REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2026-184797**

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

1/11/2026 [redacted]
DATE SIGNATURE

In the matter between:

AFRICAN NATIONAL CONGRESS YOUTH LEAGUE (ANCYL)	First Applicant
SOUTH AFRICAN STUDENTS CONGRESS (SASCO)	Second Applicant

and

INDEPENDENT ELECTORAL COMMISSION OF UNISA	First Respondent
INDEPENDENT ELECTION TRIBUNAL OF UNISA	Second Respondent
UNIVERSITY OF SOUTH AFRICA (UNISA)	Third Respondent
THE VICE-CHANCELLOR, UNIVERSITY OF SOUTH AFRICA	Fourth Respondent
ECONOMIC FREEDOM FIGHTERS' YOUTH COMMAND (EFFYC)	Fifth Respondent
UNISA LAW STUDENTS ASSOCIATION (ULSA)	Sixth Respondent
MK STUDENTS' MOVEMENT (MKSM)	Seventh Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an urgent review concerning the election of the executive committee of the National Student Representative Council (NSRC) of the University of South Africa (Unisa). The election took place at a National Congress held at the Kopanong Conference Venue, Ekurhuleni, on 24 June 2026. The applicants, two student formations, lodged a dispute against the outcome. The Independent Election Tribunal of Unisa (the IET) dismissed it in a written ruling dated 10 July 2026.

[2] The applicants' central complaint is that the IET decided the dispute on a version and evidence presented by the Independent Electoral Commission of Unisa (the IEC) in their absence, which they were never shown and to which they were never permitted to reply, although they had asked in writing to be allowed to do so. They also attack the conduct of the election itself.

[3] The first to fourth respondents (the respondents) opposed the application. They contend that this court lacks jurisdiction, that the point is res judicata, that review proceedings cannot be brought urgently, that the matter is not urgent, that several prayers are incompetent, and that no ground of review is made out.

[4] The fifth to seventh respondents did not oppose the relief sought.

BACKGROUND

[5] Student governance at Unisa is regulated by the SRC Constitution and the Electoral Policy, both approved by Council on 23 November 2017. Regional SRC elections were conducted online in April 2026. The National Congress then convened on 24 June 2026 to elect, among others, the nine NSRC executive portfolios listed in clause 5.3.1 of the SRC Constitution. Clause 3.2.3 provides that the National Congress elects by secret ballot nine NSRC members

constituting the executive committee "as elected and presented by organisations".

[6] According to the report of the Electoral Institute for Sustainable Democracy in Africa (EISA), which administered the ballot, 90 voting delegates signed the attendance register. Nominations were taken from the floor. The contested portfolios of President and Deputy President were each won by the EFFYC candidate by 46 votes to 44 against the SASCO candidate. The Secretary-General (ULSA) and Treasurer-General (EFFYC) were declared elected unopposed. No nominations were recorded for the remaining five executive portfolios.

[7] It is common cause that the applicants' delegates left the venue during the proceedings. The parties differ on why and when. The applicants say they withdrew in protest after their objections to ballot secrecy and credentials were ignored. The IEC says they walked out without stating any objection after losing the Deputy President ballot. Clause 3.1.6 of the SRC Constitution provides that the withdrawal of an individual or organisation does not preclude the National Congress from being legally constituted.

[8] On 25 June 2026 the applicants, together with MKSM, lodged a formal electoral dispute with the IET under clauses 11 and 12 of the Electoral Policy. They alleged, among other things, that the IEC lacked independence; that credentials were not transparently verified; that the secrecy of the ballot was compromised because delegates kept mobile phones and photographed marked ballots; that objections were not recorded or resolved; that observers were improperly removed; that a nomination of Mr Gift Nkuna was ignored; and that only four of the nine executive portfolios were filled.

[9] The IET heard the parties separately. The applicants addressed the tribunal on the morning of 9 July 2026 in the absence of the IEC. On the same day, the applicants wrote to the tribunal asking, among other things, for the IEC's presentation schedule, the deadline for the IEC's written submissions and evidence, and "*confirmation that we will have an opportunity to respond to any evidence or submissions presented by the IEC*".

[10] Later that day, the IEC presented its case to the tribunal in a recorded Teams meeting, in the applicants' absence. Its chairperson, Dr Mpya, addressed each allegation. He referred to a six-page credentialing report and other evidence, which he undertook to submit after the hearing. The tribunal chairperson asked him to submit "*the presentation as well as all the evidence that you have shared and any additional ones that you could not pr*esent". Dr Mpya himself asked for a right of reply to any new evidence from the complainants, observing that "*it may not look nice if there's a ruling on the basis of something that we've never had an opportunity to answer to*". The chairperson assured the IEC that any additional material implicating it "*will also be shared with [the IEC] so that you can respond before the tribunal makes a final and binding decision*". The applicants were given until the end of 9 July to submit their evidence. It did not submit any evidence.

[11] The IET delivered its ruling the next day, 10 July 2026. It dismissed the dispute, confirmed the results as valid and binding, and directed that the elected office bearers continue in office. It recorded that it had considered the objection documents, the governing instruments, and "*the submissions made by the Applicants and the Respondent*". The ruling was signed by the chairperson, Prof Mudau, with Dr Twabu, Mr Matsoso and Ms Mhluzi concurring. It is common cause that Dr Twabu, Mr Matsoso and Ms Mhluzi attended the National Congress as observers.

[12] It is not disputed that the applicants were never furnished with the IEC's presentation, its credentialing report, or any of the material the IEC submitted after the hearing, and were never invited to reply to it.

