



**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 No.: 2612/2018

In the matter between:-

DEON SCHEEPERS

Applicant

and

THE SCHOOL GOVERNING BODY, GREY COLLEGE BLEOMFONTEIN	1 st Respondent
THE MEC: DEPARTMENT OF EDUCATION, FS PROVINCE (N.O.)	2 nd Respondent
JURIE GELDENHUYS	3 rd Respondent
THE NATIONAL MINISTER OF EDUCATION (N.O.)	4 th Respondent
SUID AFRIKAANSE ONDERWYS UNIE	Intervening Party

CORAM: MUSI, AJP *et* VAN ZYL, J

HEARD ON: 20 AUGUST 2018

JUDGMENT BY: MUSI, AJP

DELIVERED ON: 06 SEPTEMBER 2018

[1] When power, competency or authority is not properly delineated, circumscribed or exercised, dysfunctionality will reign supreme. Schools are not exempt from this truism. Schools need to pay careful attention to these issues if the democratisation and participatory management of schools are to survive. A partnership such as that envisaged for public schools in the South

African Schools Act¹ (the Act) can only flourish when there is mutual respect, trust and cooperation.

[2] In **Welkom** and **Harmony**² the Constitutional Court said the following:

“Given the nature of the partnership that the Schools Act has created, the relationship between public school governing bodies and the State should be informed by close cooperation, a cooperation which recognises the partners’ distinct but interrelated functions. The relationship should therefore be characterised by consultation, cooperation in mutual trust and good faith. The goals of providing a high quality education to all learners and developing their talents and capacities are connected to the organisation and governance of education. It is, therefore, essential for the effective functioning of a public school that the stakeholders respect the separation between governance and professional management, as enshrined in the Schools Act.”³

[3] This case is about whether the School Governing Body, as one of the partners, adhered to the qualities and values mentioned by the Constitutional Court, in **Welkom** and **Harmony**, in its interaction with the principal.

[4] The applicant is the principal of Grey College Secondary School since 1 January 2013. The first respondent is the governing body of Grey College. It serves both Grey College Secondary School and Grey College Primary School. The second respondent is the Member of the Executive Council: Education, Free State Province. The third respondent, Mr. Geldenhuys, is the principal of Grey College Primary School. The fourth respondent is the Minister of Basic Education.

[5] The applicant approached this Court, on an urgent basis, seeking the following relief:

¹ South African Schools Act 84 of 1996.

² *Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another (Equal Education and another as amici curiae)* 2013 (9) BCLR 989 (CC).

³ Ibid para [124].

- “1. The applicant’s failure to adhere to this court’s rules related to time periods and service is condoned and the application is heard as an urgent application in terms of Rule 6(12).
2. The decisions taken by the Grey College Secondary School’s governing body at a special meeting of 15 May 2018, as set out in Annexure “A” hereto and to the effect that:
 - 2.1 All delegated governing body powers are recalled from Mr Scheepers (the applicant);
 - 2.2 Mr Jurie Geldenhuys is appointed as interim school manager to manage all school activities with the exception of teaching and learning on behalf of the governing body;
 are hereby reviewed and set aside alternatively declared to be unlawful and of no force and effect...
4. Costs of suit including the costs of two counsel against the respondent and any respondent who opposes the order (jointly and severally in such instance).”

[6] The first respondent not only opposed the application but it also launched a counter-application, which it amended to become a conditional counter application. In essence, the counter-application is conditional upon this court finding that a school governing body has no express or implied authority to delegate any of its functions to a school principal such as the applicant. In that case, the first respondent seeks an order declaring its decision to delegate any of its statutory functions or powers contained in the Act, to the applicant, whether impliedly or expressly, unlawful and invalid. Alternatively, that the first respondent’s unlawful decision to delegate any of its statutory functions or powers in the Act, to the applicant, whether impliedly or expressly, be reviewed and set aside, in terms of section 6(2) of the Promotion of Administrative Justice Act.⁴

[7] The Suid Afrikaanse Onderwys Unie (SAOU), a registered trade union in the education sector that represents 36,000 members, including the applicant, applied to intervene as a party to these proceedings. It sought the following relief:

- “1. That, insofar as necessary, the intervening party’s failure to comply with prescribed rules pertaining to form, process and time periods for filing of papers and service of process be condoned;
2. That leave be granted to the intervening party to intervene in the main and counter application under civil case number: 2612/2018 and the affidavit filed in support of this affidavit (sic) be allowed in support of the following relief:
 - 2.1 That the decisions taken on 15 May 2018 and given effect to on 16 May 2018, as per annexure “A” to the applicant’s, in the main application, notice of motion be reviewed and set aside as prayed for by the applicant; and
 - 2.2 Alternatively:
 - 2.2.1 that it be declared that the management functions which forms the subject matter of the decision set out in annexure “A” to the applicant’s notice of motion, forms part of the professional management of the school and cannot be retracted from the principal or delegated to another person by the school governing body of a school and is *ultra vires*;
 - 2.2.2 that the purported decision to retract the functions of the principal is void *ab origine*, alternatively unlawful and set aside;
3. That the costs of the intervention application form part of the costs of the main application, alternatively that such party who opposes the intervention application pays the costs of the application, including the costs of two counsel;
4. That in the event of the intervening party being successful in the main application, the court orders its costs to be paid by the unsuccessful party or parties, including costs occasioned by the employment of two counsel...”

[8] The first respondent opposed the application to intervene. It requested that some of the allegations in the union’s founding affidavit be struck out on the basis that they are irrelevant. After hearing the parties, we granted the application to intervene and dismissed the striking out application. We reserved the costs issue for later adjudication. These are the reasons for those orders.

[9] The union’s members comprises of employees and educators in the education sector. The applicant and a number of other principals are members of the union. The union contended that the stance taken by the first respondent, that it has the power to denude principals of their power and authority, directly and materially affect the interests of its members who are principals and any member who has aspirations of becoming a principal.

[10] It contended that the powers that were purportedly retracted by the first respondent in terms of its decision, do not fall within the exclusive domain of the first respondent and it was therefore not entitled to retract it.

[11] The first respondent contended that the union does not have any standing because it is a trade union and its functions should therefore be limited to representing its members in labour relations disputes in terms of the Labour Relations Act⁵. It further contended that the union failed to indicate what its cause of action was and whether it relies on PAJA or the principle of legality.

[12] In **SA Riding for the Disabled Association v Regional Land Claims Commissioner**⁶ the Constitutional Court reaffirmed the applicable test and principles as follows:

“[9] It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court. This means that the applicant must show that it has a right adversely affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the state of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief.

[10] If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a predecision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation.”

[13] In **AfriForum and Another v University of the Free State**⁷ it was said that:

⁵ Labour Relations Act 66 of 1995.

⁶ *SA Riding for the Disabled Association v Regional Land Claims Commissioner and Others* 2017 (5) SA 1 (CC).

⁷ *AfriForum and Another v University of the Free State* (CCT101/17) [2017] ZACC 48; 2018 (2) SA 185 (CC); 2018 (4) BCLR 387 (CC).

“The generosity or liberality of our standing provisions does not mean that standing is there for the taking. On the contrary, closer scrutiny is always called for, especially when standing is not apparent from the nature of the party, its interest in or relationship with the issues and the explanation offered to support standing. And courts ought to be circumspect in affording standing to similarly-positioned parties where the grounds for standing are weak. They must first be satisfied that factors are relevant to determining whether a person is genuinely acting in the interests of a group, that has legal interest in the matter, have been shown to exist...”⁸

[14] In terms of the union’s constitution its objectives are, *inter alia*, to:

1. establish a politically non-aligned and independent union, which will promote and protect the collective interests of its members at all levels within any existing or future labour relations dispensation;
2. promote the interests of its members;
3. promote, support or resist proposed legislative or other measures, which affect the interests of its members;
4. strengthen educators in the discharge of their professional duties and to assist them to guide learners and to prepare them to be responsible citizens in a democratic State;
5. do everything within the power of the SAOU to accomplish its objectives and to serve the general welfare and interests of the members in particular and of the teaching profession in general;
6. make a contribution to the accountable development of education, legislation and education policy.

[15] It is abundantly clear from the objectives of the union that it is indeed a very important stakeholder in the education sphere. It has principals of public schools as its members and the applicant is one of them. The relationship between a principal and the school governing body of a public school is of importance to it. This case is about that relationship. The order in this matter will have a direct impact on other principals of public schools.

