



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

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

SIGNATURE

DATE: 22 October 2025

Case no. 2025-189952

In the matter between:

SIYABONGA NKHUTHA

First Applicant

KARABO MODISAPUDI

Second Applicant

PALISA MOLESHIWA

Third Applicant

and

UNIVERSITY OF JOHANNESBURG

First Respondent

PROFESSOR LETLHOKWA MPEDI NO

Second Respondent

DR NELL LEDWABA NO

Third Respondent

JUDGMENT

WILSON J:

- 1 Most South African university students have a great deal to worry about. At the top of the list are crushing familial and social expectations, academic pressure, scarce funding, and university and state funding administrations

which often appear to act towards the students they are meant to care for in an alienating and hostile manner. It does not surprise me that, caught in these riptides, students sometimes engage in disruptive protest against what they perceive to be thoughtless and inefficient university authorities.

2 Some degree of disruption is inherent in any protest. Picketers interfere with access to the property they picket. Demonstrators may be noisy, obstructive and sometimes aggressive, but they must be tolerated so long as they remain peaceful. Sit-ins, occupations and the public formation of other temporary communities of dissent, such as encampments on or near public or private property are all time-honoured forms of protest. Depending on the circumstances, they may all find protection under the constitutional entrenchment of the right to peacefully assemble, demonstrate, picket, and petition in section 17 of the Constitution, 1996, even if they disrupt the activities of others.

3 The applicants in this case all stand accused, in pending disciplinary proceedings taken by the first respondent, the University of Johannesburg, of having engaged in disruptive protest contrary to the University's code of student conduct. They approach me on an urgent basis to set aside the University's decision to suspend them pending a disciplinary inquiry which is set to proceed on 22 October 2025. They also seek to interdict and restrain the University from proceeding with that inquiry.

4 Critically, the applicants do not challenge the University's code of conduct itself. They do not say that the University may not lawfully sanction participation in a disruptive protest. I must accordingly decide this case on the

assumption that the University is perfectly entitled to discipline its students for participating in disruptive protest – an assumption that I make reluctantly, while expressly leaving the underlying question open.

- 5 The protest in which the applicants participated took place on 8 September 2025. It took the form of a sit-in at the University's student finance office. The facts surrounding the sit-in are contested. While it initially alleged that the conduct of some of the protestors was violent or criminal in nature, the University no longer appears to suggest that this is so. Still, the University alleges that a group of students, led by the applicants, entered and occupied the student finance office, banged on doors, attempted to force their way into offices and refused to leave when directed to do so. The University's case at the disciplinary inquiry is that the applicants' conduct was disruptive enough to contravene its code of student conduct.
- 6 The applicants advance a different version of events. They suggest that they did no more than lead a delegation of students who, while "visibly agitated" were never actually in occupation of the student finance office, and who sought no more than an engagement with the University administration about the fact that their government financial aid had been arbitrarily withdrawn.
- 7 It forms no part of my function to adjudicate that dispute. The question before me is whether the applicants' suspension and the institution of disciplinary proceedings against them was so grossly unfair and unlawful as to justify my interference with those proceedings. This is, I think, the nub of the "exceptional circumstances" test developed in a number of cases in which courts have been asked to interfere with the conduct of domestic tribunals. For example,

in *Jiba v Minister: Department of Justice & Constitutional Development* (2010) 31 ILJ 112 (LC), Van Niekerk J held that the power to intervene in uncompleted disciplinary proceedings ought only to be exercised in “truly exceptional circumstances”. The underlying point is that a court is bound to respect the proceedings of domestic tribunals, such as disciplinary inquiries, generally only intervening after they have been completed, and the court is asked to exercise its powers of review.

8 The “exceptional circumstances” test adverted to in *Jiba* posits a residual power to intervene in disciplinary proceedings midstream, but only where they are so unlawful, unfair or otherwise flawed that to subject a person to them would be manifestly unjust. A good example of such a situation is the conduct of the chair of the disciplinary inquiry in the matter of *Dyantyi v Rhodes University* 2023 (1) SA 32 (SCA), where the outcome of a student disciplinary inquiry was set aside on the basis that the chairperson had postponed it to a date on which the student’s legal representatives could not attend, and then proceeded in Ms. Dyantyi’s absence to convict her of misconduct without hearing her version. Although those proceedings were set aside after the fact, rather than interdicted midstream, they provide a fair illustration of the kind of manifest injustice that would meet the “exceptional circumstances” test.

9 At the outset of the argument before me, I asked counsel to address me on whether the exceptional circumstances test applies to this case, and whether, if it does, it has been met. Although Ms. Mkhwanazi, who appeared for the applicants, did not explicitly concede that the test does apply, her submissions departed from the proposition that it does. I think that was a sensible approach.

It seems to me that the University is entitled to the benefit of the exceptional circumstances test. It is a higher education institution, which is specifically empowered, under section 36 of the Higher Education Act 101 of 1997, to subject its students to “such disciplinary measures and disciplinary procedures” as it may determine. A court ought not to intervene too readily in the lawful exercise of those powers.

10 Ms. Mkhwanazi submitted that the “exceptional circumstances” test is satisfied in this case because the suspension of the applicants was unlawful. The argument was that the applicants were suspended in breach of section 5 of the University’s Regulations for Student Discipline, which empower the second respondent, the Vice-Chancellor, or his delegee, to suspend a student if and only if there is information which gives rise to a reasonable belief that a student “poses a threat to the orderly academic process; endangers the safety of other students or staff of the University; is a risk to the property, facilities, possessions or buildings of other students, staff or the University; [or] has disregarded a direct instruction of the Management Executive Committee”.

