



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

The School Governing Body Grey College, Bloemfontein v Scheepers and Another (Case no 506/19) [2020] ZASCA 82 (3 July 2020)

From: The Registrar, Supreme Court of Appeal

Date: 03 July 2020

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against an order of the Free State Division of the High Court, Bloemfontein (Musi AJP and Van Zyl J, sitting as court of first instance). The appeal was dismissed with costs.

The matter concerned a dispute between the School Governing Body of Grey College, Bloemfontein (the SGB) and the first respondent, the principal of Grey College secondary school, Mr Deon Scheepers. Mr Scheepers was appointed as principal from 1 January 2013 by the Head of the Free State Department of Education (the HOD) on the recommendation of the SGB. He served in that position until May 2018, when the SGB purported to recall all delegated SGB powers from him.

At a special meeting of the SGB on 15 May 2018, Mr Scheepers was informed that the SGB's executive had identified certain issues which potentially impacted on the relationship of trust between him, as principal, and the SGB. The SGB had taken the view that, as principal, Mr Scheepers' functions were limited to managing the academic activities of the school and that all other functions had been delegated to him by the SGB. The purpose of the meeting, so it was said, was to determine whether the SGB was comfortable with the manner in which Mr Scheepers had discharged those apparently delegated functions.

At the meeting Mr Scheepers was confronted with a litany of complaints, including the harsh and aggressive treatment of staff, that he victimized and bullied educators and that he was not approachable

to parents. Thereafter the SGB voted, by secret ballot, on whether the functions and responsibilities delegated to him should be withdrawn. Fourteen of the seventeen members in attendance voted in favour of the motion. A resolution was subsequently adopted to reflect this. It provided, *inter alia*, that the functions, responsibilities and duties that were delegated to Mr Scheepers are withdrawn with immediate effect. It also provided for the appointment of a so-called interim school manager, to execute the delegated functions of the SGB until a long-term solution could be implemented. The interim school manager would manage all school activities save for teaching and learning, which Mr Scheepers would remain responsible for. This meant, according to the SGB, that Mr Scheepers would be continuing with his professional duty as school principal, exercising only those powers that are assigned to him under the South African Schools Act 84 of 1996.

Aggrieved at the decision, Mr Scheepers approached the court below to have it reviewed. He contended that the SGB's decision was unlawful and procedurally unfair. In his view, there was no substantive basis for the decision and the SGB was thus acting beyond its powers. On the other hand, he argued that he had been deprived of a reasonable opportunity to make representations by not being given adequate notice of and information concerning the contemplated action by the SGB. In addition, there were no adequate or clear reasons provided for the SGB's decision.

Opposing the relief sought by Mr Scheepers, the SGB maintained its view that the powers, functions and duties which he exercised prior to the impugned decision had been delegated to him by the SGB. As the repository of the original powers and functions, so the argument went, the SGB was entitled to revoke them and, in so doing, retake the control that vested in it in terms of the provisions of the South African Schools Act.

The high court considered the applicable legislative framework and concluded that the SGB had overreached in stripping Mr Scheepers of the various functions and duties. It held that the SGB's decisions to recall all delegated governing body powers from Mr Scheepers and to simultaneously appoint an interim school manager were unlawful and set them aside.

The SCA had regard to the functions and duties of governing bodies and school principals by considering the applicable legislation as well as Constitutional Court jurisprudence on this subject. It held that the SGB had ignored the statutory architecture which distinguished clearly between the governance/legislative function and the managerial/executive function performed by the governing body and the principal, respectively. It held, further, that the SGB was unjustifiably dismissive of the provisions of the South African Schools Act and the other applicable legislation by adopting the position that Mr Scheepers, as principal, derived all his functions and duties from it; that in performing his task as principal, Mr Scheepers was merely acting on delegated authority. The decision of the court of a quo that the SGB lacked the statutory authority to act in the manner complained of was thus confirmed.

In conclusion, the SCA held as follows:

'[T]he fundamental premise on which the impugned decision is based is not only false but also contrived. It is clear that the relationship between the chairperson of the SGB and Mr Scheepers has soured. It is equally clear from the documents filed of record that there is tension between camps on either side. The principal might be the victim of unjustified criticism by those opposed to him or he might be conducting himself as described by them. The accusations by each camp are serious. If there is a basis for a disciplinary case to be pursued against Mr Scheepers by the SGB then that should be the route that is followed, rather than the stratagem adopted here. It is disingenuous to suggest that whatever labour law complaints Mr Scheepers might have he must take up with his employer, the HOD. In taking the impugned decision the SGB not only acted beyond its statutory authority, but also negated Mr Scheepers' labour law rights. Wherever lies the fault for the breakdown in the relationship, it cannot be in the school's best interests that it continues. What is required is sober reflection by all concerned. More often than not, in situations such as the present it is difficult to persuade parties to retreat from entrenched positions. The school's interests are not best served by protracted litigation, with attendant financial implications for all, and continuing tensions and uncertainty. There should be a sustained effort to arrive at a solution that best serves the school and any attempt at mediation should involve parties without a leg in either camp. This ongoing tension might also be part of a greater turf war, including organisations. In this instance the interest of FEDSAS and the SAOU diverge. The legislation is there as a beacon. We must, all of us, get down to the real and urgent business of realising the right to education, which is the pathway to the development of the full potential of our learners and communities. This will only occur if every role player understands its role and fulfils it. Put differently, the message to all the role players is simply this: Put the learners first.

In the result, the appeal was dismissed with costs, including the costs of two counsel.
