



NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO. 2025-187763

In the matter between:

ECONOMIC FREEDOM FIGHTERS
YOUTH COMMAND
SOUTH AFRICAN STUDENT CONGRESS
PAN AFRICAN STUDENT MOVEMENT
OF AZANIA
YOUNG BRIGHTEST MOTIVATED MINDS

First Applicant
Second Applicant

Third Respondent
Fourth Applicant

and

THE UNIVERSITY OF FORT HARE
THE VICE CHANCELLOR
PROFESSOR SAKHELE BUHLUNGU
THE REGISTRAR, GOVERNANCE AND LEGAL

First Respondent

Second Respondent
Third Respondent

**BRIEF REASONS FOR GRANT OF INTERIM
RELIEF AND RULING IN RESPECT
OF PRELIMINARY OBJECTION**

HARTLE J

[1] The applicants, as their citing's indicate, are politically affiliated student organisations. It is common cause that they are represented on campuses of the first respondent ("*the University*") through its Student Representative Council ("SRC"). The two campuses concerned, for present purposes, are those at Alice and in East London.

[2] The applicants issued out an application on an urgent basis, allegedly on behalf of member students, seeking, *inter alia*, to interdict the respondents from summarily evicting them from their residences located on the two campuses concerned.

[3] It is common cause that following certain discord between the general student community and the University on contentious issues, which gave rise to protests, the respondent on 8 October 2025 issued a directive that the students should vacate all the campuses by 9 October 2025 at 17h00.¹

[4] The applicants sought legal advice on the lawfulness of the directive. The guidance given to them was to urgently interdict the respondents from evicting their member students on the basis of the University's directive aforesaid.

¹ It would later transpire, with reference to the answering affidavit filed on the respondents' behalf, that they did so, according to them, for safety concerns after "*closing*" the University.

[5] A certificate of urgency according with such advice, prepared and submitted to the duty judge, was issued in line with the standard practice of this court in urgent applications. It was unusual though in that it urged upon the duty Judge to permit the applicants, given the extreme urgency contended for, to come give oral testimony in support of their proposed application, including the basis upon which their *locus standi* would be established.

[6] If oral evidence had been led, one is by implication to assume from the certificate that this would have established that the applicants are not random organizations in relation to the University, but political formations recognized by it because they contest elections and in the ordinary course enjoy institutional representation through the SRC. Branches of these organizations exist on the University's campuses. Each applicant through the SRC leads constituencies of students whose interests they represent. In this instance they stood poised to vindicate the breach of their respective member student's rights not to be arbitrarily evicted from their residences on the University's campuses following the issue of the directive aforesaid.

[7] Additionally, the certificate also purported to explain that those purporting to represent the applicants in the present application are "*political heads*" of the relevant "*formations*" (student bodies) who would have had the requisite legal authority to bring the present application on each applicant's behalf and depose to the necessary affidavits, or to have led *viva voce* evidence if that had been permitted.

[8] This evidence was however, as it turned out, not adduced because contrary to the applicants' hope that they might be heard by the deadline indicated in the respondents' directive (which may have justified the giving of oral evidence), Zilwa J gave directions that the application be heard at 12h30 on

Friday, 10 October 2025, at the East London Circuit Court. The applicants were further expected, in accordance with Zilwa J's directive, to have issued and served the application, supported by affidavits instead, before 19h00 on 9 October 2025.

[9] 12h30 came and went on the Friday. No papers surfaced and there was no appearance in court at the designated time, except by Mr. Mati, who had been instructed to appear on behalf of the respondents on the strength only of a notice of motion. (The applicants would later explain that the anticipated notice of motion had been uploaded merely as a means to an end to get a case number allocated on the new Court Online system.)²

[10] Zilwa J struck the matter from the roll and ordered the applicants to pay the wasted costs of the proceedings that they were ostensibly intent upon pursuing but were unable to galvanize in time.

[11] At 16h00 on 10 October 2025 I came on duty and I was apprised of the applicants' intention to pursue the application after all. After reading a revised certificate of urgency, that did not flinch at disclosing the failed attempt earlier that afternoon to get the matter onto the urgent court roll, I issued a directive that required the applicants, *inter alia*, to speak to the “*logistical problems*” referenced in the new certificate because of their non-appearance at the putative hearing before Zilwa J. The directive provided as follows:

- “1. I was informed by Zilwa J earlier today that papers were not received in accordance with the directive issued by him so I need to be brought up to speed about the logistical difficulties that made it impossible for the matter to be heard when he said it should, and why the applicants imagine that it is imperative for the application to be heard tonight.
2. An application for condonation will be necessary.

² The impression one gains from the fleeting explanation tendered on behalf of the applicants is that they were not expecting any formal court appearance because they had been unable to meet the terms of Zilwa J's directive on time. Indeed no application had by then been issued at all.

3. The registrar may issue the main application on the basis of the claimed urgency.
4. The matter may be called at the Tribunal at 20h00.
5. Service must be effected in accordance with the Uniform Rules of Court.
6. The applicants are to liaise with the Registrar to ensure that the papers are uploaded to the Court Online system.
7. It is suggested that the Notice of Motion be adapted to make provision for interim or temporary relief pending the hearing of the application should the respondents indicate their intention to oppose. The respondents must be suitably placed on terms to indicate by when they must file such notice to oppose and to file papers initially to deal only with the interim relief sought.
8. Further directives may be issued tonight depending on the respondents' attitude to the intended relief."

