IN THE NORTH WEST HIGH COURT
MAFIKENG

CASE NO.: 2596/10

In the matter between:

THE UNITED CHRISTIAN DEMOCRATIC PARTY	**1ST APPLICANT**
MAVIS NTEBALENG MATLADI	**2ND APPLICANT**
IPUSENG CELIA DITSHETELO	**3RD APPLICANT**
ISAAC SIPHO MFUNDISI	**4TH APPLICANT**

and

LUCAS MANYANE MANGOPE	**1ST RESPONDENT**
ISAAC RAMMUSI MAHUMA	**2ND RESPONDENT**
VERONICA GOITSEONE GAANAKGOMO	**3RD RESPONDENT**
NTHUSTANG PETRUS KGURANE	**4TH RESPONDENT**
NALEDI SELEKA	**5TH RESPONDENT**
MATSHEDISO MANTUANE	**6TH RESPONDENT**
THE SPEAKER OF THE NATIONAL ASSEMBLY OF THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA	**7TH RESPONDENT**
THE SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE OF THE REPULIC OF SOUTH AFRICA	**8TH RESPONDENT**

DATE OF HEARING	**:**	**3 NOVEMBER 2010**
DATE OF JUDGMENT	**:**	**24 NOVEMBER 2010**
FOR THE APPLICANTS	**:**	**MR H EISER**
FOR THE 1ST TO 6TH RESPONDENTS	**:**	**ADV C ZWIEGELAAR**

JUDGMENT

GUMBO AJ:

[1] This is an application brought by The United Christian Democratic Party, the first applicant, Mavis Ntebaleng Matladi the second applicant, Ipuseng Celia Ditshetelo the third applicant and Isaac Sipho Mfundisi the fourth applicant against Lucas Manyane Mangope the first respondent and seven other respondents. The second to sixth respondents are natural persons who are said to be the employees of the first applicant.

The seventh respondent is the Speaker of the National Assembly of the Parliament of the Republic of South Africa and the eighth respondent is the Speaker of the North West Provincial Legislature of the Republic of South Africa.

[2] The applicants seek the following relief in their Notice of Motion, namely an order:

> "1. That the usual forms and service and time periods provided for in the

Rules of this Court be dispensed with and that this matter be heard as one of urgency in terms of Rule 6(12).

2. Pending the outcome of the disciplinary proceedings against him the first respondent is hereby interdicted and restrained from:

2.1 doing or purporting to do anything in the name of and/or on behalf of the first applicant;
2.2 convening or attending any meeting of the first applicant;
2.3 making contact with any members of the first applicant in connection with the affairs of the first applicant;
2.4 attending any meetings of the North West Provincial Legislature as one of the representatives of the first applicant in that body, and/or in any other way participating in the activities of the North West Provincial Legislature as one of the representatives of the first applicant;
2.5 entering any of the premises owned and occupied by the first applicant for any purpose whatsoever.

3. Pending the outcome of the disciplinary hearing proceedings against each of them, each of the second, third and fourth respondents are hereby interdicted and restrained from:

3.1 carrying out any duties at all in the name of and/or for and/or on behalf of the first applicant whether on the instructions of the first respondent and/or otherwise;
3.2 making any contact with any members of the first applicant relating to and/or connected with the affairs of the first applicant;
3.3 entering any premises of the first applicant whether owned or occupied by the first applicant;
3.4 attending any meeting of the first applicant other than as members of the first applicant and in that capacity alone.

4. Each of the first, second, third, fourth, fifth and sixth respondents is interdicted and restrained from communicating in any manner with neither the seventh or the eighth respondents for any purpose whatever related to or connected with the affairs of the first applicant.

5. It is ordered that:

5.1 the communication by the first applicant under the hand of the first respondent that the second applicant had been expelled from the first applicant with effect from 2 October 2010 and was consequently from that date not a lawfully appointed representative of the first applicant in the House of Assembly of the Parliament of the Republic of South Africa is unlawful and of no force or effect;
5.2 the second applicant remains a member in good standing of the first applicant and remains a lawfully appointed representative of the first

applicant in the House of Assembly of the Parliament of the Republic of South Africa.

