

SOUTH AFRICA / JUDGMENT

Baloyi and Others v Tshifhesi and Others (J1000/2023) [2025] ZALCJHB 214 (4 June 2025)

[2025] ZALCJHB 214

COURT

Labour Court Johannesburg

BEFORE

Daniels

CASE / FILE NUMBER

J1000/2023

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE

case

No: J1000/2023

In

the matter between:

RECKSON
BALOYI
First Applicant
JACKSON
TISO
Second Applicant
JIMMY
RAMAANO
Third Applicant
MEMBERS
OF THE NEC
Fourth to Tenth Applicants
PROGRESSIVE
ALLIED AND TRAVEL UNION
Eleventh Applicant
and
LIVHUWANI
TSHIFHESI
First Respondent
SIMON
NKOMO Second

Respondent
THEMBANI
WALUWALU
Third Respondent
MILDRED
MOLELE
Fourth Respondent
REGISTRAR,
DEPT OF EMPLOYMENT AND LABOUR Fifth
Respondent

Heard: 16
April 2025

Delivered: 4 June 2025

Summary: Application to declare the applicants as the office bearers
of the union, and declare the National Congress held to be lawful.
Application
dismissed.

JUDGMENT

DANIELS J

Introduction

- [1] The applicants bring this application seeking final relief. They seek an order confirming that their election, or appointment, as the national office bearers was lawful, and that the National Congress held from 28 to 30 October 2022 was lawful. The application is opposed by the second to fourth respondents.
- [2] The Union has been stricken by internal conflict since at least the middle of 2021, when the first respondent, the President, sought to dismiss the General Secretary and the Vice General Secretary, the first and second applicants. The General Secretary ignored the President's efforts to dismiss him and instead began convening meetings with members of the National Executive Council (hereafter "the NEC") who supported him - to the exclusion of the President, the Vice President, and their supporters. Effectively, this created two leadership structures within the Union.
- [3] For several years, these two factions have operated side by side, both purporting to represent the leadership of the Union. This lamentable situation cannot be permitted to continue and requires a robust approach from this court.

Material

facts

- [4] On 3 August 2021, the President wrote a letter to the Registrar of Labour Relations advising him, among other things, that the General Secretary faced allegations of serious misconduct, including the alleged rape of a staff member.
- [5] On 6 September, the President wrote a letter to the General Secretary informing him that, because there were serious allegations against him, he was required to provide reasons why he should not be suspended. This included an allegation that the General Secretary had raped a staff member and a further allegation that he had agreed to a R10, 00 deduction from the Union's members funds, without a proper mandate to do so. The President believed that these funds were being used, illicitly, to benefit the General Secretary.
- [6] A disciplinary hearing was held for the General Secretary on 15 September, chaired by a CCMA Commissioner, Mr Siphon Dlamini. The General Secretary did not attend the hearing and, on 6 October, he was found guilty of the charges against him. The chairperson recommended to the NEC that he be dismissed.
- [7] In the ruling, the chairperson advised the General Secretary that he was entitled to appeal to the President, or refer a dispute to the Commission for Conciliation, Mediation and Arbitration (the "CCMA"). The General Secretary did not appeal to the President, nor did he refer any dispute to the CCMA.[1]
- [8] On 8 October, the President informed the General Secretary that he had been dismissed by the Union. Interestingly, the President did not, in the letter, indicate that the NEC approved the chairperson's recommendation that he be dismissed. Thereafter, so it appears, the General Secretary did not make any referral to the CCMA.
- [9] During October 2021, the second applicant, the Vice General Secretary, engaged the first respondent, the President, on a suitable date to hold the next NEC meeting.
- [10] The Vice General Secretary proposed to meet on 13 November. The President rejected this and replied that the meeting should be held on 27 November.
- [11] During their engagement, the President reminded the Vice General Secretary that clause 9.7.2 of the constitution states that the "GS will consult with the President to decide on a dates and agenda for the meetings [of the NEC]". The President also referred to clause 9.8.3 which states "The President must decide on a time and place [for NEC meetings] provided that the meeting must be held between ten (10) and fifteen (15) days thereafter".[2]
- [12] The General Secretary and the Vice General Secretary are officials[3] who also serve in the Union's constitutional structures. They are appointed by the second highest constitutional structure of the Union, the NEC,[4] which structure is chaired by the President.[5]