[13] On 12 July 2026 the applicants wrote to the University Council asking it to intervene. They received no substantive response. On 31 July 2026 they launched two applications: this review (case 2026-184797), set down for 6 October 2026, and an urgent application for interim relief pending the review (case 2026-185133), set down for 11 August 2026. On 21 August 2026. Nel AJ dismissed the interim application, ordering that "*the Gauteng Division of the High Court (Johannesburg) does not have jurisdiction to determine the Application*".

The applicants requested reasons. None had been furnished when this matter was argued.

[14] In the review, the respondents filed the Rule 53 record on 21 August 2026. The applicants filed an amended notice of motion and a supplementary affidavit on 31 August 2026. The respondents answered on 30 September 2026, the applicants replied on 1 October 2026, and both sides filed heads of argument. The matter was fully argued on 7 October 2026.

[15] As amended, the notice of motion seeks:

(1) urgent enrolment under Rule 6(12);

(2) the review and setting aside of the National Congress elections under section 6 of PAJA, alternatively the principle of legality;

(3) a declaration that the IET's ruling of 10 July 2026 is inconsistent with section 33(1) of the Constitution and unlawful and invalid;

(4) a declarator that vacancies may only be filled after candidates are elected by the National Congress;

(5) an order directing the IEC and Unisa to reconvene the National Congress within 90 days;

(6) an interim SRC pending the rerun; and (7)–(8) costs.

JURISDICTION

[16] The respondents contend that, by Government Notice 7648 of 2 July 2026 (GG 54935), this local seat ceased with effect from 1 July 2026 to have concurrent jurisdiction with the main seat in Pretoria. They submit that the relevant administrative action is the IET's ruling, which was taken in Pretoria, where the administrator is based and where its adverse effects are felt. Relying on *Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd* [1]and *Doctors for Life International v Speaker of the National Assembly*,[2] they argue that jurisdiction is

[1] 1969 (2) SA 295 (A) at 310D-E
[2] 2006 (6) SA 416 (CC) at para 57

determined when proceedings are instituted, so that the later order in *Pretoria Society of Advocates v Minister of Justice and Constitutional Development*,[3] on which the applicants rely, cannot assist them.

[17] I accept the respondents' premise that jurisdiction is determined as at the date on which proceedings are instituted, namely on 31 July 2026. That does not end the enquiry. The question is what the legal position was on that date, and the answer depends on the effect of the order of 28 September 2026. That order, whose existence and terms are not disputed, reviewed and set aside GN 7648, and directed that the historical areas of jurisdiction of the main seat and the local seat of this Division continue to apply.

[18] The respondents submit that the order is not retrospective and that, absent a fresh notice by the Minister, it does not restore the previous areas of jurisdiction. I do not agree.

[19] An invalid administrative act exists in fact, and may have legal consequences, until it is set aside by a court. [4]It would therefore not be accurate to treat GN 7648 as *pro non scripto* from the outset for all purposes; until 28 September 2026 it had to be treated as valid, and parties and courts were obliged to act on it. Once it is set aside, however, the setting aside ordinarily operates retrospectively.

[20] Invalidity is objective; a court's declaration describes a pre-existing state of affairs rather than creating it.[5] The corrective principle requires that the consequences of invalidity be reversed where they can no longer be prevented.[6] Acts that depend for their validity on the invalid act fall with it, "*irrespective of whether those acts were performed before or after the court order*".[7] A court may limit the retrospective effect of its order under section 172(1)(b)(i) of the Constitution or section 8(1) of PAJA. But it must do so in its order. Absent such a limitation, act that is set aside is treated as never having had legal effect.

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[3] case 2026-217318, order of 28 September 2026
[4] (*Oudekraal* para 26; *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC) paras 101–106)
[5] *Ferreira v Levin NO* 1996 (1) SA 984 (CC) at paras 27-28
[6] *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency (No 2)* 2014 (4) SA 179 (CC) at para 30
[7] *Seale v Van Rooyen NO* 2008 (4) SA 43 (SCA) at paras 13-14

[21] Three features of the order of 28 September 2026 are decisive. *First*, it contains no limitation of its retrospective effect. On the contrary, paragraph 2 directs that the historical areas of jurisdiction "continue" to apply. That is the language of continuity, which presupposes that those areas were never validly displaced.

[22] *Second*, the submission that only the Minister may determine areas of jurisdiction misconceives the effect of the order; the court did not determine new areas- GN 7648 itself withdrew Government Notice 408 of 29 March 2018, which had determined the areas of the Gauteng Division and its seats (paragraph 1(b) of GN 7648). That withdrawal depended for its effect on GN 7648. When GN 7648 was set aside, the withdrawal fell with it, and the Minister's own earlier determination applies again. No fresh notice is required for that determination to operate.

[23] *Third*, *Thermo Radiant* does not assist the respondents: It fixes the date at which jurisdiction is assessed; it does not prescribe the law applicable on that date. The rule protects a litigant against losing jurisdiction because of later events; it does not require a court to give effect to a notice that a competent court has since set aside without limiting the retrospective effect of its order.

[24] It follows that, as at 31 July 2026, this division of the Gauteng Division had its historical areas of jurisdiction, including its concurrent jurisdiction. The respondents do not dispute that, on that footing, the matter falls within this court's jurisdiction as Kopanong, in Ekurhuleni, and the applicants' addresses are within its historical area. This conclusion does not conflict with the order of Nel AJ. On 21 August 2026 GN 7648 had not been set aside, and the court was bound to give effect to it.[8] That order stands in its own case. My finding concerns a different application and the legal position as it has since been clarified.