[12] As a prelude to the discussion that follows below in this judgment on the subject of *locus standi*, I mention that the certificate that served before me repeated that the applicants are student organisations of the University with constituencies at its various campuses. Also emphasized was the fact that the applicants in their perception represented "*all students*" of the University and that the students, all of them, had been issued the instruction (perceived to be unlawful) that they must immediately vacate their residences. It is this harm that was sought to be redressed by the proposed urgent application in which the applicants would seek interdictory and ancillary relief, ostensibly on behalf of their member students.

[13] The application was duly issued by the Registrar on the Friday evening but under a new case number, in my view through no fault on the part of the applicants. The anticipated notice of motion was revised to seek interim relief and condonation was also prayed for as per my directive. The applicants explained in the founding affidavit that they had experienced technical difficulties in getting the application issued in time under the auspices of the

new Court Online regime that applies to applications issued out of the courts of this Division. The deponent to the founding affidavit also explained that their counsel was out of town and the students scattered across different campuses, which had made it difficult to consult with those concerned and to get the application issued out in time on the basis of Zilwa J's directive, especially because they were now expected to make out their case on affidavit.

[14] When the matter was called before me late on Friday night, Mr. Mati, roused from his sleep upon being advised that the matter had been resuscitated, appeared on the respondents' behalf. The papers were not served on the respondents but uploaded to Court Online. Although no answering affidavit had been filed by then, he sought to make out a case from the Bar that I should dismiss the application for various technical reasons,³ although a lack of legal standing or a challenge to the authority of the applicants to litigate on behalf of the students were not among those.

[15] I accordingly proceeded to hear the applicants' case for interim relief on the *prima facie* belief held that their authority to litigate and *locus standi* to interpose themselves on behalf of their member students had been adequately accounted for, or was at least not contentious.

[16] After hearing argument, I issued the following order:

“1. A Rule nisi hereby issues calling upon the Respondents to show cause on **14 October 2025 at 09h30** why the following final order should not be granted:

1.1 Interdicting and restraining the Respondents, their members or anyone acting as their agent or under their direction or instruction from evicting the Applicants and their members who are registered students of the UFH at their residences located in the EL and Alice campuses respectively.

³ The objections raised concerned the applicants' non-compliance with the judges' urgent directives, a claim of *Lis pendens*, the applicants' failure to have meaningfully sought condonation and their failure to have served the application papers in terms of the rules of court. For the rest, Mr. Mati argued, as best he could on the applicants' papers, that they had failed to make out a case for the grant of interim relief.

- 1.2 Directing the Respondents to allow the students who were evicted on 09th October 2025 to be allowed back to the campuses.
 - 1.3 Interdicting and restraining the respondents, their members or anyone acting as their agents or under their direction or instruction from intimidating, harassing, threatening, injuring or harming the students presently at the university on both campuses.
 - 1.4 Directing the respondents to pay the costs of the application jointly and severally, the one paying the other to be absolved.
2. Prayers 1.1 and 1.3 above shall operate as an interim interdict pending the finalisation of the application.
 3. Reasons for this court's order may be requested in writing within 10 days."

[17] I am constrained to mention that a similar urgent application served before me that night issued out by three students of the University and the SAWLA Student Chapter against the respondents in effect seeking the same relief against the University arising from the evictions that had and or were being carried out under the guise of the University's directive aforesaid. The obvious difference in that application in relation to the present one was that the interim relief claimed was confined to vindicating the rights of students who were members of that student organisation. The other significant variances that I need mention are that the students also approached the court acting in their own interests, and were accommodated in residences in East London.⁴

[18] That application was not opposed, or at least Mr. Mati who was co-incidentally present at court to represent the interests of the University in the

⁴ In the present application it was alleged that the affected students were also on campus in Alice. It was evident from media reports that the latter campus had erupted into pandemonium as a result of student protests. Critically buildings were on fire and acts of violence were being perpetrated. The East London residents were not in the thick of the chaos.

present matter, confirmed that he had no instructions to contest the relief prayed for in the SAWLA application.⁵

[19] Since I was subsequent to granting the interim relief in the present matter requested to furnish reasons for my decision in such respect, I wish to elaborate herein as well why I issued the interim relief which I did.

[20] In my view the applicants had established all the requirements for the grant of an interim interdict.⁶

[21] The applicants alleged a *prima facie* right of the members “*not to be (arbitrarily) evicted*”. Whether the students’ entitlement to be accommodated on campus is based in contract, or statute, or the University’s prospectus (they seemed to have cast the net wider to include the right to access the library and internet resources as if a right to education was implicated), their predicament essentially was premised on their lawful entitlement not to be arbitrarily evicted without a court order, thus referencing the breach of a jealously guarded constitutional right.⁷ The dangerous repercussions that they explained might flow from the members being put out of their residences and off campus that night with no place to go and no means to make alternative arrangements convinced me that there was a reasonable apprehension of irreparable harm if the interim relief sought was not granted.

[22] I was reminded that some of the students are minors (in respect of whom this court is the upper guardian) who are under the care of the University. I was concerned that students would be outside of their places of safety that they

⁵ In the related matter I made provision in the interim order for the University to seek a reconsideration of its terms if so advised. I was on duty for the week (10 – 17 October 2025), but no challenge was forthcoming.

⁶ An application for an interim interdict must establish a *prima facie* right; a well grounded apprehension of irreparable harm if the relief is not granted; the balance of convenience must favour the granting of an interim interdict; and another satisfactory remedy should be absent. These requirements are trite. Since the grant of an interim interdict is discretionary, the requisites are not considered in isolation.

