



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Narius Moloto v The Pan Africanist Congress of Azania (1176/2019) [2023] ZASCA 140 (27 October 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal with costs on attorney and client scale, including the costs of two counsel where so employed.

The appellant, Mr Narius Moloto, the then President of the respondent, the Pan Africanist Congress of Azania (the PAC) in 2006, appealed against the order of the Gauteng Division of the High Court, Pretoria (the high court), to set aside his 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.

On 8 March 2019, in earlier application proceedings before the high court, 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.

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 to the congress in compliance with the consent order and attend to the logistics. 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, on 10 June 2019, 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.

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. The high court granted the order sought, finding that the appellant overlooked the NEC resolutions of 18 May 2019 and that the invocation of clause 14.2 should not have occurred. It further found that there was no emergency in Mr Pooe's legitimate actions, and the reasons raised by the appellant had an apparent objective of wresting the administrative powers of the joint NEC of the PAC into the hands of his faction. The PAC, armed with Mavundla J's order, then convened the national congress from 29 to 31 August 2019 in Bloemfontein, albeit without the presence of the appellant and his followers.

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 the high court.

In the majority judgment by Matojane JA (Hughes and Molefe JJA concurring), the SCA held that a consent order is a negotiated settlement agreement which is made an order of the court and the obligation to obey court orders is a constitutional imperative specified in s 165(5) of the Constitution of the Republic of South Africa. The majority further stated that the appellant's unilateral invocation of clause 14.2 changed the terms of the consent order without first seeking an appeal or review of that order and, as a result, the appellant's decree is void and has no legal effect. Regarding 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, the majority held that, on a contextual reading of the clause, the President could only exercise 'emergency powers' when there is a genuine emergency, holding that in the present case, there was no emergency as the organisational structures within the PAC, including the unified NEC, as established and mandated by the consent order, remained intact and valid. In the result, the majority found that the appellant's use of his emergency powers was not justified since there was no genuine emergency within that warranted such action.

The minority judgment, penned by Nhlangulela AJA (Mocumie JA concurring), held that, on the issue of mootness, the relief sought in the appeal had been overtaken by events. It held that the meeting convened on 24 August 2019 at Marble Hall by the appellant and his followers, and the resolutions taken thereto undermined the national congress of the PAC that was scheduled to take place in Bloemfontein from 29 to 31 August 2019. It held that 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 which is revealing in that the appellant's election as the President of the PAC was set aside. Consequently, he has not been re-elected as the President since 2020 and he and his followers have been reduced to a rebel group that operates outside of the main structure and administration of the PAC. In the absence of an appeal against Mahlangu AJ's order, the appellant ought to have realised that the pursuit of any relief in these appeal proceedings is of only academic importance. In the last instance, the minority judgment was of the view that there is no live controversy between the parties as the decree had lapsed when the appellant purported to act in terms thereof.

In the result, both judgments held that the appeal be dismissed with costs on attorney and client scale, including the costs of two counsel where so employed.

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