

In the matter between:

**NATIONAL AFRICAN FEDERATED CHAMBER
OF COMMERCE AND INDUSTRY
AND SEVEN OTHERS**

Applicants

And

**MKHIZE, VERONICA PINKY NOMASWAZI
AND SEVENTY OTHERSRESPONDENT**

Respondents

The first applicant, a voluntary federal organisation through its duly elected and appointed representatives, together with other applicants sought an interdictory relief declaring that;

The convening by respondents of a meeting of the Council of the first applicant held on 6 December 2012 is invalid and of no force and effect.

The meeting held on 6 December 2012 purporting to be a meeting of the first applicant and all resolutions passed thereat are invalid and of no force and effect

Interdicting the respondents from convening a meeting of the Council of the first applicant

Directing that the respondents pay the costs of this application jointly and severally.

On the first hearing of the matter the court made an order that the meeting should proceed as planned. However, all resolutions taken there were to be suspended until the final order. The applicants argued that they were entitled to the relief they sought because of their clear right which emanated from their 2011 Constitution. However, when the adoption of such a Constitution was challenged by the respondents they changed their case on their reply affidavits and sought to produce new facts. Their new case, as built in their reply affidavit, challenged the validity of the 6 December 2012 meeting. The Court held that deviating from the

founding affidavit was only allowed when exceptional circumstances were present. In this matter none were present. Furthermore the Court cautioned the parties for unnecessarily causing the Court record to be voluminous by adding irrelevant documentation which did not add anything on their respective cases.

The court held that the Constitution of the first applicant exhibited serious shortcomings. However, in interpreting the language of the said Constitution it was unreasonable to argue that the chairperson had no powers including powers to convene and preside over the meetings. The argument that the respondents were a rebel group was also rejected. The court also rejected the argument made by the applicants as baseless, that the December meeting was not properly conducted because even though invited they did not attend that meeting. Accordingly the Court found that the meeting was properly called and properly conducted its affairs according to the Constitution.

It was held that on reading and interpreting the Constitution it was clear that the National Executive Committee of the first applicant was its supreme body. The National Council being its “parliament” of the constituents affiliate members. Therefore it could not have been the intention of the founding fathers of the first applicant not to allow the national council to convene or preside over meetings. Furthermore, regarding being had of the structures of the first applicant every constituent part is clothed with authority to call and preside over the meetings.

On the issue of costs the Court held that it was clear that both parties were involved in the tussle to control the first applicant. It was therefore necessary to protect the misuse of the first applicant’s resources against mala fide agents. The costs were therefore awarded against the second to eighth applicants the applicants jointly and severally.