[25] Even if the order of 28 September 2026 had no retrospective effect, I would reach the same conclusion on an independent ground. GN 7648 is said to have removed this seat's *concurrent* jurisdiction over the main seat's area. It did not remove this court's jurisdiction over causes connected with its own area. Section 1 of PAJA defines "court" to include a High Court within whose area the party

[8] *Oudekraal* at para 26

whose rights have been affected is domiciled or ordinarily resident, or the adverse effect of the administrative action was, is or will be experienced. The connecting factors are alternatives. The first applicant's regional office is at 54 De Korte Street, Braamfontein, and the second applicant's headquarters at 71 Ashwold Road, Saxonwold, both in Johannesburg; those averments are not contradicted, and it is there that the ruling's adverse effect on them is experienced. The National Congress whose results the IET confirmed took place in Ekurhuleni.

[26] The submission that the ruling was "taken in Pretoria" is in any event thin: the IEC's hearing was conducted on Microsoft Teams, and the respondents do not say where the tribunal members were when they deliberated or signed. I am accordingly satisfied, on both grounds, that this court had jurisdiction when the application was instituted.

RES JUDICATA

[27] The respondents contend that the question of jurisdiction was finally decided between the same parties by Nel AJ on 21 August 2026, and that prayer 6 repeats prayer 3 of the dismissed interim application. They rely on *National Sorghum Breweries Ltd (t/a Vivo African Breweries) v International Liquor Distributors (Pty) Ltd*.[9]

[28] The plea of res judicata requires a prior final judgment between the same parties, concerning the same cause of action and the same relief. Those requirements are not met. Nel AJ decided a different application, under a different case number, for different relief: an interim interdict and an interim caretaker committee pending this review. The order is expressly confined to "*the Application*" before that court. The present application is a final review of the IET ruling. An order declining jurisdiction to grant interim relief is not a judgment on the merits of the review.

[29] Insofar as the respondents' argument is really one of issue estoppel, the courts apply that doctrine flexibly and case by case, and will not apply it where to do so

[9] 2001 (2) SA 232 (SCA) at para 2

would cause unfairness.[10] Two considerations weigh decisively against its application here. First, no reasons have been given for the order of 21 August 2026, despite a timeous request. This court cannot know on which connecting factor, if any, Nel AJ's conclusion rested, or whether the PAJA domicile factor was argued. Issue estoppel cannot attach to an issue whose basis cannot be identified. Second, GN 7648, the only basis on which a want of jurisdiction could have rested, has since been set aside with retrospective effect. To shut the applicants out of any court on the strength of an unreasoned interlocutory order would be unjust.

[30] As for prayer 6, I decline it on the merits below and thus it is unnecessary to decide whether it is barred as alleged by the respondents.

[31] Accordingly, the plea of res judicata is dismissed.

URGENCY AND THE RULE 53 OBJECTION

[32] The respondents submit that a review is by its nature unsuited to the urgent roll, that Rule 53 prescribes its own timetable, and that Rule 6(5)(f) required the applicants to obtain a date from the Registrar before setting the matter down. They say the applicants, having failed to obtain interim relief, must now prosecute the review in the ordinary course.

[33] I do not agree that a review can never be heard urgently. Rule 53(7) applies Rule 6, including Rule 6(12), to the set-down of review proceedings. The respondents' own heads accept that Rule 6(12) may apply where the impact of a public body's decision requires urgent handling. Whether a review should be heard urgently is a matter for the court's discretion on the facts. There is no rule that an applicant who seeks interim relief, and fails, forfeits the right to ask that the main review be expedited. Still less does that follow where the interim application failed on a jurisdictional ground that was never explained.

[34] The purpose of Rule 53 is to ensure that the applicant, the respondent and the court have the full record of the decision under review. That purpose has been

[10] *Smith v Porritt* 2008 (6) SA 303 (SCA) para 10

achieved. The record was filed on 21 August 2026.[11] The applicants supplemented their papers and amended their notice of motion with the benefit of it.

[35] The respondents were entitled to complain about the truncation, and did so by letter. The respondents filed a comprehensive answering affidavit with annexures and a confirmatory affidavit from the IET chairperson. Both sides filed heads of argument, and the respondents were represented by senior and junior counsel. The respondents point to no fact they were unable to place before the court, and no argument they were unable to make, because of the truncated time periods.

[36] The measure of an applicant's departure from the rules must be matched to the degree of urgency. [12]Here the departure was moderate. The application was issued on 31 July 2026 for hearing on 6 October 2026, more than two months later, precisely to allow the record to be produced. That is not an abuse of the urgent roll. The Rule 6(5)(f) objection is part of the same complaint. Where a matter is properly brought under Rule 6(12), the applicant may set it down on a date of its choosing, subject to the court's control.

[37] The test for urgency is whether the applicants have set out explicitly the circumstances which render the matter urgent, and why they cannot be afforded substantial redress at a hearing in due course.[13]

[38] The IET ruled on 10 July 2026. The applicants brought the current application on 31 July 2026 and themselves selected a hearing date of 6 October 2026, more than nine weeks later. A litigant able to wait nine weeks can apply for a preferential date on the opposed role. The applicants did not explain why that course was unavailable. Instead they enrolled the matter on the urgent role and truncated the respondent time for answering under Rule 53(5)(b).

[39] I therefore find that the applicants have not established urgency justifying the truncation of the Rule 53 time periods.

