



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

IN THE MATTER BETWEEN:

MICHAEL MANZI

Applicant

And

EXECUTIVE COMMITTEE OF THE SRC

First Respondent

AMBER NIEUWENHEYZEN

Second Respondent

MZWAKHE BOLOTINA

Third Respondent

Neutral Citation: *Manzi v Executive Committee of the SRC 22/07/25*

Judgement: THE COURT (Unanimous)

Decided on: 22 July 2025

FINAL JUDGEMENT

THE COURT

Introduction

[1] The Applicant is the Secretary General of the interim Students' Representative Council ("SRC"). The Applicant seeks an order setting aside his suspension from the SRC on the grounds that it is procedurally or substantively inconsistent with the SRC Code of Conduct ("Code of Conduct"). The Applicant additionally seeks an order declaring the conduct of the third Respondent improper and in violation of the Code of Conduct insofar as it constitutes harassment in implicating the Applicant in an act of

gender-based violence, as well as an order compelling the Respondents to release a statement clearing the Applicant of any misrepresentation as it pertains to his involvement in the reported act of gender-based violence currently being investigated by the South African Police Service (“SAPS”).

Locus standi

[2] The Applicant is a registered student at Stellenbosch University and thus satisfies the requirements imposed by section 86 of the Student Constitution 2021 (“Student Constitution”), granting him *locus standi* to bring a case before this court.

Jurisdiction

[3] Section 85 of the Student Constitution empowers the Court to grant an interdict or any interim relief, a declaratory order, and to set aside any decision that is inconsistent with the Student Constitution or a constitution, policy, regulation or any empowering provision of a student body. Importantly, section 85(4) empowers the Court to grant any order, inclusive of a combination of the above, that is fair and equitable. The Court therefore has jurisdiction to preside over the matter.

Urgency

[4] The Applicant requests that the matter be dealt with urgently, as the events in which he is implicated may materially prejudice his prospects of being granted a South African Council for Educators (SACE) licence.

[5] The Applicant was unable to furnish the Court with a date of the licensing evaluation, but submitted that it may occur before 21 July 2025. The Applicant avers that the news articles upon which his harassment claim is based and the suspension imposed by the SRC may jeopardise his prospects of being issued the SACE license.

[6] This Court accepts that the matter is urgent and that a truncated timeline must be followed, falling outside the Court’s sitting dates. Whilst the Court could not guarantee a ruling before 21 July 2025, it did approach the urgency necessary whilst still preserving the integrity of its judgement.

Factual Background

[7] On 30 April 2025, an incident of gender-based violence occurred on the Stellenbosch University Campus, allegedly involving the SRC Sports Manager, Mr Sithole, who was subsequently suspended from his position.

[8] On 1 May, the Accountability Officer of the Student Imbizo, Andri Malan, informed the President of the SRC that the victim of the alleged assault had received multiple phone calls and text messages from the Applicant, who had allegedly been attempting to persuade her to withdraw the charges that had been laid against the SRC Sports Manager.

[9] On 2 May, a gossip channel called the Maties Mole alerted the broader student community of the allegations of the Applicant's inappropriate communication with the victim. The Mole utilised WhatsApp messages that were forwarded and shared across student community groups to spread the news.

[10] On 3 May, the Executive Committee of the SRC ("Executive Committee") convened to discuss the allegations, whereafter the Applicant was suspended. Thereafter, a statement was released by the Third Respondent, Mr Bolotina, in his capacity as the SRC Communications Officer, stating that the SRC Sports Manager had been suspended and was subject to a criminal investigation, and that the Applicant was also suspended following his alleged involvement, and subject to a review and investigation by the Student Imbizo.

[11] The Applicant disputes the legitimacy of his suspension on the grounds that the alleged offence was incorrectly classified in terms of the Code of Conduct and that it was procedurally unfair in that the Applicant was not given an adequate opportunity to make representations against his suspension. In addition, the Applicant avers that the statement issued by the SRC Communications Officer constitutes harassment in that the ambiguous language created the impression that he was the perpetrator of the crime, thus creating hostility towards him on campus.