⁷ See Section 26 of the Constitution, which prohibits arbitrary evictions.

regard as “*home*”, albeit temporarily, and forced to seek shelter somewhere other than on campus if they could not afford to travel home, and in the process be exposed to the risk of harm. At some stage during the course of discussions in chambers to facilitate the granting of consensual relief, an undertaking was sought by the applicants’ counsel that students would not be evicted by the University from their residences pending the hearing of the matter after a full exchange of papers, but this was not forthcoming.⁸

[23] There was no comfort offered that the students would be protected pending the hearing of the matter on the ensuing Tuesday on the unopposed motion court roll. Thus I concluded that there was no adequate remedy that availed the students to counter the situation that pertained at that moment, which is that the University would continue to give effect to its directive, the claimed lawfulness of which seemed to me to be doubtful.

[24] Finally, I considered that the balance of convenience favoured the limited, interim protection which my order would afford to the applicants’ members pending the shortest return date. If I granted no order, I reckoned with the reasonable concern that certain harm might befall the students exposed to the elements. That risk and potential prejudice to the students forced to leave campus in effect just before midnight, which was when I granted the interim order, and extending over the weekend, was to my mind far greater than the respondents having to back off in continuing to implement the directive even though at that moment I did not know the basis for their opposition to the application without them having been afforded an opportunity to consult and file opposing papers. It also appeared to me to be in the broader public interest that this court does not permit what seemed on the face of it to be an arbitrary eviction of students who had no place to go in the middle of the night.

⁸ An undertaking may negate the reasonable apprehension of harm. See *AfriForum v City of Tshwane Metropolitan Municipality & Others* [2012] JOL 29111 (GNP) at [13].

[25] I should clarify one aspect of the interim order which the applicants appear to have misinterpreted. I was only constrained, in the interim, to interdict the University from *continuing* with the evictions. I reckoned that those students who had responded to the University's contentious directive were already off campus and not requiring the court's protection in the short term, or at least the applicants' papers did not make out a case for that category of students to be afforded interim relief.⁹ I was merely concerned to remediate what was going on on campus at that juncture and to have in place an interim arrangement over the weekend and until the application could be properly heard once there had been a full exchange of affidavits.¹⁰

[26] By the time the matter was called before me on the return date, the respondents had delivered their answering affidavit in which an objection to the legal authority of those representing the applicants, and their respective standing to litigate, was for the first time articulated. The respondents also repeated an objection of *Lis pendens* that Mr. Mati had orally raised on the Friday night already on the basis that the present application is a repetition of the matter that served before Zilwa J and was struck off but still alive as it were. If I may dispel this complaint, I indicated to the parties at their first appearance before me already that I was satisfied that we are dealing with one and the same application which is a continuation of the matter that had initially served before

⁹ *Van der Merwe N.O. and others v Drenched Boxing (Pty) Ltd and Others* [2021] 3 All SA 281 (WCC). A court will not grant an interdict restraining an act that has already been committed. The injury must be a continuing one.

¹⁰ The interim relief indicated in prayer 3.1 was added on the basis of the applicants' claim that the University had called in the assistance of the Police and private security who had treated the students resistant to the execution of its directive inhumanely, in a "*barbaric manner*", and in a way displaying "*brutality*". Although the respondents had not at that juncture had the opportunity to controvert these allegations, I considered that the balance of convenience in the meantime favoured the inclusion of such a prayer coupled with the main injunction that the evictions not be carried forth.

Zilwa J. This is indeed why I directed that the applicants should seek condonation in the first place.¹¹

[27] The further objection, somewhat related, concerns the applicants failure to have complied with the letter of my and my colleague's urgent directives, the respondents contending that the applicants had succeeded in obtaining an interim order which they were not entitled to and in spite of the fact that they had not honoured the judges' directives even as a basic premise.

[28] I have stated above why I granted the interim relief under the compelling circumstances that prevailed.

[29] Urgent applications are invariably messy and perfection is often sacrificed for the greater objective of getting such matters before the court to remediate those concerns brought under the immediate spotlight. Whilst this may influence ultimate success and where the costs should lie after the fact, I was not inclined to non-suit the applicants on the supposed basis that they were in wilful default of the judges' directives. Indeed, having overseen their supposed non-compliance, I am not in agreement that the applicants were being disrespectful of the court process or seeking any strategic advantage.¹²

[30] Having accounted for the immediate perceived crisis facing the applicants' members, I turn now to focus on the legal authority and *locus standi* objections that this court has been called upon to decide. These objections are

¹¹ My views do not bind a court hearing the application in respect of the final relief. It was a rough and ready answer to the problem and arguments facing me on the night of the 10th. Reading between the lines the respondents were particularly aggrieved by the fact (in their perception) that the applicants could not be bothered to come to court on Friday at 12h30, yet purported to come in through the back door as it were, again, with a new application, before a different judge, after court hours, and without serving them with papers. The applicants however tendered a plausible explanation for their perceived abuse of the court process.

¹² I did not include a prayer of condonation. In my view it followed by the mere fact that I allowed the matter to be heard before me on the night of the 10th, that I was prepared to accept the applications' claims of the logistical difficulties that had dogged their earlier attempt to bring their concerns before the court.

related, but not to be conflated. Authorization, as indicated by *Erasmus*,¹³ concerns the question whether a party is properly before the court in legal proceedings. The issue of *locus standi* materially concerns the direct interest of a party in the relief sought in legal proceedings.¹⁴

[31] On 13 October 2025 the respondents filed a notice in terms of Rule 7 (1). The notice filed contemporaneously with the respondents' answering affidavit and notice to oppose the application on the return date, read as follows:

- “1. Whereas the Applicants (have) instituted an application on an urgent basis in terms wherein they (essentially) seek interdictory and ancillary relief on behalf of students enrolled in the University of Fort Fare.
2. And whereas the deponents to the affidavit have not alleged that the applicants are juristic persons or that they have been authorized to launch the applications for and on behalf of the applicants.
3. And whereas the deponents have not attached any resolution that they have been authorized to launch the applications on behalf of the applicants.
4. Now therefore respondents disputes the authority of attorneys MM SOMNISO ATTORNEYS to act and represent the Applicants in the application and requires the said attorneys to satisfy the court that they also authorized.”

