



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 1176/2019

In the matter between:

NARIUS MOLOTO

APPELLANT

and

THE PAN AFRICANIST CONGRESS OF AZANIA

RESPONDENT

Neutral citation: *Narius Moloto v The Pan Africanist Congress of Azania*

(1176/2019) [2023] ZASCA 140 (27 October 2023)

Coram: MOCUMIE, HUGHES, MATOJANE and MOLEFE JJA and
NHLANGULELA AJA

Heard: 24 May 2023

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Summary: Civil procedure – review application – whether changed circumstances existed since the order appealed was granted – any decision sought not having practical effect nor can produce practical results – powers of an appeal court in terms of s 16(2)(a)(i) the Superior Courts Act 10 of 2013 –

mootness of the appeal – public interest – interpretation of clause 14.2 read with 14.1 of the Pan Africanist Congress of Azania’s Constitution.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Millar AJ, sitting as a court of first instance):

The appeal is dismissed with costs on attorney and client scale, including the costs of two counsel where so employed.

JUDGMENT

Nhlangulela AJA (Mocumie JA concurring):

Introduction

[1] This is an appeal against the order of the Gauteng Division of the High Court, Pretoria, per Millar AJ, (the high court), to set aside the appellant's unilateral invocation of clause 14.2 of the Pan Africanist Congress's disciplinary code adopted as part of its amended Ga-Matlala Constitution of Pan Africanist Congress, 2000 and all decrees issued by the appellant from 9 June 2019 to 12 July 2019, contrary to the resolutions of the Pan Africanist Congress's National Executive Council that were made on 18 May 2019. The appeal is with leave of the high court granted by Millar AJ on 23 August 2019.

[2] The appellant is Mr Narius Moloto, the then President of the Pan Africanist Congress of Azania (the PAC) in 2006. In these proceedings, the PAC is represented by Mr Apa Shadrack Ntsiki Pooe (Mr Pooe) in his capacity as the Secretary-General of the PAC; a political party duly established and registered by the laws of the Republic of South Africa.

Background

[3] On 8 March 2019, in the earlier application proceedings before the high court and registered under case number 11224/2019, an order was granted by Mavundla J, to unite factions of the PAC, each having a national executive committee (NEC) and led by the appellant and Mr Pooe respectively. A joint NEC was formed under the leadership of the appellant, as the President, and Mr Pooe as the Secretary-General. Six other office bearers were nominated to fill the positions of Deputy President, Deputy Secretary, Treasurer, National Organiser, National Chairman, and Deputy National Chairman. The order was granted by consent between the parties. The purpose of the consent order was to create a joint NEC for the PAC and elect the office bearers in a national congress to be held on or before 31 August 2019. The congress would be held subject to the provisions of the PAC's Ga-Matlala Constitution of 2000.

[4] On 18 May 2019, the joint NEC convened a meeting, under the chairmanship of the appellant to prepare for the congress. The NEC members, as constituted in terms of the consent order, were present. The meeting resolved that the national congress would be held on 29 to 31 August 2019 in Bloemfontein. The Secretary-General, Mr Pooe, was mandated to issue a circular of the congress in compliance with the consent order and attend to the logistics and 'all other administrative requirements of the congress'.

[5] Accordingly, on 23 May 2019, Mr Pooe issued a circular to all the PAC members and structures. However, on 26 May 2019, Mr Philip Dhlamini, the National Chairperson of the joint NEC, addressed a letter to Mr Pooe asking for clarification about the road map toward the congress. After Mr Pooe gave him the clarification on 9 June 2019, the appellant issued a decree in terms of clause 14.2 suspending the Constitution of the PAC so that he, alone, could determine

the road map and set a new date and place for the congress. He alleged that the emergency powers of the President of the PAC in terms of clause 14.2 provided him with such powers. The clause provides as follows:

‘The President shall have emergency powers, which he may delegate, to suspend the entire constitution of the PAC so as to ensure that the movement emerges intact through a crisis. At that time, he directs the PAC so as to ensure that the movement emerges intact through a crisis. At that time, he directs the Movement by decree, and is answerable for his actions to the National Conference or National Congress.’

[6] In his understanding, the clause authorised him to suspend the constitution as:

- (a) the Notice of Congress issued by Mr Pooe was not accompanied by the agenda;
- (b) the notice was not sent to the wards of the PAC;
- (c) social media should not have been used to circulate the notice as not all members belong to the social media platforms; and
- (d) a bank account was opened late for the members to pay subscriptions in time for them to show that they were members in good standing.

