



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 25 February 2025

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 judgments of the Supreme Court of Appeal

Board of Governors of Mitchell House School and Others v Maluleke (748/2023) [2025]
ZASCA 15 (25 February 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the order of the Limpopo Division of the High Court, Polokwane (the high court). That court, per Mdhluli AJ, set aside the decision of the first appellant, the Board of Governors of Mitchell House School, to terminate its contract with the respondent, Mr Tsundzuka Kevin Maluleke (Mr Maluleke), in respect of his children who were enrolled at the second appellant, Mitchell House School (the school). The effect of the school's decision was that Mr Maluleke's three children would not be enrolled at the school for the 2023 academic year because of Mr Maluleke's repeated failures to pay for his children's tuition fees at the school.

Mr Maluleke, a legal practitioner, approached the high court on an urgent basis for an order allowing the return of his children to the school. The application was heard by Muller J, who dismissed the application and concluded that the school process in terminating its contract with Mr Maluleke was a fair one in the circumstances, emphasising that the school being privately owned depended on school fees to sustain itself. Thereafter, Mr Maluleke filed a document called a 'Re: Enrolment Affidavit in Re: Urgent Application' which the school opposed. The matter was heard by Mdhluli AJ who ultimately delivered her judgment *ex tempore* and granted an order directing the school to admit and enrol one of Mr Maluleke's children pending the determination of Part B of case number 6883/2021. The school approached the SCA and were granted special leave to appeal.

In the SCA, Mr Maluleke asserted that the appeal was moot because all his children were no longer at the school. This was not contested by the school and the SCA accepted it was so. However, the SCA entered into the merits of an appeal, notwithstanding the mootness. This follows, as the Court put it, 'a discrete issue of public importance ... that would affect matters in the future and on which adjudication of the court [will be] required'.

The SCA considered whether it was competent for Mdhuli AJ to entertain Mr Maluleke's application at all, given the doctrine of *res judicata* that bars continued litigation for the same cause, between the same parties, and where the same thing is demanded. The SCA highlighted a concern in the Limpopo Division as this was prevalent in two other cases from that division wherein the principle was not observed. The SCA found that Mdhuli AJ had misconstrued her powers in respect of the application before her and that the honourable Judge predicated her judgment on the interests of the children, however, Muller J had considered that issue in his judgment and dismissed that application. The SCA further reasoned that by traversing the issue again, Mdhuli AJ impermissibly positioned herself as a court of appeal over Muller J's judgment and that she erred in doing so. Further, the SCA held that as a legal practitioner Mr Maluleke must have known that his application was not properly before court.

As such, the appeal was upheld with costs to mark its displeasure at the conduct of Mr Maluleke.

-----oOo-----