

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: **D9549/2019**

In the matter between:

THANDAZILE RALUSHAI

FIRST APPLICANT

SIYABONGA BOPHELA

SECOND APPLICANT

SIYATHEMBA KUNENE

THIRD APPLICANT

and

**KWAZULU-NATAL PROVINCIAL EXECUTIVE
COMMITTEE OF THE SOUTH AFRICAN CLOTHING
AND TEXTILE WORKERS UNION**

FIRST RESPONDENT

**THE SOUTH AFRICAN CLOTHING AND TEXTILE
WORKERS UNION WORKERS (SACTWU)**

SECOND RESPONDENT

Coram: Mossop J

Heard: 21 July 2023

Delivered: 21 July 2023

ORDER

The following order is granted:

1. The application is dismissed.
2. The applicants are to pay the respondents costs jointly and severally, the one paying the others to be absolved.

JUDGMENT

Mossop J:

[1] This is an ex tempore judgment.

[2] This application was launched as an urgent application on 12 November 2019. It is now 21 July 2023, and the matter has still not been finalised. This delay in concluding the matter is of some significance because some, if not all, of the relief claimed by the applicants is date specific. The order sought, in the form of a rule nisi, reads as follows:

‘2.1 That the decision of the first (sic) Respondent to suspend the first Applicant as a Treasurer of the Southern African Clothing and Textiles Workers Union Newcastle Branch be declared unlawful and set aside;

2.2 That the decision of the first Respondent to suspend the Applicants from attending the National Executive Committee meetings and National Co-Ordinating Committee meetings for a period of twelve months be declared unlawful and set aside;

2.3 That the first Respondent immediately attend to arrange for travelling and accommodation of the Applicants for the extended National Executive Committee meeting scheduled to take place on the 13th to 15th November 2019 at Cape Town.

2.4 That in the event of the first Respondent failing to comply with the provisions of paragraph 2.1 to 2.3 above, the second Respondent be interdicted from proceeding with the extended National Executive Committee meeting scheduled to take place on the 13th to 15th November 2019 or/and any other Executive meeting pending the final determination of this matter;

2.5 That the first Respondent pays costs of this application.

3. That the orders as contained in 2.1 to 2.2 hereof operate as Interim Orders forthwith pending the final determination of this application.'

[3] This morning when the matter was called, Mr Aldworth appeared for the respondents. There was no appearance for the applicants, who also did not deliver any heads of argument or a practice note. Mr Aldworth is thanked for his helpful submissions.

[4] This matter involves two distinct complaints. The first is that the first applicant has allegedly been wrongly suspended from the second respondent. I shall refer to this as the 'primary relief'. The second complaint is that all the applicants have unjustly been prevented from attending an extended National Executive Committee (NEC) meeting of the second respondent over the period 13 to 15 November 2019. I shall refer to this as 'the secondary' relief. The way in which the founding papers is crafted has tended to blur the distinction between the two distinct types of relief claimed.

[5] What looms large in this matter insofar as the question of the secondary relief is concerned is the question of mootness. As indicated, this application was moved initially as an urgent application. It appears that the catalyst for the urgency was the relief claimed in respect of the secondary relief. This would appear to be the case by virtue of the fact that the application was brought the day before the NEC meeting was to be held. Thus, it is safe to assume that the application was designed to achieve a result that would allow the applicants to attend the NEC meeting. Those dates are now nearly four years distant. That some of the relief claimed by the applicants is thus now moot permits of no doubt. Even if the court was disposed to

grant the relief identified in paragraphs 2.2, 2.3 and 2.4 of the notice of motion, such an order would have no practical effect.

[6] It appears to me that the only relief that could be regarded as still being potentially alive is the relief claimed in respect of the primary relief in paragraph 2.1 of the notice of motion, although I make that comment hesitantly because the suspension mentioned in these paragraphs must also have come and gone. However, notionally, I suppose that the first applicant may still wish to impugn the decision that led to her suspension.¹

[7] No relief was granted to the applicants when this application was first considered by this court on 13 November 2019. No relief having been afforded the applicants at that hearing, it appears that all the steam that had been fuelling the application dissipated. Indeed, the applicants have failed to even deliver a replying affidavit and appear to have completely lost interest in the matter. The last affidavit filed in the matter was the answering affidavit, which was delivered on 6 December 2019. Since then, the matter has slumbered in a state of hibernation until it was recently set down, not by the applicants, but by the respondents.

[8] It is perhaps convenient first to consider the secondary relief. The general principle is that a matter is moot when a court's judgment will have no practical effect on the parties.² Courts should not make rulings on matters that are properly moot, as the court's decision will simply amount to an advisory opinion on the identified legal questions, which are abstract, academic or hypothetical.³ In *President of the Republic of South Africa v Democratic Alliance*,⁴ the Constitutional Court stated that:

¹ In his heads of argument, Mr Aldworth explains that, in truth, the applicants were not suspended but were merely withdrawn as delegates to the NEC meeting.

² *A B and Another v Pridwin Preparatory School and Others* [2020] ZACC 12; 2020 (9) BCLR 1029 (CC); 2020 (5) SA 327 (CC).

³ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 21 fn 18.

⁴ *President of the Republic of South Africa v Democratic Alliance and Others* [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC) para 35.

‘courts should be loath to fulfil an advisory role, particularly for the benefit of those who have dependable advice abundantly available to them and in circumstances where no actual purpose would be served by that decision, now’.

[9] This general principle is, however, not an absolute bar to the determination of matters that are now recognised to be moot. Such matters may still be considered by a court if they involve issues of public importance that may have some future effect on like matters and on which the adjudication of a court is required.⁵ This is not such a matter.