[7] On 10 June 2019, the appellant communicated in writing to Mr Pooe that, because of a lack of cooperation between office bearers and the joined NEC in arranging the August 2019 National Congress, he has invoked clause 14.2 of the Disciplinary Code to place the PAC under a decree. As part of this decree, members of the NEC elected at Mpumalanga and Kimberly were stripped of their NEC membership status and demoted to ordinary members. Various new office bearers were appointed for the National Congress, scheduled for 24 August 2019 in Marble Hall.

[8] Subsequently, on 15 June 2019, Mr Pooe subjected the decree to the NEC meeting that was held at Graaff-Reinet, Eastern Cape. Despite notification, the appellant did not attend the meeting. As a result, the meeting passed a resolution authorising Mr Pooe to bring an urgent application against the appellant for contempt of the consent order and to set aside his decree. On 12 July 2019, the high court, per Muller AJ, granted the order sought.

[9] The PAC, armed with Mavundla J's order, convened the national congress from 29 to 31 August 2019 in Bloemfontein, albeit without the presence of the appellant and his followers. It appears from the papers that the order made by the high court did not achieve the purpose of restraining the appellant and his followers from convening a parallel national congress on 24 August 2019 as provided in his decree.

In the high court

[10] In considering the validity of the decree issued by the appellant with reliance on the emergency powers in terms of clause 14.2, the high court raised two questions. Firstly, whether there was an emergency that caused the appellant, as the President then, to invoke clause 14.2; and, secondly, was he entitled to do so in the prevailing circumstances then? The high court was of the view that the steps Mr Pooe took such as circulating the notice of the national congress, preparing the road map for the congress, and selecting the venue and date for the congress to the members were taken in compliance with the resolutions of the 18 May 2019 NEC meeting. It weighed these steps against the reasons advanced by the appellant that the constitutional authority to make preparations for the national congress rested with the NEC and those members delegated by it. It reasoned that the method of circulating the agenda for the meeting was not deficient and that the road map designed by Mr Pooe was not defective. Having done so, it found that had the appellant overlooked the NEC

resolutions of 18 May 2019 and that the invocation of clause 14.2 should not have occurred. The high court did not find an emergency in Mr Poee's legitimate actions and the reasons raised by the appellant with an apparent objective of wrestling the administrative powers of the joint NEC of the PAC into the hands of his faction.

Before this Court

[11] Before this Court, both parties agreed that the relief sought in this appeal has been overtaken by events. It is common cause that the resolution of the joint NEC of the PAC authorising the joint NEC to convene the national congress on 29 to 31 August 2019 was adopted on 18 May 2019; the decree was issued by the appellant on 9 June 2019. The decree commenced on 9 June 2019 and lapsed on 24 August 2019. The main application was launched on 9 July 2019 and the high court granted the order, setting aside the decree issued by the appellant on 12 July 2019. At the heart of the disputes between the parties was the issue of whether the national congress would be held on or before 31 August 2019 in terms of the consent order by Mavundla J. With the order of the high court having paved the way for the holding of the congress, which was indeed held, it appeared that any relief that may be granted by this Court will have no practical effect or produce practical results as is envisaged in s 16 (2)(a)(i) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). That notwithstanding, counsel for the appellant submitted that this is an exceptional case in which this Court may still decide the merits of the appeal and decide the question whether the emergency powers which empowered the President of the PAC to disband the NEC in terms of clause 14.2 are lawful.

[12] The provisions of s 16 (2)(a)(i) of the Superior Courts Act read as follows:

‘When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.’

These provisions signal an intention of the legislature to clothe the appeal court with a discretion to exercise in adjudicating an appeal even though there is no relief capable of being granted that will have practical effect or produce practical results. Therefore, it seems to me that since there is no appeal matter that is the same as the other, the exercise of a discretion can only be approached on a case-by-case basis.

