Member Services Election

Introduction:

Over the course of these elections, the application of SAM provisions was extensively tested by way of a contestation from one of the Member Services Officer (MSO) candidates (see Contestation – Candidacy of Ms. Pura; Judicial Board Ruling Jenny Pura). The basis for this series of complaints was that Ms. Pura was not an eligible candidate as a result of misapplied or disregarded procedure. This allegation was first publicly discussed soon after the close of nomination period. It was finally resolved April 17th, with no wrongdoing on the part of the accused candidate. The current contestation alleges that, as a result of this contestation, Ms. Pura’s candidacy was sullied in the eyes of voters, and that her opponent, Ms. Lungu fed into this view with malicious intent. Furthermore, this contestation alleges that Ms. Lungu benefited from a series of advantages, as well as disregarded several administrative regulations.

The CRO contacted over twenty parties in researching the below ruling, including executives, staff, candidates and members.

Ruling:

I do not believe that sufficient grounds exist to invoke SAM 9:15:1:4, and order a new election for the MSO. I decline to disqualify Ms. Lungu under article 9:6:3, noting that, while this candidate’s behaviour and actions were sometimes at odds with fair and democratic practice, she did not, to all evidence viewed, violate any election regulation in a significant or real manner.

Complaint:

Essentially, the contestation alleges the following:

- Ms. Lungu, in maliciously accusing Ms. Pura of being ineligible for election, led, with intent, voters and her fellow candidates to believe that Ms. Pura was an unscrupulous and crooked party to the elections. Furthermore, regarding the campaign affiliation (the slate), this candidate painted the picture that working with Ms. Pura during campaigning would be fruitless for, as per the assumption, Ms. Pura was campaigning on borrowed time. As a result, stemming from a misleading assertion, Ms. Pura could not benefit from allied campaigning

- The contestation against Ms. Pura was akin to slander. Furthermore, in spite of legal practice to the contrary, Ms. Lungu used the allegations of the contestation to campaign against Ms. Pura.
The candidacy of Ms. Lungu was extensively supported by some of the former PGSS executive. None of these campaign assistants were declared to the Chief Returning Officer (CRO). Also, it is noted that one of the campaign members, a law student, drafted the aforementioned contestation.

Ms. Lungu put undue pressure on PGSS administrative bodies and staff in hopes of achieving preferential treatment for her contestation. When this failed, she pursued her complaint through a vindictive suit against the CRO and Judicial Board – namely a legal threat against the latter institution for their lack of priority treatment. Secondary to this, is that Ms. Lungu, in attempting to bypass standard procedure (harassing the CRO, threatening the Judicial Board, proposing legal suit), unduly used her privileges as the MSO officer to benefit in the elections.

Despite firm deadlines to the contrary, Ms. Lungu submitted both her deposit and nomination forms after the deadlines in violation of 9:2 and 9:4:10.

Facts:

For concision, most details presented in previous decisions will be excluded here. It is recommended to first review the original contestation, the CRO ruling, and the Judicial Board decision.

In speaking with several members of the affiliation, I cannot confirm that Ms. Lungu or persons acting on her behalf presented Ms. Pura as being ineligible to run, or otherwise tainted. Some candidates were informed by Ms. Lungu that there was an existing contestation against Ms. Pura that could end her candidacy; however, Ms. Lungu, to all evidence, presented this as a possibility – not a fact.

Ms. Lungu informed the candidate for Secretary-General, Ms. Toccalino, that she intended on resubmitting her candidacy for MSO at the time of the extension of the nomination period - a time when Ms. Pura had not yet informed the CRO and other candidates of changing postings. The affiliation had intended on including Ms. Lungu under the assumption that she was the only candidate for MSO. They also planned on excluding Mr. Sharif and Ms. Pura as, to their knowledge, these individuals were running opposed for the VP Finance posting. Under this false assumption, Ms. Lungu and the remainder of the affiliation began planning their campaigning. When Ms. Pura switched her candidacy, the affiliation had already established a concrete team and plan.

Several members, including executives, as well as some PGSS staff overheard Ms. Lungu discuss Ms. Pura’s eligibility with some PGSS members, including the gentleman who later wrote the contestation against Ms. Pura. This latter group, to the knowledge of this office, did not present Ms. Pura as ineligible or mischievous; however, according to research, they did extensively question the validity of Ms. Pura’s nomination.

