



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 1816/2019

In the matter between:

THE SCHOOL GOVERNING BODY, GREY COLLEGE Applicant

and

**THE HEAD OF DEPARTMENT, DEPARTMENT OF
EDUCATION, FREE STATE PROVINCE** First Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL
EDUCATION, FREE STATE PROVINCE** Second Respondent

HEARD ON: 26 APRIL 2019

JUDGMENT BY: C REINDERS, J

DELIVERED ON: 2 MAY 2019

- [1] This matter came before me on Friday, 26 April 2019. It was enrolled by the applicant (the School Governing Body of Grey College, “the Grey SGB”) as an urgent application. I removed the matter from the roll with costs and indicated that I would furnish my reasons later. Here are those reasons.
- [2] The application was opposed and opposing papers were filed by the respondents. The first respondent is the Head of Department of Education in the Free State Province (“the HOD”). The second respondent is the Member of the Executive Council for Education, Free State Province (“the MEC”). The HOD replied thereto. In deciding the matter of urgency I applied the principles as set out in ***Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Services v Hawker Aviation Partnership [2006] ZASCA 51; 2006 (4) SA 292 (SCA)***. The parties agreed that in applying these principles the only question to be determined is that of urgency. I indicated that, should I find that the matter is not urgent, I will not consider myself with the merits but merely remove the matter from the roll. Mr Grobler (appearing on behalf of the respondents) submitted that the application should be struck from the roll with costs due to a lack of urgency.
- [3] The relief sought by Grey SGB in the notice of motion reads as follow:
- “1. That the matter be heard as one of urgency and that, in terms of the provisions of Rule 6(12) this Court condones any non-compliance of the rules pertaining to service and time periods.
 2. Declaring the decision of the First Respondent to withdraw the “financial and other related” functions of the Applicant to be unlawful and invalid;

3. Reviewing and setting aside the First Respondent's decision to withdraw the "financial and related" functions of the Applicant;
4. Ordering the First and/or Second Respondents to bear the costs of this application jointly and severally, the one paying, the other to be absolved.
5. Granting further and/or alternative relief.

ALTERNATIVE RELIEF IN THE EVENT THAT FINAL RELIEF IS NOT GRANTED

5. That, the following order shall issue:
 - 5.1 That, pending finalisation of the main review application, the court grants an interim order interdicting the First Respondent from implementing the impugned decision for the withdrawal of the functions of the Applicant;
 - 5.3(sic) That, pending finalisation of the main application, the court grants an interim order for the restoration of the normal performance of functions of the Applicant to the state it previously existed prior to the issuance of the decision to withdraw the "financial and related" functions of the Applicant.
 - 5.3 The order in paragraph 5.1 and 5.2 shall operate as an interim interdict pending finalisation of the main application on a date to be determined by this Court.
 - 5.3(sic) That the cost be cost in the cause.
 - 5.4 Further and/or alternative relief. "

[4] The nub of same therefore appears to be the decision made by the HOD on 11 April 2019 in terms of s 22(3) of the Schools Act 84 of 1996 ("the Act"), conveyed to Grey SGB in a letter ("the letter") to withdraw the financial and related functions of Grey GSB on an urgent basis due to allegations of maladministration and mismanagement of school funds. Grey SGB was invited to make representations to the HOD why the said decision should

be reversed or suspended. In a letter addressed to the HOD on 12 April 2019 Grey SGB indicated that should the letter not be withdrawn within 24 hours on or before 15 April 2019 at 15h30, it will approach the court on an urgent basis. Not being satisfied with the reply on 15 April 2019, Grey SGB on 16 April 2019 appealed to the MEC in terms of s 22(5) of the Act to withdraw the letter by the HOD. Grey SGB afforded the MEC one day to provide his decision by 17 April 2019 at 15h30. Grey SGB served this application on the respondents on 18 April 2018 at 10h00, shortly before the Friday public holiday on 19 April 2019 (Good Friday). The Easter weekend included another public holiday on Monday 22 April 2019. Grey SGB indicated that the respondents had to file its opposing papers on Tuesday, 23 April 2019. Accordingly, taking into account the aforementioned exposition of dates, the respondents were effectively afforded one day to reply. Opposing papers were filed on Wednesday, 24 April 2019, and on the morning of the hearing of this application, replying papers were filed by Grey SGB.

