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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: A3176/2018

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

Z: R

Appellant

and

**THE SOUTH AFRICAN HELLENIC EDUCATIONAL
AND TECHNICAL INSTITUTE**

Respondent

J U D G M E N T

MAHALELO, J:

- [1] This is an appeal against the whole of the judgment and order of the Magistrate (Mr Texera) granted in favour of the respondent on 17 August 2018 against the appellant for payment of arrear school fees in the amount of R 615 135.25 together with interest and costs.

BACKGROUND

- [2] The background culminating in the litigation in the Magistrate Court is set out hereafter.
- [3] The respondent (plaintiff in the *court a quo*) is the South African Hellenic Educational and Technical Institute (“SAHETI”), an independent school duly registered as such in terms of section 46 of the South African Schools Act 84 of 1996. The first defendant in the court a quo is the biological father of five children who is married to the second defendant (appellant).
- [4] On 27 January 2009 and 1 February 2010, the respondent and the appellant and the first defendant entered into written agreements namely “POC1”, “POC2”, “POC 3”, and “POC 4” in terms of which the respondent would supply schooling services to the appellant and the first defendant’s children for the school terms during the periods 2009 until December 2014 (the period). The appellant and the first defendant bound themselves to effect payment of the school fees for schooling services provided by the respondent in respect of their minor children.
- [5] The first minor child was enrolled at the respondent in 1995, the second in 1997, the third in 2001, the fourth in 2005 and the fifth is till

attending school. The first to fourth children have completed their schooling with the respondent.

[6] The respondent contended that it had complied with its obligations in terms of the agreements and submitted that the appellant and her husband have breached the terms of the agreements in that they failed to pay the school fees as agreed. On or about 15 April 2015 the respondent issued summons against the appellant and her husband. The summons were served on the appellant only. In the summons the respondent prayed for judgment against the appellant and the first defendant jointly and severally the one paying for the other to be absolved. Because of non-service of the summons on the first defendant the respondent chose to pursue its claim against the appellant only and judgment was granted against her in the amount of R 615 135.25, plus interest and costs.

[7] The court a quo found in favour of the respondent and make the following order against the appellant:

7.1 Payment of the reduced proved sum of R 615 135.25 by the second defendant to the plaintiff;

7.2 Interest on the sum of R 615 135.25 at the rate of 9% per annum from the date of service of summons on the second defendant (as prayed for in the summons);

7.3 Second defendant to pay the costs of suit.

[8] The appellant appeals against the whole of the judgment and order of the court *a quo* and contends that the Magistrate erred in the following respects:

1. Failing to find that the agreements relied upon by the plaintiff proved that the first defendant was the sole party responsible for payment of the school fees.
2. Finding that the existence of the oral agreement was improbable and dismissed the evidence of the appellant as hearsay evidence, and
3. Failing to find that the settlement agreement concluded between the respondent and the first defendant discharged the liability (if any) of the appellant.

[9] The appellant raised the following:

1. She concluded an oral agreement with the respondent's representative Mrs Hoffman whereby it was agreed that the first respondent would be solely responsible for the payment of the school fees.
2. There was no general undertaking by the appellant to be liable for school fees. Contractually, in accordance with "POC 2", only the first defendant was responsible for payment of school fees for their children.

3. "POC1" was terminated as a result of performance of the relevant obligation (payment of the school fees for 2009) further, "POC1" was novated by "POC 2"

THE APPELLANT'S VERSION

[10] She disputes that she is jointly and severally liable to pay for her children's arrear school fees with the first defendant. She testified that she stopped working in 1996 and the first defendant has been the one responsible for payment of all school fees for their children. She explained that she concluded an oral agreement with the respondent's representative Mrs Hoffman the import of which was that the first defendant would be solely responsible for the payment of school fees to the respondent. She stated that the first defendant appended his signature on "POC 2" rendering himself solely responsible to make payment of the school fees. She further said that the correspondence exchanged between the first defendant and the respondent clearly indicate that the first defendant accepted sole responsibility and the respondents acted in terms of the oral agreement by addressing invoices and statements with regard to school fees to the first defendant only. She added that in any event the respondent's claim had become settled. The settlement agreement was concluded between the respondent and the first defendant, the terms of which were that the first defendant would make an interim payment of R 3000 per month where after an amount of R 120 000 would be paid on the

sale of the first defendant's immovable property. She handed up a letter marked exhibit "A" written by the respondent where an interim payment arrangement was made with the first defendant. The appellant stated therefore that the settlement agreement put an end to the dispute between the respondent and the defendants and the respondent could not seek relief based on the original cause of action but could only seek relief in the event of a breach of the settlement agreement.