On another hand, some members, as well as this officer, did witness discussion of Ms. Pura’s character stemming from negative portrayals in campaigning deriving from the contestation against her. There is no evidence, beyond inference, to suggest this stems from the camp of Ms. Lungu.
In private conversation with Ms. Lungu, some members were told by this candidate that she felt Ms. Pura was benefiting from an unfair advantage stemming from Executive control of the CRO or personal vendettas against her. It is worth noting that the relationship amongst some Executive members, PGSS staff, and Ms. Lungu was very strained at the time of the General Elections.

Regarding the allegation of undeclared support, it is known to this officer that the former Secretary-General, Mr. Jonathan Mooney, was involved with the drafting of the contestation against Ms. Pura. Mr. Mooney admitted to writing this document on multiple occasions. This document was written in such a manner than exceeds the legal knowledge of a typical graduate student in a non-legal programme.

Some members have alleged that former MSO, Ms. Elizabeth Cawley, was involved with the candidacy of Ms. Lungu. These allegations cannot be demonstrated through evidence. Ms. Cawley denies this allegation. Nevertheless, it is worth noting that Ms. Lungu has no registered campaign team members.

Turning to Ms. Pura, this member also had no campaign team. Following this vein, some members of the current executive and staff admit to assisting Ms. Pura and making her aware of the responsibilities of the MSO posting. Additionally, one executive discussed, prior to a debate, with Ms. Pura, important issues facing the future MSO.

Ms. Lungu first inquired of a contestation against Ms. Pura via facebook on the 22nd of March at 9:00 am. The CRO replied with a notice of reception that afternoon. He then replied at 8:21 pm of that day with the following:

Thanks Brighita

I know that the environment is very strained at the moment, and is taking a toll on everyone. I hope you are able to take some time for yourself to relax. We will all get through this eventually :). The funny thing is that, I am convinced everyone is acting in good faith - just not always being smart about it!

I think everyone could use a good long vacation!

Regarding the contestation, there is no official process beyond sending me an email or signed letter outlining what rule was broken, how, when, etc. I then look into it. If I think there is merit, I will proceed to an investigation and a ruling - this can then be appealed to the appeal's board.

In the case at hand, the change of Nomination, I cannot determine which rule you feel has been violated. This being said, if you can provide me with grounds, I would be happy to look into it.

Ms Lungu then replied with a more formal contestation the 24th of March at 2.26 pm. The CRO replied with a notice of reception. Ms. Lungu, on the 26th at 6:09 pm, requested a deadline for a ruling, to which, the CRO replied at 6:16 pm that there is no official deadline. He added that rulings involve an extensive research process. He added that he wished to produce a ruling for Monday, March 30th. The morning of the 2nd of April, Ms. Lungu sought recourse with the Judicial Board as the CRO had not yet produced a decision. Ms. Lungu included the CRO on her email to the Judicial Board in which she requested the Judicial Board rule in lieu of the CRO on the contestation against Ms. Pura.
The CRO then contacted the Judicial Board. He explained the reason for the delay - that being research. The Judicial Board explained to Ms. Pura the appeal process. They ordered her to wait patiently.

On 2 April, Ms. Lungu wrote to the Judicial Board, again, directly, rather than through the administrative staff. She repeated her request: “In the event that [the CRO] fails to respond by the time that you convene, I will ask you to adjudicate the contestation given the CRO's negligence to act.”

[Judicial Board Ruling Jenny Pura (Judicial Board) [2015], para 12]

The CRO rendered a decision on Ms. Pura’s candidacy on Saturday, April 4th at 8:58 PM. The CRO was officially on vacation from the 31st of March until the 11th of April. The CRO also informed the Judicial Board of his decision on Monday, April 6th. On the 13th of April, Ms. Lungu submitted a document to the Judicial Board accusing this body of misconduct in not accepting the earlier request to rule on her contestation of Ms. Pura’s candidacy:

Given your negligence to act, I will have no choice but to seek injunctive relief from the courts to prevent the disclosure of the election results this Friday, April 17, 2015 if I do not hear back from you by this Wednesday, April 15, 2015.

[Quoted from an email written by Ms. Lungu to the Judicial board]
[Judicial Board Ruling Jenny Pura (Judicial Board) [2015], para 13]

In response to this allegation and threat, the Judicial Board reminded Ms. Lungu of official procedure, which this candidate did not respect. They added that, while the demand letter did not include a request to review the CRO’s original ruling, they assumed that this was partially the objective of the demand. The reason for this assumption was that there was no contact between this board and Ms. Pura from the time of the CRO’s decision being rendered and the 13th of April. They then informed Ms. Pura and the CRO of a meeting, scheduled for the 16th of April at 9:30 am, in which this body would consider an appeal of the CRO’s ruling.

