



# IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 1605/94

In the matter between:

THULANI RUDOLF MASEKO	1st Applicant
BONGANI MARTIN MASUKU	2nd Applicant
VINCENT DLAMINI	3rd Applicant
BONGANKOSI NTSHANGASE	4th Applicant
MUSA DLAMINI	5th Applicant
VELAPHI DLAMINI	6th Applicant
LINUS MAVIMBELA	7th Applicant

and

THE UNIVERSITY OF SWAZILAND	1st Respondent
THE VICE-CHANCELLOR OF THE UNIVERSITY OF SWAZILAND	2nd Respondent

CORAM:	Hull, C.J.
FOR APPLICANTS	Mr. L. Mamba
FOR RESPONDENTS	Mr. J. Vilakati

Judgment  
(14/10/94)

This matter turns on the construction of Article 4.2 of the constitution of the Students' Representative Council of the University of Swaziland.

The article has to do with the annual election of students to the Students' Representative Council. The second paragraph of the article is worded in the following way:

"4.2. Any full time student, except final year students, residing on each Campus shall be eligible to be elected to the SRC."

The issue, simply, is what the expression "final year students" means.

Although the following facts are not in every respect set out in the affidavits filed in this matter, they are not in dispute.

Elections to the Students' Representative Council are, under Article 4.1, to be held every year in the last week of March. The academic year for the University commences every August and ends in the following May. The seven applicants were in March of this year full time students, each in his third academic year of study for a degree that in the ordinary course takes four years to complete. In April, they were declared to have been elected to the Students' Representative Council in the elections that fell to be held in March 1994. Thus, at the time of the elections, none was in his final year of study.

The University has nevertheless declined to recognise the applicants as duly elected members of the Students' Representative Council. It contends that, at the time of the elections, they were "final year students" within the meaning of Article 4.2. and, accordingly, were not eligible to be elected.

The applicants take a different view. They maintain that they were not final year students at the time of their election. They seek therefore a declaration that they have been elected lawfully as members of the Students' Representative Council and an order that the University and its officers recognise them as such.

At the hearing of this application, all parties proceeded on an assumption that the constitution of the Students' Representative Council has been duly promulgated. In other words, there has been no issue, here, as to the validity of the constitution. Section 24 of the University of Swaziland Act, 1983 (Act No. 2 of 1983) provides that there shall be a Students' Representative Council which shall be constituted in accordance with the Statutes of the University. I

proceed on the basis that this has been duly done. Under section 15 of the Act, power has been delegated to the Council of the University to make Statutes. The constitution is accordingly a measure of delegated legislation and is therefore to be construed in accordance with the rules of statutory interpretation.

It is argued for the University that the constitution provides that elections shall be held annually, in March: see Article 4.1. By reason of Article 5.1, elected members are to hold office until the next annual elections, i.e. for one year, the greater part of which (from August until March) falls within the academic year commencing next after the elections - and by way of contrast, only two months of which fall within the academic year in which the elections take place. Moreover, Article 5.3(2) provides that a member of the Students' Representative Council shall cease to hold office if and when he ceases to be a student.

As I understand its case, it is essentially for this combination of reasons (but subject to one argument to which I shall come shortly) that the University contends that in the context of the constitution, the expression "final year student" in Article 4.2 refers to a student who will commence his final year in the academic year commencing next after the elections.

Counsel for the University also made submissions as to the generality of the words of the article but, with respect, I do not think that there is anything relevant in this aspect of his argument.

In the interpretation of a statute, it is the duty of a court of law to give effect to the intention of the body by whom the legislation is made. No question of the validity of this piece of subordinate or delegated legislation arises here. If the words in issue are themselves precise and unambiguous - i.e., clear and explicit - then they are to be given their ordinary and natural meaning: See Warburton v. Loveland (1832) 2 D and Cl 480.

Taken by itself, Article 4.2 is in my view clear and unambiguous. It says simply that any full-time student, "except final year students", residing on each Campus shall be eligible to be elected to the Students' Representative Council. The expression "full-time student" and "final year student" are not specially defined for the purposes of the constitution. They are therefore to be given their ordinary meaning.

Article 4.2 does not qualify the meaning of "final year student" in any way. In particular, it does not say expressly that the reference is one to students who begin their final year in the next ensuing academic year.

No other provision in the constitution qualifies Article 4.2 explicitly in that way. To sustain its argument, the University has sought to rely on the inferences that, it says, are to be drawn from Articles 4.1 and 5.3 - or, to give it the benefit of a broader possibility - from inferences to be drawn from the other provisions of the constitution generally.