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[11] *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 660E-G
[12] *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W) at 137F-138A
[13] Rule 6(12)(b); *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 at paras 6-9

[40] This finding does not, in my view, require that the matter be struck from the roll: Striking a matter for want of urgency is the usual consequence; but it is not automatic; the court contains a discretion.

[41] In applying it, I have had regard to the fact that by the time the matter was heard by me, the Rule 53 record had been filed, the applicants had supplemented their case, the respondents had answered fully with the assistance of senior and junior counsel, replying papers and heads of argument had been delivered, and the matter was argued in full. Striking it from the roll now would achieve nothing but delay and duplicated costs. The same papers would be re-enrolled, and another court would decide the same issues on the same record months later. In those circumstances, the interests of justice favour deciding the matter now, provided the applicants show a real basis for expedition. In my view they do, for the reasons that follow.

[42] The respondents argue that the only reason advanced is the two-year term of office, that the ordinary roll does not take two years, and that if the applicants succeed in due course, a fresh election will give the new office bearers a full two-year term, so the applicants suffer no prejudice.

[43] The last argument cannot be correct as the applicants' complaint is not only about the term of the successful candidates; it is that the student body of a public university is presently governed by a national executive whose election was confirmed in a procedurally unfair process, and that the applicants were denied a fair hearing of their dispute. Every month in which that state of affairs continues is a month of a two-year term that cannot be recovered. The NSRC exercises representative functions on university structures on behalf of all students now. The prejudice is therefore not merely that of the applicants' candidates; it is that of a student electorate whose representatives' mandate is in genuine doubt.

[44] Nor is it an answer that the ordinary opposed roll does not take two years. On the respondents' own approach, the review would only be enrolled after the full Rule 53 timetable and an allocation by the Registrar, followed by the delay inherent in judgment and any appeal. A remitted rehearing before the IET would then follow. By that stage a substantial part of the term would have run, and any

relief would be of diminishing practical value. Election disputes are, by their nature, matters in which delay is itself a form of denial of relief.

[45] I do not accept the respondents' contention that the matter cannot be urgent because the interim application was dismissed. Nel AJ's order rests on jurisdiction, not on a finding that the matter lacked urgency. The order says nothing about urgency, and no reasons have been given.

[46] The respondent have not suffered any prejudice. First, they sought and were granted an extension of the truncated periods afforded to it, and then delivered their affidavit 12 days after it expired. Second, they have answered every ground of review fully and have not said it that they needed still more time in order to do so.

THE MERITS

[47] The respondents contend that the election is not "*administrative action*" under section 1 of PAJA, that the dispute was referred to the IET, whose ruling is final and binding under clause 11.5 of the Electoral Policy, and that the court's function is to review the ruling, not to rehear the election dispute. I agree with the last two propositions.

[48] The parties chose, and the university's rules prescribe, a dedicated forum for election disputes. The applicants invoked it. The IET's ruling, once given, exists in fact and has legal consequences until set aside by a court.[14] The proper object of review is therefore the IET's ruling. The conduct of the election is relevant as the subject matter of that ruling, but it is not for this court, on contested affidavits, to decide afresh whether the election was free and fair. That would usurp the function the Electoral Policy gives the IET.

[49] Unisa is a public higher education institution established under the Higher Education Act 101 of 1997. The Electoral Policy and SRC Constitution are Council-approved instruments. The IET exercises a public power, under those instruments, to decide disputes about who will represent the university's students on its governance structures, and its ruling is final and binding. Its decision

[14] *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) at para 26

adversely affects the rights of the student formations that participated, and has direct external legal effect. In my view, it is administrative action under PAJA.[15] Even if it were not, the principle of legality would apply to the exercise of that public power. The respondents did not seriously contend otherwise. Their point is that the grounds pleaded do not engage PAJA, a matter I deal with below.

[50] The respondents further submit that prayer 3 seeks only a declaration of inconsistency, not an order setting the ruling aside. That is too formalistic; prayer 3 asks the court to declare the ruling "*inconsistent with section 33(1)… and therefore unlawful and invalid*". Under section 172(1)(a) of the Constitution, a court deciding a constitutional matter must declare conduct inconsistent with the Constitution invalid to the extent of its inconsistency. Section 8(1) of PAJA, and section 172(1)(b) of the Constitution, then empower the court to make any order that is just and equitable, including setting aside and remittal. The respondents knew exactly what case they had to meet: their answering affidavit and heads deal fully with the alleged procedural unfairness and with remittal as the ordinary remedy. No prejudice arises from treating prayer 3 as a challenge to the validity of the ruling, and I do so.

PROCEDURAL FAIRNESS: THE DENIAL OF A RIGHT OF REPLY

[51] This is the decisive ground. Section 3(1) of PAJA requires administrative action that materially and adversely affects rights or legitimate expectations to be procedurally fair. Section 3(2)(b) sets out the minimum content of fairness, which includes a reasonable opportunity to make representations. Section 3(3), on which the respondents rely, makes some further elements discretionary, including the opportunity "*to present and dispute information and arguments*" and to appear in person. But it does not dilute the mandatory requirement of a reasonable opportunity to make representations under section 3(2)(b).

[52] A reasonable opportunity to make representations means an opportunity to deal with the case against one. This requires knowing what material the decision-maker will rely on, at least in substance. This is the core of the *audi alteram*

[15] see *Calibre Clinical Consultants (Pty) Ltd v National Bargaining Council for the Road Freight Industry* 2010 (5) SA 457 (SCA) at paras 38-42 on the exercise of public power by bodies created under private-law instruments

partem principle. In *Administrator, Transvaal v Zenzile*[16] the court described the right to be heard as a fundamental principle of fairness. In *Joseph v City of Johannesburg,*[17] the Constitutional Court explained that procedural fairness is concerned with giving people an opportunity to participate in decisions that affect them and to influence the outcome; a party cannot influence the outcome by answering a case it has never seen.