After considering comments from interested parties, including Ms. Lungu, the CRO, Ms. Pura and PGSS staff, the Judicial Board determined that the CRO’s ruling, which absolved Ms. Pura of fault, was correct.

Turning to the allegations of fault against Ms. Lungu regarding nominations, the ruling of the CRO and Judicial Board establish that Ms. Lungu submitted her nomination form in paper format after the written deadline for paper submission, but prior to the electronic deadline. The Judicial Board confirmed this was a just decision:

The nomination form had stated that nominations (for the original, unextended date) were to be accepted at the office until 5:00PM, and by email until 11:59PM. Both the CRO and Ms. Lungu agree that she submitted the forms, in person, after 5:00PM.

28. A strict reading of Section 2.4 and of the nomination form would imply that Ms. Lungu's nomination is null and void.

Issue: The Meaning of Discretion

29. The CRO, in both the case of the candidate switching process, in his decision to schedule the nomination extension as he did, and to accept Ms. Lungu's nomination, exercised his discretion, as allowed by the SAM.

30. In both cases, the discretionary judgement went beyond the strict letter of the SAM.
Ms. Lungu, despite information and personalized reminders to the contrary, did not submit her deposit until the 23rd or 24th of March (after the deadline). While the CRO did insist the candidate turn in the deposit as soon as possible, he also did confirm that he would accept a late deposit.

Governance and Judicial Board Rulings permit the CRO to use his discretion in the application of the PGSS bylaws, regulations and standing regulations. This is tempered by obligations of reasonableness and fairness.

Analysis:

The complaining party is correct in claiming that the preservation of PGSS’s core democratic principles is paramount. To mislead voters in their choice is an undeniable violation of this; however, in the case at hand, evidence does not support such an assertion. Using a layperson’s definition of mislead, a point can be made that voters were misled in believing that Ms. Pura was cheating; however, all evidence suggests that misleading information was not disseminated. Even if some voters were misled, the extent of such falsehoods could not explain the 140 surplus votes for Ms. Lungu. Furthermore, standard legal practice has established that to discuss a justified claim against a person is not defamation, even if this claim is later demonstrated to be invalid. This assumes that the initial claim was made in good faith, is not malicious, and does have some grounds. In the case at hand, the CRO accepted Ms. Lungu’s contestation against Ms. Pura. While this officer later ruled her contestation to not be valid, he, in accepting the contestation, recognised the valid basis for it. As a result, the discussion of this contestation by Ms. Lungu during the campaign is not misleading. An ungrounded contestation would, conversely, be misleading. What is more, evidence demonstrates that Ms. Lungu, along with members in general, never presented the contestation as a guilty verdict against Ms. Pura. Rather, discussion was limited to its nature as an allegation.

Turning to the latter aspects of this contestation, an abuse of power or privileged procedural treatment completely undermines the notion of equality. Nevertheless, the réalité des faits demonstrates that the CRO and Judicial Board did not privilege Ms. Lungu, despite the candidate’s requests for expedited treatment.

Items in Question:

A) Did Ms. Lungu mislead voters?
B) Is it permitted to campaign using judicial processes to portray a candidate is a negative light?
C) Was Ms. Lungu’s nomination form receivable? And the deposit?
D) Does the undeclared support of 3rd parties enjoyed by Ms. Lungu and Ms Pura constitute a violation of PGSS regulations?
E) Did Ms. Lungu exert pressure on PGSS judicial bodies resulting in an unfair advantage?
F) Were voters presented with a reasonable and fair choice without a bias constituting a mislead decision pursuant to 9:15:1:4?

Decisions:

A) Did Ms. Lungu mislead voters?

No. As noted in the facts, there is no evidence to suggest that Ms. Lungu told voters or her fellow candidates that Ms. Pura was operating outside of what is considered fair or permissible. While Ms. Lungu may have claimed that Ms. Pura did actions that were, at face value, at odds with PGSS regulations, these allegations were a statement of fact (noting that these actions were indeed permitted according to a correct, interpreted reading of PGSS bylaws). Ms. Lungu did discuss the receivability of Ms. Pura’s nomination form. Even the most disfavorable reading of defamation law could not justify limiting one’s ability to discuss a legitimate legal challenge. Regarding Ms. Lungu’s discussion of fairness at PGSS, this office cannot see any means or reason to limit one’s freedom to express one’s opinions under the auspices of defamation. Ms. Lungu did no wrong in expressing her personal viewpoints or feelings about her fellow candidates or the PGSS Elections Office. All comments were presented as opinions, and not fact.