[13] As the so-called “chief executive officer” of the Union,[6] the President is the highest office bearer of the Union. The President is the head of the NEC.[7]

[14] The constitution gives the General Secretary no express powers to determine dates for NEC meetings. The General Secretary must issue

notices of NEC meetings,[8] and he must consult with the President on the dates for meetings. The President, by contrast, has powers to determine the dates of NEC meetings, and dates for meetings of the Central Executive Committee (at least those meetings which had to be adjourned because of a lack of quorum).[9]

[15] As the chief executive officer of the Union, and the individual who chairs the NEC meetings, one might expect that the President must agree to the dates for such meetings.

[16] Indeed, the President assumed that his agreement was required, and informed the Vice General Secretary that the NEC meeting proposed for 13 November would not continue, and the meeting would instead be held on 27 November. The Vice General Secretary did not inform the President that the meeting would proceed despite his wishes. In the circumstances, it cannot be contended that the President was given notice of the meeting. [10] There is no indication that the Vice President was given notice either.

[17] Despite this, a NEC meeting was held on 13 November. The President and the Vice President were both absent. The constitution required the President to chair all meetings of the NEC, and in his absence such meetings must be chaired by the Vice President.[11] The meeting was chaired by an additional NEC member nominated by the meeting. The meeting was attended by General Secretary, whom the President had informed of his dismissal on 8 October.

[18] At the meeting, on 13 November, judging from the minutes at least,[12] the participants resolved to suspend the President and Vice President, pending an investigation.

[19] In the days which followed the meeting of 13 November, the President and Vice President issued notices of suspension to several additional members of the NEC including Mr Jackson Tiso (the Vice General Secretary) and several additional members of the NEC; namely Mr Simon Sekhoacha, Mr Themba Mbhele, Mr Elvis Zitha, Mr Sello Thulatshipi, Ms Cherrols George, and Mr Vusumuzi Mpondo.

[20] Mr Tiso, the Vice General Secretary, was summoned to a disciplinary hearing on 18 February 2022, which led to his dismissal on 8 March

2022. It does not appear that the NEC approved the outcome.

[21] Despite the decision to suspend the President, it appears that he was not charged in accordance with clause 10.5.1 of the constitution. Nor, it appears, was any disciplinary hearing held in terms of clause 10.5.1.5 of the constitution.

[22] The constitution is silent on how the dates for the National Congress are determined, however clause 9.6.2.13 of the constitution states that the NEC shall decide all matters of procedure on which the constitution is silent.

[23] The applicants, state that during April 2022 the NEC decided to hold a National Congress. No resolution or minutes of the NEC are attached to that effect.

[24] During April 2022, the Registrar of Labour Relations gave notice to the Union of its intention to deregister it because of the leadership

impasse. Apparently[13] the first to fourth respondents approached this court and sought an interdict in two parts. The first part sought an order preventing the Registrar from deregistering the Union and the second part sought an order preventing the first and second applicants from discharging their duties. This court, apparently, granted the first part and required the respondents to enrol the second part but they have not done so.

[25] The first to fourth respondents also approached the High Court seeking to interdict the National Congress. That application was struck from the roll for lack of urgency.

[26] The NEC, at least the faction led by the General Secretary, convened a meeting of the NEC on 19 August 2022[14] in which it was decided that the National Congress would be convened on 28 – 30 October 2022.

[27] The National Congress proceeded from 28 – 30 October 2022. It appears that the President and the Vice President did not attend

despite the fact that they were entitled to do so (assuming that they were not lawfully suspended, or dismissed).[15] It is unclear if they were invited to attend, or prevented from attending.

