



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case No: D9489/2023

In the matter between:

NONHLANHLA MILDRED KHOZA

FIRST APPLICANT

MBALI MBALENHLE FRAZER

SECOND APPLICANT

ZAMAZULU SOKHABASE

THIRD APPLICANT

FIKILE ANDISWA MASIKO

FOURTH APPLICANT

MATOZI ZIBUYISILE KHUZWAYO DLAMINI

FIFTH APPLICANT

(Sixth to Twenty-Fifth
applicants are as listed
in annexure "X")

and

NATIONAL EXECUTIVE COMMITTEE, AFRICAN

NATIONAL CONGRESS WOMEN'S LEAGUE

FIRST RESPONDENT

PROVINCIAL EXECUTIVE COMMITTEE (PEC)

OF THE AFRICAN NATIONAL CONGRESS

KWAZULU-NATAL

SECOND RESPONDENT

AFRICAN NATIONAL CONGRESS

THIRD RESPONDENT

ORDER

1. The application is dismissed.
 2. The applicants are ordered to pay the costs, including the costs of counsel and such costs to include the costs of 01 September 2023
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JUDGMENT

Sipunzi AJ

Introduction

[1] This is an application in which the applicants seek an interim order (rule nisi) calling upon the first respondents to show cause why the first respondent's 'nullification' of the sixth provincial conference of the African National Congress Women's League ("ANCWL") KwaZulu-Natal held in August 2023 should not be set aside. In addition, the applicants seek an order interdicting and restraining the first respondent from prohibiting the applicants in performing their functions and duties as the duly elected and mandated Provincial Executive Committee ("PEC") in KwaZulu-Natal of the ANC Women's League, pending the finalisation of this application. The applicants also seek an order restraining the first respondent from appointing any interim structure or task team to replace and/or act in the stead of the duly elected PEC pending the finalisation of this application.

[2] All respondents opposed the application. On 1 September 2023, the application served before this court as an urgent matter, but it was postponed indefinitely sine die. Specific directives were given for the future conduct of the proceedings and the costs were reserved.

[3] On 22 November 2023, an application for leave to intervene in this application was issued under case no. D9489/2023. The intervening applicants were three other members of the ANCWL who had attended the conference in issue. This application to intervene was however withdrawn at the instance of the intervening applicants when the matter served before court on 01 December 2023.

Parties

[4] The applicants are all members of the African National Congress (“ANC”) and the ANCWL in the KwaZulu-Natal province. They all took part in the provincial elective conference of the ANCWL KwaZulu-Natal that was held in August 2023.

[5] The initial five candidates were running for the top five positions in the executive committee of the KwaZulu Natal Province’s ANC Women’s League during the election. The remainder of the applicants were nominated for the position of additional members of the same Women’s league.

[6] The first respondent is the National Executive Committee (“NEC”) of the ANCWL, a structure within the ANC, which controls the affairs of the ANCWL at a national level and which operates through its adopted Constitution read with the Constitutional instrument of the parent body, the ANC.

[7] The second respondent is the PEC of the ANC, KwaZulu-Natal, which controls and regulates the affairs of the ANC within the province of KwaZulu-Natal and whose address is at 190 Stalwart Simelane Street, Durban KwaZulu-Natal.

[8] The third respondent is the ANC, a voluntary association and registered political party which has perpetual succession, may sue and be sued in its own right, is duly registered in terms of s 15 of the Electoral Commission Act 51 of 1996, and which is governed by its own adopted constitutional instrument. Its registered offices are at Chief Albert Luthuli House, 54 Pixley Ka Seme Street, Johannesburg.

Facts

[9] The ANCWL in KwaZulu-Natal had scheduled its provincial elective conference for 4-7 August 2023. Due to delays, it was extended to 8 August 2023.

[10] The conference was held with the approval of the National Executive Council of the ANCWL after it was satisfied that all the compliance requirements, as imposed by its constitutional rules and guidelines, had been met in preparation for the conference.

[11] The conference was attended by delegates representing their respective branches. The conference was constituted by respective branch delegates. There was a total of 1287 voting delegates; 55 non-voting delegates and 55 guests in attendance.¹ The voting process was coordinated and overseen by the electoral committee, chaired by Ms Majodina, as mandated by the ANCWL. The responsibilities of this committee included the compilation of the voter's roll.