6. It is ordered that:

6.1 the communication by the first applicant under the hand of the first respondent that the third applicant had been expelled from the first applicant with effect from 2 October 2010 and was consequently from that date not a lawfully appointed representative of the first applicant in the House of Assembly of the Parliament of the Republic of South Africa is unlawful and of no force or effect;

6.2 the third applicant remains a member in good standing of the first applicant and remains a lawfully appointed representative of the first applicant in the House of Assembly of the Parliament of the Republic of South Africa.

7. It is ordered that:

7.1 the communication by the first applicant under the hand of the first respondent that the fourth applicant had been expelled from the first applicant with effect from 2 October 2010 and was consequently from that date not a lawfully appointed representative of the first applicant in the North West Provincial Legislature of the Republic of South Africa is unlawful and of no force or effect;

7.2 the fourth applicant remains a member in good standing of the first applicant and remains a lawfully appointed representative of the first applicant in the North West Provincial Legislature of the Republic of South Africa.

8. That notwithstanding anything to the contrary contained in this notice of motion, the first respondent is ordered and directed that, immediately this order is granted, he is to cancel the meeting of the Federal Council of the first applicant called by him for 6 November 2010 and he is, pending the outcome of the disciplinary hearing referred to in paragraph 2 above not to call any other meetings for the Federal Council of first applicant nor any other body within the first applicant for any purposes whatsoever.

9. Granting the applicant further or alternative relief.

10. That the first respondent pays the costs of this application on the scale as between attorney and own client."

[3] The applicants are represented by Mr Eiser and first up to sixth respondents by Adv C Zwiegelaar. The seventh and eighth respondents are not represented but have indicated that they would abide the decision.

[4] The Notice of Motion is supported by the founding affidavit to which various documents are attached. The first up to sixth respondents opposed the application and have filed an answering affidavit. The applicants have replied to this. For the purpose of this judgment I shall refer to the first up to the sixth respondents as the respondents.

[5] The respondents raised two points ***in limine*** that relate to urgency and ***locus standi*** which must be decided on at the outset.

5.1 URGENCY

The second applicant on behalf of all the applicants in her founding affidavit averred pointedly for that matter, that the first respondent organised a Federal Council meeting of the first applicant (the party) for the 06 November 2010.

This averment was not directly responded to on the papers and when engaged on the issue during argument, Ms Zwiegelaar did submit that the first respondent had not called the said meeting however her instructions were that the meeting would indeed proceed on the 06 November 2010. The second leg of Ms Zwiegelaar's argument was that, the expulsion of the second up to the fourth applicants had commenced during 18 March 2010 when the first respondent issued out letters to them, demanding that they resign their positions from the National Parliament and the North West Legislature. In her view, the matter could thus not be urgent.

On the other hand Mr Eiser submitted on behalf of the applicants that the question of the meeting of 06 November 2010 and the expulsions of the second up to fourth

applicants from the party, with resultant displacements from the National Parliament and North West Provincial Legislature, were clear cut basis for urgency in this matter.

It is common cause on the papers that, indeed the question of the resignations commenced on 18 March 2010. However, there were some activities that occurred in between the said date and the date of this application. These activities entail, ***inter alia***, exchange of correspondence between the applicants and the respondents' legal representative as well as correspondence by the first respondent to the speaker of the National Parliament and North West Provincial Legislature.

Things came to a head when the Speakers of both the National Parliament and North West Provincial Legislature demanded clarity on the issue of displacement through a court order.

It therefore falls to reason that urgency was informed by the imminent meeting of the 06 November 2010 and the displacements of the second up to fourth applicants in both the National Parliament and North West Provincial Legislature; which if not urgently addressed would have adversely affected the smooth running of the Legislature business, thereby affecting and compromising the general membership of the first applicant.

It is therefore against that backdrop that I deemed it appropriate in the circumstances to rule that the said meeting of the 06 November 2010 would not take place and further that the matter was urgent and ought to be heard on its merits.

