



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Case No: 416/2013
Not Reportable

In the matter between

NICOLIN PETER CROUWCAMP

APPELLANT

and

CIVIC INDEPENDENT

FIRST RESPONDENT

THE CHIEF ELECTORAL OFFICER:

INDEPENDENT ELECTORAL COMMISSION

SECOND RESPONDENT

PETER BOTHMAN

THIRD RESPONDENT

DANIE SEPTEMBER

FOURTH RESPONDENT

JONATHAN STEVENS

FIFTH RESPONDENT

AUBREY KUHN

SIXTH RESPONDENT

JACOBUS DAMONS

SEVENTH RESPONDENT

ADRIAN MONTZINGER N.O.

EIGHTH RESPONDENT

Neutral citation: *Crouwcamp v Civic Independent & others* (416/2013)
[2014] ZASCA 98 (31 July 2014)

Coram: Mpati P, Navsa, Bosielo and Saldulker JJA and Mocumie
AJA

Heard: 20 May 2014

Delivered: 31 July 2014

Summary: Political Party registered in terms of section 15 of the Electoral Commission Act 51 of 1996 – non-compliance with the party’s constitution – meetings – quorum – legality of a meeting where a non-executive member was permitted to participate actively in the meetings of National Executive Committee – NEC not properly constituted.

ORDER

On appeal from: The Western Cape High Court, Cape Town (Nyman AJ sitting as a court of first instance):

The following order is made:

- (a) The appeal is upheld with costs to be paid by the third to seventh respondents jointly and severally the one paying the other to be absolved;
- (b) The order of the court below is set aside and substituted as follows:
 - ‘(i) The application is dismissed with costs to be paid by the second to seventh applicants, jointly and severally, the one paying the others to be absolved;
 - (ii) The counter application is upheld with costs to be paid by the third to seventh respondents jointly and severally, the one paying the others to be absolved;
 - (iii) The decisions reached at the meetings held on 2 May 2012 and those reached at subsequent meetings related to and flowing from the first mentioned meeting are set aside.

JUDGMENT

Bosielo JA (Mpati P, Navsa and Saldulker JJA and Mocumie AJA concurring):

[1] Central to this appeal is the legality of a meeting purportedly held by the National Executive Committee (NEC) of the first respondent, the

Civic Independent (Civic), a political party registered in terms of section 15 of the Electoral Commission Act 51 of 1996. The meeting was held on 2 May 2012 where a decision was taken to, amongst other things, remove the appellant, Nicolin Peter Crouwcamp (Crouwcamp) as the first respondent's President; prohibiting him from acting as such with immediate effect, but allowing him to retain his status as an ordinary member; appointing the third respondent (Bothman) as Acting President; and establishing a Disciplinary Committee (DC). Although the minutes of the meeting do not state the purpose of the DC, it later transpired that it was intended to investigate allegations of misconduct by the appellant. This decision gave birth to litigation in respect of which the Western Cape High Court (Nyman AJ) gave a judgment that, amongst other things, interdicted the appellant forthwith from acting and/or purporting to act as the first respondent's President and/or its member or representative. In terms of that judgment a seat previously occupied by the appellant in the Langerberg Municipality was declared vacant. This appeal is with the leave of the high court.

[2] The background facts which resulted in this appeal and which are common cause can be stated briefly as follows: the Civic was formally established as a political party during March 2011. At this meeting the following members were elected as the executive committee (EC): the appellant as the President, Danie September (September) as Deputy President, Zanine May (May) as Secretary; (why the sudden change from commas to semi-colons? It's either the one or the other.) Sharlene Scheepers (Scheepers) as Deputy Secretary; Aubrey Kuhn (Kuhn) as Treasurer and Jonathan Stevens (Stevens) and Johan Matthews (Matthews) as additional members.

[3] On 18 September 2011 the Civic held its Special National Conference where, amongst other things, a new Constitution was adopted. The minutes of that conference reflect that the current National Executive Committee (NEC) was confirmed. Furthermore it was resolved that the next NEC elections would be held every four years in terms of clause 37.4 of the new Constitution.

[4] Although there appears to be a dispute as to whether Bothman was elected as the National Secretary at the meeting the minutes reflect him as the Secretary General. However, according to the letter written by the appellant to the IEC on 8 August 2011, Bothman formally replaced May as the Civic's National Secretary with effect from 1 July 2011. This position was reflected in a letter written by the appellant to the IEC. Furthermore, the NEC, including Bothman, was confirmed in a letter to the IEC dated 27 September 2011. I interpose to state that Mr Jacobus Damons (Damons) was not elected as an NEC member at this meeting.