[12] The election process was conducted in two sessions. The first session was for the election of the five top executive positions and the second session was for the 20 additional members. The second session commenced after the announcement of the results of the first session.

[13] During the voting process of the second session it transpired that some verified voters were not included in the voters' roll. The matter was brought to the attention of Ms Majodina, the chairperson and the election committee. Despite some delegates being unable to cast their votes in the first round/session, the election of delegates nominated for the second voting stage proceeded, and the counting of the votes began after the voting process was closed.

[14] The complaints that were reported to Ms Majodina related to the inconsistencies between the voters' roll and the number of delegates that were accredited as the voting delegates, who were not able to cast their votes. According

¹ Annexure "NMK 6", page 11.

to the complaints these delegates were omitted from the voters' roll. There were also allegations of missing ballot papers.

[15] At the time of the adjournment of the conference, there was an understanding that those delegates who couldn't vote would be allowed to do so at a later stage and their votes would then be counted.² According to the first respondent, this is the reason why the conference could not be handed over to the first applicant and that the results of the conference could not be formally announced. Such handing over would have been a signal that she had been successfully elected to the position of the chairperson on the PEC KZN. On the contrary, the applicants contend that the results were announced publicly.³

[16] According to the report compiled by Ms Majodina as the chairperson of the electoral committee, the conference was scheduled to unfold within three days, however due to delays, it was extended to five days. There were challenges experienced during the voting, as some delegates were not appearing in the voter's roll. When the results in the first category were presented, they were challenged on the basis that the numbers did not tally. The four matters raised by the plenary with the electoral committee included that: (i) when some accredited voters arrived to cast their votes, the voting stations had closed; (ii) some voters were not appearing in the voters' roll; (iii) disputes were raised on the figures of spoilt and abstentions votes; and (iv) observers' complaints that 300 ballots were missing and lack of cooperation when requests for recounts were made.⁴ The report observed that there was lack of cooperation between its committee and the convenor.⁵ It recommended to the first respondent to consider the recount of all voting positions.⁶ It concluded that the conference was characterised by tension and mistrust and she left it to the first respondent to take the matter further.⁷

² Answering affidavit, paragraphs 38-39.

³ The founding affidavit, paragraph 31.

⁴ ANCWL NEC Deployees Report to 6th ANCWL KwaZulu-Natal Provincial Conference 04-06 August 2023.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

[17] In the report compiled by Independent Elections Facilitators of Southern Africa (IEFSA), which was appointed to render electoral services, the two stages of elections were concluded in the morning on 06 August 2023. The report confirmed that 1287 voters were expected to vote, however 1219 cast their votes. It further reported that the disparity in numbers and apparent misrepresentation of abstentions on the position of the chairperson were queried and they were explained to the satisfaction of the voters.⁸ According to IEFSA, the election results for both categories were recorded. It concluded that they delivered a free, fair and credible election, an assignment that was carried out with no incidents.⁹

[18] According to the first respondent, after the conference, it received numerous complaints which corroborated the report of Ms Majodina. A special meeting of the first respondent was convened on 18 August 2023 to discuss the alleged irregularities and complaints. This is where the NEC of the ANCWL resolved to nullify the conference. According to it, such was the only reasonable step that could be taken in the exercise of its discretionary powers.¹⁰ The difficulties noted and resolution of the first respondent were shared with the first to fifth applicants in a meeting that was held on 25 August 2023. Consequently, on 31 August 2023, the first respondent appointed a Provincial Task Team which was assigned functions that would have been ordinarily assigned to the PEC.

Issue

[19] The central question that arises from the facts is whether the first respondent had the requisite authority and power to nullify the elective conference of the ANCWL KwaZulu-Natal held in August 2023 and in terms of rule 11.2.4 of the ANCWL Constitution.

[20] If the answer to that question is in the affirmative, the next issue would be whether that authority or powers were exercised appropriately, and in terms of the Constitution of the ANCWL rules and guidelines.