[32] Concerning the claimed interest of the applicants in the present application to vindicate the rights of their member students, the respondents' objection to their *locus standi* was pleaded as follows in the answering affidavit:

- “17. The Deponent in the introductory parts to the Founding Affidavit alleges to have been duly authorized to depose to the Founding Affidavit by virtue of the position they occupy with the First Applicant.

¹³ *Erasmus, Superior Court Practice*, 2nd Edition.

¹⁴ *Erasmus*, at D1 – 96.

18. *Ex Facie* and on the papers presented before Court, no factual basis has been presented to substantiate the Deponents claim to either bring the litigation on behalf of the First Applicant or any of the Applicants.
19. The respondents Legal Representatives have on Monday 13 October 2025 requested a power of attorney from the Applicants' representatives to at the very least evince the authority by which they have instituted this application.”
(sic)

[33] As a result of the challenge to the applicants' authority to represent the students whose rights were evidently sought to be protected by the grant of the interdict, Mr. Zimema, who appeared on behalf of the applicants together with Mr. Mhlanti, requested a postponement to enable them to consult with the applicants, file a replying affidavit and respond to the respondents' notice in terms of Rule 7 (1).

[34] This request was resisted by the respondents. Mr. Mati urged upon the court to dismiss the application out of hand because as far as his clients were concerned, they were technically the only parties before the court.

[35] I ultimately granted the application to postpone, but only to the following day and on terms as to when the replying papers had to be served. Costs were reserved. I also extended the *rule nisi* on the basis that the balance of convenience continued to favour the students whose rights not to be arbitrarily evicted fell to be protected pending the hearing of the main application even though by then it appeared to be the case, according to the respondents answering papers, that the University had suspended the evictions on the 8th already at 18h00.

[36] On 15 October 2025 the matter again served before me at 15h00. By now the applicants' attorneys had filed powers of attorney and replying papers, but

the respondents stood firm that these did not adequately address the issue of the attorney's and applicants' authorisation and their standing respectively. Mr Mati again urged upon the court to dismiss the application.

[37] In arguing the preliminary point before the court, it became noticeable that the factual underpinning for the applicants' standing on behalf of its members may not have been fully engaged with by the respondents. This is because, when the founding papers were uploaded to Court Online, there was a page missing. I had alerted the parties to this fact on the night of the 10th already, and although the court had been provided with a hard copy of the papers to supplement the deficiency after the fact, it appeared that the respondents had not been shown the same courtesy.

[38] I was also concerned that the court was in essence dealing with critical constitutional rights (*viz-a-viz* the students on whose behalf the applicants were evidently seeking to interpose themselves) which it had already found on a *prima facie* basis had been infringed by the University. On the basis of the approach adopted in a matter concerning the wholesale eviction of residents at *Airport Park*,¹⁵ who I considered to have been in a similar predicament to the applicants in relation to the challenge to their authority and legal standing to vindicate their rights not to be arbitrarily evicted, I issued an order standing the matter down to 9h00 on 17 October 2025 for the applicants to supplement their response to the respondents' Rule 7 (1) notice and to file a supplementary

¹⁵ *Residents of Farm Greydell (Airport Park) and Another v National Department of Public Works and Another* (EL 738/2020) [2020] ZAECELLC 20 (21 September 2020); *Fani and Others (collectively referred to as "Residents of Farm Greydell (Airport Park)") v National Department of Public Works and Another* (EL 738/2020) [2020] ZAECELLC 1 (29 October 2020); *National Department of Public Works v Fani and 77 Others*, unreported judgment (Case No. EL 738/2020); and *National Department of Public Works v Fani and 77 Others [Collectively referred to as Residents of Farm Greydell (Airport Park) and Another]* (090/2021) [2024] ZASCA 43 (8 April 2024). I have referenced the collection of judgments to record the trajectory that the matter took. When the matter first came before me, I was concerned that whereas the infringement of a constitutional right was at stake, the aspect of *locus standi* had been poorly pleaded. In fact, the pleadings were woefully deficient, but it appeared counterintuitive not to have afforded the applicants an opportunity to amplify the basis upon which they hoped the court might intervene.

affidavit to deal with the allegations in the founding affidavit that had gone unanswered before.

[39] In referencing the *Airport Park* matters I had hoped that the applicants might seek creatively to qualify their standing with reference to the provisions of section 38 (b), (c) or (e) of the Constitution if not on the basis of their being distinct legal persons acting within the parameters of their *universitates personarum* concerning their entitlement to sue in order to vindicate the breach of rights of their members in the peculiar circumstances.¹⁶

[40] Apart from the expected supplementation of their founding papers on the subject of their capacity to sue, the provisions of rule 7 (1) especially confer the power on a court to adjourn the hearing of an application in order to enable a party served with a Rule 7 (1) notice to satisfy the court that he/she/it does indeed have the necessary authority to act or is so empowered.¹⁷

[41] In essence, as is emphasized by *Erasmus*, the proposed power of attorney is to establish the mandate of the attorney concerned and “*to prevent a person whose name is being used throughout the process from afterwards repudiating the process altogether and saying he had given no authority and to prevent persons bringing an action in the name of a person who never authorised it*”.¹⁸

[42] The provision of the sub-rule are applied when the authority of anyone acting on behalf of a person is challenged and is not limited to the challenge to the authority of attorneys to act only.¹⁹

¹⁶ Section 38 of the Constitution endorses a broad approach to standing whenever an allegation is made that a right guaranteed by Chapter 2 of the Constitution has been infringed or is threatened.

