

Simplifying the Labour Court Judgement against NUMSA – What Does It Mean?

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Problem statement:

Democratically elected leaders who were suspended in the NUMSA Regions of Hlanganani, JCBez, Mpumalanga, Western Cape, Eastern Cape, Ekurhuleni and Sedibeng were vindicated by the Labour Court Judgement against NUMSA. The NUMSA 2nd Deputy President who was not spared and all suspended Comrades had their suspensions set aside, declared unconstitutional, unlawful and invalid. If only the NUMSA National Office Bearer were impartial and acting Constitutionally from the outset, then litigation and wasteful expenditure would not have been necessary.

There is only one technical error in the Labour Court Judgement. The Judge refers to Mpumalanga as the biggest Region in NUMSA. The fact is that Kwazulu Natal Region is the biggest Region with a membership of 56 072 and Mpumalanga only has a membership of 23 154. Does this make the Judgement wrong? No. The Judgement is sound in law.

The Judge on the Credentials Committee:

Judge Moshwana correctly pointed out that NUMSA's Constitution states very clearly that for a National Congress "*The accreditation of delegates will be determined by a Credentials Committee appointed by the Central Committee.*

Only delegates accredited by the Credentials Committee shall be entitled to vote at a National Congress." What then is the Credentials Committee supposed to do when appointed by the Central Committee?

- The Central Committee of December 2021 resolved that the March 2022 membership figures would be used to determine the final delegation to the 11th National Congress. For Regional Congresses the February 2022 membership figures should have been used.
- Amongst other things the task of the Credentials Committee would be to ensure that, as per the Constitution;
 - Those members who are Shopstewards pay a 1% subscription fee to the union
 - Those members who do not pay 1% subscription to the Union cannot be an accredited delegate to the Regional or National Congress
 - Those members who are Shopstewards who pay a flat fee or from whom no deductions are paid over to NUMSA by their employers cannot be an accredited delegate. This is what the Constitution says and this is what the Central Committee resolved.

- Making sure that a Shopsteward means *“a trade union representative who has been elected by paid up members in accordance with this Constitution and who follows the rules, policies and procedures of the Union in terms of section 14 of the Labour Relations Act of 1995 as amended.”* This is taken from the Definition section at the back of the NUMSA Constitution.

How do Shopstewards get elected to attend a National Congress?

Judge Moshwana quoted from the NUMSA Constitution when he said, *“For a National Congress, each Local may elect one Shopsteward per 300 members, as a delegate for their Region at the Congress.”*

Meaning that;

- The Credentials Committee must provide the membership figures of paid up members to the Local so that the Local may elect one Shopsteward per 300 members
- Constitutionally the Local is run by the Local Shopstewards Council (LSSC) and it is therefore the duty of the LSSC to constitutionally elect their delegates to the National Congress.
Nowhere in NUMSA’s Constitution is the Region given any say in who the LSSC can elect as National Congress delegates

What about Mpumalanga’s exclusion from the NUMSA National Congress?

If there is respect for the fact that it is Local Shopsteward Councils who elect one delegate for every 300 members to go to the National Congress, Judge Moshwana ruled that:

“Numsa is bound by what is in the constitution. Nothing more nothing less. Accordingly placing Mpumalanga under administration without the necessary powers to do so is unconstitutional, invalid and unenforceable in law.”

Conclusion:

The poor delegates gathering in the Cape Town International Convention Centre have been interdicted from holding the 11th NUMSA National Congress in any form or shape. Should they follow the advice of the current National Office Bearers, they shall unfortunately all be in Contempt of Court and defying a Court Order.

Issued by:

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