⁸ ANCWL KwaZulu-Natal Provincial Conference Election Report, page 6, paragraph 6.

⁹ ANCWL KwaZulu-Natal Provincial Conference Election Report, page 9, paragraph 7.

¹⁰ Answering affidavit, paragraph 44.

[21] Lastly, it has also become necessary to determine if there is a dispute of fact, if yes, then whether it cannot be resolved by the application of the *Plascon-Evans* rule.

Submissions by the parties

[22] The applicants' main thrust of their argument was that since the rules and the guidelines for the conduct of the conference were adequately complied with, there was no justification and/or empowering provision to nullify the conference. According to them, even if some delegates were not able to cast their votes due to the omission from the voters' roll, the first respondent was not authorised and/or empowered to nullify the conference and/or its outcomes.

[23] In regard to the powers of the first respondent, the applicants complained that the powers of the NEC in terms of rule 11.2.4 are 'to suspend or dissolve a PEC' and not the nullification of the conference, as it sought to do in this instance. The applicants further submitted that rule 11.2.4, as the empowering provision that regulates the authority of the NEC, made no provision that conferred authority and power to nullify a conference, wherefore, the first respondent's conduct falls to be set aside on the basis that it was *ultra vires*. In order to advance this submission, they relied on *Matlholwa v Mahuma and Others*.¹¹ Where the court held the power to expel a member may be exercised only by a body in which such power has been vested by the constitution expressly or by clear and unambiguous implication, failing which the purported expulsion will be *ultra vires* the constitution and void.

[24] According to the applicants' submissions, 'the rule relied on by the first respondent, 'the power to "nullify" the conference is nowhere to be found' in the Constitution. To this end they contend that, use of the words 'suspend' and 'dissolve' infer with certainty that the authority conferred was for the dissolution and/or suspension of a PEC that already existed and duly constituted. They criticised the persistence of the first respondent that a PEC was not elected at the conference.¹²

¹¹ *Matlholwa v Mahuma NO and Others* [2009] ZASCA 29; [2009] 3 ALL SA 238 (SCA) para 11.

¹² Applicants' heads of arguments, paragraphs 11-12.

[25] The applicants further submitted that if there were objections raised, the first respondent was required to refer same to the National Dispute Resolution Committee of the third respondent. According to the applicants, even if the decision of the first respondent was informed by the written objections, such objections may not have been valid for they were not contained in sworn affidavits.

[26] After all, the applicants argued, that at the close of the conference on 7 August 2023, the top five executives were recognised without any objections.¹³

[27] Contrary to the contention of the first respondent, the applicants further contended that there are no material disputes of facts. They argued that the consistent referral to a dispute of fact by the first respondent did not find support in the facts and issues that required determination. According to them, the first respondent failed in its attempt to create a narrative that a material dispute of fact existed and their claims find no support in the evidence.

[28] The first respondent's main argument for the opposition to the application was that the applicants were not legally appointed at the conference in terms of the prescripts and constitution of the ANCWL. The first respondent contended that, the conference was characterised by material irregularities which infringed democracy of the structures. These included that some members were deprived of their right to cast votes; there was the electoral committee's failure to carry out instructions from the convenor of the committee and the substantial number of objections raised, hence the conference was adjourned before it completed its business.¹⁴ The announcement of the results was conditional and subject to the further voting and inclusion of the members who had been denied the opportunity to vote.¹⁵

[29] The first respondent argued that it was under the duty to safeguard the rights of members and ensure compliance with its Constitution. When it resolved to nullify the conference; as the highest decision-making body between conferences, it derived

¹³ Founding affidavit, paragraphs 33- 34.

¹⁴ Answering affidavit, paragraphs 41-42 and 44

¹⁵ First respondent's practice notes, paragraph 8(c).

its authority in rule 11.2.4 to ensure that its structures function democratically and effectively.

[30] The first respondent based its argument on *Dube and Others v Zikalala and Others*,¹⁶ where the court found or at least accepted that the NEC could declare a provincial conference null and void or invalidate it if it finds it necessary to do so after considering complaints filed by the members of the organisation. It is thus without merit for the applicants to argue that the first respondent is not possessed with the authority to nullify a conference.