[12] The Applicant accordingly seeks an order to the effect that his suspension be overturned, that the conduct of the SRC Communications Officer constitutes harassment and is in violation of the Code of Conduct, and that the SRC must release a statement rectifying the apparent misrepresentation about the nature of his involvement in the domestic violence incident.

The classification of the alleged offence

[13] In the Applicant's Founding Affidavit, the challenge to his suspension is two-fold: as the main challenge, he submits that, substantively, it was misclassified under the wrong SRC code regulating disciplinary action; should this challenge fail, he submits that, in the alternative, the process by which the suspension occurred is unjust and encroaches on his right to a fair procedure.¹

[14] The first part of this judgment will accordingly deal with the substantive challenge to the suspension; namely, whether its severity was correctly classified.

[15] The Applicants and the Respondent submitted different versions of the Code of Conduct wherein misconduct is classified and respective sanctions are prescribed. Notwithstanding the minor differences, both documents address misconduct in a similar fashion, with Grade 1 misconduct being violations of any provisions of the Code of Conduct unrelated to constitutional obligations; Grade 2 being repeated violations of the Code of Conduct; and Grade 3 being non-compliance with obligations imposed by the Student Constitution.

[16] The Applicant's alleged misconduct was deemed to be non-compliance with constitutional obligations imposed on the Executive Committee and it was thus classified as Grade 3 misconduct. The Applicant avers that the classification of the alleged misconduct was erroneous as there was no *prima facie* non-compliance with constitutional obligations, nor evidence to support the legitimacy of the alleged offence beyond mere rumours.

[17] To determine the appropriate Grade of the Applicant's alleged misconduct, it is important to note that section 27(1) of the Student Constitution compels SRC Representatives to "act in the best interests of students." Above any other obligations the Student Constitution imposes on the SRC, section 27(1) is fundamental as it underpins the very existence and functioning of the SRC.

[18] The matter in which the Applicant is allegedly implicated is a highly sensitive one. Stellenbosch University, as a microcosm of South African society, does not escape the topical and critical issues that our youth are faced with. More than 20 years ago, in *S v Baloyi*, the Constitutional Court already recognised that gender-based

¹ Para 22 of the Applicant's Founding Affidavit.

violence has reached critical proportions, and, quoting American author Donna Willis, noted that it is ‘an unacknowledged epidemic in our society’.² This Court similarly acknowledges the plight of gender-based violence and its impact on our campuses.

[19] Thus, where an issue of gender-based violence is concerned, it is imperative that the SRC act swiftly and decisively—not only to support and protect victims of such incidents, but to participate in the wider efforts to make the Stellenbosch University campuses safe for all students. Section 27 of the Student Constitution thus compels the SRC to ensure that victims of gender-based violence are supported in laying criminal and disciplinary complaints and that those implicated in such incidents are dealt with by the due processes of the law and the appropriate institutional rules. This does not only cater to singular reported instances of gender-based violence, but ensures that the wider student community feels safe on campus and that the SRC will represent and uplift anyone who should be unsure of whom to seek assistance from.

[20] As the allegations against the Applicant had not been proven by the Student Imbizo at the time the Applicant was suspended, the evidence and facts available to the SRC Executive Committee are of overarching importance in determining whether the classification of the Applicant’s misconduct as Grade 3 was lawful.

[21] The evidence submitted by the Respondents show WhatsApp communication between the Applicant and alleged victim between 00:00 and 04:00 on 1 May. Notably, neither the Applicant nor the alleged victim had shared any communication prior to 1 May. The Applicant’s defence was that he had reached out to the victim in his capacity as Secretary General to attempt to console and help her. Shortly thereafter, the alleged victim posted a status on her Instagram account in which she stated that the Applicant had attempted to persuade her to drop the case, and a complaint against the Applicant was made to the Imbizo.