THE RESPONDENT'S VERSION

[11] The respondent placed evidence before the court through its only witness Ms Holland, the current credit controller. She testified that she took over from Mrs Hoffman in February 2014. She explained that "POC2" is a document which merely indicated a payment plan of the school fees. It is titled payment option form. It indicates the method of payment of the school fees. On the other hand "POC3" is a parent or guardian declaration. It indicates an undertaking by the signatories thereof binding themselves to abide by the policies of the school and the payment of school fees. According to Ms Holland paragraph 1 of "POC 3" also indicates that signatories are parents or legal guardians of the learner(s) whose details appear on the payment option form therefore, "POC 2" is clearly a form ancillary to "POC 3" and not the main agreement. She stated that "POC 2" contains no declaration of liability for payment of school fees as one finds in paragraph 8 of "POC 3" where it is stated; "I/we hereby assume absolute responsibility for

the payment of any fees as a result of the learner(s) attending SAHETI School”.

- [12] With regard to the oral agreement allegedly concluded between the appellant and Mrs Hoffman, Ms Holland explained that Mrs Hoffman could never have absolved the appellant from her liability to pay school fees as she simply did not have the authority to do so as a credit controller and that not even the Bursar of the school executive head could do so. Only the school’s board could on the advice of the finance committee. Ms Holland testified further that there was no information at all in the Zatezalo’s school file which could indicate any such agreement. Furthermore, the appellant had at no stage indicated to her that she had an oral agreement with Mrs Hoffman to the effect that only the first defendant will be liable for school fees. Ms Holland explained that in 2009 already, the appellant indicated in “POC4” that the statements and school fees invoices should be sent to the first defendant, the father, and that school reports and correspondence should be sent to her, and that currently statements gets generated automatically by their financial system. If the appellant and first defendant elected the father to receive the statements and invoices the system would have been programmed accordingly and it would explain why the statements were addressed to the first defendant. Ms Holland stated that despite the fact that the statements and invoices were addressed to the first defendant, the appellant was always copied therefore, she received the statements and in fact it is her who has

discovered the statements contained in pages 138 to 191 of the trial bundle.

ISSUE FOR DETERMINATION

- [13] There are three issues for determination in this appeal. The first is whether the appellant is contractually liable for payment of arrear school fees and whether “POC 2” together with the alleged oral agreement superseded “POC 1” and absolved her from her liability to pay her children’s school fees, secondly whether there was a settlement agreement concluded between the respondent and the first defendant with regards to the arrear school fees, and thirdly whether the alleged settlement novated “POC 3” and absolved her from paying school fees.

LEGAL PRINCIPLES

- [14] It is common cause that the duty to pay school fees is that of the parents. Since independent schools are autonomous, they do not exercise a public function and the relationship they have with the parents is contractual.
- [15] It is settled law that generally a person who signs a contractual document thereby signifies his assent to the contents of the document. In *Burger v Central South African Railways* 1903 TS 571: Innes CJ stated:-

“it is a sound principle of law that a man, when he signs a contract is taken to be bound by the ordinary meaning and effect of the words which appear over his signature.”

[16] Non-payment of independent school fees is a breach of contractual obligations by the signatory and is enforceable by law.

[17] The appellant alleged that the oral agreement together with “POC 2” supersedes her obligation to pay school fees in terms of “POC 1” and that she signed “POC 3” pursuant to the oral agreement after she was told to sign by Mrs Hoffman. She contended that in terms of the oral agreement only the first defendant would be liable for school fees by virtue of signing “POC 2”.

THE ORAL AGREEMENT

[18] The appellant testified that she had concluded an oral agreement with the respondent represented by Mrs Hoffman on or about February 2010 the details of which were that:

18.1 The respondent would only accept the admission of children of the appellant and the first defendant on condition that both the appellant and the first defendant were signatories to “POC 2”, “POC 3” and “POC 4”;

18.2 The appellant would not be liable or called upon to pay school fees and that the only person responsible for such payment would be the first defendant in accordance with the contents of “POC 2”;

18.3 Annexure “POC 3” and “POC 4” were only signed by the appellant pursuant to the oral agreement;

18.4 Liability for school fees is solely the responsibility of the first defendant in terms of the written agreement and/or the oral agreement since the only signatory of “POC 2” (payment option form) is the first defendant.

[19] According to the appellant, the reason she did not sign “POC 2” was because it was represented to her that the person signing same acknowledged responsibility that he would be the only person liable for payment of school fees.