- [16] In any event, the union has standing in terms of section 38(e) of the Constitution of the Republic of South Africa⁹ which states that:

“Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are...an association acting in the interest of its members.”

The right implicated in this case is the right to administrative action that is lawful, reasonable and procedurally fair.¹⁰ There is no doubt that the union has a direct and substantial interest in the subject matter of this case. I now turn to deal with the Uniform Rule 6(15) application.

- [17] Rule 6(15) provides:

“The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The court may not grant the application unless it is satisfied that the applicant will be prejudiced if the application is not granted.”

- [18] The first respondent’s ground for the ‘striking out’ application is that the affidavit contains irrelevant matter. The first respondent must also show that it will be prejudiced if the impugned matter is not struck out. Although some of the allegations in the union’s affidavit is repetitive in order to bolster its point, I am not satisfied that the applicant will be prejudiced thereby. The union, in the circumstances of this case, had to set out the factual matrix in order to point out what it contends the law ought to be on the issue. In as far as it repeated some of the facts, it is clear that its case differs from that of the applicant on the reasons why the decision has to be reviewed and set aside.

- [19] The first respondent’s complaint that the union does not expressly plead whether it seeks to have the impugned decision reviewed and set aside on

⁹ The Constitution of the Republic of South Africa Act 108 of 1996.

¹⁰ See section 33 of the Constitution.

the grounds of PAJA or legality is also misplaced. The union clearly attacks the lawfulness of the decision from the perspective that the first respondent is not empowered by the Act to retract the functions which it purported to do from the principal's competencies. It contended that the first respondent's decision is *ultra vires* and unlawful. It also contended that the school governing body may delegate its functions to the principal only. In my view, nothing turns around this point of the first respondent. It is clear that the union based its case on PAJA alternatively legality. It is for these reasons that we granted the application to intervene and dismissed the striking out application. It is now time to consider the other preliminary points taken by the first respondent. That exercise must, however, be preceded by setting out the factual matrix.

- [20] The members of the first respondent were elected on 16 March 2018. Some of them had been members of a differently constituted Grey College School Governing Body (SGB). There were already tensions between some members of the SGB, notably its chairperson, and the applicant when it, as currently constituted, resumed office.

- [21] On 3 May 2018, the first respondent's Executive Committee issued a notice to SGB members to attend a special meeting on 15 May 2018. The notice indicated that the only point on the agenda would be the retraction of the rights and duties delegated to the applicant by the first respondent.

- [22] The applicant wrote various emails to the chairperson of the first respondent wherein he enquired what powers it intended withdrawing. The applicant indicated that he wanted to prepare himself in order to make a positive contribution during the meeting. He intimated that he was not aware of any rights and responsibilities that were delegated to him.

- [23] The chairperson responded to all the correspondence. He ultimately indicated to the applicant that certain rights and responsibilities were delegated to him in terms of the Act and that he was not prepared to set out those rights and responsibilities because the applicant was aware of the provisions of the Act.

He also informed the applicant that there are certain functions that he exercised that are not stipulated in the Act. He pointed out that those functions were delegated to the applicant, expressly or tacitly, by the first respondent. The applicant indicated that according to him, he exercised all his functions in terms of the Act.

[24] During the special meeting the chairperson informed the members about the purpose of the meeting and that he had compiled a list of incidences which would demonstrate that the trust relationship between the SGB and the principal has broken down. The applicant was accused of many indiscretions and misconduct. He requested, on numerous occasions, time to prepare himself on the accusations, but these requests were denied. The chairperson painstakingly put all the allegations to the applicant and he was requested to answer thereto. Despite his protestations of being unprepared, he was subjected to cross-examination by some of the members of the first respondent.

[25] After the unnecessary laborious process the first respondent concluded that the trust relationship between it and the applicant had broken down. This decision was preceded by a secret ballot conducted by members of the first respondent. They voted 14-3 in favour of the motion that the powers, rights and privileges delegated by the first respondent to the applicant be withdrawn with immediate effect. The first respondent decided to appoint the principal of Grey College Primary School as the school manager of Grey College Secondary School and to inform the school community about its decision.