[5] The NEC held what purported to be its meeting on 2 May 2012. Present at this meeting were Stevens, Bothman, Kuhn, September, Scheepers and Damons. The appellant did not attend this meeting. Purporting to act in terms of clause 54.8 of the Civic's Constitution Damons, supported by Stevens, proposed a motion of no confidence in the appellant at this meeting. A resolution was adopted unanimously, removing the appellant as the President of the party and prohibiting him from operating as such with immediate effect. The DC referred to above, comprising of Messrs A Saayman (Saayman), J Stevens and Frans Filies (Filies) was established.

[6] Pursuant to the above resolution, and purporting to act in terms of clause 48.1 of the Civic's Constitution, the DC held a meeting on 3 June 2012, where it resolved to appoint attorney Adrian Montzinger (Montzinger) to preside over the disciplinary proceedings against the appellant. Saayman was appointed as the prosecutor.

[7] On 21 June 2012, the disciplinary hearing took place in the absence of the appellant. This is notwithstanding his request for a postponement. At the end of the disciplinary hearing, the presiding officer, Montzinger found the appellant guilty of "having conducted himself in a way that lowered the esteem in which the Complainant is held by the public as provided for in paragraph 51.9 of the constitution of the Party". He then recommended that the appellant be expelled from Civic and also that he be removed from any office which he held on Civic's behalf with immediate effect. Acting on the recommendations of the DC the NEC expelled the appellant from the Party

[8] However, the appellant continued to act as the President and leader of the party in disregard of the aforesaid decision. In an attempt to put an end to the appellant's behaviour the Civic approached the high court with an urgent application to restrain and interdict the appellant from continuing to act as its President and leader and/or a member or representative, and to have Bothman acting in that capacity.

[9] The appellant opposed the application and filed a counterclaim where, amongst other things, he sought to have third to seventh respondents joined as applicants in the main application and respondents in the counter application. He also sought an order to have Attorney Montzinger who acted as a chairperson in the disciplinary proceedings

which took place on 21 June 2012 joined as a respondent in the counter application in his official capacity. I interpose to state that the appellant's applications were granted by agreement.

[10] The gravamen of his opposition was the legality of all the meetings purporting to have been held by the Civic's NEC on diverse dates, including 19 February 2012; 26 April 2012; 2 May 2012; 29 May 2012 and 26 June 2012, and the meeting held on 3 June 2012, where Montzinger was appointed as the presiding officer and Saayman as the prosecutor of the disciplinary proceedings against the appellant. The nub of his attack is that all these meetings, purportedly held as NEC meetings, were neither quorate nor held in terms of the Civic's Constitution. The logical conclusion is that no lawful decisions could have been taken at those meetings.

[11] The court below found these grounds to be without merit, dismissed the counter-application and granted the Civic the relief it sought.

[12] I pause to observe that although both counsel had prepared elaborate heads of arguments, the arguments before us were narrowed down to one crisp issue, namely the legality of the meetings purporting to be those of the NEC, in particular the one held on 2 May 2012 where, amongst other things, the decisions to terminate the appellant's Presidency and membership of the party was taken; appointing Bothman as the Deputy President with all the authority, duties and powers granted to him by the Constitution and establishing a DC.

[13] The basis of the appellant's submission is that only persons elected in terms of clause 38 of the Civic's Constitution could constitute the NEC lawfully. Clause 38 provides as follows:

'38. The NEC shall consist of

38.1 The Leader of the Party (President)

38.2 The Deputy Leader of the Party

38.3 Secretary General

38.4 Deputy Secretary General

38.5 National Organiser

38.6 National Treasurer

38.7 Nation Policy Convenor

38.8 Members of Parliament will serve as ex-officio members on the NEC

38.9 Chairperson of the National Councillors Forum.'

[14] It was argued further that clause 37.4, in turn, prescribes that the NEC shall be elected every four years after the party's Provincial Conference or election process has been finalised. This was also resolved at the Special National Conference held on 18 September 2011. The further submission was that no other provincial conference or election process was held in terms of the Civic's Constitution after the one held on 28 September 2011 where Damons could have been elected as a member of the NEC. As a result, only the members elected at the last Provincial Conference qualified as legitimate members of the NEC on 2 May 2012. Damons was only co-opted as the National Policy Co-ordinator of the NEC on 28 May 2012. This was after the Civic's Constitution had been amended specifically "to co-opt members as the need arises", as it did not provide for such co-option at the time. It was accordingly argued that as Damons was not a legitimate member of the NEC, he had no right to attend its meetings and to participate thereat. The logical conclusion was therefore that all the NEC meetings where Damons participated were not

legitimate NEC meetings and that all the decisions taken at those meetings were invalid.

