



## **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

### **PRINCIPAL OF MBILWI HIGH SCHOOL & OTHERS V MAKHERA RATSHILUMELA JOHANNES (OBO OVHONALA MAKHERA)**

From: The Registrar, Supreme Court of Appeal  
Date: 30 May 2017  
Status: Immediate

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

The Supreme Court of Appeal today upheld an appeal against a judgment of the high court, Limpopo Local Division, Thohoyandou, concerning the interpretation and application of the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grade R -12 (National Policy) issued by the Department of Education.

On 30 January 2015, the respondent brought an urgent application against the appellants in his capacity as parent and natural guardian of his minor son, Ovhonala Makhera (Ovhonala). The respondent required that the decision of the school management team refusing to promote Ovhonala from grade 11 to grade 12 be set aside and directed that Ovhonala be promoted from grade 11 to grade 12 with immediate effect. On that same day, and by agreement between the parties, an interim order was issued and on 10 April 2015 the appellants applied for leave to appeal. An execution order was granted on 14 April 2015 pending the application for leave to appeal and Ovhonala progressed to grade 12 in 2015. Reasons for the judgment of the court a quo were handed down on 18 October 2015. It was common cause that the outcome of this appeal would have no practical effect between the parties as Ovhonala had almost completed grade 12 in 2015.

The SCA held that the proper interpretation and application of the provisions of the National Policy are important matters of law which will have an impact on the future conduct of the appellants' as well as learners.

The SCA found that a learner may only be progressed upon having failed to achieve the requirements for promotion for the second time. The first failure has to be dealt with by way of retention in the same grade and should second failure follow, the educational authorities have a discretion to decide whether a further retention, or progression, would be in the best interest of the learner. That decision is to be taken

in consultation with the parents and a Partnership Agreement is to be entered into between the parties, it is only when a second failure is to be dealt with, that is subject to an appeal in the event that the educational authorities and the parents do not agree.