[22] Again, whilst the Student Imbizo had not yet proven that the Applicant did indeed attempt to coerce the alleged victim to withdraw her criminal complaint, the evidence as illustrated above does point to a *prima facie* case of an SRC member fraudulently using their office to intimidate or persuade a student to act in accordance with their own personal objectives—such action would constitute a violation of the

² 2000 1 BCLR 86 (CC) para 11.

section 27(1) obligation that SRC representatives act in the best interests of students and such a violation lawfully warrants a Grade 3 classification. The Executive Committee thus lawfully suspended the Applicant, pursuant to their collective section-27 obligation, to prevent him from further misusing his position should the allegations against him be proven to be true by the Student Imbizo.

[23] As the Applicant's principal challenge to his suspension fails, this Court will now consider his procedural challenge, which invokes the right to administrative justice.

Procedural Fairness

[24] Administrative law is that part of the law which governs the exercise of public power or the performance of a public function. It does not operate in a vacuum and should be understood to operate parallel to other substantive areas of law, best described as the plasma wherein which the cells (i.e., other areas of law) flow through.

[25] Section 33 of the Constitution of the Republic of South Africa, 1996 ("Constitution") entitles everyone to just administrative action that is lawful, reasonable, and procedurally fair. The Promotion of Administrative Justice Act 3 of 2000 ("PAJA") is the shepherd of this right, providing a framework to determine what an administrative action is, and what exactly lawfulness, reasonableness, and procedural fairness ought to broadly take the form of.

[26] In this regard, the Applicant avers that his suspension was procedurally unfair on the basis that he was not given a sufficient opportunity to make representations before the Executive Committee. The Court thus endeavours to determine whether the Applicant's argument supports the conclusion that his suspension was procedurally unfair.

[27] Section 3(1) of PAJA states that "administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair." This standard is echoed in the language of section 14 of the Student Constitution, which states that:

Every student whose rights or legitimate expectations are materially and adversely affected by any decision taken by a student body or member of a student body has the right to –

(a) Be notified of the nature and purpose of the proposed action.

(b) A reasonable opportunity to make representations and a provide [sic] written response.

(c) Adequate notice of any applicable right of review or internal appeal.

(d) Request reasons for the decision and to be furnished with written reasons within a reasonable time.

[28] For PAJA to find application, the decision under scrutiny must first constitute an administrative action. To make such a determination ordinarily requires a separate enquiry into the nature of the decision but section 14 of the Student Constitution only requires that there is a “decision” which adversely affects the rights or legitimate expectations of a student. Given that an elected SRC member may legitimately expect to remain in office for the duration of their term, any decision resulting in a sanctioning which would remove an SRC member from the structure, albeit temporarily, does affect their legitimate expectations to remain in office. Consequently, the SRC Executive Committee’s decision to suspend the Applicant does affect his legitimate expectations to remain in office for the duration of the term and thus allows for section 14 of the Student Constitution, and PAJA, to apply.

[29] As it can be reasonably concluded that the Executive Committee’s decision to suspend the Applicant has an adverse effect on a legitimate expectation, it is prudent to determine whether such adverse effect is material enough to warrant an entitlement to procedural fairness. In the context of section 3(1) of PAJA and, by extension, section 14 of the Student Constitution, our courts have interpreted materiality to mean ‘non-trivial’,³ and the right to procedural fairness accrues to an individual where they have a legitimate expectation and not only necessarily an actual right or entitlement.⁴

[30] In the present matter, the Executive Committee decided to suspend the Applicant and in doing so, stripped him of his office and the privileges and entitlements that flow therefrom. The impact of such suspension cannot be deemed to be trivial and as such, the Applicant is entitled to the procedural fairness envisioned by section 14 of the Student Constitution.

³ *Joseph v City of Johannesburg* 2010 4 SA 55 (CC) para 31.

⁴ *Walele v City of Cape Town* 2008 6 SA 129 (CC) para 28.