¹⁷ *Erasmus, Supra*, at D1 – 96B.

¹⁸ *Erasmus Supra* at D1 - 93, including the authorities cited in support of the principle. Here the concern raised by implication is that the persons who had initiated the application were not authorized by the applicants themselves to have brought the application.

¹⁹ *Erasmus, Supra* at D1 – 96. *Eskom v Soweto City Council* 1992 (2) SA 703 (W); *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA).

[43] Again I extended the rule *nisi* in the purported interests of the applicants' member students pending the hearing of the application. The costs were reserved.

[44] The preliminary objections, which Mr. Mati is confident is dispositive of the application, were ultimately argued on Friday morning the 17th at 09h00.

[45] Before I deal with the legal position, it is necessary to traverse what the applicants did or didn't say about their authority and legal standing in the present application.

[46] Who the applicants are and in what capacity they litigate and why in relation to the relief claimed or the right to claim the relief they say they have an interest, is vital to a consideration of the preliminary issues which this court must determine. If not a direct-interest party, the further question of who holds the empowerment to litigate, and on the strength of what authority, is an important one.

[47] The primary deponent, Mr. Somila Tendana, in the founding affidavit, alleged that he is a student at the University and the "*Secretary General*" of the first applicant ("EFFYC"). He claimed that by virtue of this *position*, he was duly authorized to depose to the founding affidavit on the organisation's behalf.

[48] He did not say that he, or any of the other applicants for that matter, had also been authorised by their respective organisations to *bring* the application or indeed why the mere fact of their being student bodies with student constituencies on the University's campuses afforded them the necessary *locus standi* or capacity to litigate in place of the students themselves who self-

evidently hold the legally enforceable rights to vindicate their own unfortunate positions.²⁰

[49] He minimally averred that the applicants are student bodies that have student constituency in all the University's campuses, but how far does that really take the matter in relation to the students' eviction and their personal rights sought to be protected by the court through the granting of an interdict?

[50] Do student organizations have a direct interest in vindicating the rights of their members concerning issues that do not naturally resort under the ambit of matters of student governance, which appears to be the primary concern for which they may be "*recognized*" by the university.²¹

[51] Mr Tendana mentioned (co-incidentally, because this explanation really went to justify the essential reason why the students were protesting on campus) that the applicants had in effect become disenfranchised by virtue of the fact that a new SRC has not yet been elected because the management of the University had sought irregularly, improperly, and unilaterally, to draft the terms of reference that will govern or regulate that process. He informed the court that this top-down approach had been rejected by the students who consider that Institutional Student Parliament, through which all students are represented through their respective student organisations in a duly elected SRC, was being denied to them.

[52] If this was meant to suggest that the SRC might have been the structure through which a concern for the students' safety under the present circumstances would otherwise have been voiced to the management of the University but for the claimed disenfranchisement, this was not pertinently said.

²⁰ Confirmatory affidavits were deposed to on behalf of only the third and fourth applicants, but these do not deal with any of the organizations' authority to litigate on behalf of their members.

²¹ See sections 72 and 73 of the Statute of the University of Fort Hare, GN 506 of 2020), published in Government Gazette No. 43288 on 8 May 2020.

It is doubtful though that issues of governance, that would afford the applicants the statutory “*recognition*” with the University contended for, would also automatically clothe student organizations having student constituencies through the structure of the SRC with the capacity to litigate in a matter such as the present on behalf of the students seeking to vindicate the violation of personal rights as opposed to collective rights naturally resorting under the mantle of governance issues.

[53] With hindsight and proper reflection of the case made out in the initiating papers,²² there is nothing in them that helpfully speaks to the issue of the applicants’ *locus standi*. Much is left to assumption and speculation. Mr. Mati submitted that this is fatal to the application.

[54] Importantly, as I began to explain above, legal standing is not only a procedural question but also one of substance. As *Harmse*²³ indicates. It concerns the sufficiency and directness of a litigant’s interest in the proceedings which warrants his or her title to prosecute the clam asserted. The applicant has to show that it is the rights-bearing entity, or is acting on the authority of the entity, or has acquired its rights.

[55] None of this is simply assumed from the mere allegation that the applicants are student bodies having student constituency. As Mr. Mati fairly asked, what is a student constituency and its relevance in the present context of the relief claimed and the applicants’ right to prosecute the claim?

[56] If I am being uncharitable concerning the applicants’ standing, they are also required to establish that they are properly before this court.

²² It is for the party instituting proceedings to allege and prove that he has standing and to make out such a case in the founding papers. See *Harmse Civil Procedure* in the Superior Courts at A6, 1 and the cases cited in footnotes 5 and 7 in relation to the trite principle.

²³ *Supra* at A6.1

[57] One Mr. Thabo Zide put up a confirmatory affidavit but this does not speak to his organisation's interest in the proceedings. He is a registered student at the University residing at a university residence in Southernwood, East London. He asserted that he is "*a secretary*" of the fourth applicant ("YBMM"), which is a "*political formation*" that is recognized by the University as one contesting elections. He claimed to have the requisite legal authority to depose to the affidavit confirming support for the first applicant's cause and complaint in the present application (presumably in respect of the YBMM's own members) by virtue of his position in the organisation.

[58] Ms. Unam Tyhalithi put up a similar confirmatory affidavit without expounding on the nature of her organisation's interest in the litigation. She also resides on the Southernwood campus, is a registered student, and claims to be the chairperson of the third applicant ("PASMA"). The latter according to her affidavit is also a political formation recognized by the University as one contesting elections on the SRC. She claimed to have the requisite legal authority to depose to the affidavit by virtue of her position in the organisation.

