

Numsa did not breach interdict by holding national congress, court rules

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The judge did not, however, rule on the validity of the decisions taken by the central committee, the credentials committee or the national congress.



Numsa's controversial congress in July was the subject of an interdict application. Illustration: Lisa Nelson / GroundUp

- Numsa did not breach an interdict by holding its national congress in July, the Labour Court has ruled.
- Former Numsa deputy president Ruth Ntlokotse wanted General Secretary Irvin Jim and President Andrew Chirwa to be held in contempt of court for going ahead with the congress.
- Judge Andre van Niekerk has dismissed the application saying the union's office bearers had complied with the conditions attached to the interdict.
- Ntlokotse still has remedies under the common law and the Labour Relations Act to "pursue her interests and those of other disaffected union members" the judge noted.

Former NUMSA deputy president Ruth Ntlokotse has failed in her bid to hold the union and its general secretary Irvin Jim in contempt of court by proceeding with its national congress in July in spite of her obtaining an interdict stopping the event until it "complied with its own constitution".

Ntlokotse, in her urgent application which was heard by Johannesburg Labour Court Judge Andre van Niekerk last week, was also seeking an order that "all that was done under the guise of the congress be declared to be null and void and resolutions passed, including nominations and elections are invalid and have no force or effect".

She wanted Jim and president Andrew Chirwa to be sent to prison for 30 days, suspended on condition that they comply with the order, which was granted by Labour Court Judge Graham Moshwana on 23 July, two days before the congress was to start.

But Judge van Niekerk has dismissed her application.

[Read the judgment](#)

Referring to the history of the matter, Judge van Niekerk said Judge Moshwana had made an order declaring the suspension of Ntlokotse and other Numsa members to be unconstitutional and invalid.

He had also interdicted Numsa from proceeding with its 11th National Congress “unless it fully complied with the terms of its own constitution”.

Judge van Niekerk said it was not disputed that the first part of the order had been complied with and the suspensions had been lifted.

In the matter before him, he only had to determine whether the union and its officials had wilfully breached the interdict.

He said Jim, in his affidavit, had said that after the granting of the interdict, the national congress was delayed and a special meeting of the union’s central committee was convened where “decisions called into question by the judgment were identified”.

These included the suspension of certain members, including Ntlokotse, the decision to place the Mpumalanga region under administration (with the consequence that delegates from that region would not be permitted to attend the national congress) and the decision that the central committee – and not a credentials committee – would decide who could attend.

“The respondents aver that they unconditionally accepted that these matters were not compliant with the constitution,” Judge van Niekerk said.

The suspensions were lifted and a credentials committee was appointed. That committee then met and resolved not to accredit delegates from Mpumalanga because the region had last held a regional congress in 2016 and the view was that the executive committee “did not represent the will of union members in the province”.

Jim, in his affidavit, said that the constitutional defects had thus been cured, paving the way for the national congress to begin on 27 July.

Jim said the previously suspended members, including Ntlokotse, were not excluded from the national congress, the judge said.

Ntlokotse, in her affidavit, insisted however, that the union had breached the interdict, that the central committee had met in her absence, and that she and others had been effectively barred from attending any of the meetings because no travel and accommodation arrangements had been made for them. She contended that the exclusion of the Mpumalanga region was unlawful.

Judge van Niekerk, in his ruling, said the terms of the order granted by Judge Moshwana did not make clear precisely which provisions of the union's constitution had been contravened and what action was required.

"The order did not make any reference to any meeting of the national office bearers, nor does it oblige the respondents to permit her to attend any such meeting.

"The terms of the interdict were not unconditional ... what occurred is that the start of the congress was delayed to enable the central committee, and later the credentials committee to meet.

"It does not seem to me that a decision taken to postpone the national congress until such time as the union fully complied with its constitution constitutes a breach of the order. On the contrary, it is indicative of compliance with the order," the judge said.

The original judgment also did not order any action regarding the Mpumalanga issue.

Judge van Niekerk said while Ntlokotse claimed that she and others had received the notice of the central committee meeting too late – and the invitation to attend the national congress was "not genuine" – the respondents had said this was not true and that she had taken a calculated decision not to attend.

"In summary I am not persuaded that the applicant (Ntlokotse) has established a breach of the order beyond reasonable doubt," he said.

He said the validity of the decisions taken at the national congress had not been canvassed in the application.

"Nothing in this judgment should be construed to constitute a finding of the substantive validity of any of the decisions taken by ... the central committee, the credentials committee or the national congress."

He noted that Ntlokotse still had remedies under the common law and the Labour Relations Act to "pursue her interests and those of other disaffected union members".

He said given that the dispute between the parties had yet to reach a stage of final resolution, the requirements of law and fairness were best served by each party bearing its own costs.

Ntlokotse was suspended on 14 July by the central committee. While the union said this was because she had been elected as President of the South African Federation of Trade Unions (Safu), Ntlokotse claimed it was because she had demanded accountability for the 3Sixty Life debacle.

Earlier this year, GroundUp broke a [series of stories](#) about Numsa's leadership and its investment arm, in particular its funeral insurance scheme 3Sixty Life. We revealed reports that suggested improper dealings, including that 3Sixty Life paid for Numsa general secretary [Irvin Jim's birthday party](#). AmaBhungane also [published](#) a detailed report on possible malfeasance at the union.

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