[53] The respondents' answer rests on clause 11.4 of the Electoral Policy, which permits the IET to determine its own procedure, and on Prof Mudau's evidence that the IET heard the parties separately to keep order, that "*no request for a right of reply was made by the Applicants during the proceedings*", and that under the procedure adopted "*there was no expectation that either party would be afforded an opportunity to respond to submissions made in their absence*".

[54] I accept that the IET may determine its own procedure, and that hearing parties separately may be a sensible way to manage hostile situations. A power to determine procedure, however, is a power to determine a *fair* procedure. It must be exercised consistently with section 3 of PAJA and section 33 of the Constitution. Hearing parties separately is not in itself unfair; what makes it unfair is hearing them separately and then not disclosing to one side the substance of what the other said and produced, before deciding against it.

[55] Three matters, in my view, are conclusive. *First*, Prof Mudau's statement that no request for a right of reply was made is contradicted by the record the respondents themselves filed. On 9 July 2026 the applicants wrote to the tribunal asking whether they would "*be afforded an opportunity to respond to the IEC's submissions before the Tribunal reaches its final determination*", and expressly requesting "*confirmation that we will have a reasonable opportunity to respond to any evidence or submissions presented by the IEC*". There is no indication that the tribunal answered.

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[16] 1991 (1) SA 21 (A) at 37C-F
[17] 2010 (4) SA 55 (CC) at paras 42-47

[56] The respondents' version on this point is, to that extent, untenable on the papers and can be rejected under the *Plascon-Evans* rule. [18]Nor can the applicants be said to have waived the right: they asserted it in writing before the IEC was heard.

[57] *Second*, the procedure was not applied even-handedly. When the IEC asked for a right of reply to any new material from the complainants, recognising that "*it may not look nice if there's a ruling on the basis of something that we've never had an opportunity to answer to*", the tribunal chairperson assured it that any such material "*will also be shared with [the IEC] so that you can respond before the tribunal makes a final and binding decision*". The applicants asked for the same assurance in writing and received nothing. Prof Mudau's statement that there was "*no expectation that either party would be afforded an opportunity to respond*" is irreconcilable with the assurance the tribunal gave the IEC on the record.

[58] *Third*, the IEC's undisclosed material was not peripheral; it was central to the ruling. The IEC presented a detailed answer to each allegation and undertook to submit, after the hearing, its presentation, a six-page credentialing report and other evidence, which the tribunal asked for so that it could deliberate. The ruling, delivered the next day, relies on the IEC's version on the critical issues. On the secret ballot, it found that "*the evidence before the Tribunal indicates that the Presiding Officer warned delegates against such conduct*" (paragraph 38). The only source of that evidence is Dr Mpya's own presentation.

[59] On credentials and observers, the ruling adopts the IEC's account of seating, accreditation and the absence of objections (paragraphs 10, 32-36, and 46). The applicants had no opportunity to dispute any of it.

[60] The unfairness is underscored by the content of the IEC's presentation. On the central complaint of ballot secrecy, Dr Mpya told the tribunal that "*everyone can have their mobile phone at any time, including in the voting booth"*. In this court, he says on oath that "*no student was permitted to enter or vote in the voting booth with a cell phone*".

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[18] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C

[61] I need not, and do not, decide which version is correct. The point is that the applicants, had they seen the IEC's case, might well have exploited such matters before the tribunal. The presentation also proceeded on the basis that the margin in every contested portfolio was large enough that isolated irregularities could not have affected the result. The EISA report records margins of 46 to 44 in a 90-member electorate for both the President and Deputy President. A reply on materiality could have made a difference.

[62] The respondents submit that the applicants were themselves given until the end of 9 July to produce evidence and did not do so. That is a matter going to the weight of the applicants' case before the tribunal, not to whether the tribunal was obliged to let them meet the IEC's case. A party's failure to support its own allegations does not entitle the decision-maker to decide against it on material the party has never seen. In any event, the applicants' letter of 9 July 2026 made clear that they wished to finalise and formally submit their evidence once the tribunal had clarified the issues and procedure, which it never did.

[63] It is no answer that the result might have been the same. Where a fundamental requirement of fairness is breached, the court will not ordinarily speculate whether the outcome would have been different; the breach itself vitiates the decision, save perhaps where the result is truly a foregone conclusion. That is plainly not this case. The tribunal itself recommended that the IEC strengthen "*ballot secrecy awareness; observer management; credential record-keeping; and formal recording of objections*" (paragraph 65), the very matters in dispute.

[64] I conclude that the IET failed to afford the applicants a reasonable opportunity to make representations, as required by section 3(2)(b) of PAJA, and that its ruling is reviewable under section 6(2)(c) as procedurally unfair. It is likewise inconsistent with section 33(1) of the Constitution. The ruling must be set aside.

REASONABLE APPREHENSION OF BIAS

[65] The applicants contend that three of the four tribunal members observed the National Congress and then sat in judgment on it. The respondents answer that bias is a section 6(2)(a)(iii) ground, not section 6(2)(c); that mere presence as an observer does not give rise to a reasonable apprehension of bias under the test

in *President of the Republic of South Africa v South African Rugby Football Union*;[19] and that the applicants knew of the members' attendance and did not seek their recusal, so that they may not raise it now.[20]

[66] The mislabelling of the PAJA ground is not fatal; the facts were fully pleaded and answered. On the substance, there is force in the respondents' waiver point. A party aware of facts said to found an apprehension of bias should ordinarily raise them at the first opportunity. I also accept that attendance as an observer does not, without more, establish bias. Members who witnessed disputed events, however, may be drawn into relying on their own impressions of contested facts, impressions that the parties have no means of testing. That risk is heightened where, as here, the tribunal decided against one party without disclosing the material on which it relied.