[28] The first to fourth respondents, in their answering affidavit, claim that the National Congress was not lawfully convened. Among other things, they contend that:

28.1 The Congress agenda was not circulated to the regions as required by clause 8.3.5.[16] This allegation is confirmed under oath by the chairperson and secretary of the Cape Town region. In reply[17] the applicants state that all regions were informed of the dates for the Congress. However, in relation to the allegation that the agenda was not circulated, the applicants provide only a bald denial. The applicants state that the Union has six established regions but they concede that three regions, though not formally established, were permitted to attend and participate in the National Congress.

28.2 The respondents allege that the National Congress is entitled to request, from the regions, reasonable proof of the size of the membership upon which the delegation is based. They suggest, but do not expressly state, that the request was made and not complied with. In the circumstances, this required no response from the applicants. In any event, the applicants have provided a satisfactory response - that the National Congress did not require such proof.

28.3 The respondents allege^[18] that the nomination and election of the third applicant and Mr Simon Sekhoacha was irregular because they should have been nominated by the respective region and there should have been a branch resolution proposing their nomination. In reply,^[19] the applicants state that these individuals were nominated by their respective regions but they do not specifically deal with the

allegation that a branch resolution was required but not provided.

28.4 The respondents allege that the election of the first applicant as General Secretary, at the National Congress, was irregular, because he must be appointed by the NEC, and not elected. The applicants replied that the first applicant was not, in fact, elected at the National Congress.

28.5 The respondents allege that three individuals^[20] were elected to the NEC, at the National Congress, despite the fact that they did not qualify to be elected, because they had not been in any Regional Executive Committee for at least two years.^[21] In reply, the applicants concede that these individuals were elected to the NEC and they did not meet the requirements. It is therefore common cause that these three individuals were elected to the NEC in contravention of the constitution.

28.6 The respondents allege that only one of the individuals who were elected as additional members of the NEC came from a region with at least 500 members, as required by the constitution. The applicants deny this, but concedes that three individuals^[22] came from regions which did not have at least 500 members. It is therefore common cause that these individuals were elected in breach of the constitutional requirements.

^[29] The faction headed by the President resolved to hold a separate National Congress in February 2023. It is unclear whether this National Congress was held or not.

Legal principles

Importance of the constitution

^[30] The Union, the fifth applicant, is a voluntary association, but it is also a body with legal personality. The constitution sets out the Union's powers, as well as the powers of each of its structures and office bearers. It is trite that where a trade union performs any act that deviates from, or is contrary to, its constitution, that act is ultra vires (beyond its powers) and null and void.^[23]

Disputes of fact

^[31] It is trite that, in applications for final relief, the court will grant such relief only where the facts alleged, and admitted, by the respondent justify the order.^[24]

[32] Where material disputes of fact arise in motion proceedings, and final relief is sought, our courts have consistently applied the principles in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[25] (hereafter the “Plascon-Evans rule”) as clarified in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*[26] where Heher JA held:

“[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the

latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984

- (3) SA 623 (A) at 634E - 635C. See also the analysis by Davis J in *Ripoll-Dausa v Middleton NO and Others* 2005
- (3) SA 141 (C) at 151A - 153C* with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities

may be appropriate.)

[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances

be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering

affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.”

(own emphasis)

Interpretation of the constitution

- [33] As previously mentioned, a trade union constitution is a contract between the members of the union setting out the terms on which they agree to associate. The interpretation of the terms of a union constitution is therefore an exercise of contractual interpretation.[27]
- [34] Whenever legal documents, including contracts, are to be interpreted, courts are required to adopt the interpretative triad of language, context and purpose. This was explained by Wallis JA in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[28] as follows:

“[18] The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.” (own emphasis)

Analysis

- [35] First, the application must fail for the simple reason that the applicant fails to make the allegation in its founding papers that it has complied with all the requirements, per the constitution, for the holding of the National Congress. It also fails to address each and every requirement individually. It is trite that the applicant must make out its case in its founding papers.[29]
- [36] The purpose of the Union, and the constitution, is comprehensively set out in clause 3, the “Aims and Objectives”. This includes the provision of liaison between members and the NEC, the settling of disputes affecting members as individuals or as an organised group, the promotion of consensus to ensure the implementation of the objectives and policies of the Union, the

protection of the common interests and rights of the members in general. It is against this background that the contentious clauses

in the constitution must be considered.