[31] Procedural fairness is not black and white. Every matter has its own ideal for what procedural fairness ought to look like in those particular circumstances.⁵ In English law, which informs much of our South African administrative law jurisprudence, Lord Mustill, in *R v Secretary of State*, found that procedural fairness ought not to apply identically in every circumstance.⁶ This sentiment was echoed in our courts when Ngcobo J held in *Zondi v MEC for Traditional and Local Government Affairs* that the overriding consideration for procedural fairness is what fairness would demand in each particular case.⁷

[32] Section 3(2)(b) of PAJA establishes core standards for determining whether an administrative action is procedurally fair. Of primary relevance in this matter is the right to make representations,⁸ echoed in section 14(b) of the Student Constitution.

[33] The Applicant submits that his suspension was erroneous, as the process by which it occurred was unjust and encroached on his right to a fair procedure.⁹ The Applicant avers that his rights and reputation were infringed by the lack of reasonable opportunity to make representations and to provide a written response. These averments are made despite the Applicant being present in the WhatsApp call in which the Executive Committee decided to suspend him.

[34] It is important to note that the standard for representations for purposes of procedural fairness is written representations, and the opportunity to make it orally and respond in real time is of a higher discretionary bar. This is evident in the language of PAJA where, under section 3(2), the core standards of procedural fairness include the opportunity to make *written* representations. Only in section 3(3) does it provide an administrator with the discretion to allow oral representations, and this subsection is thus referred to as discretionary standards of procedural fairness, which are only available should the administrator, in exercising their discretion, decide so.

[35] To the extent that PAJA informs the interpretation of section 14 of the Student Constitution, it can be concluded that, similarly, the standard for representations under section 14(b) is written representations, and that oral representations are allowed at

⁵ S 3(2) of PAJA.

⁶ *R v Secretary of State for the Home Department, ex parte Doody* 1994 1 AC 531.

⁷ *Zondi v MEC for Traditional and Local Government Affairs* 2005 3 SA 589 (CC) para 114.

⁸ S 3(2)(b)(ii) of PAJA.

⁹ Para 22 of the Applicant's Founding Affidavit.

the discretion of the decision-maker. The fact that the Applicant was thus allowed to make oral representations during the meeting, as opposed to written ones, means a higher standard of procedural fairness was applied to his case and, as such, his contention that he was denied administrative justice due to not having the chance to make *written* representations, when ample opportunity was given to make oral ones, rings hollow. It is unclear what written representations the Applicant could have made which could not be stated as clearly, if not more clearly, during oral representations.

[36] Furthermore, it was conceded during the hearing that there were multiple calls organised, and ample opportunity given to the Applicant to have spoken for and represented himself. Moreover, there is no evidence that the Executive Committee refused him the opportunity to also make written representations. No arguments were lead as to even suggest he had requested the opportunity to make written representations in the first place. It rather appeared that the Applicant refused to engage with the Executive Committee when prompted to do so, and now with the luxury of hindsight prays before this court to find the procedure unfair on the grounds that his representations were not written.

[37] As per the words of Lord Mustill and Ngcobo J mentioned above, the factual circumstances are of relevance in determining what a fair opportunity to make representations entails in a specific case. The Executive Committee's decision to suspend the Applicant was a temporary one, contingent upon confirmation of the allegations by the Student Imbizo. Moreover, the decision was urgent due to the explosive traction of the false information and rumours that were spreading on campus. Importantly, an opportunity to make representations through WhatsApp calls was presented as it was the medium most accessible to both the Applicant and the Executive Committee at the time. Both factors justify an urgent disciplinary hearing in the way it was conducted.

[38] In light of the urgency of the matter, the Respondents acted promptly to facilitate a phone call that would allow the Applicant to participate in the discussion of the matter and to make representations on his own behalf. The Applicant cannot now claim, after electing not to engage aptly with the Respondents, that the procedure used to suspend him was unfair. It is at this point that it is necessary to highlight that administrators are bound to the confines of the law and other instructive texts that inform them on the

proper procedure for lawfully carrying out administrative action. Where an administrator acts lawfully, an applicant cannot claim procedural unfairness simply because they disagree with the lawful procedure enlisted by the administrator. Where the Executive Committee offers the Applicant an opportunity to make oral representations due to the surrounding circumstances, the Applicant is not entitled to claim that such an opportunity is procedurally unfair merely because he would have preferred to have made written representations, especially in the context of this case where there is no suggestion that the Applicant had even requested to make written representations in the first place.