5.2 ***LOCUS STANDI***

The respondents through their counsel submitted that the deponent to the founding affidavit, namely, Mavis Ntebaleng Matladi, who is the second applicant, lacked the necessary authority to act on behalf of the first applicant (the party). However, nothing substantial was proffered as evidence to support the submissions. On the other hand, the applicants on their papers had provided a written clear authority to act, in the form of a resolution that was taken by the Federal Council on 23 October 2010 which is annexure FA1. This is in my view, by no stretch of imagination sufficient and cogent proof of authority to act by the second applicant.

[6] The further grounds for resisting the application were that:

6.1 the expulsion of the second up to the fourth applicants was unlawful.

6.2 the meeting of 02 October 2010 was not empowered to take decisions that resulted in another meeting of the 23 October 2010, that ultimately suspended the first respondent from the party, pending the hearing of his disciplinary hearing i.e. (the suspension of the first respondent from the party was irregular and unlawful).

6.3 the applicants flouted the laid down procedures by failing to bring review proceedings in terms of Rule 53 of the Uniform Rules.

[7] I now turn to deal with the averments on the papers and submissions.

7.1 **SUSPENSION OF THE FIRST RESPONDENT FROM THE PARTY PENDING THE HEARING OF HIS DISCIPLINARY PROCEEDINGS.**

A decision to suspend the first respondent from the party pending the hearing of his

disciplinary proceedings was taken on the occasion of a Federal Council meeting held on 23 October 2010. Subsequent thereto the first respondent was served with a letter of suspension which is annexure FA20 to the founding affidavit. The question that deserves attention is:-

Whether the Federal Council meetings of both the 02 October 2010 and 23 October 2010 were properly constituted?

As it has already been indicated (*supra*) the respondents challenge the validity of the said meetings, it being averred and argued that:-

(a) The 02 October 2010 meeting was initially properly constituted until the first respondent decided to leave due to the circumstances that prevailed.
(b) In the first respondent's absence the meeting ceased to be properly constituted and thus could not have lawfully taken decisions including the scheduling of the 23 October 2010 Federal Council meeting that ultimately decided on the suspension of the first respondent from the party.

The facts as per minutes of the meeting of the 02 October 2010 were that the first respondent caused commotion in the meeting and circumstances of his sudden departure were entirely of his own doing. The remaining membership proceeded with the business of the meeting that included the scheduling of the Federal Council meeting for the 23 October 2010. The total members attending were 225 in number, the first respondent departed with 17 members, and thus the remainder of membership amounted to 207. This number is more than 50 (fifty) plus 1 (one) in terms of quorum. It needs to be emphasised that the meetings hereto referred are Federal Council meetings and in terms of the constitutional provisions of the UCDP

the Federal Council is the highest decision making body, when Congress is not sitting. It should also be stated that only the Federal Council, in between Congress, can take major decisions that would, ***inter alia***, relate to expulsion and suspension of membership from the party.

It has been averred and argued by the applicants that the scheduled meeting of the 23 October 2010 was highly publicised through diverse means, including electronic and print media and the first respondent ought and should have come to the notice thereof. This in my view is reasonable and sufficient notice.

Ms Zwiegelaar submitted further that there was a dispute of fact around the minutes of the said two meetings. However, on the papers, the alleged dispute of fact has not been clearly articulated. In line with *trite* practice that says, he who alleges should prove; I am not at all persuaded that there is any dispute of fact, real, genuine and ***bona fide*** on this aspect and the matter is thus in my view capable of resolution on the principles laid down in **PLASCON-EVANS PAINT LTD V VAN RIEBEECK PAINTS LTD 1984 (3) SA 623A.**

I accordingly find the decision to suspend the first respondent pending the hearing of his disciplinary proceedings to be both procedurally and substantively fair. In any event this would afford the first respondent a clear opportunity to challenge the allegations against him and state his case at the hearing. I am unable to make any further pronouncements on this aspect as the first respondent has not filed or brought a counter application.