[15] Confronted with this conundrum, the first respondent's counsel conceded, properly in my view, that as Damons participated in that important meeting held on 2 May 2012 qua NEC member whilst he was not, the meeting was not proper and hence its decisions were invalid. It was conceded further that by parity of reasoning all the decisions which were taken at the meetings which followed the meeting held on 2 May 2012 were equally invalid.

[16] It is common cause that the Civic as a political party is governed by its Constitution which represents the collective voice of its members. This Constitution spells out clearly when and how members of the Civic's NEC will be appointed and removed from office. It follows therefore that the NEC is constrained to exercise only those powers entrusted to them by Constitution, and, strictly in terms of the Constitution. This is in line with the principle of legality. Any conduct that falls outside the purview of the Constitution is therefore ultra vires and invalid.

[17] I have already indicated that, as at 2 May 2012, Damons had not been elected onto the NEC as its member in terms of the Civic's Constitution. He was only co-opted on 28 May 2012. He therefore had no right to participate in the NEC's meetings qua NEC member. He was essentially a so-called stranger. However, Damons did not only participate in the meeting but also proposed the motion of no confidence against the appellant, which ultimately became the death-knell of his status as President and member of the party. It follows, therefore, that the

NEC, which purported to make the decision in question, was not a legitimate NEC and could not take any valid decisions on behalf of the NEC of the Civic.

[18] I pause to observe that, ordinarily, strangers to an organisation are not allowed to participate in its affairs. This is primarily because they have no privity of interest with the organisation and can therefore not be held accountable for their actions. The *raison d'être* against strangers being permitted to participate in meetings was succinctly enunciated as follows by Trollip J in *Gründling v Beyers & others* 1967 (2) SA 131 (W) at 152D-E:

‘The implication is that other strangers cannot be co-opted or attend and participate in meetings of any of the Union’s organs. The reason is that, if a stranger is co-opted or permitted to attend and participate, even if not to vote, he could influence the discussion and the eventual voting at the meeting, especially if he has a forceful or domineering character; his mere presence might inhibit freedom of discussion, expression of views and the voting; and not being a member himself and representative of the members, accountable to them for his actions, he might not have the Union’s interests at heart; on the contrary he might have his own axe to grind.’

[19] What Trollip J warned against in *Gründling* happened in this case. As already indicated, Damons, the stranger, did not only participate in the all-important meeting of 2 May 2012 but also took the lead and moved the motion of no confidence against the appellant, which culminated in the termination of the appellant’s Presidency and his sacking from the party. Undoubtedly, his participation was not in terms of the Civic’s Constitution and was therefore illegal. This made the NEC’s decision of 2 May 2012 and all other decisions based on it invalid. It follows that all the meetings and the decisions following the meeting of 2 May 2012 stand to be reviewed and set aside. This appeal must therefore succeed.

[20] I now turn to deal with the costs. I have already indicated above that third to seventh respondents were co-applicants in the main application and co-respondents in the counter application. The eighth respondent was joined as a co-respondent in the counter application in his official capacity as a chairperson of the DC. However, no cost order was sought against him unless he opposed the application. The appellant had sought costs against the third to seventh respondents on the basis that they had instituted these proceedings against him without proper authority from Civic. In other words, that they had used Civic's name for their own personal interests in furtherance of their own political objectives.

[21] I have already found that the meeting held on 2 May 2012 was not a legitimate meeting of the NEC and that the resolutions arrived thereat were invalid. In the circumstances, I agree that it is only fair that these respondents be held liable for the costs incurred in the counter application. However, I am not persuaded that it would be fair to have the eighth respondent mulcted in costs because, first, the appellant did not seek costs against him, and secondly, save for deposing to a confirmatory affidavit explaining his role in the disciplinary proceedings as an impartial adjudicator with no personal interest in those proceedings, he did not oppose the application.

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

- (a) The appeal is upheld with costs to be paid by the third to seventh respondents jointly and severally the one paying the other to be absolved;
- (b) The order of the court below is set aside and substituted as follows:
 - ‘(i) The application is dismissed with costs to be paid by the second to seventh applicants, jointly and severally, the one paying the others to be absolved;

(ii) The counter application is upheld with costs to be paid by the third to seventh respondents jointly and severally, the one paying the others to be absolved;

(iii) The decisions reached at the meetings held on 2 May 2012 and all those reached at subsequent meetings related to and flowing from the first mentioned meeting are set aside.

LO BOSIELO
JUDGE OF APPEAL

Appearances:

For Appellant : HJ de Waal

Instructed by:
Van Rensburg & Company; Cape Town
Symington & De Kok, Bloemfontein

For Respondent : GR Papier

Instructed by:
CSM Attorneys; Cape Town
Bezuidenhout Attorneys, Bloemfontein