[39] As such, the procedure followed by the SRC is valid, not unfair, and adheres to the standards set out in section 14 of the Student Constitution, as well as PAJA.

Reasonableness

[40] The Court considers this element briefly as the Applicant avers that should the procedure followed by the Executive Committee be found to be valid, the sanction should be found to be unreasonable due to the lack of credible evidence provided by the Respondents.

[41] An unreasonable decision for purposes of PAJA, as confirmed by *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism*, is one which a reasonable decision maker could not reach.¹⁰ It is not this court's prerogative to determine whether the decision was the best decision, but rather if the decision could not reasonably have been arrived to at all, considering the factors mentioned in *Bato Star*. These factors are the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved, and the impact of the decision on the lives and well-being of those affected.¹¹ Furthermore, for a decision to be reasonable, it must be both rational, considering the factors above, and proportional (i.e., there must not be less restrictive means available to achieve the desired purpose).¹²

¹⁰ 2004 4 SA 490 (CC) para 44.

¹¹ 2004 7 BCLR 687 (CC) para 45.

¹² *Medirite (Pty) Limited v South African Pharmacy Council* (197/2014) [2015] ZASCA 27 (20 March 2015) para 20.

[42] During oral arguments, the sanction was described as “practical” rather than “punitive”, arising from the necessity of temporarily removing the Applicant from his position as Secretary-General due to the allegation that he had used that position to exert influence over a victim of gender-based violence. The urgency of the suspension was warranted due to the sensitive nature of the incident, Applicant’s alleged role therein, growing pressure and scrutiny from the student body, as well as the necessity of protecting the victim. Importantly, the fact that the decision was subject to review by the Student Imbizo meant that it was, by its very nature, temporary.

[43] The identity and expertise of the decision-maker is of importance as well as the SRC is tasked with the duty to uphold and promote students’ rights and prevent instances such as the current allegation where an SRC member misuses their office to deny a victim justice.

[44] Though the decision has a materially adverse effect on the Applicant, it is temporary, and outweighed by the necessity of protecting the victim, and resolving incidents of gender-based violence in a just and prompt manner. The Applicant was informed that he was suspended due to the alleged infringement of his section 27 constitutional duty which amounts to a Grade 3 misconduct in accordance with the Code of Conduct. Such suspension, subject to a report from the Student Imbizo verifying the legitimacy of the allegations, was sanction to prevent the Applicant from using his office to exert any pressure on students or interfere with the Student Imbizo investigation.

[45] On the facts and evidence available, these reasons are rationally connected with the decision to suspend the Applicant. The Applicant did not indicate any less restrictive means or sanctions available to the Executive Committee that would have appropriately addressed the allegations against him. Thus, in considering the facts and circumstances holistically, the Executive Committee’s decision to suspend the Applicant cannot be said to be disproportionate to the allegations.

[46] As no official Student Imbizo report was available at the time to determine the veracity of the allegations against the Applicant, it is this Court’s opinion that the *prima facie* evidence available to the SRC at the time the decision to temporarily suspend the Applicant was made, and the proportionate nature of the decision, was sufficient to render it reasonable. Based on the circumstances and the *prima facie* evidence put

forth by the Respondents, this Court is unconvinced that the decision to suspend the Applicant is one that a reasonable decision-maker could not reach.

[47] In lieu of the fact that the Applicant's challenge in terms of administrative law fails, there is no need to consider the remedies available under administrative law.

Harassment

[48] Following the Applicant's alleged role in attempting to get Mr Sithole's criminal case dropped, the SRC released an official statement which the Applicant alleges implicates him in the crime itself.¹³ This, he submits, constitutes harassment, as it was written in an ambiguous manner, which led students to believe he was the perpetrator, and thereby caused hostility towards him on campus.

[49] During oral arguments, it was conceded by the Applicant that the matter does not constitute defamation, and the sole focus on this part of the judgment will therefore be on the alleged harassment.

