

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: A5458/2018

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE: 31/10/19 SIGNATURE: 	

In the matter between:

**THE SCHOOL GORVERNING BODY OF
MABOGOPEDI SECONDARY SCHOOL
(ELECTED ON 12 APRIL 2018)**

APPLICANT

AND

**MEMBER OF THE EXECUTIVE COMMITTEE
DEPARTMENT OF EDUCATION**

FIRST RESPONDENT

**HEAD OF DEPARTMENT: LIMPOPO
DEPARTMENT OF EDUCATION
DISTRICT OF WATERBERG**

SECOND RESPONDENT

THIRD RESPONDENT

CIRCUIT MANAGER: THABAZIMBI

FOURTH RESPONDENT

**ACTING PRINCIPAL OF MOBOGOPEDI
SECONDARY SCHOOL**

FIFTH RESPONDENT

**CHAIR PERSON OF THE 02ND SCHOOL
GOVERNING BODY OF MOBOGOPEDI
SECONDARY SCHOOL**

(ELECTED ON 12TH JUNE 2018)

SIXTH RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] On the 12th April 2015 the applicant was elected as a School Governing Body (SGB) of Mabogopedi Secondary School. On the 25th May 2018 the applicant attended the inauguration for newly elected SGB members for the whole Limpopo Province hosted by the Member of Executive Committee (MEC) of Education Limpopo Province held at Mokopane. On the 28th May 2018 the applicant was called to a meeting by the District Office of Waterberg (third respondent), and was informed about an audit query by the Treasury. The query was to the effect that they did not comply with the time frame for holding of SGB elections and that the SGB that was elected on the 12th April 2018 had to be dissolved.

- [2] The applicant tried to argue that the elections of the 12th April 2018 were valid without success. New elections were held on the 12th June 2018 wherein a new SGB was elected. According to the applicant, the SGB of the 12th June 2018 was elected unlawfully.
- [3] Aggrieved by the election of the SGB of the, 12th June 2018, the applicant brought an application seeking an order that the SGB that was elected on the 12th April 2018 be declared a legitimate body, and that the SGB elected on the 12th June 2018 be declared null and void.
- [4] The respondents are opposing the applicant's application. In their opposing affidavit, the respondents have stated that the period for holding governing body elections is between 1st and 31st March of the year that the previous SGB's term of office comes to an end. According to the respondents, if elections are held outside that period, permission from the Head of Department Limpopo Province (2nd Respondent) should first be sought for the extension of time to hold elections, of which the applicant had failed to do.
- [5] The respondents have also stated that due processes were not followed when the election of the 12th April 2018 was held in that they were not overseen by a school electoral officer appointed by the district senior manager, and that the declaration of elections was not signed by the school electoral officer, but by the acting principal of the school who signed it on the 10th May 2018.
- [6] When this matter was argued in court, counsel for the applicant correctly conceded that the decision of the 2nd respondent to dissolve the SGB that was

elected on the 12th April 2018 amounted to an administrative action. However, he insisted that they are entitled to the relief they are seeking. The respondents' counsel submitted that the applicant should have brought a review of the decision of the 2nd respondent in terms of PAJA. The applicant submitted that the elections of SGB's in Limpopo Province are regulated by Regulations relating to Governing Bodies of Public Schools, Limpopo Provincial Gazette of 2018. The applicant argued that in terms of the Regulations there is no provision for a requirement that the school must obtain permission from the 2nd respondent for extension of time to hold SGB elections after the stipulated period to hold elections has lapsed.

- [7] **The Promotion of Administrative Justice Act¹(PAJA)** provides for judicial review of administrative actions. What constitute an administrative action was defined in **Minister of Defence v Motau²** as follows:

“... there must be (a) a decision of an administrative nature; (b) by an organ of State or a natural or juristic person; (c) exercising a public power or performing a public function; (d) in terms of legislation or an empowering provision; (e) that adversely affects rights; (f) that has direct, external legal effects; and (g) that does not fall under any of the listed exclusions.”

- [8] Section 6(2) (a) of PAJA reads as follows:

“ A court or tribunal has the power to judicially review an administrative action if-

(a) the administrator who took it-

(i) was not authorised to do so by the empowering provision;

¹ 3 of 2000

² 2014 (5) 69 CC at 83 A-B

- (ii) acted under a delegation of power which was not authorised by the empowering provision;
- or
- (iii) was biased or reasonably suspected of bias.”

[9] The 2nd respondent when he took the decision to dissolve the SGB that was elected on the 12th April 2018 was performing a public function, which amounted to an administrative action. As I have already pointed out above, counsel for the applicant has correctly conceded that the action of the 2nd respondent amounted to an administrative action.

[10] According to the respondents, the reason why he ordered a re-run of the elections, was that there were some irregularities committed when the elections were held and also that the elections were held after the stipulated time period has lapsed without obtaining permission from the 2nd respondent. That in my view amounts to nullifying the elections of the 12th April 2018. The applicant contends that the Regulations relating to the elections of SGB's in Limpopo does not makes it a requirement that a school must obtain permission from the 2nd respondent to hold elections after the stipulated time period has lapsed. What the applicant is basically saying is that the 2nd respondent took the action when he was not authorised to do so by the empowering provisions of the Regulations. Since the 2nd respondent was performing a public function in my view, his action falls within the ambit of section 6(2) (a) (i) of PAJA, and the proper route for the applicant to have followed, was to bring a review application in terms of PAJA.

[11] In **Onderkraal Estate (Pty) Ltd v City of Cape Town and Others**³ the court said:

“Until the Administrator’s approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.”

[12] The decision of the 2nd respondent to dissolve the SGB that was elected on the 12th April 2018 has not been set aside by a court of competent jurisdiction. It will therefore continue to exist and have legal consequences which cannot be ignored. It will therefore be improper for this court to grant the applicant the relief that it is seeking whilst the decision of the 2nd respondent is still in existence. On this point alone the applicant's application stands to fail.

[13] In the results I made the following order:

13.1. The applicant's application is dismissed with costs.

³ 2004 (6) SA 222 SCA at 242 A-C



MF KGANYAGO

JUDGE OF HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

APPEARANCE:

COUNSEL FOR THE APPLICANT : ADV S TEBEILE
INSTRUCTED BY : MAMPA & MACHETE
ATTORNRYS

COUNSEL FOR 1ST RESPONDENTS : ADV B MATLHAPE
INSTRUCTED BY : STATE ATTORNEY POLOKWANE
DATE OF HEARING : 09 October 2019
DATE OF JUDGEMENT : 31st October 2019