IN THE HIGH COURT OF SOUTH AFRICA GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case No: 38907/2019

(1)REPORTABLE: ~~Yes/No~~ No
(2)OF INTEREST TO OTHERS JUDGES: ~~Yes/No~~ No
(3)REVISED
10 December 2019
DATE SIGNATURE

In the matter between:

BONGANI LUVALO	**Applicant**
and	
SOUTH AFRICAN YOUTH COUNCIL	**1st Respondent**
THEMBINKOS1 JOSOPU	**2nd Respondent**
TUMI ZWANE	**3rd Respondent**
TEMBANI MAKATA	**4th Respondent**
WESLEY KGANG	**5th Respondent**
LERATO MOFOKENG	**6th Respondent**
MORONGWA MARGARETTE MOTHIBA	**7th Respondent**

ZAMAKHANYASE FELICA KHANYISE	**8th Respondent**
MBALI NKOS1	**9th Respondent**
NONTETHELELO MBHENSE	**10th Respondent**
ZINZIE RABE	**11th Respondent**
CANCY MNTAMBO	**12th Respondent**
TONY MATHIBA	**13th Respondent**
RICCARDO MOLEKWANA	**14th Respondent**
SIYABONGA MAGADLA	**15th Respondent**
SIBIYA TOLIKA	**16th Respondent**
MBALI HLOPHE	**17th Respondent**
MORE MOKOBANE	**18th Respondent**
SIYABULELA LUCAS	**19th Respondent**
NDIYAKHOLWA NGQULU	**20th Respondent**
TSHEPISO BOSKRAAL	**21st Respondent**
KGOMOTSO MAN WALE	**22nd Respondent**
ZUKO MNDAYI	**23rd Respondent**
NATHI TSHOTWANA	**24th Respondent**
THEODORA LEEU	**25th Respondent**
SOUTH AFRICAN COUNCIL OF CHURCHES YOUTH FORUM	**26th Respondent**

JUDGMENT

Molahlehi J

Introduction

[1] The Applicant instituted this urgent application in two parts. In Part A he seeks an interim order reinstating him as the Secretary-General of the Respondent, the South African Youth Council (SAYC). The order is sought on the interim basis pending the outcome of the review proceedings still to be instituted under Part B. In part, B he intends to review the decision to "remove" him from his position as the secretary-general of the SAYC.

[2] The application is consequent the motion of no-confidence passed on him at the meeting held by the National Executive Committee (NEC) of the SAYC on 12 October 2019.

The background facts

[3] The SAYC is constituted of various organizations and not individuals. It has structures in the nine provinces and consists of, membership based national youth organisation, national organisations which provide services to the youth and national issue-based coalitions whose programme target young people.

[4] The election of its leadership is held during the Tri-annual General Assembly (TGA), which was last held in 2017. The TGA is the highest decision-making body constituted of the NEC and delegates from member organizations.

[5] In terms of its constitution the NEC is elected at the TGA meeting. On 12 October 2019 the NEC meeting was convened in Durban. The meeting was convened following the meeting of the South African National AIDS Council and National Department of Health which was held on 11 October 2019.

[6] The practice at meetings of the NEC is that the general secretary submit an organizational report, the president delivers a political report and the treasurer a financial report.

[7] The Applicant arrived late on 11 October 2019 because he had to attend a school concert with his daughter. He had informed the president about this challenge.

[8] In preparation for the meeting, the Applicant proposed to the president that the officials should hold a meeting at 8h00 on the morning of 12 October 2019. The president rejected the proposal and said the meeting would be held on 11 October 2019. The Applicant then proposed that the meeting be held at 20h00 on that day. The president again rejected the proposal and said that the meeting will be held at 18h30. It is apparent that the meeting had already taken place by the time the Applicant arrived in Durban.

[9] The NEC meeting was as stated earlier, convened on 12 October 2019. Both the president and the Applicant presented their respective reports. The members of the NEC had not read the Applicant's report because he did not attend the officials meeting the previous day. The NEC at its meeting of the 12 October 2019 passed a vote of no-confidence on the Applicant as the general secretary.

[10] The Applicant contended that the vote of no-confidence was irregular because the NEC was not properly constituted. According to him, of the 21 elected members of the NEC, only 11 were present. In this regard he contended that the decision was thus *ultra vires* the powers of the NEC. The Applicant further contended that his removal was irregular because:

1. Member organizations of as SAYC were not consulted.
2. He was not given a hearing prior to adopting the resolution to remove him.

3. His organization was not informed of the intention to remove him.

[11] As stated earlier he intends challenging the decision of the NEC in review proceedings to be instituted in the future.

URGENCY

[12] The approach to adopt when dealing with an urgent application is governed by the provisions of rule 6(12) of the Uniform Rules of the High Court (the Rules). In terms of that rule a Judge in urgent applications has discretion to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as he deems feet.