[10] I am therefore not prepared to grant the secondary relief set out in paragraphs 2.2, 2.3 and 2.4 of the notice of motion.

[11] As regards the primary relief, Section P of the second respondent’s constitution deals with the question of discipline. Important clauses in that document are the following:

(a) Clause 23.1, which provides that:

‘A member may be suspended, fined or expelled as may be determined by the Provincial Executive Committee, National Co-ordinating Committee or by the National Executive Committee if he/she infringes any of the terms of this Constitution or acts in a manner which is detrimental to the interests of the Union.’

(b) Clause 23.2, which states:

‘No member may be suspended, fined or expelled unless he/she has been afforded the opportunity to state his/her case personally at a disciplinary hearing which shall be a meeting of the Committee in Clause 23.1 which intends to consider the matter. Such member shall be given not less than four (4) days’ notice in writing from the

⁵ *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another* [2015] ZASCA 155; [2015] 4 All SA 571 (SCA); 2016 (2) SA 121 (SCA) para 14. See also *MEC for Education, KwaZulu-Natal and Others v Pillay* [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) para 32.

Secretary of the Committee. The matter with which the member is charged shall be set out in such notice.'

(c) Clause 23.3, which provides, inter alia, that:

'If the Committee hearing the matter is satisfied that the person charged has though absent, received the prescribed notice, or if the person charged is present, the Committee may proceed to hear and determine the charge, and if it finds the charge proved to its satisfaction may:

23.3.1 ...

23.3.2 suspend the member for a definite period from membership of the Union.'

[12] The first applicant appears to contend that this prescribed procedure was not followed when she was suspended. One of the difficulties with the founding papers is that reference is made to annexures which will buttress submissions made by the deponent but those annexures are not attached. That I have been able to refer to the constitution of the second respondent is due entirely to the fact that the second respondent put it up. Another annexure put up by the respondents is a letter dated 5 November 2019 (the suspension letter) in which it is alleged that the first respondent failed to fulfil her constitutional responsibilities in relation to clause 13.5 of the SACTWU constitution.⁶ She was thus to be suspended from that position for such failure. The interesting thing to note about the suspension letter is that it states the reason for the suspension to be the following:

'The KZN Provincial Executive Committee therefore resolved that the Newcastle Branch Treasurer has neglected to perform her constitutional responsibilities as a branch treasurer as entrenched in Clause 13.5 of the SACTWU constitution and she

⁶ Clause 13.5 reads as follows: 'The Branch Treasurer shall be in charge of all monies and assets of the Branch and in the case of a Branch, he/she shall sign all cheques drawn on behalf of the Branch. He/she shall initial the books of account each month. Together with the Branch Secretary he/she shall present monthly statements of finance to the Branch Executive Committee and submit such monthly financial statement to the Provincial Secretary. He/she shall generally exercise supervision over the financial affairs of the Branch and perform such duties as by usage and custom pertain to the office.'

should be provisionally suspended pending an investigation into allegations of financial mismanagement at SACTWU Newcastle Branch.'

[13] The suspension letter is not addressed to the first respondent at all. Nor does it suggest that the first respondent was given the required notice of the intention to suspend her or that she was provided with the opportunity to provide any reasons why she should not be suspended. Moreover, in dealing with the first respondent's suspension, the deponent to the answering affidavit indicates that:

'The reasons were, briefly:

11.1 Mismanagement of funds at the Newcastle Branch; and

11.2 Misleading the National Congress.'

[14] There is no reference at all to the first applicant misleading the National Congress in the suspension letter. There is, however, a mention of the events at the National Congress in the founding affidavit. Briefly stated, the applicants allege that they were suspended for alleging that certain delegates at a National Congress of the second respondent held in Durban in September 2019 were not entitled to be in attendance. They may or may not have claimed that this was known by them because of them having investigated this. This is a disputed issue.

[15] It seems to me that there may have been merit in the first applicant's complaint regarding her suspension as branch treasurer. There is certainly no indication that the prescribed procedure was followed before she was suspended. But, as was pointed out by Mr Aldworth, the first applicant never challenged the decision internally as she was entitled to do. The observations above are mine and are not raised on the papers.

[16] Given the age of the matter and its state of dormancy, it occurs to me that the true issue why this matter is before me is the issue of costs. The respondents want their costs of opposing this application paid by the applicants. Because the applicants appear to have lost interest in the application, it is tempting to merely

order them to pay the costs. Oscar Wilde once said that he could resist everything but temptation. I must do better than that: I must consider whether there was initially any cause for the applicants to have approached the court for assistance. If there was, then that cause may have an impact on the issue of costs.

[17] Generally considered, the application was poorly and inexpertly constructed. Looking beyond that, the applicants have claimed, but cannot be granted, the secondary relief. While there may have been prospects of the first respondent having grounds to approach the court over her suspension she, in the end, appears to have abandoned the application entirely. It seems to me that in these circumstances the respondents are entitled to the following order:

1. The application is dismissed.
2. The applicants are to pay the respondents costs jointly and severally, the one paying the others to be absolved.

MOSSOP J

APPEARANCES

Counsel for the applicants	:	No appearance
Instructed by:	:	A P Shangase and Associates 467 Che Guevara Road Glenwood Durban
Counsel for the respondent	:	Mr D W D Aldworth
Instructed by	:	Purdon and Munsamy Attorneys Suite 1302 13 th Floor, The Marine Building 22 Dorothy Nyembe Street Durban

Date of argument: 21 July 2023

Date of Judgment : 21 July 2023