[31] The first respondent contended that when the conference was adjourned, the applicants were not yet pronounced as elected, hence they had no right to occupy management positions in light of the fatal irregularities. According to the first respondent, the applicants sought for the court to regulate the affairs of the ANCWL. This was due to the applicants' failure to appreciate that the first respondent was enjoined by its Constitution to resolve internal disputes, which rendered its structures undemocratic and ineffective.

[32] The first respondent further contended that there was material dispute of facts that arose on various matters in the application. These are contained in the paragraph 6 of the first respondent's practice notes, namely:

- (a) Whether there were objections lodged;
- (b) Whether the elections were free and fair in circumstances where the electoral commission refused twenty-seven delegates their right to vote and failed to comply with the steering committee's lawful instruction;
- (c) Whether the conference completed its business when the understanding was that there were still quarantined votes to be counted;
- (d) Whether the first to fifth applicants were informed of the reasons for nullification of the conference in the meeting held on 25 August 2023;
- (e) Whether there was any pronouncement of the results of the additional members;
- (f) Whether Ms. Majodina, in her capacity as the NEC deployed convenor of the steering committee, declared the conference free and fair; and

¹⁶ *Dube and Others v Zikalala and Others* [2017] ZAKZPHC 36; [2017] 4 ALL SA 365 (KZP).

- (g) Whether the applicants, in light of the incomplete conference were in fact elected and/or had any authority to perform the functions of the PEC.’

[33] According to it, in the circumstances, the application of the *Plascon-Evans* rule should suffice for the court to resolve such dispute in favour of the first respondent.

Applicable legal principles

[34] The rule that is central to the dispute between the applicants and the first respondent provides for the powers of the NEC, in particular, it provides:

‘Rule 11.2.4. Ensure that the Provincial, Regional and Branch structures of the ANCWL function democratically and effectively. (The NEC may suspend or dissolve a PEC where necessary. The suspension of a PEC shall not exceed a period of 3 (three) months. Elections for a PEC, which has been dissolved, shall be called within 9 (nine) months from dissolution. The NEC may appoint an interim structure during the period of suspension or dissolution of the PEC to fulfil the functions of the PEC.’¹⁷ (My emphasis.)

[35] In its quest to demonstrate that the NEC of the ANCWL lacked the authority and powers to nullify the conference, the applicants relied on *Maltholwa v Mahuma*.¹⁸ In particular where it was held that:

‘...It is true that there is authority for the proposition that the constitution of a voluntary association should, in appropriate circumstances, be interpreted broadly and benevolently and not in a carping, critical and narrow way, - adopting a practical, common sense approach to the matter. However, this principle of benevolent construction does not apply to a situation such as the one forming the subject of this appeal. As pointed out above, the power to expel a member may be exercised only by a body in which such power has been vested by the constitution expressly or by clear and unambiguous implication, failing which the purported expulsion will be *ultra vires* the constitution and void.’

¹⁷ ANCWL Constitution, Adopted by the 12th National Congress Tshwane, Gauteng 5-8 August 2015.

¹⁸ *Matlholwa v Mahuma and Others* [2009] ZASCA 29; [2009] 3 All SA 238 (SCA) para 11.

[36] The applicants also referred to *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk*¹⁹ regarding the interpretation of the exercise of powers conferred on the National Executive Council of the ANCWL.

[37] As far as rule 11 is concerned, as it appears to be at the centre of the dispute *in casu*, it is apposite to reflect on what the court said in *Dube* that:

'In support of an order, which it was contended would be just and equitable, reliance was also placed in *Ramakatsa* on rule 11.3 which empowers the NC with "the right and power to review, ratify, alter, or rescind any decision taken by any of the constituent structures, committees or officials of the ANC". The order sought was that the Constitutional Court direct the NEC to reconsider the complaints of the appellants in that matter, or that the NEC consider the complaints at the start of the conference.' (Footnotes omitted) (My emphasis.)

[38] As the court observed in *Ramakatsa and Others v Magashula and Others*:²⁰

'The interplay between the ANC's constitution and section 19:

[73] Section 19 of the Constitution does not spell out how members of a political party should exercise the right to participate in the activities of their party. For good reason this is left to the political parties themselves to regulate. These activities are internal matters of each political party. Therefore, it is these parties which are best placed to determine how members would participate in internal activities. The constitutions of political parties are the instruments which facilitate and regulate participation by members in the activities of a political party.'