- [5] In its founding affidavit Grey SGB states that the purpose of the application is to restore the *status quo ante* to enable Grey SGB to fulfil its functions pending any investigation and/or receipt of submissions by the HOD in respect of allegations of financial mismanagement. From the opposing papers it would appear that the the HOD on 16 April 2019 as an interim measure (“the interim arrangement”) instructed that the principals of both Grey College (“the school”) primary and secondary schools must oversee the financial workings of the school. Two senior officials of the department, namely the district manager of Motheo and circuit manager, Mesrs Moloï and Cicilie, were mandated to assist the

principals with the operational and management challenges that might stem from the withdrawal of Grey SGB's functions. This included daily payments to be made and budgeted expenses approved by the HOD. The principal of Grey Secondary on 23 April 2019 relayed this arrangement in an email to the Registrar of Grey College Secondary School, Mr Nico Maritz (an employee of the applicant who heads the financial department of Grey) and alluded to interim measures being put in place. It is not disputed in the replying papers that these measures had been put in place by the HOD, but the Grey SGB denies that these measures are adequate.

- [6] The interim arrangement put in place by the HOD pending the outcome of an investigation and/or receipt of submissions were done before the application was launched, and having filed its opposing affidavit, confirmed by the HOD on 23 April 2019. Mr Maritz and the financial staff of the school received the following instruction from the HOD : *"You are instructed and protected to manage the finances of the schools with the co-operation of the appointed teams until further notice."* On 24 April 2019 Mr Maritz confirmed that he will proceed with the written instructions from the HOD. Mr Grobler argued that the urgency of the application falls flat under these circumstances. Ms Engelbrecht, representing the applicant, submitted that the HOD's confirmation cannot address on going decisions that must be made by the Grey SGB and which have a financial impact, for instance the schools hosting of the Craven week during the June/July holidays, building projects and negotiations with individuals to render services.

- [7] It is the applicant who must convince me that there are good reasons to depart from the prescribed time limits as set out in the Rules. It is well established that there are degrees of urgency (See: ***Luna Meubel Vervaardigers (Edms) Bpk v Makin t/a Makin's Furniture Manufacturers 1977(4) SA (W)***) and an applicant should carefully consider the way in which it decides to shorten the time frames as prescribed in the Rules. Mr Grobler submitted that the Grey SGB truncated the time frames to such an extent that respondents were not afforded a fair opportunity to properly oppose the application and have the issues fully ventilated. This the Grey SGB could have achieved by enrolling the matter in such a way that, although the time frames had been shortened, the application could have been enrolled with heads of argument. He furthermore submitted that the Grey SGB, praying for review relief, is fully aware that review applications are heard in this division on a Monday by two judges. Urgent dates for the hearing of reviews may be granted as swiftly as within two to three weeks.
- [8] The Grey SGB in its papers avers the application is urgent in that the school is not properly administered from a financial point of view. No examples are given of inadequate administration substantiating this averment. Applicant furnishes examples of events or negotiations that have financial implications, but is silent on alluding to actual inadequate financial administration by the appointed interim team. The interim measurements by the HOD in my view made it unnecessary for the Applicant to launch the application on an urgent basis. The Grey GSB makes it clear in its papers that the relief sought is reviewing and setting aside the

HOD's decision to withdraw the financial and related functions of the Grey SGB and submitted that the application is urgent "given the impending Easter weekend to have an outcome before the end of April, when various **payments** must be made (including the various staff members employed by the Applicant)". In my view the Grey SGB,s fear that prompted this application to be brought on an urgent basis, has now in any event been alleviated for the time being by the confirmation letter of 23 April 2019 and that the school would not find itself in distress due to financial uncertainties as indicated by the Grey SGB. Moreover, it has now been confirmed that an investigation in terms of s 16A(2)(k) of the Act by the Superintendent General of the Free State, has been prioritised to investigate the alleged mismanagement of school funds by the Grey SGB. A meeting in this regard with the Grey SGB is set to take place between 6 and 10 May 2019. There was in view of the measurements no reason for the applicant to request me to condone the prescribed time frames, nor is there any reason why I should allow the applicant to have the matter urgently adjudicated. The interim measurements have the effect that the school's finances would be properly addressed pending any investigation and/or receipt of submissions by the HOD in respect of allegations of financial mismanagement by the Grey SGB. I could see no reason therefore why the matter should be enrolled on such an urgent basis and why the time limits should be shortened.

- [9] I in the said circumstances I came to the conclusion that the applicant has not made out a proper case or convinced me that the matter should be heard on an urgent basis. In my discretion I therefore made the orders as I did.

[10] For the above reasons I made the order removing the application from the roll with costs.

C. REINDERS, J

On behalf of the Applicant: Adv G Engelbrecht
Assisted by Adv J Merabe
Instructed by:
Horn & Van Rensburg Attorneys
BLOEMFONTEIN

On behalf of the Respondents: Adv S Grobler
Instructed by:
State Attorneys
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