[13] On these facts, to support their case, counsel for the appellant submitted that even if the appeal is moot, it was open to this Court to adjudicate the matter because it is in the public interest and would constitute binding precedent since there was legal uncertainty on the test to be applied as regards the powers of the President of PAC under clause 14.2, being either subjective or objective. The appellant’s counsel relied on two cases: *Western Cape Education Department and Another v George*¹ and *Mohamed And Another v President of the RSA and Others*.² In strong opposition to this proposition, relying on the case of *Pan Africanist Congress of Azania and Others v Moloto and Others*,³ counsel for the respondent submitted that the merits of the dispute are moot and there is no legal uncertainty. In the event that this Court was persuaded to consider whether clause 14.2 was valid or not, counsel for the appellant urged the Court to adopt the (subjective mind) approach that was adopted by the Free State High Court in *Pan Africanist Congress of Azania v Ka Plaatjie and Others*.⁴ On the approach I adopt in this case, there is no need to decide whether the test to be adopted in the exercise of discretionary powers of a President of the PAC in terms of clause 14.2 is on a subjective or objective standard.

¹ *Western Cape Education Department and Another v George* [1998] ZASCA 26; [1998] 2 All SA 623 (A); 1998 (3) SA 77 (SCA) at 84D-E.

² *Mohamed and Another v President of the Republic of South Africa and Others* 2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC).

³ *Pan Africanist Congress of Azania and Others v Moloto and Others* [2021] ZAGPPHC 539.

⁴ *Pan Africanist Congress of Azania v Ka Plaatjie and Others* [2008] ZAFSHC 73.

[14] On the issue of mootness I accept, as it was common cause between the parties, that the relief sought in this appeal has been overtaken by events. This Court, in *The President of the Republic of South Africa v DA and Others*,⁵ had this to say on the issue:

‘The question of mootness of an appeal has featured repeatedly in this and other courts. These cases demonstrate that a court hearing an appeal would not readily accept an invitation to adjudicate on issues that are of “such a nature that the decision sought will have no practical effect or result”. The Constitutional Court in *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs* 2000 (2) SA 1 (CC) para 21 footnote 18 remarked:

“A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law. Such was the case in *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* 1997 (3) SA 514 (CC) (1996 (12) BCLR 1599), where Didcott J said the following at para [17]:

“(T)here can hardly be a clearer instance of issues that are wholly academic, of issues exciting no interest but an historical one, than those on which our ruling is wanted have now become.”

There are instances where there have been exceptions to the provision, initially of s 21A of Act 59 of 1959 and presently s 16(2)(a)(i) of the Superior Courts Act 10 of 2013. The courts have exercised discretion to hear a matter even where it was moot. This discretion has been applied in a limited number of cases, where the appeal, though moot, raised a discrete legal point that required no merits or factual matrix to resolve. In this regard, the Constitutional Court in *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC), in paragraph 11 held:

“...A prerequisite for the exercise of the discretion is that any order which this Court may make will have some practical effect either on the parties or on others.”’

⁵ *The President of the Republic of South Africa v Democratic Alliance and Others* [2018] ZASCA 79 paras 11-12.

[15] Pertinent to these facts is the following. Sometime after the order of 12 July 2019 was granted, the appellant and his followers decided to convene their meeting on 24 August 2019, at Marble Hall. At that meeting, resolutions were taken which undermined the national congress of the PAC that was scheduled to take place in Bloemfontein from 29 to 31 August 2019. The resolutions of the Marble Hall congress were challenged by the PAC and an order was granted by Mahlangu AJ in favour of the PAC.⁶ That order is revealing in that the appellant's election as the President of the PAC was set aside. He has not been re-elected as the President since 2020. He and his followers have been reduced to a rebel group that operates outside of the main structure and administration of the PAC.

[16] In the absence of any appeal against Mahlangu AJ's judgment and order (*Pan Africanist Congress of Azania and Others v Moloto and Others*),⁷ the appellant ought to have realised that the pursuit of any relief in these appeal proceedings is of only academic importance. In the light of the order by Mahlangu AJ that was not appealed by the appellant, this appeal does not conduce more to the exercise of the discretion of this Court in terms of s 16(1) (b) of the Superior Courts Act; either in the interest of justice, or any purported novel legal issue.

[17] In the light of the conclusion I have reached in the preceding paragraphs, the issue of the validity of clause 14.2 raised on behalf of the appellant became wholly academic. Additionally, from the factual circumstances, it is clear that

⁶ The order by Mahlangu AJ reads:

'i. The election of the First and Second Respondents as the President and the NEC of PAC and any resolution taken at the congress convened by the First Respondent and held at Limpopo, on the 24th and 25th of August 2019 are unlawful and invalid;

ii. The NEC of the PAC elected at the conference held on the 29th and the 30th of August 2019 at Bloemfontein, to be the lawful leadership of the PAC;

iii. Directing the Electoral Commission of South Africa to allow the first Applicant through the application to participate in the 2021 local government elections...'

