (paragraph [47]). This is not formalism; it is orthodox statutory interpretation.
- 13) Moreover, the Student Court’s interpretation gives effect to the rule’s purpose while preserving candidates’ freedom of expression under section 16 of the Constitution. A blanket ban on all endorsements would constitute an unjustifiable limitation on political speech. The Student Court properly balanced these competing considerations.
- 14) This ground of appeal fails.

Ground 3: estoppel and administrative oversight

- 15) The appellant’s third ground is misconceived. The appellant argues that the Student Court improperly applied estoppel principles to prevent the SEC from enforcing its rules. However, a careful reading of the judgment reveals that the Court did not apply estoppel at all.
- 16) The Student Court’s reasoning was that the SEC’s own negligence in approving the article without reading it properly was a relevant factor in assessing whether the subsequent sanction was rational and proportionate under the Promotion of Administrative Justice Act 3 of 2000 (‘PAJA’). This is not estoppel; it is the application of basic administrative law principles.
- 17) Section 6(2)(h) of PAJA requires that administrative action must be reasonable. As the Constitutional Court held in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) at paragraph [45], reasonableness includes consideration of

the impact of the decision on those affected and the proportionality of the means to the end. Where an administrator has contributed to the problem, this is plainly relevant to proportionality.

18) The appellant's invocation of the principle that estoppel does not lie against public bodies is therefore beside the point. The Student Court did not find that the SEC was estopped from acting. It found that the SEC's sanction was disproportionate in the specific circumstances, including the SEC's own oversight.

19) This ground of appeal fails.

Ground 4: the disqualification sanction

20) The appellant argues that disqualification was justified under Schedule 2, Item 15(2) of the Student Constitution because the first respondent refused to comply with a lawful directive. This ground conflates two separate issues: the lawfulness of the directive and the proportionality of the sanction.

21) The Student Court found that the underlying directive was unlawful because it was based on a misinterpretation of Rule 3(8) and was itself disproportionate (requiring deletion of an entire article when only one paragraph was allegedly problematic). The appellant has not successfully challenged these findings on appeal.

22) If the directive was unlawful, then the first respondent's refusal to comply cannot justify disqualification. The 'Doctrine of Insubordination' on which the appellant relies applies only to lawful and reasonable instructions. Wilful disobedience justifies dismissal only where the instruction disobeyed was lawful and reasonable.

23) Moreover, even if the directive had been lawful, the Student Court properly applied the proportionality analysis required by PAJA. The Court considered:

(a) The SEC's own negligence in approving the original endorsement;

(b) The disproportionate nature of requiring deletion of the entire article rather than just the offending paragraph;

(c) The constitutional protection of political speech under section 16;

- (d) The timing of the sanction (the day before Executive Committee elections); and
- (e) The impact of disqualification on the voters who had elected the first respondent.

24) This multi-factorial analysis is precisely what PAJA and *Bato Star* require. The Student Court's finding that disqualification was disproportionate is an evaluative judgment entitled to deference. The appellant has not shown that this finding was unreasonable or irrational.

25) This ground of appeal fails.

Ground 5: factual error regarding the 'baiting question'

26) The appellant correctly identifies a factual error in the judgment. At paragraph [54], the Student Court stated that the appellant, Mr Baleka, asked a 'baiting question' at the Heemsteede caucus. However, the first respondent's affidavit identifies the questioner as Mr Liyema Langa, not Mr Baleka.

27) We agree this was an error and paragraph [54] of the judgment should be corrected to reflect that Mr Langa, not Mr Baleka, asked the question.

28) However, this error does not affect the outcome of the case or provide a basis for setting aside the judgment. The Student Court's findings regarding the first respondent's DASO affiliation (paragraphs [51] to [56]) were that:

- (a) No rule prohibits candidates from being members of political parties;
- (b) Candidates may not campaign as party representatives or accept party endorsements;
- (c) When asked a direct question about his political affiliation, the first respondent answered honestly; and
- (d) It would be an unjustifiable infringement on freedom of association and expression to require candidates to deny their political beliefs.

- 29) These findings are independent of who asked the question. The identity of the questioner is irrelevant to the legal analysis. The error therefore does not justify setting aside the judgment.
- 30) Furthermore, the appellant has not shown how this error prejudiced his interests. The judgment makes no adverse finding against Mr Baleka. It simply (incorrectly) identifies him as the questioner. There is no breach of *audi alteram partem* where no finding affecting the appellant's rights was made.
- 31) Nor does the error meet the test for bias articulated in *S v Basson* 2007 (3) SA 582 (CC). That case requires an error to be "so unreasonable on the record that it must have arisen from bias or given rise to a reasonable apprehension of bias" (paragraph [70]). A simple misidentification of a questioner, where the answer and its consequences remain the same, does not approach this threshold.
- 32) Accordingly, while we correct the error in paragraph [54], this ground does not provide a basis for allowing the appeal.

Ground 6: alleged appearance of bias

- 33) The appellant's final ground is that the involvement of Mr Luca Bester, a former Justice of the Student Court, created an "incurable appearance of bias" that tainted the proceedings. This ground has no merit whatsoever.
- 34) The facts are clear: Mr Bester initially requested to be joined as *amicus curiae* and later as an applicant. However, as the judgment records at paragraph [34], Mr Bester "withdrew from the matter entirely". He never participated in the hearing. He never filed substantive submissions. The judgment makes no reference to any arguments or materials he may have prepared.
- 35) The test for bias is whether a "a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel": *President of the Republic of South*

Africa v South African Rugby Football Union 1999 (4) SA 147 at paragraph [48]. A reasonable person, aware that Mr Bester withdrew before any substantive participation, could not reasonably apprehend bias.

36) The appellant's argument that the first respondent gained an "insider advantage" is pure speculation unsupported by any evidence. There is no indication that:

- (a) Mr Bester advised or assisted the first respondent;
- (b) The Student Court was influenced by Mr Bester's potential involvement; or
- (c) The outcome would have been different had Mr Bester never expressed interest in the case.

37) The Student Court's discussion of *amicus curiae* participation at paragraphs [31] to [35] was academic commentary on a procedural *lacuna* in the Student Court rules. It had no bearing on the outcome because Mr Bester withdrew. To argue that the Court should have 'summarily dismissed' an application that became moot is to fault the Court for not doing something that was unnecessary.

38) This ground of appeal fails.

Conclusion

39) The Student Court delivered a careful, well-reasoned judgment that correctly applied the principles of administrative law and statutory interpretation. The Court properly found that:

- (a) Rule 3(8) does not prohibit all candidate-to-candidate endorsements;
- (b) The SEC's interpretation of the rule was inconsistent with its text, context, and purpose;
- (c) The sanction imposed was irrational and disproportionate; and
- (d) The disqualification violated the first respondent's rights under PAJA and the Student Constitution.

40) The appellant has not demonstrated any misdirection on the law or any finding of fact that is clearly wrong. The appeal is accordingly dismissed.

41) We make one correction: paragraph [54] of the judgment of the Student Court is amended to reflect that Mr Liyema Langa, not Mr Lihle Baleka, asked the question about the first respondent's DASO affiliation at the Heemsteede caucus. This correction does not affect any of the Court's findings or conclusions.

Order

42) The following order is made:

1. The appeal is dismissed.
2. Paragraph [54] of the judgment of the Student Court delivered on 21 November 2025 is corrected to reflect that the question regarding the first respondent's DASO affiliation was asked by Mr Liyema Langa, not by the appellant, Mr Lihle Baleka.



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