[67] I thus conclude that the IET's ruling was procedurally unfair and must be set aside, and that the just and equitable remedy is to remit the dispute for rehearing by a newly constituted tribunal, before which the applicants will be furnished with the IEC's case and afforded the opportunity to make representations in reply. I decline to determine the validity of the election myself, and I decline the remaining relief.

[68] In the applicants' heads of argument and in parts of its papers, it refers interchangeably to the IEC and the IET. The two bodies are distinct: The IEC is the electoral management body that ran the election (clause 5.1 of the Electoral Policy for a Student Representative Council, the Electoral Policy). The IET is the body that hears election disputes (clauses 11 and 12). The Electoral Policy, as the applicants' own dispute records, does not permit the IEC to resolve formal election disputes itself. Any rehearing of the objection must therefore take place before the IET, and the order is framed accordingly.

[69] Because the ruling falls to be set aside on the ground of procedural unfairness, it is unnecessary to decide whether a reasonable apprehension of bias is

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[19] 1999 (4) SA 147 (CC) at para 48
[20] *Bernert v Absa Bank Ltd* 2011 (3) SA 92 (CC) at para 69

established. The members' attendance is, however, relevant to the remedy, to which I turn below.

THE REMAINING GROUNDS

[70] The applicants ask the court to set aside the Congress elections itself, order a re-run within 90 days, declare how vacancies may be filled, and establish an interim SRC.

[71] The applicants contend that the IET erred in law in holding that the election of fewer than nine office bearers does not invalidate the results (section 6(2)(d)); that it ignored the evidence of ballot photography (section 6(2)(e)(iii)); and, in the supplementary affidavit, that credentials were never adopted by the Congress, that the Treasurer-General portfolio was wrongly treated as uncontested, and that vacant portfolios could not lawfully be filled by deployment by email under clause 9.2.2 of the SRC Constitution.

[72] I decline to grant the relief sought for the following reasons:

[73] First, the policy designate the IET as the body that resolves election disputes, and it's ruling is final and binding. Having set aside the IET's ruling for procedural and fairness, the proper course is to return the dispute to that forum to be decided fairly. It is not for the court to decide at first instance on contested facts. The relief is final, and on the respondent papers the respondent version must prevail where facts are disputed (*Plascon Evans*).

[74] On the respondents' version, delegates were not permitted to take phones into the booths, the Congress was paused and delegates warned when a concern was raised, delegates were accredited, and no valid contested nomination for the disputed portfolio was approved. The applicant's own account of that nomination is inconsistent: Before the IET they said it concerned the Secretary - General; before this court it says the Treasurer- General. On the record before

me, I cannot find the Congress materially irregular, and should not substitute my own decision for the IET's.[21]

[75] Second, the failure to fill all nine portfolios does not provide a proper ground of review. The applicants contend that the Congress failed because fewer than five portfolios were filled. The Policy does not support this view: Paragraph 9.2 of the Policy prescribed election "*by a simple majority vote*"; that is a voting threshold, not a minimum number of portfolios. Clause 3.1.6 of the SRC Constitution provides that the withdrawal of an organisation does not prevent the Congress from being legally constituted. The applicants withdrew of their own accord.

[76] Third, there is no basis for the declarator sought concerning the vacancies. Whether paragraph 9.2.2 of the SRC Constitution permits the seats left unfilled at the Congress to be occupied by alternatives is a genuine question of interpretation. But it was not placed before the IET. The person's appointed have not been joined. The appointments are, in any event in interim, pending regularisation at the first setting of the National Student Parliament. A declarator in the abstract, affecting parties not before the court, would be inappropriate.

[77] Fourth, paragraph 14.1 of the Policy reserves to Council, in defined circumstances, the power to constitute an interim SRC. The structure the applicants propose would also displace the proportional allocation of seats. The relief would usurp the function the institution's own rules assign to the Council and not the court, and no case is made for the Court to interfere with this.

[78] Moreover, none the four elected office bearers and the alternates appointed are joined to the current proceedings. This provides a further reason not to grant the relief as they have a material interest in the relief sought in the current proceedings. The order I make does not disturb their positions; and they will be entitled to notice of the rehearing.

[79] In any event, The complaints about credentials and vacancies were, on the respondents' version, not part of the original dispute. Whether and to what extent

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[21] *Trencon Construction (Pty) Ltd v Industrial development C Iorporation of SA Limited* 2015 (5) SA 245 (CC)

the applicants may now raise them is for the tribunal to decide in the exercise of its procedural discretion, fairly applied.

[80] Nothing in this judgment should be read as a finding that the election of 24 June 2026 was or was not free and fair, or that any of the alleged irregularities occurred. Those are matters for the tribunal.

REMITTAL RATHER THAN SUBSTITUTION

[81] Under section 8(1)(c) of PAJA, having set aside administrative action, the court may remit the matter for reconsideration, with or without directions. It may substitute its own decision only in exceptional cases. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd* [22]the Constitutional Court held that remittal is the default position, and that substitution requires that the court be in as good a position as the administrator to make the decision, and that the decision be a foregone conclusion. Other relevant factors include delay, bias or incompetence on the part of the administrator. The overriding consideration is fairness to all concerned. The respondents accept that remittal is the ordinary consequence of setting aside the ruling.

