



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
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STATUS Immediate

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

***The Kenmont School & another v Moodley & others
(454/12) [2012] ZASCA 79 (30 May 2013)***

Media Statement

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the Kwazulu-Natal High Court, Durban. The matter concerned the admissions policy of the Kenmont School in Umlazi, a school for learners with specific learning disabilities. The respondents are the parents of one such learner, R. When the school informed the respondents, of the decision of its governing body to exclude R from the school on disciplinary grounds in January 2010, they approached the High Court by way of urgency for an order in effect that the school re-instate him.

The school and its governing body opposed the application on two primary bases: first, that there had been prior litigation between the parties which had culminated in a settlement agreement in terms of which it had been agreed that the learner would leave the school at the end of 2009; and, second, because of the learner's on-going behavioural problems and his propensity to resort to violent behaviour, the governing body had resolved not to re-admit him to the school for the 2010 academic year.

The application ultimately came before Mbatha AJ who, after reserving judgment for almost one year, found that the school's governing body had the power to amend its policy but that in applying that amended policy it had done so with an ulterior purpose. The high court accordingly set aside the school's decision to exclude R. During the middle of 2012, the school was granted leave by the high court to appeal its judgment to the SCA. However as R had matriculated at the end of 2012 and was no longer a learner at the school, the SCA asked the parties to first address the issue of whether the matter had not become moot. The parties filed further heads of argument on that issue pursuant to a

directive from the SCA. Having heard argument on this preliminary issue, the SCA was not persuaded by any of the points raised by the appellants in support of their contention that the appeal was not purely academic. It accordingly dismissed the appeal on 21 May being the date of the hearing of the appeal and ordered the appellants to jointly and severally pay the costs of the appeal. As intimated then it furnished its reasons for that conclusion today. In its reasons the SCA re-emphasised the trite legal principle that courts should and ought not to decide issues of academic interest only. In particular, the court noted that the High Court's finding that the school is empowered to amend its own admission policy is not the subject of a cross-appeal and thus stands. It further held that none of the issues sought to be advanced as to why the appeal was not academic present as discrete legal issues of public importance. As no practical effect or result could be achieved in the case the appeal was accordingly dismissed.

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