



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Member of the Executive Council, Department of Education, Eastern Cape v Komani School & Office Supplies CC, t/a Komani Stationers (Case no 1417/2018) [2022] ZASCA 13 (26 January 2022)

Today the Supreme Court of Appeal (SCA) upheld an appeal against a decision of the Eastern Cape Division of the High Court, Grahamstown in a majority judgment penned by Petse AP in which Gorven JA and Weiner AJA concurred.

The facts were as follows. Komani School & Office Suppliers CC (Komani Stationers) instituted motion proceedings in the Eastern Cape Division of the High Court (the high court), Grahamstown, against the Eastern Cape Member of the Executive Council for Education (the MEC) seeking payment of the purchase price in respect of goods sold and delivered to Mpendulo Public Primary School (the school) as well as for additional costs incurred in the Queenstown Magistrates' Court in an action in which Komani stationers sued the School Governing Body and the Principal of the school for similar relief.

Komani Stationers supplied the school with stationary and when no payment was forthcoming, it instituted proceedings against the school's governing body and principal. However, interpleader summons were instituted by the MEC as the assets of a public school are immune from judicial attachment in terms of section 58A(4) of the South African Schools Act 84 of 1996 (Schools Act). The claim against the MEC was based on section 60 of the Schools Act, which holds the MEC liable for any delictual or contractual damage or loss suffered as a result of any act of omission in connection with any activity conducted by a school. However, the MEC contended that section 60 did not find application in this instance, and even if it did, it was of

little consequence as the claim had prescribed. Nevertheless, the high court found in favour of Komani Stationers and ordered the MEC to pay the amounts claimed.

The high court held that the claim by Komani Stationers against the MEC fell squarely within the purview of s 60. In addition, it held that the claim had not prescribed because the running of prescription commenced only on 8 June 2016 or alternatively on 11 September 2015 when Komani Stationers obtained default judgment against the School.

Thus, the SCA was called upon to determine whether the high court was correct in upholding a claim for specific performance in respect of the repayment of money owed to a creditor by a public school, notwithstanding the provisions of the Schools Act. This Court specifically emphasised the importance and meaning of section 60 of the Schools Act having regard to the manifest purpose of the Basic Education Laws Amendment Act 15 of 2011 and related legislation. However, Komani Stationers contended that denying its claim for specific performance would amount to it being left with no remedy.

This Court indicated that this was not the case. In order to hold the MEC liable, Komani Stationers was required to establish that it had suffered contractual or delictual damage or loss, which it did not do. Rather, and despite the express provisions of section 60, it specifically pursued a claim of specific performance. This Court held that a claim for specific performance based on section 60 would have extended section 60 beyond its natural ambit, thereby crossing the divide between interpreting the law and legislating.

The Court concluded that it was inconceivable that section 60 was intended to provide a contracting party with a warranty against a public school should such a school have failed to fulfil its contractual obligations. Accordingly, this Court set aside the high court's order and substituted it with one dismissing the claim with costs.

However, the joint minority judgment penned by Mocosie and Mbatha JJA concluded that it would have dismissed the appeal with costs, by reasoning that section 60, as amended, only ascribes liability for delictual and contractual damages and loss, thereby excluding claims for specific performance. The minority found the interpretation favoured by the majority too narrow as it paid no regard to the spirit and purport of the Constitution of the Republic of South Africa, 1996, and infringed sections 9 and 34. Rather, the interpretation should have been purposive and pragmatic. Any other interpretation of section 60 would result in the unjust precedent being set that a party was denied the possibility of pursuing a remedy of specific performance in circumstances beyond its control as existing remedies would never have been contextually appropriate. The MEC, being vested with powers to ensure public schools honour their contractual obligations should not only prescribe what should be done, but actually ensure

that it is done. In the result, the appeal would have been dismissed with costs, including the costs of two counsel.

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