[59] I should mention that none of these deponents, although they would each have an interest in their own right, asserted such right in relation to the present debacle.

[60] As outlined above, the respondents in their answering affidavit raised the preliminary objection of a lack of *locus standi* on the part of the applicants, going to both substance and procedure.

[61] They also took the point that no powers of attorney had been filed despite the filing of their notice in terms of Rule 7 (1) on the 13th already, and that no

confirmatory affidavit had been put up on behalf of the second applicant (“SASCO”).²⁴

[62] In the replying affidavit Mr. Tendana merely denied that *he*, as opposed to the first applicant, did not have the necessary *locus standi*.²⁵ In order to vouch for his authority to represent the EFFYC, he attached a copy of a “*resolution*” passed by it permitting him both to litigate on the first applicant’s behalf and to depose to the replying affidavit.

[63] The resolution concerned appears rather to be a general notice dated 9 October 2025 addressed by Commissar Naledi Chirwa-Mpungose in her capacity as EFF Youth Command CYILC Coordinator to all “*Fighters*”. On the face of it, it concerns the “*Formal Authorisation And Mandate To Represent The EFFYC In Legal and Administrative Matters*” and it purports to serve as “*an official and binding confirmation issued under the authority and directive of the National Coordinator of the Economic Freedom Fighters Youth Command(EFFYC), acting in accordance with the constitutional provisions, policies and resolutions of the organisation*”. It states that the following authorisation is made and shall have full legal force and effect:

“Fighter/ Mr. Somila Tendana, in his capacity as a duly elected Branch Chairperson of the Economic Freedom Fighters Youth Command (EFFYC) at the University of Fort Hare, is hereby expressly authorized and mandated to act on behalf of the EFFYC in all judicial, quasi- judicial, and administrative proceedings relating to matters concerning the University of Fort Hare and its students.”

[64] Such authorization is said to include the signing and execution of affidavits, statements, pleadings or any other legal or administrative instruments and the submission of documents, correspondence or applications to any court,

²⁴ This defect was however cured on 16 October 2025.

²⁵ Quite clearly this is a mistake.

tribunal, or competent authority. It confirms that acts performed by Mr. Tendana in pursuance of his mandate shall be deemed to have been lawfully done with the full consent and authority of the national office of the EFFYC. It also appoints and confirms Professor Somniso as the legal representative and attorney of record for the Command. (It is common cause that the attorney's firm with which Professor Somniso is associated is MM Somniso Attorneys Inc.)

[65] Finally, it bears a signature that purports to be that of the Commissar, who despite this title, has identified herself in the "*resolution*" as the EFFYC CYILC coordinator.

[66] No resolution of the second, third or fourth applicants were put up together with the replying affidavit. (These were offered from the Bar by Mr. Zimema, but objected to by Mr. Mati.)

[67] Four special powers of attorney, each given at the hand of the office bearers of each applicant in favour of "*MM Somniso Inc*", were attached to Mr. Tendana's replying affidavit. These are dated 9 October 2025 and uniformly confer authority on the said legal firm to act on behalf of each organization "*in the matter between (them) and the University of Fort Hare*". The authority given is, however, by the individuals themselves as opposed to the applicants.

[68] When the matter was called before me on the 15th it was argued on behalf of the respondents that the applicants' supposed reply to their notice in terms of rule 7 (1) was wholly inadequate and that each of the deponents who had purported to suggest that they represented the respective applicants had failed to prove as much.

[69] Mr. Mati challenged the validity of the purported resolution of the EFFYC in the absence of any constitution stating who had the requisite authority to provide it as well as the absence of any confirmatory affidavit by Ms. Chirwa-Mpungose. He further pointed out that Mr. Tendana's averment that he was the secretary general of the first applicant was inconsistent with the so-called resolution that conferred the requisite authority on him as the branch chairperson instead.²⁶

[70] As for the uniform powers of attorney he submitted that they fell short of the standard expressly required in Rule 7 (4).

[71] I digress to set forth the peremptory requirements in this respect. Rule 7 (1) and (4) provide as follows:

- “(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.
- (2) ...
- (3) ...
- (4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power.”

²⁶ In the later supplementary affidavit put up by him, he identified himself only as “*the representative*” of the first applicant.

[72] Mr. Zimema submitted that the resolution was enough (well at least in respect of the EFFYC) and that the absence of a confirmatory affidavit by its coordinator who had signed it was not fatal.

[73] He further purported to explain, as best he could with reference to the papers which had been filed at that juncture, that the applicants before court do not exist for the purposes of litigating, but for the express purposes of championing the rights of their members who are students at the University. Therein lies the rub because the applicants' interests in this narrow context indeed appear to me to be confined to promoting parochial institutional student concerns within the context of the SRC being a structure through which student organizations recognized by the University play an accepted role.²⁷