⁷ Op cit fn 3.

there is no live controversy between the parties as the decree had, in any event, lapsed when the appellant purported to act in terms thereof. This Court and so too all courts are best advised not to give advice to parties on how to deal with their internal affairs, more so, in cases of political and self-governing organizations which have their own constitutions to guide them on how to deal with disputes. Consequently, the appeal will have no practical effect.

Costs

[18] In the absence of any ground to interfere with the general rule that costs follow the result,⁸ there will be no reason to deprive the PAC of an order of costs. Furthermore, in this case, there are good reasons to order that such costs be paid on a punitive scale. The appellant was ill-advised to prosecute this appeal as he knew that the outcome of the appeal would have no practical effect or result. The papers of the appeal record were in disarray, to say the least. In my opinion, the failure to file a proper record and to comply with the directive reflects a type of conduct that may fairly be described as reprehensible, deplorable, and contemptuous. Inevitably, as a mark of the Court's displeasure,⁹ mulcting the appellant with costs on the scale of attorney and client is appropriate.

[19] In the result, the following order is made:

The appeal is dismissed with costs on attorney and client scale, including the costs of two counsel where so employed.

⁸ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (2) SA 621 (CC); 1996 (4) BCLR 441 (CC) para 3.

⁹ See: *Nel v Waterberg Landbouers Ko-operatiewe Vereeniging* 1946 AD 597; and *Law Society, Northern Province v Mogami* 2010 (1) SA 186 (SCA) at 196I. Compare with *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC); *SA Liquor Traders Association And Others v Chairperson, Gauteng Liquor Board And Others* 2009 (1) SA 565 (CC) where the Public Protector, State Attorney and MEC respectively, as the public representatives, were ordered to pay costs *de boniis propriis* for failing to fulfill their constitutional duties.

ZM NHLANGULELA
ACTING JUDGE OF APPEAL

Matojane JA (Hughes and Molefe JJA concurring):

[20] I have had the benefit of reading the judgment prepared by my colleague Nhlangulela AJA (first judgment). I agree with the order proposed in the first judgment but for different reasons. There are conflicting judgments by different courts on whether the invocation of clause 14.2 of the PAC disciplinary code by the President of the PAC should be objective or subjective. The interpretation of this clause is a significant legal issue with implications for the future of the PAC. It is for that reason that I decided to write separately.

[21] On 8 March 2019, Mavundla J was asked to make an agreement an order of court, (the Mavundla order) after two opposing factions within the PAC, each with its own NEC, reached an agreement. This order led to the establishment of a unified NEC of the PAC, with the appellant assuming the role of President and Mr Pooe serving as Secretary-General.

[22] On 18 May 2019, the unified NEC, led by the appellant, gathered for a meeting to prepare for the upcoming congress. During this meeting, a decision was made to hold the national congress from 29 to 31 August 2019 in Bloemfontein. Mr Pooe was assigned the responsibility of issuing a circular regarding the congress and was also tasked with handling the logistics and all other administrative requirements for the congress.

[23] On 23 May 2019, Mr Pooe issued a circular to all the PAC members and structures regarding the upcoming congress. However, on 26 May 2019, Mr Philip Dhlamini, the National Chairperson of the joint NEC, wrote a letter to Mr Pooe seeking clarification on the roadmap to the congress. Mr Pooe provided the requested clarification.

[24] Then, on 10 June 2019, the appellant informed Mr Pooe, in writing, that due to a lack of cooperation between office bearers and the joint NEC in organizing the August 2019 National Congress, he had invoked clause 14.2 of the disciplinary code to place the PAC under a decree. As part of this decree, members of the unified NEC were removed from their positions and demoted to ordinary members. Additionally, he had changed the date and venue of the National Conference to 24 August 2019, in Marble Hall, Polokwane.

[25] On 15 June 2019, Mr Pooe presented the appellant's decree during an NEC meeting in Graaff-Reinet for discussion. The appellant was notified but did not attend the meeting. Consequently, the meeting passed a resolution that empowered Mr Pooe to file an urgent application against the appellant for contempt of the Mavundla order and to invalidate the appellant's decree.