7.2 THE CASE OF THE SECOND, THIRD AND FOURTH RESPONDENTS

The applicants have on their papers and through argument submitted that the second, third and fourth respondents are employees of the first applicant (the party). That through their misconduct and collusion with the first respondent they have defied authority and their situation falls to be dealt with in terms of the Labour Relations Act. They were issued with suspension letters pending the hearing of their disciplinary hearing. The respondents have not mounted any meaningful challenge to those averments and accordingly as in the first respondent's situation, I find that their suspension is both procedurally and substantively fair.

7.3 THE EXPULSION OF THE SECOND, THIRD AND FOURTH APPLICANTS FROM THE PARTY

The question of the expulsion of the second, third and fourth applicants from the party by the first respondent commenced from 18 March 2010 through some letters which are annexures FA4.1; FA4.2 and FA4.3. These are letters which were issued out by the first respondent, wherein in his capacity as the leader of the party demanded that the second, third and fourth applicants resign from the National Parliament and North West Provincial Legislature. The reason for the said demand could best be set out by quoting annexure FA4.1 which states:

> "By virtue of the powers vested in me as the Leader of the United Christian Democratic Party (UCDP), and the responsibility bestowed upon me by section 11.1.2 of the Constitution of UCDP, I put into effect the decision taken and ratified by the Federal Council in a meeting held on 13th February 2010 at Embassy Hall, Mafikeng, that members who served in either the National Parliament or Provincial Legislatures or both for ten (10) or more years should not be eligible for the third term.

I thus instruct you to resign from the position you are holding as MP / MPL on or before the 31st March 2010."

The policy referred to in both annexures FA 4.1 and FA4.3 is commonly referred to as "THE TEN (10) YEAR RULE" and it would relate to the second and fourth applicants only.

The situation of the third applicant is captured by annexure FA4.2 which states as follows:

> "Your appointment as a member of parliament representing the United Democratic Party (UCDP) has been clouded with complaints of unfairness, noncompliance with what was agreed on and nepotism which cannot be ignored.
>
> By virtue of the powers vested in me as the Leader of the United Christian Democratic Party (UCDP) and responsibilities bestowed upon me by sections 3..2.3, 11.1.2 and 11.1.3 of the Constitution of the United Christian Democratic Party (UCDP), **I order you to step down as a member of parliament on or before the 31st March 2010."**

This has come to be known and referred to as "NEPOTISM RULE".

The applicants did upon receipt of the correspondence aforestated respond through their legal representatives whereby they categorically refuted that no such rules were ever adopted as policy by the party. They were consequently expelled from the party and the speakers of the National Parliament and North West Provincial Legislature were advised of this position by the first respondent.

The issue before me is whether the first respondent acted unlawfully by expelling the

second, third and fourth applicants from the party.

The first respondent has admitted that it is only the Federal Council or Congress that is authorised by the party's constitution to make policy decisions and also to suspend and/or expel members from the party. The first respondent further submitted that the TEN YEARS and NEPOTISM RULES have long been adopted by the Federal Council as policy and he was simply implementing the said policy decision.

The respondents in an endeavour to substantiate their averments referred the Court to a myriad of meetings, minutes of which are availed as annexures to the answering affidavit.

A closer look and analysis of those meetings especially those aspects to which the Court's attention was drawn by Ms Zwiegelaar, for instance, Clause 7.3 of the minutes of a meeting of the Federal Council of 01 May 2009 (annexure LMM 8) would reveal that members were only commenting on the TEN YEAR RULE. The same trend is displayed in respect of annexures LMM 9 up to LMM 12.

Annexure LMM13 being the minutes of a Federal Council meeting of 14 August 2010, (clauses 6.5.33 and 6.5.35) reveal that there was some sort of opposition on the issue of this TEN YEAR RULE, from some members. It is also interesting to note that annexure LLM13 conclude by stating "that the leader should think and pray for his leadership also to think and take a decision on the people who completed ten years in the legislatures."

The question is, why would the leader have to think and decide on the issue, if policy had already been adopted.