²⁷ The SRC is a legal construct of the Higher Education Act No 101 of 1997. Its composition, constitution, functions and elections are determined by institutional statutes. As the governing body for students, SRCs have a significant leadership role to play and this includes transformation. *The SRC has jurisdiction, subject to Council, over certain student matters.* In terms of the Higher Education Act, the main institutional governance structures are council; the senate; the institutional forum and the Student Representative Council (SRC). The council is the highest decision-making body and is responsible for ensuring good governance of the institution subject to the Higher Education Act and relevant institutional statutes. The senate is accountable to the council with regard to academic and research functions of an institution. The institutional forum advises the council on issues affecting the institution as stipulated in the Act. Senates and SRCs also exercise their primary governance role through their membership of university councils as provided for by the Higher Education Act. The governance relationship between the councils and senates; between councils and SRCs; and between councils and institutional forums is set out in the Higher Education Act, Act 101 of 1997, amended. The relevant provisions in the Act set out in which cases council can only act after having consulted these three structures and in which cases such consultation takes the form of non-binding 'after consultation' or binding 'in consultation'. It is required that councils must follow these prescriptions meticulously as part of good governance practices in their institutions. See: <https://www.justice.gov.za/commissions/feeshet/docs/2015-HESummit-Annexure15.pdf>; <https://www.dhet.gov.za/Institutional%20Governance%20Policy%20Documents/Guidelines%20on%20Good%20Governance.pdf>. See also: Hall, M., Symes, A. & Luescher, T.M. (2004). *The Culture of Governance in South African Higher Education*. Journal of Higher Education Policy and Management. 26(1): 91-107. Institutional Statutes are expected to focus on the practice of governance at institutional level. It would be the key purpose of any student organisation that has student constituency to focus on the express objects of the Higher Education Act. Whilst it is not inconceivable that student organizations having representation through the SRC might extend their founding constitutions beyond this objective to protect the interests of students generally, the second, third and fourth applicants (who have constitutions) do not appear to have such a mandate.

[74] As far as he was concerned the first applicant at least had established, with reference to the resolution put up, which was all that was necessary in his view to give Mr. Tendana permission to act, that he was authorised to litigate on behalf of the EFFYC who, as the designated person so authorised, had in turn signed a special power of attorney in favour of their attorneys of record.

[75] As for the authority of the remaining applicants, he purported to hand up resolutions from the Bar which the respondents objected to. It was at this point that the matter was postponed to Friday, the 17th to afford the applicants an opportunity to supplement their responses to the respondents' notice in terms of rule 7 (1).

[76] The applicants filed a supplementary affidavit on 16 October 2025 in which the three additional resolutions were introduced and given context, and amplified special power of attorneys in favour of MM Somniso Attorneys Inc. were introduced.

[77] The respondents objected to the manner of supplementation, by way of affidavit without seeking condonation, but self-evidently some explanation was necessary in order to convince or satisfy the court on the basis envisaged by rule 7 (1) that each of them are authorised to act and why they say so.²⁸

[78] In a bid to allay the procedural challenge, Mr. Tendana explained that the EFFYC was new, having been formed by reason of a resolution of the EFF National People's assembly in December 2024. Since it was in its formative stages, no constitution was yet in place, but it operated under the auspices of the

²⁸ My order dated 15 October 2025 was confined to directing the applicants an opportunity “to supplement their powers of attorney or to cure the existing four that were filed in the matter”. The existing four were in the names of Mr. Tendana, Ms. Tyhalithi, Ms. Mgqibela and Mr. Zide respectively, but evidently not in their representative capacities. With hindsight I should have been more explicit in crafting my order to require the applicants to especially amplify the basis upon legal standing was hoped to be established. I had prevailed upon counsel why I thought this essential, especially with reference to the fact that a claimed breach of critical constitutional rights was at the core of the matter.

EFF as its “*mother body*”, to which it deferred, according to the principle of democratic centralism. This means, according to the deponent, that decisions of upper structures are binding to lower structures.

[79] He explained that when the University issued its “*letter of eviction*”, such “*challenge*” was escalated to the National Office for Intervention, the highest authority and/or decision-making body of the organization, whereupon the National Coordinator issued the resolution concerned authorising him to bring the proceedings and to appoint MM Somniso Attorneys Inc. to represent it.

[80] Regarding SASCO, he asserted that Ms. Yolelwa Mgqibela, had been given full authority by SASCO, in her capacity as chairperson at the University, East London Branch, to litigate on its behalf in these proceedings and to appoint MM Somniso to represent it as well. This followed a resolution of the National Executive Committee (“NEC”) of SASCO.

[81] He explained that whilst the constitution of SASCO does not expressly indicate who has the authority to litigate on the organization’s behalf, the NEC is regarded as the highest decision-making body of the organisation through which strategic and decisions of consequence are taken.

[82] The “*resolution*” put up, dated 16 October 2025, is on a SASCO letterhead evidently emanating from the “(o)ffice of the Secretary General” in Johannesburg. It is ostensibly authored and signed by the Secretary General, Cadre Admission Monareng (co-incidentally only the court’s copy of the supplementary affidavit included a signed page).²⁹ It is addressed to UFH East London Branch Executive Committee and concerns the “*NEC Resolution on*

²⁹ This is a concern in itself where a procedural challenge to authority is under the scope. The court’s copy is evidently an electronically signed one, but why did counsel not have the same document in their paginated bundles? Whilst an affidavit confirming a resolution may not in every instance be fatal to convince the court that a party is authorised to act, it is vitally necessary in a scenario where not everyone has been furnished with the same copy thereof.

Legal Action Regarding Student Evictions at the University of Fort Hare". It states that a special National Executive Committee was convened following interactions with the University's SASCO branches regarding the eviction of the students whereupon it was resolved to give Ms. Mqibela full authority to act on SASCO's behalf in any legal proceedings arising therefrom as advised by legal counsel which she was also given authority to seek and take as per the resolution, and to take subsequent steps to remedy the problem.

[83] The letter explains that SASCO as a student movement has the authority to litigate in its own name duly represented by anyone who is appointed by the NEC.

[84] Concerning PASMA, Mr. Tendana confirmed that the organization in the instant proceedings is represented by Ms. Tyhalithi, its chairperson at the East London branch of the University. He explained that the constitution of PASMA does not expressly indicate which official can litigate on behalf of the organization but noted that it placed the duty on the National Executive Council under section F,XV1 to provide legal assistance to members on matters affecting them and students. He assured the court that Ms. Tyhalithi had been granted full authority by the NEC to litigate on behalf of the organization. Acting in accordance with the resolution, she has also signed a special power of attorney appointing the attorneys of record and has done so in line with the NEC resolution.