[82] Prayers 2 and 5, which ask the court to set aside the election itself and to order a fresh National Congress within 90 days, would amount to substitution. They would require this court to decide the electoral dispute on the merits, as the tribunal of first instance. The conditions for that are absent. The facts about what happened at Kopanong are seriously disputed on the papers, namely whether phones were permitted in the booths, whether objections were raised, when and why the applicants left, whether Mr Nkuna was nominated, and whether credentials were properly verified. These disputes cannot be resolved on affidavit in motion proceedings, least of all in favour of the applicants (*Plascon-Evans*, above).

[83] Nor is the outcome a foregone conclusion. The Electoral Policy entrusts these questions to a specialised tribunal familiar with the university's student governance. Its ruling is final and binding precisely so that it can resolve such

[22] 2015 (5) SA 245 (CC) at paras 42-47

disputes quickly. The right course is to restore the applicants to the position they should have been in, had they had a fair hearing before that tribunal.

[84] I note that the amended notice of motion does not contain a prayer for further or alternative relief. But, the order I intend to make is narrower than and contained within prayer three of the amended notice which seeks a declaration that the IET's ruling is unlawful and invalid. The respondent answered the complaint in full and are not prejudiced.

[85] Courts have long recognised that remittal to a differently constituted body is appropriate where the original decision-maker has shown bias, or where there are grounds to fear that it will not bring an open mind to the matter.[23]

[86] I am of the view that a newly constituted tribunal is required, for three reasons: First, the four members who decided the dispute have already expressed a firm and reasoned conclusion on every issue; they would be asked to reconsider it in light of a reply they declined to receive. However conscientious they may be, a reasonable student body would doubt that the reconsideration was genuinely open.

[87] Second, the chairperson has deposed in these proceedings to a version about the applicants' request for a right of reply that the record contradicts. He has thus become a partisan witness on a matter connected to the dispute.

[88] Third, three of the four members observed the National Congress. Even if their attendance would not on its own have required recusal, their position as witnesses to contested events makes them unsuitable to rehear a dispute in which those events must now be fully contested. Fairness to all concerned, including the fifth to seventh respondents whose positions depend on the outcome, is best served by a panel whose impartiality is beyond reproach.

[89] The Electoral Policy, as I understand it, leaves the composition of the IET to the university. The order will direct Unisa to constitute the tribunal afresh from persons who did not sit in the original hearing or attend the National Congress,

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[23] *Livestock and Meat Industries Control Board v Garda* 1961 (1) SA 342 (A) at 349G-H; *Trencon* at para 47

and who are otherwise free of any association with the IEC or any of the participating bodies.

DIRECTIONS FOR THE REHEARING

[90] The purpose of the remittal is to cure the unfairness found, not to prescribe how the tribunal must decide. The directions are therefore confined to securing a fair exchange of each side's case and a prompt decision. In particular:

a. The IEC must furnish the applicants with its full case as presented to the IET: the presentation, the credentialing report, and every document and item of evidence submitted to the IET after the hearing of 9 July 2026.

b. The applicants must be afforded the opportunity to make written representations in reply and to submit evidence, including the material now attached to their papers in this court. The IEC must then be afforded an opportunity to respond to any new material.

c. The same must apply to the appointed four office bearers and the remaining five office beares who were nominated to fill the alleged vacancies.

d. MKSM (the seventh respondent) was a co-complainant before the IET and is entitled to participate on the same footing. The EFFYC (the fifth respondent) and ULSA (the sixth respondent), whose office bearers' positions are at stake, must be notified and allowed to make representations.

e. Whether to hear oral argument, and whether to hear the parties together or separately, remains for the tribunal to decide. Whatever procedure it adopts must ensure that each party knows, in substance, the case and material of every other party, including the office bearers and the fifth to before the tribunal decides.

f. The tribunal should determine the dispute expeditiously. I have set periods that, in my view, allow a fair process without allowing the matter to drift.

[91] The results declared on 24 June 2026, and the NSRC constituted under them, remain enforce pending the fresh ruling. The order I intend to make is to set aside the IET's decision, not the election.

[92] The rehearing is confined to the dispute lodged on 26th June 2026. Whether further complaints, such as the filling of vacancies, may be entertained is for the reconstituted tribunal to decide under the Policy.

THE POSITION PENDING THE REHEARING

[93] Setting aside the ruling does not, by itself, invalidate the results declared on 24 June 2026; those results were declared by the IEC, and their validity is the very question that the tribunal must decide afresh. To leave the student body without any national executive in the interim would be disruptive and contrary to the interests of the students at large. The just and equitable course is that the office bearers declared elected continue to hold office pending the determination of the rehearing, without prejudice to the outcome. That order also answers prayer 6, to which I now turn.

THE INTERIM SRC AND THE DECLARATOR SOUGHT

[94] Prayer 6 asks the court to direct Unisa to establish an interim SRC with one member from each participating formation. I decline it. Chapter 12 of the SRC Constitution reserves the power to constitute an interim SRC to the University Council, acting through its Management Committee, on conditions the Council determines. The court will not lightly take over a power the university's own instruments confer on Council, still less design the body's composition itself. Prayer 6 is also expressly premised on a re-run of the National Congress, which I have declined to order. Given the order in paragraph [93], there is no leadership vacuum to fill.

