THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

THE GOVERNING BODY OF THE RIVONIA PRIMARY SCHOOL & ANOTHER

v

MEC FOR EDUCATION: GAUTENG PROVINCE & OTHERS

The Supreme Court of Appeal today held unanimously that the governing body of a public school – not the provincial education authorities – has the authority to determine the number of children that a school may admit as an incident of its admission policy. And further that a provincial government has no authority to override the school's policy. The SCA therefore upheld an appeal by the School Governing Body of the Rivonia Primary School against a judgment of the South Gauteng High Court judgment on 7 December 2011 that came to the contrary conclusion. The SCA ordered the Gauteng MEC for Education, the Head of the Gauteng Education Department (HoD) and the District Director of Johannesburg East, the respondents, to pay the costs of the appeal.

The dispute arose after the school principal, Ms Carol Drysdale, had refused to admit a child to Grade 1 because the school had reached its capacity, which the governing body had set in its admission policy.

The learner's mother had submitted a late application and was placed on a waiting list along with other late applications. She was placed at number 14 on the waiting list. The child's mother was aggrieved at the decision and exerted pressure on the officials of the department to admit her child. The head of the Gauteng Education department, Mr Boy Ngobeni, instructed Ms Drysdale to admit the child early in February 2011 after the school year was already well underway. A few days later the child was brought to the school by her mother and accompanied by officials from the department. They asked Ms Drysdale and the chairman of the governing body, Mr Paul Lategan, to admit the child. Ms Drysdale and Mr Lategan asked for time so that they could meet with the governing body urgently to resolve the dispute. The officials, however, insisted that the school admit the child immediately. They produced a letter from Mr Ngobeni withdrawing Ms Drysdale's responsibility to admit learners. And then proceeded to the Grade 1 classrooms where they deposited the child in one of them.

The main issue in the appeal was whether the South African Schools Act 84 of 1996 gave the primary responsibility for determining the school's capacity, as part of its admission policy, to the governing body or the provincial government. Put another way it had to decide whether the provincial government had the authority to override a school admission policy that had been adopted lawfully.

The SCA said that the provincial government had made much of the fact that the school was located in an affluent, historically white suburb and had benefitted from Apartheid. This was done to justify the argument that the MEC and the HoD ought to have the power to override the policy to ensure that schools in historically white areas do not entrench racially discriminatory privileges bequeathed by Apartheid.
But the facts showed that these assertions were not relevant to deciding the issue

of whether the Schools Act gave the provincial authorities the power to override the admission policy of the governing body. The SCA held that on a plain reading of the relevant provisions of the Schools Act, no such power existed. It said further that the provincial government could not insist that the child was admitted contrary to the policy of the school governing body and ahead of other children on the waiting list.

The SCA also said that the HoD's decision to withdraw Ms Drysdale's admission function was unlawful, and that it was confident that the sanction which had been imposed on her recently arising from a disciplinary hearing would be reviewed in the light of this judgment.