[20] The trial court, correctly in my view, rejected the appellant’s version regarding the validity of the oral agreement as highly doubtful. Even though the trial court misdirected itself by finding the allegations about the oral agreement to be hearsay, fact of the matter is that according to the appellant the alleged oral agreement was reached between herself and Mrs Hoffman and it pertained to the first defendant who was not party to agreeing to his sole liability towards payment of the school fees. There is nothing in writing to confirm the alleged oral agreement. What is in writing is the appellant’s signature on “POC 3” assuming responsibility together with the first defendant for payment of the school fees for their children. The respondent’s witness testified that no agreements or representations pertaining to payment of school fees could be authorised by a credit controller. Such decisions ought to have been decided by the school treasury subcommittee or the school

board. In any event, on the reading of the correspondence between the respondent and the appellant entered into over a period, at no stage did the appellant expressly state that there was such an oral agreement in place or state the terms thereof.

- [21] It is important to note that the written agreement between the parties in particular “POC 3” pertains to the year 2010. In “POC 3” the appellant has by her signature, together with the first defendant accepted responsibility and therefore liability for the payment of school fees for 2010. “POC 3” is headed “2010 parent/guardian declaration”. It briefly reads that:

“1. I/we am/are the parent/legal guardian(s) of the learner(s) whose details appear on the ‘payment option’ form. I/we have read and understood the policies of the school as published in the SAHETI information booklet....

8. I/we hereby assume absolute responsibility for the payment of any fees as a result of the learner(s) referred to in point 1 above attending SAHETI school;

9. I/we acknowledge that school fees are payable in advance and that facilities exist from termly (3 payments) or monthly payments over 10 months;

10. I/we acknowledge that should any one instalment payable in terms hereof not be paid on due date, then the whole balance outstanding shall immediately become due and payable by

me/us, and no indulgence or grant of time by SAHETI shall be deemed a waiver of its rights hereunder....;

11. As a period and method of payment, I/we choose the option as signed for on 'payment option' form attached hereto;"

[22] At the bottom of "POC 3" the following appears;

"It is a condition of attendance at SAHETI School that both parents/legal guardian(s) of relevant learner(s) signs in the space provided below. The Board will consider this declaration null and void if this document is altered in anyway and therefore the pupil/s will not be able to register at the School for 2010."

"POC 3" has been signed by both the first defendant and the appellant.

[23] "POC 2", which was signed by the first defendant, is headed "Payment option form for school fees 2010". The relevant part thereof reads as follows:

"I/we G Z (full name of person(s) responsible for payment of fees), Guardian/parent of D Z (11), N Z (8), L Z (4) and M Z (play school)."

It is important to note that no election has been made regarding the method or option for payment of school fees.

DOES “POC 2” AND THE ALLEGED ORAL AGREEMENT SUPERSEDE
POC 1?

[24] The appellant argued that annexure “POC 2” together with the oral agreement superseded her obligation to pay school fees in terms of “POC 1”. I agree with the trial court that there is no proper substantiation for this argument “POC 1” was signed only by the appellant in 2009. “POC 2” and “POC 3” were entered into in 2010. It is correct that “POC 2” and “POC 3” makes no reference to the previous year. In my view “POC 1” refers to a deposit payable and reads as follows:

“On receipt of confirmation that my/our child has been accepted at SAHETI, I/we undertake to pay one term’s fees in advance, as a deposit. This deposit will be retained by SAHETI until the child leaves the school and all financial obligations have been met”

[25] It cannot therefore be said that “POC 2” and the oral agreement (if any) absolved the appellant from her obligations to pay school fees in terms of “POC 1”. “POC1” cannot be interpreted to be an obligation on the part of the appellant to pay for the children’s school fees for the entire schooling period.

HAS THE RESPONDENT’S CLAIM BECOME SETTLED

[26] The appellant argued that the respondent’s claim had become settled. The settlement was that the first defendant would make an interim

payment of R 3000 per month where after an amount of R 120 000 would be paid on the sale of the first defendant's immovable property. The appellant therefore argued that the school entered into a settlement agreement with the first defendant to accept a lesser amount in lieu of arrear school fees and can no longer sue on the original cause of action because the settlement agreement put an end to the dispute between the parties.

[27] I agree with the trial court that there is no merit in this argument. The purported settlement is contained in a letter, Exhibit "A", which was written by the executive head of the respondent dated 08 May 2014. The contents thereof reads as follows;

"To whom it may concern

This serves to confirm that Mr G Z has a standing interim payment arrangement with the school to pay R 3000 per month.