11 Ms. Mkhwanazi did not suggest that the registrar, who acted as the Vice Chancellor’s delegee in this case, did not have information on which she formed the belief that the applicants pose a threat to the orderly academic process. Ms. Mkhwanazi argued only that, on the information before her, the registrar could not reasonably have formed that belief.

12 I do not think that is correct. On the statements presented to the registrar, the applicants had led a large group of “agitated” students in an attempt to force their way into the student finance office. Administrators at the finance office

locked themselves in their offices, obviously in fear for their safety. The police were called and arrived at the scene. This, it seems to me, is more than enough material on which to form the reasonable belief that the applicants pose a threat to the orderly academic process. I emphasise that I do not have to adopt the statements as fact to reach that conclusion. Nor do I need to find the statements particularly persuasive. In fact, I could adopt the view, advanced by the applicants, that the statements are exaggerated and that the threat alleged is overblown, but nevertheless conclude that the University's disciplinary process should be left to run its course undisturbed.

13 What I subjectively believe the truth of the situation to be does not matter. All the University needs to demonstrate is that there was material on which the required belief could be formed, and that the registrar's reliance on it was reasonable. This has plainly been demonstrated. The truth of the material falls to be tested in the pending disciplinary hearing, but it is more than enough to justify a precautionary suspension.

14 Nor does it make a difference that the statements were disputed by the applicants when they were asked to advance reasons why they should not be suspended. For the purposes of considering whether the applicants should temporarily be suspended, the registrar was entitled, as she did, to adopt the material submitted by the staff of the University's finance and security offices and reject the applicants' statements to the contrary. It has not been shown that her decision to do just that was unlawful or inherently unfair.

15 I need not decide whether a breach of section 5 of the Regulations for Student Discipline would in itself constitute the exceptional circumstances that would

justify interfering with the applicants' suspension. That, it seems to me, remains an open question. The fundamental point is that the applicants have demonstrated no such breach.

16 Faced with that reality, Ms. Mkhwanazi turned to criticise the scope of the suspensions under which the applicants have been placed. They have effectively been excluded from University life. They may not live in University residences, go to classes, be on campus, write exams, or discharge their functions as members of the Student Representative Council.

17 Given the nature of the conduct alleged against the applicants, the scope of the suspensions seems to me to be overbroad. But the problem is that a case of overbreadth forms no part of the contentions advanced on the applicants' affidavits. Nor is it foreshadowed in the relief sought. Had it been, the University might have been able to adduce facts to justify the scope of the suspensions. At the very least, I would have been placed in possession of the material necessary to evaluate that scope fairly. I do not have that material, and it would be unfair to the University for me to adjust the scope of the suspensions without it – and without that specific relief having been sought in the applicants' founding papers.

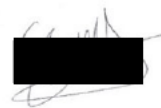
18 In any event, the suspensions have almost run their course. The disciplinary hearing is soon to proceed. It seems to me that any prejudice to the students I would ameliorate by interfering with their suspensions at this late stage is too slight to justify my intervention. The amelioration of such prejudice is plainly not “exceptional” in the sense conveyed by the applicable test.

- 19 I now turn to the relief sought in paragraph 4 of the applicants' notice of motion, in which the applicants seek an order restraining the disciplinary process itself. Ms. Mkhwanazi was unable to identify any facts on the papers that would justify such an order. She in fact conceded that the applicants have been charged with colourable transgressions of the student disciplinary code, and that there is an adequate factual substrate to support such charges. The University's answering papers are replete with such material.
- 20 Whether that material can survive interrogation during the disciplinary process itself, whether the transgressions alleged can be sustained, and what the ultimate sanction imposed, if any, will be, are of course matters that remain to be determined. But there is nothing on the papers that justifies the inference that the disciplinary process will not be fairly, rationally and lawfully conducted. Even if the process turns out to be flawed, the applicants will have their remedies on review.
- 21 It follows that the applicants have failed to establish the facts necessary to justify my intervention in their disciplinary process – whether by setting aside or narrowing the scope of their suspensions, or by preventing the disciplinary inquiry from going ahead.
- 22 That is not the same as saying that the applicants have actually misconducted themselves, that the grievances they were pursuing on 8 September 2025 were not real or that their conduct was anything other than reasonable in the circumstances. All of that remains to be determined.
- 23 The narrow conclusion I reach here is that it has not been shown that the applicants stand in peril of unfairness or unlawfulness so clear or egregious

as to justify preventing the University from exercising its disciplinary powers, grounded as they are in statute.

24 Mr. McNally, who appeared together with Ms. Saunders for the respondents, did not seek a costs order against the applicants in the event that I reached this conclusion. I would not in any event have been inclined to award costs against the applicants.

25 For all these reasons, the application is dismissed, with each party paying their own costs.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 22 October 2025.

HEARD ON: 21 October 2025

DECIDED ON: 22 October 2025

For the Applicant: T Mkhwanazi
Instructed by Mafika Sihlali Attorneys

For the Respondents: JV McNally SC
S Saunders
Instructed by Eversheds Sutherland (SA) Inc