The court also pointed out that it was not inclined 'to determine how political party concerned should regulate its internal process in the light of the declaration it had made...'. It was satisfied 'that the ANC's constitution conferred on the NEC or the National Conference adequate authority to regulate its affairs in light of the decision of the Court'.

Evaluation

[39] A glean from the papers revealed that the conference was initially scheduled for 4-6 August 2023, however, due to the delays, it was extended to 8 August 2023.

¹⁹ *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) para 10.

²⁰ *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC) para 73.

The parties agreed that all 'pre-conference protocols' had been adhered to and all reports had been adopted without irregularities. It is during the voting process it became apparent that some delegates were not able to cast their votes although they had been duly accredited.

Dispute of fact

[40] The trite principle in resolving disputes of fact is commonly referred to as the *Plascon-Evans* rule. Under the *Plascon-Evans* rule, if in motion proceedings dispute of fact arise on the affidavits, a final order can be granted only if the facts averred by the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.²¹

[41] Herein, the alleged dispute of fact as raised by the first respondent relates to the occurrences that transpired after the voting had commenced. In summary, these would be the number of voters that were not able to cast their votes; whether there were complaints that alleged irregularities and whether the elections were found to be free and fair. The existence of such material dispute of fact was however denied by the applicants.

[42] In approaching this, one is reminded that:

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.'²²

[43] Starting with whether there were disputes of fact raised, a glean at the affidavits of both parties and the annexures thereto, sufficed for a determination to be made. For instance, in the report of IEFSA, it is noted that queries were raised in regard to

²¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635B.

²² *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26.

the allegations of misrepresentations of the number of abstentions.²³ The applicants also acknowledged that during the voting, complaints about the inaccuracy of the voter's roll were recorded.²⁴ There were also written complaints from some delegates, as annexures to the first respondents answering affidavit, marked "AA3" to "AA27". Although the applicants sought to argue on the substance of such complaints, one is constrained from determining the merits and substance of same. The report of Ms. Majodina also echoed the existence of complaints during the voting process.²⁵ These justify a finding that indeed there were irregularities and objections lodged.

[44] On the question of whether the elections were declared free and fair, the report of Ms. Majodina recommended that the NEC considered the re-voting of all positions with a comprehensive voters' roll. Although the applicants alleged that Ms. Majodina pronounced the election as free and fair, she did not confirm or support this assertion. This was also denied in the answering affidavit, and such was confirmed by Ms. Majodina as per her confirmatory affidavit. On the other hand, the report of IEFSA claimed that the election was free and fair, but does not support its statement by evidence. In light of the contents of the affidavits and the reports, with the application of the *Plascon-Evans* rule, it can be concluded that this inconsistency can be easily resolved.

[45] On the remainder of the facts alleged to be material dispute of facts, and having highlighted the issues above, it is safe to conclude that the conference adjourned before it concluded its business and that it was on the understanding that other matters would be addressed or attended to by the first respondent. Evidently, the conference was characterised by irregularities; that it adjourned before it finished its business; there were objections raised and there was no final determination that the election was free and fair.

[46] The incontestable evidence placed before court indicates that the averment proffered by the respondents is plausible and is supported by the relevant reports.

²³ ANCWL KwaZulu-Natal Provincial Conference Election Report, page 6, paragraph 6.

²⁴ Founding affidavit, paragraphs 24-26.

²⁵ ANCWL NEC Deployees' Report to 6th ANCWL KwaZulu-Natal Provincial Conference.

The powers of the NEC ANCWL

[47] The letter from the NEC has been at the centre of the applicants' attack of the decision made by the first respondent to invoke rule 11.2. 4 of its Constitution, thereby nullifying the conference. Therefore, one has to approach its content in line with the guidelines on interpretation in *Natal Municipal Pension Fund v Endumeni Municipality*,²⁶ where the SCA recognised that the circumstances in which a document came into being is one of the factors to be considered when interpreting a document. Wallis JA stated:

‘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 business-like 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 business-like for the words actually used.’ (Footnote omitted.)