[37] It is plain that the language, syntax and grammar used in the constitution are not the model of clarity. To reveal the meaning, the text must be given its ordinary grammatical meaning unless this would lead to an absurdity.[30] The more precise provision must be given preference to a general or widely expressed provision.[31] The sensible must trump the absurd.[32] The purpose of the provision, understood in context,[33] must prevail. Taking note of these factors, and using the interpretative triad of language, context, and purpose, I arrive at the following conclusions:

37.1 First, I find that the 13 November meeting was unlawful, and its resolutions invalid. The meeting failed to meet the requirements of the constitution on many different levels. Firstly, notice was not given to the President (and most likely not given to the Vice President either). Secondly, the meeting proceeded on a date not agreed to by the President. Given that the constitution is unclear as to how dates for the NEC are determined in the event of disagreement, it is necessary to adopt a purposive and contextual approach to interpretation of the constitution. In my view, in the event of disagreements it is the President who must decide on the dates for such meetings. The President must, after all, chair such meetings and he is the chief executive officer. He is, as is apparent from the constitution as a whole, senior to the General Secretary. Furthermore, the only provision in the constitution which expressly provides for the selection of dates for the NEC (albeit in the context of adjourned meetings) gives such power to the President. This interpretation is in keeping with the purpose of the constitution, to make the President the overall guardian of the constitution and its structures.

37.2 Second, I find that only minutes confirmed by subsequent meetings of the NEC, and signed by the President, may be considered formal minutes. This interpretation accords with the principle that the President is the overall guardian of the constitution, and its structures.

37.1 Third, I find that the National Congress held between 28 and 30 October 2022 was unlawful and its resolutions are invalid. The dates for the Congress was determined by the NEC faction headed by the General Secretary, to the exclusion of the President. More importantly, the applicant provided only a bare denial of the allegation that the agenda for the National Congress was not circulated in accordance with the constitution. It is trite that a bare denial will not suffice to give rise to a dispute of fact where the facts averred fall within the knowledge of the denying party and no basis is laid for disputing the veracity of the averment. This factual dispute must therefore be determined on the respondents' version. It is, in any event, common cause that at least six of the individuals elected to the NEC were elected in violation of the constitution. It is also common cause that the eleventh applicant permitted several regions to participate at the Congress though they were not formally constituted, or recognised, as regions.

[38] This court has not been asked to determine whether the dismissal of the first and second applicants, during 2021 and 2022, was lawful. I therefore render no finding in that regard.

[34] This court has also not been asked to determine if the dismissal of the first and second respondents was lawful[35] and I render no finding in that regard either.

[39] The applicants pleaded for the court to assist it to resolve the leadership impasse. The applicants submitted that the court may even order the parties to hold another Congress. Unfortunately, this lies beyond the powers of the court. It is not the function of this court to provide advice to the parties. That said, it seems obvious to me that the constitution cries out for a professional audit to consider all the gaps and inconsistencies in its provisions. Furthermore, the parties might consider appointing a seasoned mediator to assist them to find each other.

Conclusion

[40] For the reasons set out above, application is dismissed. There is no order as to costs.

Reynaud Daniels

Judge of the Labour Court of South Africa

Appearances

For the Applicants:

Adv Fundile Sangoni

Malcolm Lyons & Brevik Inc

For the Respondents:

Adv T Snyders, Adv Chares Baloyi, Adv Maponya

Mangadi Masego Attorneys

[1] Answering Affidavit, para 3.11, p. 82

[2] This clause relates to meetings adjourned because there was no quorum.

