

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2024-138554**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

5 Dec 2024

DATE

SIGNATURE

In the matter between:

ALUNGILE KAMTSHE

Applicant

and

SOUTH AFRICAN STUDENTS CONGRESS

First Respondent

VEZINHLANHLA SIMELANE

Second Respondent

JUDGMENT

[1] The Applicant is a paid-up member and outgoing Secretary General of the First Respondent ("SASCO").

[2] SASCO is a voluntary association whose purpose and goals, as encapsulated in its Constitution ("the SASCO Constitution") are stated as follows in a written constitution ("the constitution"):

- a. To organize students in institutions of higher learning striving for the transformation of institutions for higher learning as well as the entire higher educational system in order to achieve a non-sexist, non-racial, non-biased democratic education system;
 - b. To champion the interests of students and to ensure their access to and success in institutions of higher learning by fighting for and championing various student rights, including more and better accommodation, more and better equipped libraries, and lower costs of education;
 - c. To achieve these various goals through mobilizing students and rallying them towards campaigning for free higher education, as well as linking with all relevant organizations concerned with the liberation of the oppressed, including building women leadership.
- [3] The Second Respondent is the outgoing president of SASCO. He, together with the Applicant, are outgoing members of the outgoing National Executive Committee (“NEC”) of SASCO.
- [4] It is common cause that the term of office for the outgoing NEC lapsed on 20 November 2024.
- [5] As things stand, there is a vacuum in the leadership structures of SASCO until new office bearers are duly appointed by the membership. The applicant points out that it is urgent for this to occur, bearing in mind the commencement of the new academic year in January 2025.
- [6] On Sunday 22 September 2024 an NEC meeting (“the September Meeting”) was held at which it was resolved that the election of a new NEC would be held at an Elective Congress (“the Elective Congress”) [also known as “the National Congress”], to be held on 7 December 2024.
- [7] The Second Respondent contends that the September meeting was irregular and wants that meeting, as well as all resolutions taken thereat set aside. The same relief is sought by the Second Respondent in respect of a National Working Committee (NWC) held on 21 September 2024.


- [8] The Second Respondent's claim for the setting aside of these meetings is made, for the first time, in a counter-application launched in these proceedings on 3 December 2024.
- [9] The Applicant complains of various correspondence and communications emanating from the Second Respondent in which it is claimed that the Elective Congress will not be taking place, as scheduled, on 7 December 2024.
- [10] The Applicant seeks urgent relief against the Second Respondent to prevent further interference with, and obstruction of, the proposed Elective Congress.
- [11] The Second Respondent's opposition rests, primarily, on the alleged irregularity of the September meeting. For as long as that meeting has not been declared to have been irregular, the decisions taken thereat (including the decision to convene the Elective Congress on 7 December 2024) stand and must be adhered to. This is the same principle which is established by the well-known decision in *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA).
- [12] That is, no doubt, why the Second Respondent belatedly seeks to impugn the September meeting (and its decisions) in the counter-application.
- [13] There are however two significant hurdles which are not overcome by the Second Respondent: first, there is no evidence that all the interested parties who attended the September meeting (and who took the decisions thereat) have been given notice of the counter-application or have been joined as parties. A court cannot grant an order in circumstances where such an order cannot be activated without affecting the interests of non-joined parties who have a real and substantial interest; and second, the Second Respondent knew about the decisions he now wants to overturn since September 2024. To have waited until 3 December 2024 to seek urgent relief is inexcusable. Counsel for Second Respondent put up a valiant and interesting argument that the Second Respondent cannot be faulted for remaining supine until he was "dragged into court" by the applicant. That argument does not assist the Second Respondent on the facts of this matter, where the essence of Second Respondent's alleged justification for his conduct is the belief that the September meeting was irregular.

It was for him to do something about what he perceived to be a major flaw in the proceedings in September 2024.

[14] The Applicant, on the other hand, compellingly argues that unless an Elective Conference is held on 7 December 2024 as determined by the NEC in September 2024, SACSO will suffer greatly by being leaderless and unable to deal with the pressing matters requiring the urgent attention of its structures to fulfil SASCO's objectives.

[15] I find that the Applicant is entitled to the urgent relief claimed and make the following Orders:

1. The Second Respondent is interdicted from issuing communications and/or correspondence of whatsoever nature in terms of which he advises third party stakeholders of the First Respondent that the Elective Congress of the First Respondent, which is scheduled for 7 December 2024 ("the Elective Congress"), will not be held as scheduled on 7 December 2024;
2. The Second Respondent is interdicted from interfering with the logistical arrangements, scheduling and sitting of the Elective Congress;
3. The Second Respondent is ordered to pay the costs of this application.


BADENHORST AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant	S Madikizela, instructed by Shamase Ramotswedi Attorneys
For the First Respondent	Adv G.Mashigo, instructed by Mkhize Attorneys