[48] In *casu*, regard must be had to the text; the context; the purpose and implications of the letter dated 18 August 2023, in the interpretation of the powers purportedly exercised by the first respondent. This has to be done with reflection to the approach of the courts in *Ramakatsa; Dube and Bothma-Batho Transport*, also alive to that, the applicants are members of a voluntary organisation, which ought to be left to regulate its affairs;²⁷ whose constitution should be interpreted broadly and benevolently and not in a carping, critical and narrow way, - adopting a practical, common sense approach²⁸ and which also has internal dispute resolution processes when a need arises.²⁹

²⁶ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

²⁷ *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC).

²⁸ *Matlholwa v Mahuma and Others* [2009] ZASCA 29; [2009] 3 All SA 238 (SCA).

²⁹ The ANCWL and the ANC Constitutions.

[49] The letter does not refer to any events or occurrences that may have preceded and necessitated its writing. It also does not disclose the basis upon which the decision to nullify the 6th Conference of the African National Congress Women's League in KwaZulu-Natal was made, save to state that it sought to communicate the resolution of the Special NEC meeting held on 18 August 2023. If considered in context, it seems appropriate to conclude that it was a manifestation of the considerations of all that was reported about the business of the conference and the complaints that were received.

[50] What appears from the arguments of the parties is that the business of the conference was greatly affected by contestations, leading up to the counting of the votes, the concerns regarding the defective voters' roll and the process that was employed to resolve the omission of some members from voting. It is undeniable that indeed there were irregularities which characterised this conference. Among the complaints raised by the applicants in appreciation of such irregularities was that, it was not up to the first respondent to nullify the conference, instead they seem to suggest that the matter was supposed to have been referred to the disciplinary committee of the third respondent.

[51] From this background, it therefore can be accepted that even the applicants were *ad idem* that something needed to be done in order to address the irregularities that materialised during the conference. Their attitude that they could not be bothered by the reasons that may have caused the coordinating committee not to deal with the complaints, but rather opted for the voting to continue, fly in the face of their evidence that there were no incidents, objections or complaints. Furthermore, the applicants admit that there was an instruction from Ms. Majodina to the convenor to attend to the complaints occasioned by the incomplete voters' roll, but down playing its negative impact into the business of the conference does not help the main case of the applicants that they were elected and that the elections were free and fair.

[52] As endorsed in *Endumeni*, among others, regard must be had to the background and circumstances in which the rule in issue was formulated. In my view, properly construed, the rule gives the NEC broad powers to ensure that its structures functioned democratically and effectively. In this instance, there were glaring irregularities which were not adequately dealt with during the course of the conference.

It was therefore within the power of the NEC, the first respondent herein, as the highest decision-maker to reflect and make a decision about what had transpired in the conference and beyond.

[53] Because the first respondent was seized with the duty to approve and oversee the convening of a special conference that sought to elect the PEC, among others,³⁰ it follows that it had to ensure that its structures functioned democratically and effectively.³¹ A purposive interpretation of powers of the first respondent must also bear in mind the reasoning in *Dube*, to the extent that the court at least accepted that the National Conference (NC) had 'the right and power to review, ratify, alter or rescind' any decision taken by any of the constituent structures, committees or officials of the ANC. The highlighted irregularities in the voters' roll; the complaints from delegates and the apparent undemocratic processes that emerged, if left without any corrective measures would certainly contradict/offend the main objectives of the first respondent of ensuring structures that function democratically and effectively. The 6th Conference that was approved by the first respondent certainly did not achieve the purpose for its approval, hence it was necessary for corrective measures to unfold.

[54] Therefore, as the first respondent was duty bound to ensure effective programmes of the organisation, it would not have been expected to remain passive and lackadaisical in the face of undemocratic irregularities. Confining the interpretation of the rule to the bracketed text, namely 'the NEC may suspend or dissolve a PEC...' does not find support. More so, if regard is had to *Matlholwa*, that interpretation must also consider that the applicants are members of a voluntary organisation, which ought to be left to the regulate its affairs.

