

SOUTH AFRICA / JUDGMENT

Riekert v Sutherland High School and Others (2803/17) [2017] ZAGPPHC 177 (12 May 2017)

[2017] ZAGPPHC 177

COURT

North Gauteng High Court, Pretoria

BEFORE

J W Louw

CASE / FILE NUMBER

2803/17

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REPUBLIC

OF SOUTH AFRICA

IN

THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

CASE

NO: 2803/17

DATE: 12/5/2017

REPORTABLE: NO

OF INTEREST TO OTHER

JUDGES: NO

In

the matter between:

SIMON

RIEKERT Applicant

and

SUTHERLAND

HIGH

SCHOOL

First Respondent

THE

MINISTER OF

EDUCATION

Second Respondent

THE

MEC: DEPARTMENT OF EDUCATION,

PROVINCE

OF

GAUTENG
Third Respondent
THE
DIRRECTOR-GENERAL: DEPARTMENT
OF
BASIC EDUCATION PROVINCE OF
GAUTENG
Fourth Respondent

JUDGMENT

J W LOUW. J

- [1] During 2016, the applicant was a Grade 11 scholar at the Sutherland High School, a public school as defined in s 1 of the South African Schools Act 84 of 1996 ("the Act"), situated in Eldoraigne, Centurion ("the school"). The applicant was born on 5 May 1997, and therefore turned 18 on 5 May 2015. The present application, in which the applicant applies for an order compelling the school, which is the first respondent, to enroll him as a scholar for his final year of studies, namely Grade 12, was brought as an urgent application and enrolled on the urgent roll of 24 January 2017. It was struck off the roll for reasons which are not quite clear to me.
- [2] On 17 November 2016, a disciplinary hearing was held in the applicant's absence during which he was found guilty on all charges which were brought against him by the School Governing Body. The School Governing Body decided to recommend to the Head of Department ("HOD")
- [1] that the applicant be expelled from the school. In terms of s 9(2) of the Act, a learner at a public school may only be expelled by the HOD and only if found guilty of serious misconduct after disciplinary proceedings contemplated in s 8 were conducted.
- [3] The MEC responsible for education in Gauteng published regulations in terms of the Act in General Notice 6903 of 2000. Regulation 5(4) provides the following:
- "The principal must give the notice contemplated in subparagraph (2) [2] to the learner and deliver a copy thereof to the parents of the learner at the address of the learner as indicated in the school register."
- [4] The applicant states in his founding affidavit that he does not remember being provided with such a notice. This is disputed by the school in its answering affidavits in which it is alleged that such notice was handed to the applicant personally. The applicant's

parents are divorced. In the applicant's admission form submitted to the school, different residential addresses and different email addresses were provided for the applicant's father and mother. It was common cause that no notice in terms of regulation 5(4) was sent to either of them. It was furthermore common cause that the School Governing Body has to date not made a recommendation to the HOD to expel the applicant from the school and that the applicant has not been expelled. What the school relies on for its refusal to enroll the applicant for the 2017 school year, is an agreement which it concluded with the applicant's father on 9 December 2016.

[5] The agreement came about in the following manner. The applicant states in his founding affidavit that, after receiving an email from the school dated 18 November 2016, which was the day of the disciplinary hearing, informing his parents that he would be expelled, his father thought it fit to enroll him in a different school for the 2017 year to finish his matric. He states that his

father and mother believed that this would be better for him, but that he disagreed with them. The school's answering affidavit was deposed to by Mr. Pieter Jacobus Grobbelaar, who is the head of the school's disciplinary committee and chairperson of the school safety committee. He states that the applicant's father and his fiancée came to see him on 9 December 2016 to discuss the way forward. At the meeting, he indicated that he would have to refer the Board's recommendation to the HOD for his consideration, who would then enforce the recommendation or not. The applicant's father then stated that it would not be necessary to refer the recommendation to the HOD because he intended to remove the applicant from the school. Mr. Grobbelaar states that the content of the conversation is fully set out in an email which the applicant's father sent to him on 14 December 2016, a copy of which is attached to the applicant's founding affidavit as an annexure. The relevant part of that email reads as follows:

"As ouers het ons besluit om Simon uit die skool te haal en in 'n ander skool te sit. Ek bevestig ons ooreenkoms dat die skool Simon van 'n skoon skoolkaart en getuigskrif sat voorsien indien ons hom nie in 2017 weer by die skool inskryf nie. In die fig van die voormelde en ons bes/uit as ouers ontvang ons dan graag bevestiging dat Simon 'n skoon kaart

en getuigskrif vanaf die skool sat ontvang ten einde hom instaat te stel om by 'n ander skool in te skryf. Ek wit dit op rekord plaas dat indien ek nie jul bevestiging en bewys van voormelde ontvang nie en/of ons nie die ooreengekom(e) skoon skoolkaart en getuigskrif ontvang nie, ek genoodsaak sat wees om hierdie saak verder te neem."

[6] Mr. Grobbelaar states that the applicant's father came to see him on 9 January 2017 to ask for the applicant's transfer card and said that he was in the process of looking for another school. The applicant's father also informed him via WhatsApp on 10 January 2017 that they had had a meeting with Abbott's College and that he was confident that they would be helped there. A screenshot of the WhatsApp message is annexed to the answering affidavit. On 11 January 2017, the applicant's father suddenly informed him that he should halt the issuance of the transfer card as he was unable to afford Abbott's College's fees. Mr. Grobbelaar had by that time finalised the transfer card, a copy of which is annexed to the

answering affidavit.

