



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

In the matter between:

MAQHAWE MWELASE SITHOLE

Applicant

and

STUDENTS' REPRESENTATIVE COUNCIL

Respondent

Neutral Citation: Sithole v Students' Representative Council 20/10/2025

Judgement: THE COURT (Unanimous)

Decided on: 20 October 2025

JUDGMENT

Introduction

[1] The Applicant is Maqhawe Sithole who approaches this Court in his capacity as the Sports Manager of the Students' Representative Council ("SRC") whose membership was terminated as a result of his arrest and subsequent detainment. He seeks an order setting aside his termination and declaring Section 31(1)(j) of the Student Constitution to be inapplicable in his circumstances. Finally, the Applicant seeks to be reinstated as the Sports Manager with full rights and privileges.

Locus standi

[2] The Applicant is currently a registered student at Stellenbosch University and thus enjoys *locus standi* to approach this Court per section 86(1) of the Student Constitution 4.4. (“Student Constitution”).

Jurisdiction

[3] This Court is empowered by the Student Constitution to decide on the constitutionality of any action or omission of a student body, as well as the authority to review any decision of a student body or a member thereof whereby the rights or legitimate expectations of a student or group of students are materially and adversely affected.¹ For that reason the court enjoys jurisdiction to hear the matter.

Urgency

[4] The Applicant requested this application to be heard as one of urgency pursuant to rule 8 of this Court’s Rules of Procedure and to thus dispense with the normal procedures and timelines applicable.

[5] Whilst the Court accepted the matter to be urgent, various factors impeded the Court in its efforts to expedite a judgement. There were delays in communication and in acquiring the necessary documents to proceed as well as delays owing to the academic and election calendar. The Court does acknowledge that this judgement would have been issued sooner had there been more stringent oversight regarding the submission of documents and other administrative matters.

Factual background

[6] On 30 April 2025, the Applicant was arrested for an alleged domestic violence incident. He was subsequently detained for custodial purposes pending legal proceedings.

[7] On 6 May, the Applicant was temporarily suspended from his position as a Sports Manager by the SRC due to his arrest. This temporary suspension was later escalated to a permanent removal from the structure, and this escalation forms the crux of the Applicant’s case against his suspension.

¹ Section 84(2) and (3) of the Student Constitution.

[8] Following a bail hearing, the Applicant was released from custody on 9 May and the legal proceedings flowing from the incident came to an end by 30 July where both cases involving the dispute were referred to arbitration.

[9] On 13 August, the Applicant enquired to the SRC about reinstatement to his position. The President of the SRC responded via email that the Applicant could not be reinstated as his membership to the SRC had been terminated in terms of section 31(1)(j) of the Student Constitution which reads:

“31. Ending membership of the Students’ Representative Council

(1) The membership of an SRC member comes to an end when –

(j) The member is sentenced to imprisonment without the option of a fine in the Republic of South Africa or elsewhere”.

[10] The Applicant thus submits that his temporary suspension was ostensibly declared permanent in terms of section 31(1)(j), which requires “imprisonment” to terminate the membership of an SRC member. The Applicant argues that this was unlawful, since he was not imprisoned, but custodially detained and not subject to sentencing and imprisonment as contemplated by the Criminal Procedure Act, nor section 31(1)(j) of the Student Constitution.

Issues of law

[11] In his founding affidavit, the Applicant is clear that his arguments before the Court do not rely on or challenge the procedural fairness of his temporary suspension. The Applicant concedes to the fact that the urgency of the matter, given the circumstances, justified a deviation in the procedure to be followed in suspending a member of the SRC. Despite this concession, the Applicant still challenges his permanent termination in his affidavit which reads as follows:

“Despite numerous procedural deviations such as a lack of opportunity to make written or oral response, and the lack of inquiry by the Student Imbizo in terms of section 8(3) of the Code, I accept that the urgency of the circumstances wherein the SRC’s initially suspended me may be fair. [...] Yet, my permanent termination is patently unfair and unsubstantiated”.

[12] Thus, the Applicant’s argument is poised on the issue of lawfulness—whether the SRC correctly held that his membership was terminated rightfully in accordance with section 31(1)(j) of the Student Constitution.

Applicable law

[13] Section 14 of the Student Constitution confers on every student the right to just administrative action which is procedurally and substantively fair.

[14] The Promotion of Administrative Justice Act 3 of 2000 (“PAJA”), which underpins section 14 of the Student Constitution, provides that an administrative action need not only be a commission, but an omission may also be regarded as an administrative action where the administrator has a duty to act and does not do so.

[15] For an administrative action to be compliant with the burdens imposed upon it by PAJA and the Student Constitution, it must be lawful. Lawfulness requires that the administrative action must be aligned with the authorisation in terms of which the action is made. To determine this, a comparison must be made between the administrative action and the relevant empowering provision—the outcome of which must be an overlap for the action to indeed be lawful.