[54] In my view, rule 11 confers certain powers and duties on the first respondent. These powers should be interpreted in a broad, contextual, and benevolent way, rather than in a critical and narrow way. Therefore, the first respondent's power to suspend or dissolve the PEC and related processes, should not be construed to be limited to those but to include the powers it exercised in this instance. Properly construed, the

³⁰ ANCWL Constitution, rule 10.1.

³¹ ANCWL Constitution, rule 11.2.4.

first respondent should ensure that democratic and effective structures are in place in the organisation. Hence, the decision to nullify the 6th Conference of the ANCWL KwaZulu-Natal was made in accordance with these powers and duties.

[55] The ANC's constitutional provision that was at the centre in *Ramakatsa* was rule 11.3. It provided for the powers and duties of the National Conference, which include the right and power to review, ratify, alter or rescind any decision taken by any of the constituent structures, committees or officials of the ANC. There is no corresponding rule in the Constitution of the ANCWL, however such omission should not be seen to imply that the first respondent, which is its highest decision-making body herein, between conferences, was without recourse when similar occurrences arose within its structures. Equally, as the ANCWL was an autonomous organisation, it was within the powers and rights of the first respondent, as the body that was seized with the convening of the special conference to devise measures that sought to resolve the impulse or degeneration of its organisation to being undemocratic and ineffective.

[56] Among others, the applicants also argued that the first respondent was required to refer the dispute to the ANC in terms of Appendix 4 read with the dispute resolution mechanism of the ANC. The ANCWL, which is autonomous, forms part of the organisational structure of the ANC³² and in turn, the ANCWL KwaZulu-Natal is one of the structures of the ANCWL. Therefore, the matter in issue relates to the affairs and processes of the ANCWL, hence it was befitting for the first respondent to exercise its powers over the special conference of the ANCWL Kwa Zulu Natal. The jurisdiction of the National Dispute Resolution Committee of the ANC provides that:

2.1 Parties who may declare a dispute

- 2.1.1 any branch, sub-region, region or zonal structure (referred to as "the complaint") which is aggrieved or directly affected by the functioning of the ANC or any of its structures may declare a dispute with the ANC in the manner prescribed in these rules.³³

In this instance the first respondent was engaged in its internal affairs that did not concern the ANC.

³² ANC Constitution as amended and adopted at the 54th National Conference, Nasrec, Johannesburg '17, R7, Organizational structure.

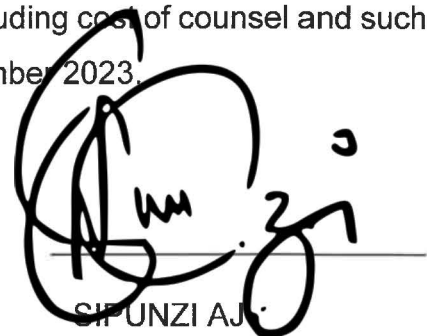
³³ Appendix 4, National Dispute Resolution Committee, Clause 2.

[57] Given all these considerations I am of the view that, the applicants have not shown that they were duly elected and that the first respondent acted unlawfully when it resolved and communicated its decisions nullifying the purported conference. The applicants are therefore not entitled to the reliefs sought in the notice of motion.

Order

[58] The following order is therefore made:

1. The application is dismissed;
2. The applicants are ordered to pay the costs, including cost of counsel and such costs to include the reserved costs of 01 September 2023.



SIPUNZI AJC

CASE INFORMATION**APPEARANCES**

Counsel for the Applicants	:	Adv Naidoo
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Attorney for the Respondents	:	Mamathunthsa Inc Attorneys No. 20 Albert Street Office No. 1207 Bram Fisher Towers Marshalltown, Johannesburg, 2001 Tel: 011 492 0622 Fax: 011 492 0682 Email: info@mamathuntshaatt.co.za Ref: CM/CIV/0736/23 c/o Wenzile Zama Attorneys Suite 603, Dalta Towers 300 Anton Lembede Street Durban, 4001 Tel: 031 302 0216 Cell: 083 631 1475 Email: info@zamaattorneys.co.za
Date of Hearing	:	01 December 2023
Date Judgment Delivered	:	06 February 2024