

SOUTH AFRICA / JUDGMENT

Mgquba and Others v Principal, St John's College and Others (1347/2023)

[2023] ZAECMHC 25 (9 May 2023)

[2023] ZAECMHC 25

COURT

Eastern Cape High Court, Mthatha

BEFORE

JE Smith

CASE / FILE NUMBER

1347/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION – MTHATHA)

CASE

NO.: 1347/2023

Matter

heard on: 20 April 2023

Judgement

delivered on: 9 May 2023

REPORTABLE:

YES

OF

INTEREST TO OTHER JUDGES: YES

REVISED

In

the matter between: -

AYANDA MGQUBA &

OTHERS

Applicant

and

THE PRINCIPAL,

ST JOHN'S COLLEGE

First

Respondent

THE

CHAIRPERSON, ST JOHN'S COLLEGE

SGB (MR

MLENZANA)
Second
Respondent
THE
DISTRICT DIRECTOR, O.R. TAMBO
DISTRICT FOR THE
DEPARTMENT OF EDUCATION, E.C.
Third
Respondent

JUDGMENT

SMITH J:

- [1] The applicants seek an order, inter alia, directing the principal of St Johns College (the first respondent) to withdraw an advertisement in respect of various teachers' posts at the school and prohibiting the Chairperson of the School Governing Body (the second respondent) from shortlisting, interviewing or employing anyone in the advertised posts.
- [2] The 18 applicants asserted that they have the necessary locus standi to bring the application because they have children who are enrolled as learners at the school. They did not provide the names of the children or the grades in which they are currently enrolled. This assertion was squarely challenged by the respondents in their answering affidavit.
- [3] The applicants contended that the impugned advertisement is unlawful because the decision to create the advertised posts was not taken by the School Governing Body (the SGB) and that, in any event, the latter has not adopted a budget as required in terms of section 38 of the Schools Act, 84 of 1996. It was thus not entitled to take decisions which would have had long term financial implications for the school.
- [4] The respondents, in their answering papers, have stated that the decision to advertise the posts was taken by the Executive Committee of the SGB, on the recommendation of the Financial Committee. The advertised posts were not new, but existing posts that became vacant as a result of the suspension of three teachers, one teacher being on maternity leave and another having retired. The SGB consequently had no alternative but to advertise the posts in order to avoid the situation where several classes would be without teachers.
- [5] The respondents have also raised various points in limine, the most compelling point being the challenge to the applicants' locus standi. In their answering affidavit, they have unequivocally stated that the applicants were not known to them, that they have failed to provide their identity numbers or the names and grades of their children so as to enable the respondents to verify their claim that they have children who are enrolled as learners at the school. Surprisingly, the applicants in their replying affidavit, instead of at the very least providing the names and grades of their children, simply repeated the bald allegations contained in their founding papers.

[6] Ms Mxotwa, who appeared for the applicants, has conceded that they could conceivably only have a direct and substantial interest in the relief sought in the notice of motion if they are indeed parents of children enrolled as learners at the school. The relief they seek,

namely to interdict the SGB from filling vacant teachers posts, have far-reaching implications, both for the learners and other parents. It was thus important for them to aver the necessary facts to sustain their assertions in respect of their locus standi. Ms Mxotwa has argued that because the SGB had previously entertained a letter from the applicants - writing as 'concerned parents'

- to demand withdrawal of the advertisement, it is not open to them to challenge their locus standi in these proceedings.

[7] It is trite that it is sufficient for a deponent in application proceedings to assert baldly that he or she has locus standi or the necessary authority to institute the proceedings. However, if those assertions are challenged by the respondent in the answering

affidavit, the applicant must either annex the relevant resolution or aver further facts to establish locus standi. It is common cause that in this case the only possible basis on which the applicants could have established locus standi is by virtue of them being parents of learners enrolled at the school. And it would have been relatively easy for them to do so merely by providing the names of their children and their grades. This would have been sufficient to defeat the respondents' challenge to their legal standing. Ms Qikila, who appeared for the respondents, correctly argued that it was simply not good enough for them merely to repeat the bald allegations contained in their founding papers and to embark on convoluted arguments to avoid dealing with the serious challenge to their standing. And insofar as a dispute of fact may have arisen regarding this issue, it must be resolved on the respondents' version.

[8] It is indeed a matter of great concern that the applicants appeared to have deliberately avoided the obvious riposte to the respondents' challenge, which was to name their children. And in my view it matters not that the respondents may previously have accepted their bona fides after they had addressed a letter to the SGB. The respondents were perfectly entitled to challenge them to provide further details regarding their children in order to establish their locus standi. As mentioned earlier, the relief they seek have far-reaching consequences for the school. It is not difficult to conceive of the deleterious consequences for learners if they are left bereft of educators in some subjects at such a vital stage of the academic year.

[9] Nevertheless, if it is established that the process leading to the decision to advertise the posts was fundamentally flawed, the court must intervene. It can, however, only do so if the proceedings have been brought by persons who have a direct and substantial interest in the relief sought and who have established the necessary locus standi. In *Four Wheel Drive CC v Leshni Rattan* NO (1048/17)

[2018] ZASCA 124 (26 September 2018), the Supreme Court of Appeal held that '[t]he plaintiff must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought; the interest must not be too remote; the interest must be actual, not abstract or academic; and it must be a current interest and not a hypothetical one. The duty to allege and prove locus standi rests on the party instituting the proceedings.'

[10] In my view the applicants have failed to put up sufficient facts to sustain their bald assertion regarding locus standi and the application falls to be dismissed on this basis alone.

[11] In the result the following order issues:

The application is dismissed with costs.

JE SMITH

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant: Adv. N Mxotwa Khazimla Sigila Inc. Office No 424, Fourth Floor Cnr York & Elliot Road ECDC Building MTHATHA (Ref.: KS/044-LIT/23 (Ms. K. Sigila) Counsel for the 1st & 2nd Respondents: Adv. CN Qikila Bongani G Mtati Inc. Suite No. 109 ECRDA (TRACOR) Building No. 52 Spring Street MTHATHA

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Prepared on 13 October 2026 · Esheria