[16] An administrator’s act may be unlawful where a mistake is made either in law or of fact. The former broadly refers to an incorrect interpretation of an empowering provision whilst the latter refers to irrelevant considerations (or incorrect facts) being taken into consideration when taking administrative action instead of the relevant considerations (or correct facts). As held in *Chairman, State Tender Board v Digital Voice Processing*, an error of fact will only justify a finding of invalidity if that error was the direct cause of the decision in question.²

[17] Thus, the task before the Court is to consider whether the SRC did indeed take administrative action, be it an act or omission, and whether such administrative action is compliant with the empowering provision in terms of which it was made.

Application of the law

[18] As previously discussed, the Applicant has disposed of any reliance on procedural fairness and thus places this matter squarely in the realm of substantive fairness. Specifically, he challenges the lawfulness of his termination in terms of section 31(1)(j) of the Student Constitution.

[19] In his founding affidavit, the Applicant submits that the basis of this termination is section 31(1)(j) as stated by the SRC President via email. Whilst this Court cannot,

² 2012 (2) SA 16 (SCA) para 36.

with absolute certainty, conclude that this is the only ground upon which the Applicant's membership was terminated, the Respondents' failure to submit any documentation before this Court thus obliges it to accept the Applicant's version as true.

[20] The statement by the SRC President on which the Applicant relies on is contained in a screenshotted email which reads:

"Dear Mr Sithole,

I hope you are doing well. Following the student constitution section 31(1)(j) which states that the membership of an SRC member comes to an end when "the member is sentenced to imprisonment without the option of a fine". Although the matter is resolved the reinstatement at this point is not possible as you membership terminated when you briefly imprisoned.

I hope the above is in order."

[21] On a contextual reading of the email above, the conclusion that can be drawn is that the SRC deemed the termination of the Applicant's membership to be by operation of the law—the Student Constitution automatically terminated the Applicant's membership to the SRC when he was imprisoned on 30 April in terms of section 31(1)(j). Thus, the SRC did not *make* the decision to terminate the Applicant's membership, as it was ostensibly done by the Student Constitution. The Court must now determine whether the SRC's interpretation of the statute was correct.

[22] If one refers to the language of section 31(1)(j), it clearly states that membership is terminated when an SRC member is *sentenced* to imprisonment without a fine. As the Applicant was temporarily and custodially detained for a bail hearing on 30 April, he was not, at that time, factually convicted or *sentenced* by a court of law.

[23] Thus, the SRC's finding that the section 31(1)(j) automatically terminated the membership of the Applicant by virtue of him being sentenced to "imprisonment" is an erroneous understanding of the facts of the Applicant's detainment and thus constitutes an error of fact.

[24] On the correct understanding of the facts in conjunction with section 31(1)(j) of the Student Constitution, the Applicant's membership to the SRC is not automatically terminated and the SRC is under a duty to reconsider the Applicant's temporary suspension in light of his release from custodial detainment. The SRC's failure to appropriately consider the statute and the Applicant's temporary suspension amounts

to a failure to act which constitutes an omission for the purposes of section 14 and an “administrative action”.

[25] Conclusively, in the absence of any conviction and sentence, the requirements of section 31(1)(j) are not met and the SRC ought to have reconsidered the Applicant’s temporary suspension from his role as Sports Manager. There accordingly exists no lawful basis for the Applicant’s permanent suspension.

Conclusion


[26] The Applicant has made out a case that his permanent removal as SRC Manager was unlawfully facilitated due to an error of fact and misconstrued reliance by the SRC on an incorrect ground of automatic removal.

[27] In the absence of any reply by the Respondents it is not for this Court to speculate on other possible grounds the SRC could have relied on.

[28] It is regrettable that the SRC has failed not only to uphold the Applicant’s right to just administrative action through their misinterpretation of section 31(1)(j), but also acted in flagrant disregard of the Student Constitution and the detailed procedures laid down for the removal of an SRC member.

Order

1. The SRC’s permanent removal of the Applicant from the position of SRC member is declared to be unlawful;
2. The SRC is required to issue a personal apology to the Applicant; and
3. The SRC is required to issue a public statement providing a substantial update on the outcome of the Applicant’s matter and stating that the Applicant’s membership was terminated in terms of an erroneous interpretation of S31(1)(j) of the Student Constitution.


RISIMATI CJ

A stylized, handwritten signature in black ink, appearing to read 'Mülke', written above a horizontal line.

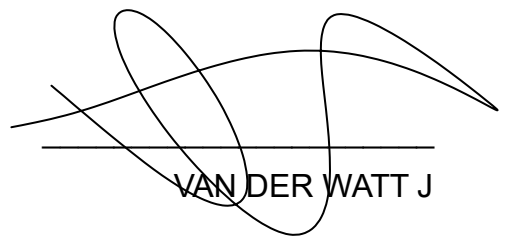
MÜLKE DCJ

A handwritten signature in black ink, appearing to read 'Zimri J', written above a horizontal line.

ZIMRI J

A handwritten signature in black ink, appearing to read 'Laker J', written above a horizontal line.

LAKER J

A handwritten signature in black ink, appearing to read 'Van der Watt J', written above a horizontal line.

VAN DER WATT J