[26] On 24 August 2019, the appellant and his supporters held a meeting in Marble Hall, which went against the Mavundla order. During this meeting, they made decisions that undermined the PAC's national congress set for 29-31 August 2019 in Bloemfontein. These decisions were challenged by the PAC. On 23 August 2021, Mahlangu AJ in *Pan African Congress of Azania and Others v Moloto and Others*,¹⁰ issued a ruling declaring the appellant's election as President of the PAC and any resolutions from that Marble Hall Congress as unlawful and void.

¹⁰ *Pan Africanist Congress of Azania v Moloto* [2019] ZAGPPHC 539 para 30.

[27] The case for the appellant in the court below was that he only needed his subjective opinion of an emergency to invoke clause 14.2. He relied on the *Pan Africanist Congress of Azania v Ka Plaatjie and Others*,¹¹ a similar case also involving PAC and the invocation of clause 14.2 where Rampai J held that clause 14.2 empowered the PAC President to suspend the constitution during a crisis. In that case, it was held that challenging the President's suspension of the constitution, based on the absence of a crisis, was not permissible. The focus was on whether the President of the PAC genuinely believed that the PAC was in a crisis given the current circumstances. The court there stated that even if the President's belief was incorrect, the decision could not be contested because invoking clause 14.2 was a subjective decision within the President's discretion.

[28] The court below, contrary to the finding of Rampai J, found that the appropriate test for invoking clause 14.2 is an objective test. The PAC members can, therefore, challenge it, despite the clause stating that the President is only answerable for invoking such clause to the National Congress.

[29] Before this Court, both parties agreed that the relief sought in this appeal has been overtaken by events and has become moot as PAC ultimately held its National Conference on 24 August 2019 and was then administered in terms of the elections and arrangements made at the said conference. The decree invoked by the appellant came into effect on 9 June 2019 and lapsed on 24 August 2019. Additionally, the appellant's election as the President of the PAC was set aside by order of Mahlangu AJ.

[30] A case is considered moot and, as a result, not suitable for legal action if it no longer involves a real, active dispute. To be justiciable, a case must have a

¹¹ *Pan Africanist Congress of Azania v Ka Plaatjie and Others* [2008] ZAFSHC 73 para 26-27.

current and live controversy, or else the court would be issuing opinions on theoretical legal questions rather than addressing practical issues. The Constitutional Court in *MEC for Education: Kwazulu-Natal and Others v Pillay*,¹² stated that:

‘A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.’

The Court has, however, held that it may be in the interests of justice to hear a matter even if it is moot if ‘any order which [it] may make will have some practical effect either on the parties or on others’.¹³

[31] When two different courts issue conflicting judgments, especially when the outcome of an appeal court’s decision has significant implications for future cases, there is a strong argument in favour of addressing the moot matter. In such cases, it becomes important to resolve the conflict and establish a clear legal precedent to guide future legal proceedings. See *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Ltd and Others*.¹⁴

[32] As indicated above, there are conflicting interpretations regarding whether the invocation of clause 14.2 of the PAC Disciplinary Code by the President of the PAC should be objective or subjective. The appellant’s counsel argued that even though the appeal may be moot, it is in the public interest for this Court to address it. They emphasized that resolving the appeal would set a binding legal precedent due to the existing legal uncertainty regarding the interpretation of clause 14.2. This issue has significant implications for the

¹² *MEC for Education: Kwazulu-Natal and Others v Pillay* [2007] ZACC 21; 2007 (3) BCLR 287 (CC); 2007 (2) SA 106 (CC); (2007) 28 ILJ 133 (CC) para 32.

¹³ *Ibid* para 32.

¹⁴ *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Ltd and Others* [2020] ZACC 5; 2020 (6) BCLR 748 (CC); 2020 (4) SA 409 (CC) para 49.

future of the PAC, making it worthwhile for this Court to address a seemingly moot matter.

[33] A consent order is a negotiated settlement agreement which is made an order of the court. The obligation to obey court orders is a constitutional imperative specified in s 165(5) of the Constitution of the Republic of South Africa. This provision dictates that court orders are legally binding on all individuals and state institutions to whom they pertain. Courts bear a constitutional duty to ensure the enforcement of these orders. Failing to adhere to court orders would erode the constitutional authority of the judicial system and the principle of the rule of law. Crucially, the validity of the order, based on the merits of the case, does not affect its obligatory nature. The order remains valid until a competent court with the appropriate jurisdiction overturns it through an appeal or review process.