[95] Prayer 4 seeks a declarator that vacancies may only be filled after candidates are elected by the National Congress. A declarator under section 21(1)(c) of the Superior Courts Act 10 of 2013 is discretionary. I decline to exercise the discretion in the applicants' favour now. The question is intertwined with the issues that the newly constituted tribunal must decide.

[96] The interpretive question was not before the IET at all on the respondents' version. The party whose email deployment is impugned, MKSM, has not been heard on it. A declarator in these circumstances would pre-empt the tribunal and could be granted without the benefit of all affected parties' views. The applicants are free to raise the issue before the tribunal, and before a court thereafter if necessary.

COSTS

[97] The applicants have succeeded on the central issue in the case, the procedural unfairness of the IET's ruling, and on every preliminary point the respondents raised: jurisdiction, res judicata, irregularity and urgency. Those points took up a substantial part of the papers and argument. But the applicants failed on most of the substantive relief they sought, and on the relief they pressed hardest: the setting aside of the election, a rerun within 90 days, an interim SRC and the declarator on vacancies (prayers 2, 4, 5 and 6). Much of the applicant's supplementary and replying affidavits, and of their heads, was devoted to the substantive relief.

[98] Costs are in the court's discretion, and the order should reflect the divided outcome. In my view the fair order is that each party bear their own costs.

[99] The respondents' request for punitive costs is not granted as there is no basis for it. The matter before me was plainly not simply a rehash of the interim application.

[100] Indeed, applicants accuse the respondents of misleading the court by presenting this application as a rehash of the interim application. The two applications were patently distinct. I am not persuaded that the respondents set out to mislead. They placed the interim notice of motion and Nel AJ's order before the court, which allowed the true position to be seen.

[101] I thus make no adverse finding against either side on this score.

[102] The applicants' request that costs "*include travelling expenses*" is now academic. In any event, reasonable disbursements are recoverable on taxation in the ordinary way.

ORDER

[103] In the result, I make the following order:

1. The application is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the applicants' non-compliance with the forms, time periods and service provided for in the Rules is condoned.

2. The first to fourth respondents' points in limine of lack of jurisdiction, res judicata and irregular proceedings are dismissed.

3. The ruling of the Independent Election Tribunal of Unisa (the second respondent) dated 10 July 2026 under case number IET-ANCYL/SASCO/MKSM-IEC/2026 is declared inconsistent with section 33(1) of the Constitution of the Republic of South Africa, 1996, and with section 3 of the Promotion of Administrative Justice Act 3 of 2000, and is reviewed and set aside.

4. The electoral dispute lodged by the applicants and the seventh respondent on 26 June 2026 is remitted to the second respondent for rehearing and determination afresh by a newly constituted tribunal, on the following terms:

    4.1 Within 10 (ten) days of this order, the third respondent shall constitute the tribunal for the purposes of the rehearing from persons who (a) did not sit in the hearing of 9 July 2026 or sign the ruling of 10 July 2026, (b) did not attend the National Congress of 24 June 2026 in any capacity, and (c) are not members or office bearers of the first respondent or of any student organisation that participated in that National Congress. The third respondent shall notify all parties in writing of the tribunal's composition.

4.2 Within 5 (five) days of the tribunal being constituted, the first respondent shall deliver to the applicants and to the fifth, sixth and seventh respondents copies of its written or electronic presentation to the second respondent of 9 July 2026, its credentialing report, and every other document, report, recording or item of evidence it submitted to the second respondent in connection with the dispute.

4.3 Within 10 (ten) days of receipt of the documents referred to in paragraph 4.2, the applicants (and the seventh respondent, should it elect to participate) may deliver to the tribunal and all other parties written representations in reply, together with any further evidence on which they rely, including the photographs and confirmatory affidavits annexed to their papers in this application.

4.4 Within 5 (five) days of receipt of the representations referred to in paragraph 4.3, the first respondent, and the fifth and sixth respondents should they elect to participate, may deliver written representations in response to any new material.

4.5 The second respondent shall give written notice of the re-hearing to the fifth to seventh respondents and to every person elected or appointed to the NSRC since 24 June 2026, each of who is entitled to make representations.

4.6 The tribunal may determine its own further procedure, including whether to hear oral representations and whether to hear the parties together or separately. It shall ensure that each party is informed of the substance of all submissions and evidence placed before it by any other party, and is afforded a reasonable opportunity to respond, before it makes its determination.

4.7 Each party to the dispute shall be informed of, and afforded an opportunity to answer, any material on which the tribunal proposes to rely.

4.8 The tribunal shall deliver a written, reasoned ruling within 15 (fifteen) days of the last date on which representations may be delivered under paragraph 4.4, or within such further period as the parties may agree in writing.

4.9 The periods in this paragraph are court days. They may be extended by written agreement of the parties or, failing agreement, by order of this court on application.

5. Pending the determination of the rehearing in terms of paragraph 4, the persons declared elected as office bearers of the National Student Representative Council on 24 June 2026 shall continue to hold office. This paragraph shall not be construed as a determination of the validity of the election or of any appointment made after it.

6. Prayers 2, 4, 5 and 6 of the amended notice of motion are dismissed.

7. Each party shall bear their own costs.

[redacted]

WENTZEL-THOMPSON J
Judge of the High Court
Gauteng Local Division, Johannesburg

Appearances:

For the applicants:	Mr J C Sambo (attorney with right of appearance), instructed by J.C Sambo Attorneys Inc, c/o Ramalivha Attorneys
For the first to fourth respondents:	Adv F J Nalane SC with Adv V Sihawu, instructed by Motalane Inc, c/o Thubakgale Attorneys Inc
For the fifth to seventh respondents:	No appearance