Ms Zwiegelaar submitted during the hearing that the respondents are not able to produce a stand alone documentary evidence of the resolution on the TEN YEAR RULE, as they cannot trace or locate same hence they are relying on the extracts from the minutes which are basically comments or remarks of membership.

The applicants through Mr Eiser have submitted that there is no such policy position, although there were some informal talks and discussions around it.

The applicants referred to annexure FA10, to the founding affidavit which is a legal opinion that was sought by the first applicant, from Adv J Pistor SC during or about July 2010.

This opinion in a nutshell concludes that, no TEN YEAR RULE has ever been adopted as policy by the Federal Council or Congress of the party. He goes on to state that, even if that could be the position, the matter becomes further complicated by the fact that expulsion from the party for non-compliance with the said policy was never agreed upon. The respondents did not challenge nor discredit the said opinion in any manner in their papers and its findings remain intact.

Annexure RA 1 is the minutes of a Federal Council meeting of 02 October 2010 and it is annexed to the replying affidavit. This annexure confirms that the general membership did reject the issue of the expulsion from the party of the second, third and fourth applicants.

Turning to the NEPOTISM RULE, the case for the applicants is simply that it was agreed by the party that the third applicant should succeed her husband in the National Assembly. The respondents have not countered this averment in any

manner. I therefore find that, neither the Federal Council nor Congress has ever adopted the TEN YEAR and NEPOTISM RULES.

Resultantly, I find that the expulsions from the party and the displacements in the National Parliament and Provincial Legislature of the second, third and fourth applicants are unlawful, invalid and of no force or effect.

[8] **THE LAW**

The law that is applicable to these proceedings is found in the **Plascon–Evans Rule** and can be summarised as follows:

(a) Where in proceedings of notice of motion, disputes of fact have arisen on the papers or final order whether it be an interdict or some other form of relief, may be granted if, those facts averred in the applicant's affidavit which have been admitted by the respondent together with the facts alleged by the respondent justify such an order;

(b) In certain instances the denial by the respondent of a fact alleged by the applicant, may not be real, genuine or *bona fide* disputes of fact, and if the respondent has not availed himself of the right in terms of Rule 6(5)(g) to refer the matter for oral evidence and the court is content as to the applicant's inherent credibility of factual averments; it may proceed on the basis of the correctness thereof and include this fact amongst those upon which it determines whether the applicant is entitled to the final relief he seeks.

(c) Where the allegations or denials of the respondent are so far-fetched that the court is justified in rejecting them merely on the papers.

I need at this stage to mention that the requisites for an interdict are:

(a) Existence of a clear right.
(b) That there exists a threat of injury or injury to the said right or reasonable apprehension thereof.
(c) That no alternative remedy is available.

From the evidentiary material produced by the applicants it is clear that all these requisites are met or satisfied in all respects.

8.1 **CLEAR RIGHT**

It is clear that the second, third and fourth applicants are members of the party. They were lawfully appointed to positions in the National Parliament and North West Provincial Legislature.

8.2 **INJURY/THREAT OF INJURY TO THE RIGHT**

The first respondent acted arbitrarily and against the Constitutional imperatives in expelling the second, third and fourth applicants from the Party, thereby displacing them from the National Parliament and North West Provincial Legislature.

8.3 **NO ALTERNATIVE REMEDY IS AVAILABLE**

The respondents through Ms Zwiegelaar submitted that the applicants ought to have brought review proceedings in terms of Rule 53 of the Uniform Rules. During the hearing of the matter she submitted orally that PAJA (Promotion of Administrative

Justice Act 3 of 2000) was also applicable. Political parties are with respect not covered by PAJA and same would thus not be applicable. The urgency of this matter and the smooth functioning of the Legislatures exclude review proceedings as an alternative remedy.
On the question of the relief of final nature as already stated; the **Plascon-Evans Rule** principles are applicable.