[13] Rule 6 (12) of the Rules further provides that an Applicant in his or her founding affidavit:

> "... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

[14] In dealing with the requirements of rule 6 (12) the court in East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others,[1] held that:

> "[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An Applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course.

[1] (11/33767) [2011] ZAGPJHC 196 (23 September 2011)

> The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress."

[15] It is trite that an Applicant in an urgent application has to explain any delay in instituting the proceedings. In this regard the Applicant has to provide reasons for the delay. In addition an explanation has to be proffered as to the Applicant claims that he or she cannot be afforded substantial redress at a hearing in due course.

[16] The fact that an Applicant labels the matter to be urgent does not in terms of rule 6 (12) of the Rules make it urgent. As stated in B East Rock Trading 7:

> "The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application."

[17] In this matter the Applicant delayed by three weeks to institute these proceedings. The period of delay has to do with him having to raise funds and two weeks for Counsel to draft the papers. The explanation in my view is unsatisfactory. He does not take the court in his confidence and indicate how he managed to raise the funds. There is also no explanation why it took two weeks for Counsel to draft papers in a simple matter such as the current. This means the Applicant did not approach the court at the first available opportunity.

Interim interdict

[18] As indicated earlier the Applicant seeks an interim interdict pending the finalisation of the review application he still has to institute. In other words he is seeking an interim interdict preserving or restoring the status quo pending the determination of his rights. It is important to emphasize that an interim interdict does not involve a final determination of these rights and does not affect their final determination[2].

[19] The requirements for the granting of an interim interdict are well known. The requirements are the following: a *prima facie* right, a well grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted, that the balance of convenience favours the granting of an interim relief, and that the applicant has no other satisfactory remedy.[3] The remedy is discretionary.

[20] In this case the Applicant has not satisfied the requirements for the granting of an interim relief. The SAYC contended that the Applicant was suspended pending disciplinary proceedings to be instituted against him. In the circumstances I see no irreversible harm occurring to the Applicant. He is not an employee of the SAYC but a volunteer who receive a stipend. He has not in his papers alleged that his stipend has been stopped. There is nothing stopping him from standing for re-election in the coming election in 2020. If he is innocent of any alleged misconduct that may impact negatively on his campaign for re-election, he can clear that during the disciplinary hearing. This may in fact strengthen his campaign if he is successful in defending himself.

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[2] See National Gambling Board v Premier, Kwa-Zulu Natal and Others. 2002(2) SA 715 CC.

[3] See Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton and Another 1973(3)SA 685 (A) and City of Tshwane Metropolitan Municipality v Afriforum and Another (157/15) [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC) (21 July 2016)...

[21] The above would apply if the court accept the version of the SAYC that the Applicant was suspended and not dismissed. The version of the Applicant is that he was dismissed. This proposition does not assist him in the assertion, that there is no other satisfactory remedy that may in due course address his dispute.

[22] The case of the Applicant would still stand to fail even if his version that he was dismissed was accepted. It would fail because in the nature of the legal relationship between the parties the applicant can obtain a satisfactory remedy in contract in due course. As alluded to earlier SAYC is a voluntary association. It is not a statutory body where the Applicant would have derived his rights from the statute. At common law the relationship between the parties in the present matter arises from membership of SAYC, which is in its nature contractual. The terms of the agreement may be found in the constitution. It follows thus that any harm that the Applicant would suffer is consequential and accordingly does not deserve protection through an urgent interdict. In dealing with a similar situation the Constitutional Court in **Ramakatsa and Others v Magashule and Others,**[4] said:

> "79 Before demonstrating that some of the irregularities raised were established it is necessary to outline the nature of the legal relationship that arises from membership of the ANC. At common law a voluntary association like the ANC is taken to have been created by agreement as it is not a body established by statute. The ANC's constitution together with the audit guidelines and any other rules collectively constitute the terms of the agreement entered into by its members. Thus the relationship between the party and its members is contractual. It is taken to be a unique contract."

[4] (CCT 109/12) [2012] ZACC 31; 2013 (2) BCLR 202 (CC) (18 December 2012)

[23] In light of the above I find that the Applicant has failed to make out a case for the relief sought and thus application stands to be dismissed.

[24] The Applicant has requested costs on a punitive scale. In the circumstances of this matter I do not belief that it would be proper to award punitive cost. The appropriate cost to be awarded are those between party and party on the opposed scale.

Order

[25] In the circumstances the Applicant's application is dismissed with costs.

E Molahlehi

Judge of the High Court ,

Johannesburg

Representation:

For the Applicant:

Instructed by: RH Pooe Attorneys

For the Respondents: Adv DM Pool

Instructed by Shamase Ramotswedi Attorneys:

Reasons : -10 December 2019