This arrangement will be reviewed in July 2014 with the view of establishing a new arrangement based on financial capacity to meet the payment requirements of the full school fees.

In addition, there is an undertaking by Mr G Z to pay an amount of R 120 000 on transfer of the sale of his property.

Yours faithfully

W Taylor

Executive Head"

- [28] The letter clearly states that the arrangement was interim and would be reviewable in July of 2014. The review mentioned in the letter occurred in the form of a meeting with the new credit controller (Ms Holland) on 4 July 2014. At this meeting both the first defendant and appellant were present. Ms Holland recorded the following to minute the discussions which took place during the meeting;-

“They paid R123 000 today. They are asking for one month extension to give them time to gather more money. They need to deliver by end of July, failing, the children will be excluded in the third term.”

- [29] This note is signed by both the first defendant and the appellant. In my view and as correctly found by the trial court, there was no settlement agreement entered into between the first defendant and the respondent on 8 May 2014. This is borne out by the minutes of the meeting which reviewed the payment arrangement agreed to in the letter of 08 May 2014.

- [30] The appellant further argued that the letter of 08 May 2014 purports to be a possible novation in that the school accepted that the first defendant pay a reduced amount of R 120 000 upon the sale of his immovable property and in the meantime R 3000 per month towards arrear school fees, as such the respondent absolved her from liability. As the respondent correctly argued in this court and the court a quo, accepting an interim payment arrangement to pay off school fees and writing off school fees are two different things. A review took place in

July 2014 where both parents were present where both of them requested more time to find more money to pay. The appellant signed the minute of the meeting acknowledging the contents. The court a quo was in my view correct in finding that the letter by the executive head of the respondent did not novate the written agreement between the school and both parents to pay arrear school fees, nor were there any school fees written off.

- [31] The appellant did indeed sign annexure “POC3” where it is clear that absolute responsibility was assumed for the payment of school fees by both parents signing. The fact that the appellant signed as a “responsible” parent does not absolve her of her liability in the eventuality of a claim rising as in this case. While the appellant argued that she signed “POC 3” on the basis of the oral agreement and upon the first defendant signing “POC 2” which he signed for alone, it cannot be accepted that on this basis liability for payment of school fees is solely the responsibility of the first defendant, neither in terms of the oral agreement (if any) nor in terms of the written agreement. The fact that the first defendant signed “POC 2” alone does not impute sole liability on him as “POC 2” is simply a document which pertains to “payment options”. Whilst he signed this form alone as the person responsible for payment, it cannot reasonably be read from this form that because he was responsible for payment he was the only parent liable for school fees. The appellant in “POC 3” acknowledged that she was also liable.

[32] Subsequent to 2010 the appellant and the first defendant continued to re-enrol their children at the school. In *Head of Department Western Cape Education Department and others v S* 2018 (2) SA 418 (SCA), [2018] 1 ALL SA 640 (SCA), the Supreme Court of Appeal held that parents at a public school are jointly and severally liable for their children's school fees as opposed to jointly liable. The court considered the prejudice which the culture of non-payment of school fees by parents has on children's education. Independent schools operates at their own costs whilst public schools are funded by the State. This means that all the resources and services of an independent school must be paid for by the school. School fees are the primary, if not the only, income for independent schools which they use to offer quality educational services to their students. In the same vein, it can therefore be reasonably said that defaulting parents pose a similar sustainably risk for the independent schools.

[33] An obligation to pay independent school fees is never foisted upon any unwilling parents. Parents freely and voluntarily choose to apply for and sign a contract(s) that clearly outlines their responsibility to pay for their children's school fees at the independent school of their choice and liking.

[34] I have already indicated that the appellant did indeed sign "POC 3" where she assumed responsibility for payment of school fees together with the first defendant and that the appellant was in no way absolved from her obligation or liability to pay school fees. In conclusion I find

that the Magistrate did not misdirect himself regarding any findings of fact or application of the law in this matter. The appeal therefore stands to fail.

[35] In the result I make the following order,

31.1 The appeal is dismissed with costs.

**M B MAHALELO
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

I agree

**H NGOMANE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARANCES

FOR THE APPELLANT: ADV R BHIMA

INSTRUCTED BY: HAJIBEY-BHYAT INC

FOR THE RESPONDENT: ADV AJJ du PLOOY

INSTRUCTED BY: CHRISTELIS ARTEMIDES

DATE OF HEARING: 06 MAY 2019

DATE OF JUDGMENT: 19 AUGUST 2019