B) Is it permitted to campaign using judicial processes to portray a candidate is a negative light?

Given the response to question A, this question is moot. In the interests of establishing jurisprudence, this office would still like to address this issue. It is in our opinion that, as outlined in the analysis section, that the discussion of an accepted contestation is acceptable under articles 9:10:1 and 9:10:4.

C) Was Ms. Lungu’s nomination form receivable? And the deposit?

Yes. The ruling of the Judicial Board established that CRO acted correctly in accepting Ms. Lungu’s paper form after the paper deadline, but before the electronic deadline [Judicial Board Ruling Jenny Pura (Judicial Board) [2015], para 27 - 32]. As outlined in the ruling on the initial contestation against Ms. Pura, the intention of a paper deadline is practicality – the PGSS office usually closes at 17h00. The real deadline is the time set for electronic submissions. Should a candidate arrange to submit a paper copy after the former deadline, but before the latter deadline, the candidate has done no wrong. Concerning the deposit, the Judicial Board has ruled that it is the CRO’s discretion to decide submission procedures. The CRO made allowances for Ms. Lungu given the rushed nature of the campaign period, and her late arrival to the elections. Nothing suggests that the CRO would not extend this privilege to other candidates in similar situations.

D) Does the undeclared support of 3rd parties enjoyed by Ms. Lungu and Ms Pura constitute a violation of PGSS regulations?

No. Article 9:10:11 states:
Candidates and Chairpersons are required to declare any individuals who will be assisting them with campaigning. These individuals are considered to be part of a campaign team, and the candidate or Chairperson will be liable for this person’s actions if done on the suasion or with the knowledge of the candidate or Chairperson.

Campaigning is not defined anywhere in the SAM or candidate guide; however, based on the definitions of campaign materials (9:10:1 - Campaign material includes any material intended to affect the ballot choice of a PGSS member), the CRO routinely informs candidates that campaigning is any action that attempts to directly affect the ballot choice of a candidate. As such, one cannot consider the support of Mr. Jonathan Mooney in drafting a contestation to be campaigning. With respect to Ms. Pura, the consultation provided by Executive members and PGSS staff is also not deemed campaigning.

Given the powerful role played by legal support in PGSS elections, in the future, the CRO will, by way of his rights to adopt practical regulations, extend the definition of campaigning to include the ensemble of campaign support, including legal.

E) **Did Ms. Lungu exert pressure on PGSS judicial bodies resulting in an unfair advantage?**

While the demands put on the CRO and Judicial Board by Ms. Lungu were unreasonable, excessive, and punitive, they did not result in any advantage being afforded to this candidate. Such an assertion is demonstrated in the total rejection of her contestation by both judicial bodies.

F) **Were voters presented with a reasonable and fair choice without a bias constituting a mislead decision pursuant to 9:15:1:4?**

Yes. Given the entirety of the previous five questions, one must conclude that voters were not misled to a level constituting significant consequence. In fact, evidence cannot demonstrate that voters were misled at all. Voters were never presented with incorrect information regarding Ms. Pura’s candidacy. A limited amount of voters were aware of the contestation against Ms. Pura; however, evidence demonstrates that Ms. Lungu did not include this contestation in her campaigning in any notable manner. Furthermore, if Ms. Lungu had, this action would be permissible assuming it is limited to facts. Once again, using a teleological approach to SAM interpretation, we can define significant consequence as having an effect on the outcome of the elections. As Ms. Lungu won the MSO election by 140 votes, this office is hard-pressed to see any possible situation in which Ms. Lungu could bias the election this much in her favour. In short then, it appears that no voters were led to believe Ms. Pura was in any way guilty of acting against PGSS regulations.

**Conclusion:**

With respect to opposing opinions, this office concludes that Ms. Lungu did not mislead voters or make use of the contestation against Ms. Pura in her campaigning in any notable manner. Furthermore, considering the purpose of the ascribed deadlines, this office considers Ms. Lungu’s nomination form and deposit acceptable. Regarding the undeclared support of Mr. Mooney in the campaign of Ms. Lungu, we believe that this is a lacuna in PGSS regulations that Ms. Lungu justifiably took advantage of. Lastly, this office notes that the
pressure exerted on the CRO and Judicial Board by Ms. Lungu, while mildly reprehensible, did not result in any electoral advantage.

This contestation is rejected, noting that the contesting party has recourse to the Judicial Board.

Respectfully,

Colby Briggs
PGSS Chief Returning Officer

Original Contestation

As the former Equity Commissioner at PGSS (2013-2014), I am concerned that the results of the electoral race for MSO may have been heavily skewed by misleading information and defamatory tactics on the part of Ms. Lungu. In my opinion, the numerous infractions to our electoral rules warrant a thorough investigation by the Chief Returning Officer so that the core democratic principles of PGSS may be upheld.