[50] The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA") is the seminal piece of legislation aimed at preventing harassment, unfair discrimination and related unwanted conduct. The University's Policy on Harassment and Unfair Discrimination, dated 16 September 2016 ("Harassment Policy") aims to give effect to these aims and policies, and must be read in conjunction with the Protection from Harassment Act 17 of 2011 ("Harassment Act").¹⁴

[51] The Harassment Policy defines 'harassment' in section 5.5 as "unwanted conduct which demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences, and which may be persistent, once-off or serious". This definition mirrors PEPUDA's definition of harassment,¹⁵ though it is wider, since it does not restrict the grounds of harassment to race, sexual orientation, gender, or a person's membership of a particular group. This evidences an intention by the University to extend the possibilities of conduct amounting to harassment, thereby offering increased protection to complainants.

¹³ Para 36 of the Applicant's Founding Affidavit.

¹⁴ Para 1.2 of the Harassment Policy.

¹⁵ S 1 of PEPUDA.

[52] The Harassment Act elaborates on the definition of harassment, defining it as “directly or indirectly engaging in conduct that the respondent knows or ought to know (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably [...] (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person...”.¹⁶

[53] The impugned phrase in the statement which the Applicant contends incriminates him and therefore constitutes harassment, reads as follows: “We confirm that the SRC Manager, who is currently in police custody has been temporarily suspended.” Thereafter, a few paragraphs below, the sentence “Considering the involvement of the Secretary General this matter has also been submitted to [S]tudent [I]mbizo for review” is found.

[54] The Applicant submits that the statement was written in an ambiguous manner, and that an “accusatory stance [was] taken toward [his] unfounded involvement in the alleged crime”,¹⁷ which, in turn, caused readers to believe he was implicated in the crime itself and that, consequently, newspaper articles published after the statement similarly perpetuated that narrative. These consequences that followed the statement, he submits, constitute harassment.

[55] In *Endumeni Municipality v Natal Joint Municipal Pension Fund*, Wallis JA reminds us that, when interpreting a text, regard must be given to the ordinary language, context, purpose of the text, and the material available to those responsible for its creation.¹⁸ Departing from the traditional approach, which pivoted on the ordinary, grammatical meaning of words, Wallis JA’s approach favours a more nuanced interpretation exercise that considers the language holistically. The process is objective, not subjective,¹⁹ and regard must thus be given to what the reasonable

¹⁶ S 1 of the Harassment Act.

¹⁷ Para 36 of the Founding Affidavit.

¹⁸ 2012 4 SA 593 (SCA) para 18.

¹⁹ Para 18.

reader would believe after reading the statement; not the Applicant's subjective interpretation.

[56] The Applicant's assertion that the statement was ambiguous and accusatory cannot be supported. Its contents are clear: reference is first made to the SRC *member*, the alleged perpetrator, who had been detained by SAPS and is the subject of possible criminal charges. In the fourth paragraph, following the word "furthermore", mention is made of the Applicant, where his full position is used and he is referred to as the SRC Secretary General. His "involvement" in the event is qualified by the phrase that he has been referred to the Student Imbizo for further investigation, clearly drawing a distinction between the criminal nature of the SRC Member's involvement in the alleged crime, and the Applicant's involvement, which does not warrant a criminal charge.

[57] Subsequent news articles, notably in SFMNews and Die Burger, merely paraphrased the statement's contents and repeatedly drew a distinction between Mr Sithole, the alleged perpetrator, and the Applicant: the article on SFMNews refers to Mr Sithole as the SRC *member* who was detained in police custody, and notes that he is scheduled to appear in the Magistrates' Court on 5 May. Thereafter, the Applicant is mentioned, who is referred to as a "second member of the SRC" who was suspended pending the Imbizo's investigation.

[58] The Applicant submits that the use of the verb "involved" in the statement²⁰ and the context of its being "an official statement" (which outlines the SRC's response to the arrest of one of its members by the SAPS, and the speedy sanction imposed on him in relation thereto) incriminates him.²¹ This Court cannot agree. Such an interpretation is a one-dimensional one which does not honour the context of the rest of the statement, the facts and material available to the SRC when it was written, nor its apparent purpose.