There is, however, no proper reason for looking beyond Article 4.2 itself. The Article is concerned specifically with the conduct of elections, in contradistinction to Article 3 ("COMPOSITION") and Article 5 ("TERM OF OFFICE"). The meaning contended for by the applicants does not give rise to any absurdity or repugnance, or inconsistency with the rest of the constitution. At the time of their election, the applicants were not final year students. Although the point was not addressed by either counsel, it appears to me that it is in principle not apposite to characterise them by reference to the number of years for which they have been students, as was done in argument. In principle, the test is whether or not, in the year which on its correct interpretation Article 4.2 contemplates, a student is a final year student. One cannot characterise a student definitively as a final year student, or so it seems to me, until he has completed successfully all necessary preceding academic years of study.

A student who, having been elected to the Students' Representative Council, in fact embarks upon his final year of study in the next

ensuing academic year, will not be disqualified by reason of Article 5.3(2) itself from continuing to hold office for the full term for which he has been elected. On the contrary, he will still be a student at the University in March of that next ensuing academic year, when the time again comes round for elections. He will still be a student until May, in that next ensuing academic year.

In contrast, the meaning for which the applicants contend has an obvious practical point: a student who is in his final year of study in the year in which he is elected to office will, by reason of Article 5.3(2), have to give up his office after two months - i.e. at the end of the academic year in which he is elected - thereby causing a vacancy on the Council.

There is one other article in the constitution which refers to final year students, namely Article 10. This provides for the composition and duties of an Internal Audit Board. It is to consist of three members, one of whom must be a "final year accounting student". This article does not however, in my view, give rise to any inference that the expression "final year students" in Article 4.2 has the meaning contended for by the University. The election of members of this board is a separate matter from those of members of the Students' Representative Council. Moreover, members of the board are elected at the first Statutory Domestic Meeting of the Student Body itself. Under Article 8.3, that must be held within fourteen days of the beginning of the academic year. Thus the final year accounting student so elected will serve in effect throughout his final year of study. I do not consider that anything at all turns on the fact that he may continue to hold office for a time after he completes his studies (i.e., in effect, throughout the long vacation at the end of the academic year and until the first Statutory Domestic Meeting in the following academic year is held.) In contrast to Article 5.3(2), nothing in Article 10 expressly requires a member of the board to vacate office on ceasing to be a student.

If anything, Article 10 to my mind tends to confirm the applicants' view of the meaning of "final year students" in Article 4.2. It is at least easy to see a rationale or scheme in the way in which the two provisions are expressed: A person who is a final year student in the

academic year in which elections to the Students' Representative Council are held is not eligible to stand as a candidate, because the election is, effectively or substantially, one of office - holders for the forthcoming academic year and he will no longer be a student then. In contrast, the final year accounting student is being elected to the internal audit board effectively or substantially for service throughout the final year of his student days.

The University has sought to assert that the reason for the exclusion of final year students (according to the meaning it seeks to ascribe to that expression) is to ensure the accountability of student office - holders for the funds of the Students' Representative Council. In that regard, it has also sought to rely on recommendations made by a commission of enquiry into Students' Representative Council finances in the 1989/1990 academic year, along those lines. It is common ground, however, that the Commission's recommendations were made after the enactment of the constitution.

Such recommendations cannot derogate from an objective interpretation of the constitution. It is not been demonstrated, either, that the exclusion of final year students was intended to avoid the "mischief" of unaccountable students having control of funds. The fact is that, on the applicants' interpretation, the office-holders will continue to be students for two months after they vacate their offices. In any case, the fact that they may leave the University does not in principle mean that they are no longer accountable for the misuse of funds.

Although legislative policy is of course the business of legislators and not of the courts, I think that it is also relevant to observe, in considering whether the ordinary meaning of Article 4.2 would lead to an absurd result, that in the way of things final year students can be expected ordinarily to be the most senior and mature members of the student body. That itself, it also seems to me, may be seen as a sensible reason why they are not disenfranchised from participation in the management of the affairs of the Student Body.

For these reasons, this application must in my judgment succeed. I do not consider, however, that it is necessary for the High Court of

7/...

Swaziland to issue any direction (assuming that I have jurisdiction to do so) to the University's authorities. In the case of a body of the standing of the University of Swaziland, I have no doubt that it is sufficient simply to confirm the declaratory order sought in paragraph (b)(i) of the original notice of application, and an order for costs against the University itself, the Vice-Chancellor having been cited as a formal respondent only.

The rule nisi issued by my brother Twala J. on 16th September 1994 is therefore confirmed to that extent, the result being that this Court declares the applicants to have been lawfully elected members of the Students' Representative Council of the University of Swaziland on 14th April 1994 and that the University is to pay the applicants' costs on this application.

A handwritten signature in dark ink, appearing to read 'D. Hull', with a stylized flourish at the end.

DAVID HULL  
CHIEF JUSTICE