[9] Much time and effort through the papers and oral submissions were devoted to the question of whether the first respondent is the leader of the party or not. In my view, this question is not central to the determination of the issues before me in as far as the relief sought is concerned. However, in passing, I just wish to mention that, in terms of the provisions of Clause 10.3 of the Constitution of the Party, the Federal Council or Congress shall elect the national leader and deputy national leader for the party by majority vote of the Federal Council or a special or an ordinary meeting of the Federal Congress, who will hold this position until the office of the national leader or deputy national leader is declared vacant; provided the person who serve as national leader and deputy leader, will not hold this position for longer than three years, but may be re-elected during the following election.

It is clear from evidentiary material provided by the first respondent in the form of annexures LLM 3,4,5, 6 and 7 to the answering affidavit, that initially the first respondent was elected, but subsequently no elections were held. No one in the party found this situation to be at odds with the constitution, hence nothing was done about it.

As already stated whether the first respondent was a leader, elected leader or not, is to me with regard to the issues, irrelevant. The critical issue is that in terms of the

Constitution, only the Federal Council or Congress can take major decisions including expulsions, suspensions and policy.

The leader can only implement these decisions, and in this matter, it is abundantly clear that no such policies relied upon by the first respondent were ever adopted by the Federal Council or Congress. Inevitably the first respondent could not have lawfully implemented policy that did not exist.

[10] The findings that I have made are summarized as follows:

(a) The matter was urgent.
(b) The expulsion from the party of the second, third and fourth applicants is unlawful, invalid and of no force or effect.
(c) The suspension of the first respondent from the party pending the hearing of his disciplinary hearing was lawfully taken.
(d) The Federal Council meetings of 02 October 2010 and 23 October 2010 were properly constituted to take valid and binding decisions.
(e) The suspension of the second, third and fourth respondents, from the party pending the hearing of their disciplinary hearing was lawfully taken.
(e) The Federal Council or Congress has never adopted the "TEN YEAR" and "NEPOTISM RULES" as policy.

[11] I thus conclude that the applicants have on a balance of probabilities succeeded in making out a case for the relief sought in terms of their notice of motion.

[12] Turning to the question of costs, the generally accepted principle is that costs should follow the cause and this matter shall not be treated differently. The only sticking issue is whether or not a punitive cost order is appropriate, regard being had to the circumstances of this matter. From the totality of the evidence produced in this matter it would appear all the parties took it they were acting lawfully.

There is no clear evidence that shows that the first respondent was motivated by ***mala fides*** in his actions. It is against that backdrop that I am not persuaded that a punitive cost order is appropriate and costs shall be payable on a normal party and party scale.

ORDER

[13] It is therefore ordered as follows:-

13.1 Pending the outcome of the disciplinary proceedings against them the first, second, third and fourth respondents are hereby interdicted and restrained from:

1.1 doing or purporting to do anything in the name of and/or on behalf of the first applicant;

1.2 convening or attending any meeting of the first applicant;

1.3 making contact with any members of the first applicant in connection with the affairs of the first applicant;

1.4 attending any meetings of the North West Provincial Legislature as one of the representatives of the first applicant in that body, and/or in any other way participating in the activities of the North West

Provincial Legislature as one of the representatives of the first applicant;

1.5 entering any of the premises owned and occupied by the first applicant for any purpose whatsoever.

1.6 carrying out any duties at all in the name of and/or for and/or on behalf of the first applicant whether on the instructions of the first respondent and/or otherwise;

1.7 making any contact with any members of the first applicant relating to and/or connected with the affairs of the first applicant;

1.8 entering any premises of the first applicant whether owned or occupied by the first applicant;

1.9 attending any meeting of the first applicant other than as members of the first applicant and in that capacity alone;

1.10 that the communication by the party under the hand of the first respondent that the second, third and fourth applicants had been expelled from the party effectively from 02 October 2010 and consequently from that date were not lawfully appointed representatives of the party in the National Parliament and North West Provincial Legislature of the Republic of South Africa is unlawful and of no force or effect.

31.2 The first respondent is ordered to pay the costs of the application on a party and party scale.

T C GUMBO

ACTING JUDGE OF THE HIGH COURT

ATTORNEYS:

FOR THE APPLICANTS:	**MINCHIN & KELLY**
FOR THE 1ST TO 6TH RESPONDENTS:	**SM MOOKELETSI**