- [7] Mr. Grobbelaar further states that on 12 January 2017, the applicant and his father arrived at the principal's office unannounced and demanded that the applicant be enrolled for the 2017 school year. An attorney's letter was handed to the principal, who said that in light of the disciplinary committee's recommendation he was unable to allow the applicant back into the school and requested the applicant and his father to leave the premises. In the attorney's letter, which was written on behalf of the applicant, the following is stated:

"Our client made it very clear to his father that he did not want to attend another school and that he wants to finish his 2017 matric year in Sutherland High School, especially since his sister would also be attending the school. Nevertheless our client's father proceeded in applying to other schools."

- [8] It was submitted on behalf of the school that the applicant's denial that he was bound to the agreement which his father concluded with Mr. Grobbelaar was a denial of convenience as his father must have discussed the email of 14 December 2016 which he sent to Mr. Grobbelaar with the applicant. I have no doubt that the applicant's father, and his mother, told him that they believed that it would be better for him to be enrolled in a different school in 2017. But the applicant expressly states in his founding affidavit that he disagreed with them. His disagreement was also expressed in his attorney's letter which I have quoted above. The applicant had already attained the age of majority, and was therefore entitled to decide for himself which school he wanted to go to. He would not be bound to an agreement which his father concluded on his behalf, unless he acquiesced therein.

- [9] In the result, I find that the school has not proved that the applicant is bound to the agreement on which it relies for its

refusal to enroll the applicant for the 2017 school year.

- [10] The relief sought by the applicant is in the form of a temporary interdict pending any steps that may be instituted by the applicant or the school in accordance with the internal processes and remedies, and pending compliance with sections 8 and 9 of the Act and the regulations relating to the recommendation of the applicant's expulsion. The requirements for the granting of an interim interdict are a prima facie right, a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted, that the balance of convenience favours the granting of an interim interdict and that the applicant has no other satisfactory remedy. In view of my conclusion that the school has failed to prove that the applicant is bound to the agreement which it concluded with his father, the applicant has shown that he has, at least, a prima facie right.

- [11] It was submitted on behalf of the school that the applicant has not shown that that he would suffer irreparable harm if the relief is not granted or that he has no other satisfactory remedy or that the balance of convenience is in his favour. It was common cause that the applicant has been enrolled with an online home-schooling institution since the beginning

of the year for completion of his matric. Counsel for the applicant submitted that the applicant has tried to mitigate his damage and that it couldn't be expected of him to have waited for the outcome of this application and that he had to keep up with these studies. It was further submitted that an institution such as DEG does not provide the benefits of a public school, such as tuition by teachers in classrooms, sporting facilities and extra-curricular activities. I agree with these submissions.

- [12] It was further submitted on behalf of the school that there are other schools than Abbott's College in the vicinity at which the applicant could have applied for admission. The applicant's evidence in his founding affidavit is that his parents inquired from every other high school they could think of in their vicinity, but that all these schools indicated that they did not have space to accommodate the applicant. He further stated that there was only a single private school that could accommodate him, but that due to its exorbitant fees, his parents could not afford to enroll him there. This was obviously a reference to Abbott's College. This evidence was confirmed by both the applicant's parents in their confirmatory affidavits. The applicant has therefore shown that he has no other satisfactory remedy and that the balance of convenience is in his favour.
- [13] The requirement of a reasonable apprehension of irreparable harm for the granting of an interim interdict is closely related to the question of the balance of convenience. If an applicant establishes a clear right, the apprehension of irreparable harm need not be established.[3] In view of my finding that that the applicant is not bound to the agreement which was concluded with his father, the applicant, in my view, has a clear right to be enrolled at the school.
- [14] I wish to say something about the agreement which was concluded between the applicant's father and Mr. Grobbelaar which provided that the applicant would be furnished with a clean transfer card and testimonial. A copy of the transfer form is annexed to the school's answering affidavit. The second last item on the form requires that reasons for leaving the school be provided. The entry that appears is "#Error". What should have been entered, but for the agreement concluded with the applicant's father, was that the applicant had been found guilty of serious misconduct in a disciplinary inquiry and that it had been decided to recommend to the HOD that the applicant be expelled from the school. By withholding this information, the transfer card could have been used to ensure the applicant's enrollment at another school without such school being aware of the applicant's previous history of misconduct. That was clearly the purpose of the agreement. Such other school would then have been defrauded by the provision of the clean transfer card. It was submitted on behalf of the applicant that the agreement concluded between the applicant's

father and the school was *contra bonos mores* and therefore invalid. In view of the conclusion which I have reached, it is not necessary to decide that

issue, but such an agreement may well be found by a court to be against public policy and therefore invalid.

- [12] The applicant sought an order for costs against the first respondent on the attorney and client scale. In my view, such an order is not justified in all the circumstances. No costs order was sought against the second, third and fourth respondents. A notice withdrawing their opposition to the application has been filed.
- [13] I accordingly grant an order in terms of prayers 1, 2, 3, 4, 5, 6 and 7 of the notice of motion. The first respondent is ordered to pay the applicant's costs of the application.

Appearances:

For the applicant: Adv. L van der Westhuizen Instructed by: F van Wyk Inc Attorneys, Pretoria

For the first respondent: Adv. J F Grobler Instructed by: F Jordaan Inc Attorneys, Pretoria

- [1] The Head of Department is defined in s I of the Act to be the head of an education department. An education department is defined to mean the department established by 7(2) of the Public Service Act which is responsible for education in a province.
- [2] Subparagraph (2) provides that a learner who is charged with serious misconduct must be given not less than five school days written notice of the hearing into the alleged misconduct unless the governing body directs, with good cause, that a shorter notice period shall apply and there is no prejudice caused to the learner by the short notice.
- [3] Setlogelo v Setlogelo 1914 AD 221 at 227; LF Boshoff Investments (Pty) Ltd v Cape Town Municipality 1969
- (2) 256 © at 267

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