[85] The purported resolution put up appears to be an original letter, but it is unsigned and undated, and was seemingly prepared by its President General, Ms. Zandiswe Nopa, addressed to no recipient in particular.³⁰ It evidently concerns a "*EXECUTIVE RESOLUTION - APPOINTMENT OF UNAM*

³⁰ A different name appears on the top of the letterhead, which is "*Nopa Nyimbana*".

TYHALITHI” and serves to confirm that after deliberations with members of the NEC it had been resolved that the appointee assists students at the University by engaging the services of legal practitioner “*to consider available avenues and to subsequently take all steps necessary to remedy the ordeal of students, which includes court or any relevant bodies which are legislated to assist.*” (The ordeal may not be the same one we are here concerned with given the lack of a date.)

[86] Regarding the YBMM, it is recorded that the applicant is a student organization represented in these proceedings by Mr. Zide who is the fourth applicant’s branch secretary. He explained that it does not have a national structure as it only exists at the University. However, he repeated the assertion that it is a formation recognized by the University as one that contests elections and deploys members to the SRC.

[87] Its constitution, under section 9, does provide that it can sue and be sued in its own name, but it does not nominate a person who is authorised to do so. The special resolution was thus passed by its executive. Based on this authority, Mr. Zide has signed a special power of attorney instructing MM Somniso Attorneys to issue the application on it and its members behalf.

[88] In support of the averment that Mr. Zide is duly authorised, a copy of an executive resolution has been put up. It records that a resolution was passed at a meeting of the East London’s Branch Executive Committee held on 9 October 2025 in which it was resolved that Mr. Zide “*is authorised to act on behalf of the YBMM EL Branch in all court proceedings*” and to sign legal processes. Also minuted is that Professor Somniso is duly authorised to act as the applicants’ legal representative “*in all court-related matters*”. The resolution is signed by both Mr. Zide, as chairperson, and by one Sibonelo Thwala as secretary.

[89] The amplified special power of attorney's dated 16 October 2025 indicate uniformly that each appointee now *acts with delegated authority* to appoint MM Somniso Attorneys, to act on each organisation's behalf "*in the eviction matter*" against the University and, *inter alia*, to institute legal proceedings against the institution (the University) and its functionaries.

[90] As for the applicants' supposed interest in the relief sought, there was an attempt by Mr. Tendana to amplify the factual premise for the organisations' standing.

[91] Again the suggestion was made that the organizations are expected to step into the breach by the absence of a duly elected SRC but also repeated is that each applicant is a recognized student body at the institution which somehow confers a direct interest in the present quandary of the students. The amended premise though is that they are expected to vindicate the rights of the students who are members, because they have been affected by "*the decision*" of the first respondent.

[92] This is an entirely different right than the *prima facie* one relied on on Friday the 10th. In my view this cannot be said to be "*the subject of the instant application*". (I imagine though that this purported to be a response to the challenge put to the applicants in the respondents' answering affidavit that they had not sought a review of the University's decision to have closed the University campus under the emergency situation contended for, and therefore cannot impute to the University an act of unlawful eviction thereby.)

[93] Mr. Mati, even after the filing of the supplementary affidavits, yet maintained that the applicants were still not properly before the court. I regret that I have to agree with him, but there is little point in holding up the purported

authorization to the standard that is required in court when the premise for the applicants' interest in the relief and the right to claim such relief has not in my view been adequately established. That is the real failing in this matter.

[94] As I indicated elsewhere, I had hoped that the applicants would have grasped the nettle and amplified the papers to deal with this primary objection. Here in my view was a class action in the making and waiting to be properly pleaded even if only on the basis that it was impractical to round up the students affected by the threatened continuing evictions being executed on the campuses at the time. The shortcoming in standing might also have been ameliorated by the simple act of the deponents, all students themselves and evidently affected by the University's directive, qualifying themselves as having such an interest.

[95] It is regrettable that I must conclude that the applicants have failed on their papers before me to establish *locus standi*.

[96] I am inclined to agree with Mr. Mati that the applicants were given more than enough of an opportunity to amplify their case, each time to the prejudice of the University and at its great expense in a week when it was constrained itself to seek an interdict against students who were causing damage to its property.

[97] Whilst one has sympathy for students caught up in the turmoil on campus who are innocent of any wrongdoing and merely wanting to get on with their education, it seems to me to be appropriate in the circumstances for the rule *nisi* to be finally discharged bringing an end to the ill-fated litigation. The concern that motivated me to come to the assistance of the students under the threat of eviction on Friday, 10 October 2025, seems in any event to have become academic.

[98] On the subject of costs, the purported applicants do exist and tried by all means to clothe the deponents with authority to represent them. The fact they fell short in doing so is not the primary reason for discharging the interim order.

[99] They should therefore be held liable for the costs of the putative application.

[100] In the result I issue the following order:

1. The respondents' *locus standi* objection is upheld.
2. The rule *nisi* issued on 10 October 2025 is discharged.
3. The applicants are liable, jointly and severally, for the costs of the application, including the reserved costs of 14 and 15 October 2025.
4. The costs will be on Scale B.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF HEARING : 10, 14, 15 & 17 October 2025
DATE OF JUDGMENT : 10 November 2025

Appearances:

*For the applicants: Mr. S Zimema & Mr. M Mhlanti instructed by MM Somniso Attorneys,
East London (ref. Mr Somniso)*

*For the respondents: Mr. L Mati instructed by Enzo Meyers Attorneys, East London (ref. Mr.
Meyers).*