[34] In *Magidimisi v Premier of the Eastern Cape and Others*,¹⁵ Froneman J explained that:

‘In a constitutional democracy based on the rule of law, final and definitive court orders must be complied with by private citizens and the state alike. Without that fundamental commitment, constitutional democracy and the rule of law cannot survive in the long run. The reality is as stark as that.’

[35] Ponnann JA, in *Motala NO and Others*,¹⁶ relying on *Schierhout v Minister of Justice* 1926 AD 99 held:

‘It is after all a fundamental principle of our law that a thing done contrary to a direct prohibition of the law is void and of no force and effect. . . Being a nullity a pronouncement to that effect was unnecessary. Nor did it first have to be set aside by a court of equal standing’.

¹⁵ *Magidimisi v Premier of the Eastern Cape and Others* [2006] ZAECHC 20 para 1.

¹⁶ *Master of the High Court Northern Gauteng High Court, Pretoria v Motala NO and Others* [2011] ZASCA 238; 2012 (3) SA 325 (SCA) at para 14.

[36] The appellant's unilateral invocation of clause 14.2 changed the terms of the Mavundla order without first seeking an appeal or review of that order. As a result, the appellant's decree is void and has no legal effect.

[37] On the question of whether there must be objective facts to conclude that the party was in crisis before the President of the PAC could invoke clause 14.2, *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹⁷ offers guidance on interpreting the words used in a document. This Court held that interpretation involves assigning significance to the language utilized within a document, whether it is a law, a different form of legal decree or a contract. This involves considering the particular provision or provisions within the context of the entire document and the circumstances surrounding its creation. Regardless of the document's type, the wording should be assessed according to standard rules of grammar and syntax. The context in which the provision is found, its evident intent, and the knowledge available to those responsible for producing it should all be taken into account. When multiple meanings are possible, each potential interpretation must be evaluated using these criteria. This process is objective rather than subjective. A logical interpretation is favoured over one that results in illogical or impractical outcomes or undermines the document's apparent intent.

[38] Clause 14.2 reads as follows:

'14.2 The President shall have emergency powers, which he may delegate, to suspend the entire constitution of the PAC so as to ensure that the movement by decree and is answerable for his actions to the National Conference or National Congress.'

¹⁷ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

[39] On a contextual reading of the clause, the President can only exercise ‘emergency powers’ when there is a genuine emergency situation. In this context, there was no emergency situation as the organisational structures within the PAC, including the unified NEC, as established and mandated by the Mavundla order, remained intact and valid. The decision taken by the joint NEC on 18 May 2019 to schedule the National Congress for 29-31 August 2019 in Bloemfontein carries legal weight and is binding on all PAC members, including the appellant, who participated in that meeting. The appellant’s use of his emergency powers was not justified since there was no genuine emergency within that warranted such action. The existence of a genuine emergency is a jurisdictional requirement without which the apparent intent of the document is undermined.

[40] Clause 14.2 must be read with clause 14.1, which is headed ‘Democratic Centralism’ and reads:

‘14.1 This means that the power of directing the PAC is centralized in the NEC, which acts through the presidency, who wields unquestioned powers as long as he acts within the grounds laid by the decisions of the organization, which must have been democratically arrived at. It means a centralization of directive and executive implementation of a decision. If PAC wants to forge ahead, it must adopt and carry out this principle with firmness and thoroughness.’

[41] A plain interpretation of clause 14.1 suggests that the President holds significant authority, but this authority is contingent upon alignment with the democratic decisions of the organisation. Therefore, it is a logical reading of clause 14.1 to require the President to provide objective evidence of an organisational crisis before invoking his emergency powers.

[42] In light of the context and intent surrounding the provision of clause 14.2, the interpretation proposed by Rampai J contradicts the core principles of a

voluntary association with its constitution and elected officials. It suggests that a president can make arbitrary decisions entirely subjectively without ensuring they align logically with their underlying purpose. This undermines the document's apparent intent. Consequently, I find that there is no valid basis for the interpretation put forth by Rampai J, and it follows that his interpretation of clause 14.2 was incorrect and the case was incorrectly decided.

[43] For the above reasons I would have granted the same order as that of the first judgment.

K E MATOJANE
JUDGE OF APPEAL

Appearances

For the appellant: M Osborne

Instructed by: Van Rensburg & Co, Cape Town
Rosendorff Reitz Barry Attorneys, Bloemfontein

For the respondent: D Mtsweni

Instructed by: M B Tshabangu Attorneys, Pretoria
M B Tshabangu Attorneys, Bloemfontein.