[59] On a proper reading of the text, the reasonable reader is unlikely to conclude that the statement itself "incriminates" the Applicant in the crime of GBV, since the primary focus and subject of the criminal charges is the suspended SRC Manager, referred to as an 'SRC member', who is mentioned first in the statement. A continued

²⁰ Para 35 of the Applicant's Founding Affidavit.

²¹ Para 40 of the Founding Affidavit.

distinction is drawn between the criminal nature of Mr Sithole's involvement, which warranted criminal sanction, and the nature of the Applicant's involvement, which is only in a leadership context, as evidenced by the Student Imbizo's investigative role, as opposed to the formal criminal justice system.

[60] Furthermore, the context within which the statement was written proves important: the SRC was under increasing pressure from the student body to release the statement, following narratives that were already floating around about the Applicant's alleged involvement. Its purpose was to inform the student community and adhere to its constitutional mandate in terms of the Student Constitution, particularly section 28(5)(b)(i), which endows the Third Respondent, in his capacity as Communications Officer, with the constitutional mandate to ensure "students are continuously and fully informed of the activities of the SRC...". The value of transparency permeates the Student Constitution and is pivotal to the SRC's work, who must function as a democratic body elected by the students, for the students.

[61] Nothing in the texts supports an interpretation that the Applicant is criminally involved, nor that the SRC was malicious in its publication of the statement; on the contrary, it appears to have been published in a last-ditch attempt to restore the trust of a student body who has been feeling increasingly alienated by the SRC. Such sentiments are evident in the Annexures attached by both parties, which indicate the level of scrutiny the SRC and its activities are under.

[62] The verb "involved" is as neutral a description as a situation of such seriousness warrants, and it is unclear how the SRC could have expressed the sentence differently; supplying more detail about the nature of the Applicant's alleged involvement by, for example, clarifying that he is alleged to have contacted the victim to compel her to drop her case against Mr Sithole, would have opened them to further scrutiny and perhaps a defamation claim. At the time, there was only sufficient *prima facie* evidence available to the SRC to suspend the Applicant temporarily and make the statement in the broad manner that it did, since no official reports had been available at the time. The use of "involved", while making it clear that only Mr Sithole, not the Applicant, has been the subject of criminal charges, is a clear and unambiguous representation of the situation, as it stood at the time.

[63] When considering the context in which the statement was drafted—where rumours float freely and avid gossips such as the Maties Mole had already spread the story a day before the statement was released—it is reasonable to conclude that at least a substantial part of the student body would have been aware of the allegations, including the fact that it is not the Applicant who perpetuated the act of GBV. This context informs the reasonable reader, and it is therefore unlikely that the statement would have “incriminated” the Applicant in the manner he contends.

[64] Requiring the SRC to use even vaguer terminology or more specific language in relation to the Applicant’s alleged involvement, because, criminal or not, the Applicant appears to have been involved, at least to some extent, would be detrimental to their constitutional mandate and transparency, and potentially alienate a student body who is already critical of them. Care must be taken not to put too onerous of an obligation on the SRC that would inhibit their functioning, nor undermine a situation as serious as this one.

[65] Whether the statement, irrespective of how it is interpreted by the reasonable reader, constitutes harassment turns on the definition provided by the Harassment Policy, on which the Applicant relies. The parties are bound by the SU Policy on Unfair Discrimination and Harassment, and the SU Communication guidelines.

[66] The Applicant avers that the conduct is harassment because it “incriminates [him] in a serious crime, thereby humiliating [him] in causing reputational damage”; “demeans [him]” by implicating him in the crime of GBV, which offends his dignity; and “has created a hostile environment for [him] on campus”.²² He further submits that the alleged reputational harm was compounded by the official nature of the statement and its affiliation with the SRC as an official student body.

[67] It is unclear why mention was made of reputational harm, as this is not, and has never been, a defamation claim. As such, mention will only be made of the definition of harassment, as provided in the Policy, to determine whether the Statement constitutes such.