Firstly, an anonymized formal complaint challenging the legitimacy of Ms. Pura’s candidacy can be found on PGSS’ election webpage. In a subsequent Judicial Board ruling of an appeal filed by Ms. Lungu, the factum indicates that the original election complaint was lodged by Ms. Lungu against her opponent, Ms. Pura.

In her contestation, Ms. Lungu asserts that (paraphrased in the CRO’s ruling):

- “The CRO, in accepting the nomination form of Ms. Pura, violated his duty of fairness to the other MSO candidate, Ms. Brighita Lungu.”
- “The CRO has acted in the interests of the current PGSS Executive Committee rather than in the interest of democratic expectation as per the PGSS Bylaws and Society Affairs Manual (SAM).”

With these two assertions, Ms. Lungu insinuates that her opponent was placed on the ballot by unfair and deceptive means. In the factum of the Judicial Board’s rulings, we can further see that Ms. Lungu’s intent to portray the CRO’s allowance of Ms. Pura’s candidacy as an unfair, unreasonable, arbitrary act that was made with strong bias against Ms. Lungu’s.

Secondly, during her campaign to be the MSO, Ms. Lungu was advised and mentored by several former executives, and her campaign was overseen and managed by some of these individuals. These individuals who have contributed to Ms. Lungu’s campaign did not formally register with the CRO as members of Ms. Lungu’s campaign. One former executive (and a current undergraduate law student) helped Ms. Lungu draft the appeal used to defame Ms. Pura’s candidacy and to aid in Ms. Lungu’s campaign strategy. Failure
to register campaign supporters is a gross violation of PGSS election rules and I urge the CRO to actively investigate this potential infraction and deal out appropriate sanctions/rulings should these allegations prove meritorious.

Thirdly, it was found out that the fact that confidential complaints against Ms. Pura launched by Ms. Lungu to both the CRO and the Judicial Board had been actively circulated and propagated among the PGSS membership during the campaign and election periods. This seriously affected Ms. Pura’s campaign for the MSO position, by unfairly and maliciously portraying her as a campaign rule violator before any verdict could be issued by the CRO or the Judicial Board. These attacks on Ms. Pura’s character and legitimacy as a candidate represent blatant acts of defamation in direct violation of PGSS’ election rules. Although Ms. Pura was subsequently cleared of all alleged wrongdoings, these defamatory allegations of campaign violations did impart an irreversible damage to her campaign, and may have resulted in her loss. The disclosure of confidential information involving a complaint or appeal to the CRO or the Judicial Board during their investigation is tantamount to slander and constitutes both a breach of privacy as well as judicial integrity, and is an action that warrants a disciplinary investigation in itself, let alone one that directly affected the outcome of an election.

Fourthly, during the election period, Ms. Lungu submitted multiple times her conditional appeal against the CRO’s pending ruling to the Judicial Board, completely bypassing normal administrative channels and established procedure for appeals. As noted by the Judicial Board in their decision, her actions are so procedurally unsound that the Judicial Board was unable to handle the appeal without violating their protocols. In addition, Ms. Lungu threatened to sue the PGSS Judicial Board for not rendering a decision in her favor within the timeframe that she stipulated, despite the Judicial Board’s repeated insistence that Ms. Lungu must follow the correct procedures. I believe Ms. Lungu’s refusal to adhere to PGSS appeal procedures stems from her self-perceived privilege as an executive officer of the PGSS, and therefore constitutes an abuse of Ms. Lungu’s own executive privilege to create an unfair advantage in her campaign, which is in direct violation of the spirit of democratic elections.

Finally, it was also discovered after the release of the Judicial Board’s report that Ms. Lungu’s own nomination form was handed in after the nomination deadline. She also made special arrangements to turn in her deposit after the first debate at MacDonald Campus, well after the close of the nomination period. The CRO has accepted both the nomination and the deposit, but with strictest bylaw interpretation, these are yet more blatant violations of the campaign rules and procedures outlined in the SAM. This arrangement of special accommodations could also be interpreted as abuse of Ms. Lungu’s own executive privilege to aid her campaign.

In light of the aforementioned points, I hereby submit a formal complaint to the CRO regarding potential violations of multiple campaign rules by Ms. Lungu, and request that an investigation be launched immediately and appropriate sanctions be issued should any of these severe violations be proven true.

Murielle M. Akpa, M.Sc.