[3] See clause 9.5 of the constitution

[4] See clause 9.3.4 of the constitution

[5] See clauses 9.7.3, 10.1.1 and 10.1.3 of the constitution

[6] See clause 10.1.2 of the constitution

[7] See clause 9.1 of the constitution

[8] See clause 13.2.1 of the constitution

[9] See clauses 9.8.3 and 12.9.3 of the constitution

- [10] Clause 9.7.5 of the constitution states that no meeting of the NEC will be invalidated only because a member of the NEC did not receive notice of the meeting. However, this does not mean that notice of the meeting must not be given. Clause 9.7.4 states that the General Secretary must notify the NEC members of the meeting not less than two weeks before the meeting.
- [11] See clause 10.2.1 of the constitution
- [12] Note however that the minutes were not signed by the President (or the Vice President) as required by clause 10.1.1 read with clause 10.2.1 of the constitution.
- [13] The court was not provided with the court papers, the court order, or the case number.
- [14] Annexure RA1, letter from General Secretary to the Regions dated 26 August 2022, p 284
- [15] See clause 8.3.3 of the constitution
- [16] Answering Affidavit para 4.9.2, p 89
- [17] Replying Affidavit paras 54 – 60 pp 275 – 277
- [18] Answering Affidavit para 4.14 p 91
- [19] Replying Affidavit para 61 – 63, p 277
- [20] Namely Mr James Nhlapo (Free State), Ms Doris Manganyi (Johannesburg), and Mr Muzi Majola
- [21] See clause 8.3.8 of the constitution
- [22] Namely Ms. Cherrols George, Mr James Nhlapo and Mr Themba Mbele.
- [23] See AFGRI Animal Feeds v NUMSA and others 2024 (5) SA 576 (CC) at para 45
- [24] Stellenbosch Farmers Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235 where the court held: “It seems to me that where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order. I cannot agree with the learned Judge's view that he was confined to such facts as were substantially common cause. I shall accordingly only consider the facts alleged or admitted by the respondent. Where it is clear that facts, though not formally admitted cannot be denied, they must be regarded as admitted.”
- [25] 1984
- (3) SA 623 (A) at 634E - 635C
- [26]
- [2008] ZASCA 6; 2008 (3) SA 371 (SCA)

[27] General Industries Workers Union of SA v Maseko & others

(2015) 36 ILJ 2874 (LC) at para 23

[28] 2012 (4) SA 593 (SCA)

[29] See Global Environmental Trust and Others v Tendele Coal Mining (Pty) Ltd and Others (1105/2019) [2021] ZASCA 13; [2021] 2 All SA 1 (SCA) (9 February

2021) at para [95]: “In motion proceedings, the affidavits constitute both the pleadings and the evidence. The issues and averments in support of a party’s case should appear clearly therefrom. They serve, not just to define the issues between the parties, but also to place the essential evidence before the court. An applicant must therefore raise in the founding affidavit the issues as well as the evidence upon which it relies to discharge the onus of proof resting on it.”

[30] Cool Ideas 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC) at para 28

[31] This approach is adopted based on the maxim “*generalalia specialibus non derogant*”. General provisions do not derogate from the special ones. See Christie & Bradfield Christie's Law of Contract in South Africa 8 ed (LexisNexis, Johannesburg 2022) at p276 – 7 which states: 'This maxim has regularly been used in interpreting statutes, has been used in interpreting the articles of association of a company, and given that there is no difference in approach to interpreting legal documents, it could be used in interpreting contract.'

[32] See Natal Joint Municipal Pension Fund v Endumeni Municipality cited in fn. 28

[33] The context may be determined by considering other subsections, sections or the chapter in which the keyword, provision or

expression to be interpreted is located. Context may also be determined from the instrument as a whole. See AmaBhungane Centre for Investigative Journalism NPC and Another v President of the Republic of South Africa 2023

(2) SA 1 (CC) (2023 (5) BCLR 499; [2022] ZACC 31) para 36

[34] However, in passing, I note that the respondents do not suggest that any decision had been taken by the NEC to confirm their dismissal, in accordance clause 9.6.2.3 of the constitution.

[35] However, I note, in passing, that the applicants do not allege that the President and Vice President were charged and called to a hearing in accordance with clause 10.5.1.5 of the constitution. In addition, as mentioned, a properly constituted meeting of the NEC must first resolve to charge and discipline the office bearers, in accordance with clause 10.5.1.

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