[68] For the statement to be considered “harassment” for purposes of the Harassment Policy and the Harassment Act, it must constitute either *unwanted*

²² Para 50 of the Founding Affidavit.

conduct which demeans, humiliates or creates a hostile or intimidating environment or conduct which is calculated to induce submission by actual or threatened adverse consequences.

[69] It has been established that the statement does not incriminate the Applicant, nor that a reasonable reader would interpret it as such. There is thus no question of humiliation nor an offence to his dignity, as it is his own apparent actions, and the rumour mill, that have caused the scrutiny and outcry against the Applicant; not the statement. Furthermore, there is no indication of any intention on the SRC's part to induce him to act in any manner; the ostensible purpose of the statement and the SRC's intention of releasing it was to comply with their constitutional duties and protect themselves from public outcry and scrutiny. This submission by the SRC was not challenged by the Applicant, and it can therefore be accepted that their intention was to comply with their mandate.²³

[70] Nevertheless, could the statement constitute "unwanted conduct" which humiliates or demeans?

[71] Acting lawfully in terms of a constitutional mandate, as the Third Respondent has done, cannot be regarded as "unwanted conduct" for purposes of a harassment enquiry, irrespective of the fact that the release of the statement was obviously unwanted by the Applicant. To hold otherwise would inhibit the constitutional norms of accountability and transparency, and hinder the SRC's exercise of its duties and mandate. The statement was drafted in line with article 28(5)(b)(i) of the Student Constitution, in neutral terms, and does not give rise to incriminating interpretations. There is no question of a failure by the SRC to perform its duty in terms of article 28(5)(b)(i), and therefore it cannot be considered "unwanted conduct" which demeans or humiliates for purposes of a harassment enquiry.

[72] A reading of the text, informed by its context, the material available to the SRC and the necessity of dealing with the matter expeditiously, does not support the interpretation that it incriminated the Applicant. Consequently, it can also not be considered to be the cause of the hostility towards the Applicant; extracts from the Annexures attached by the Respondent, such as Instagram comments underneath the

²³ Para 30 of the Respondents' Answering Affidavit.

SRC's post of the statement, in which students complained that they had to "find out through the grapevine", and the Maties Mole's message about the Applicant's alleged involvement, sent a day before the statement, support a conclusion that the damage had been done, that hostility was caused by the rumours, and not the statement, which, for all intents and purposes, came too late. In the message by the Mole, it is declared that the SRC Secretary-General is "defending" the perpetrator and pushing victim to drop case – *not* that the Applicant has perpetrated the crime.


[73] This context also supports an interpretation that the reasonable reader of the statement was aware of the (non-criminal) nature of the Applicant's involvement, and would not interpret the statement as incriminating him, nor act on the reading of the statement by threatening the Applicant.

Relief sought

[74] The Applicant sought an order setting aside his suspension, a declaratory order that the statement constitutes harassment, and an interdict compelling the Respondents to release an official statement that clarifies the alleged misrepresentation of his involvement in the crime.

[75] In light of the fact that the suspension was reasonable, procedurally fair in the circumstances, and no harassment has taken place, none of the orders can be granted.

[76] The application is dismissed.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left. The signature is positioned above a horizontal line.

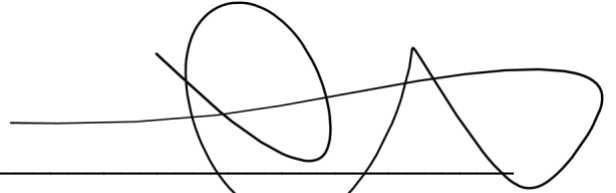
RISIMATI CJ

A handwritten signature in black ink, featuring a large, stylized 'M' followed by a horizontal line extending to the right. The signature is positioned above a horizontal line.

MÜLKE DCJ

A stylized handwritten signature consisting of a few sharp, intersecting lines.

LAKER J

A handwritten signature with a large, prominent loop and a long horizontal stroke extending to the left.

VAN DER WATT J

A handwritten signature with a cursive, flowing style and a long horizontal stroke at the bottom.

ZIMRI J