[26] On 16 May 2018 the first respondent issued the following notice:

“Drastic management decision following breakdown of trust between Grey College governing body and school principal

Dear Parent /Old Grey

The relationship of trust between the school governing body of Grey College and the secondary school principal, Mr Deon Scheepers, has irretrievably broken down and all

efforts to resolve the issue were unsuccessful. For this reason the governing body has decided on 15 May 2018 to recall all delegated governing body powers from Mr Scheepers.

At a public school such as Grey College the principal is an employee of the Provincial Education Department. The South African Schools Act determines that a school principal is responsible for teaching and learning activities at a school. The principal's duty as employee of the Education Department is therefore to "manage" academic activities at the school. All other functions, rights, duties and powers exercised by a principal are delegated to him by the governing body, and he is required to report on all these matters to the governing body. While the Schools Act places the responsibility of education management on the principal, he is still required to report back to the governing body in this regard as well.

The governing body's primary aim is to create an environment where quality education can take place. However, when the governing body has lost confidence in the principal this is no longer possible. This drastic measure was taken because the governing body always acts in the best interests of the school, and especially the learners and teachers.

The governing body also decided to appoint Mr Jurie Geldenhuys as the interim school manager to execute these delegated functions until a long-term solution can be implemented. This implies that Mr Geldenhuys will manage all school activities, with the exception of teaching and learning, on behalf of the governing body. The aforementioned includes the following:

1. The management of the school finances to the extent that those powers do not specifically vest in the school principal in terms of the Schools Act 84 of 1996;
2. Management of the extra-curricular activities, like sport and culture;
3. Management of the school campus and assets, including the hostels;
4. Management of the personnel, where they are not performing academic functions;
5. Communication and liaison, internally and externally;
6. Representing the school at all non-academic forums, for example the Reunie;
7. Internal and external liaising;
8. Management of the school's ethos, mission, values and spirit within school context;
9. Management of discipline.

Mr Scheepers, as an employee of the Free State Education Department, will continue with his professional duty as school principal, limited to only those powers assigned to him in terms of the Schools Act.

This decision was not taken lightly but we can assure you that we acted exclusively in the best interests of each boy, teacher and Old Grey...”

[27] On 16 May 2018, the applicant instructed his attorney to request reasons for the decision. The first respondent’s attorneys responded that the breakdown in trust is the only reason why the SGB resolved to withdraw its delegated functions. Supplementary reasons were later furnished for the decision.

[28] The issues to be decided in this matter are as follows:

1. Urgency;
2. Non-joinder;
3. Pre-maturity;
4. Whether the SGB may delegate any of its functions;
5. Whether the SGB may retract its delegated functions;
6. Whether the decision of the SGB was administrative action;
7. If so, whether the decision withstands section 6 of PAJA scrutiny; and
8. If not, whether it should be reviewed based on the legality principle.

[29] The first respondent conceded that the issue of urgency has been overtaken by events and that it is no longer a live issue. Nothing more needs to be said about this issue.

[30] The first respondent contended that the non-joinder of the Head of Department of the Free State Department of Education (HoD) is fatal and the application should be dismissed on this ground. The applicant as well as the intervening party contended that it is not fatal.

[31] A party must be joined in proceedings if that the party has a direct and substantial interest in any order the court might issue or where an order

cannot be effected without prejudicing such party. In **Judicial Service Commission v Cape Bar Council**¹¹ it was said:

“It has by now become settled law that the joinder of a party is only required as a matter of necessity - as opposed to a matter of convenience - if that party has a direct and substantial interest which may be affected prejudicially by the judgement of the court in the proceedings concerned... The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one...”¹²

- [32] It has been said that the right to demand joinder is limited to specified categories of parties such as joint owners, joint contractors and partners and where the other party has a direct and substantial interest in the issues involved and the order which the court might make.¹³ This is so because a court may not make findings adverse to any person's interest, without that person first being a party to the proceedings before it.¹⁴
- [33] The applicant and the intervening party accepted that the HoD may have an interest in the outcome of this litigation. They however contended that in the circumstances of this case there was no need to cite the HoD. They argued that the HoD as an organ or servant of state does not have a direct and substantial interest that may be prejudicially affected by the judgment of this court in these proceedings.
- [34] Although it is preferable and advisable that the HoD should be cited in matters where his or her power to appoint an educator is implicated or where a principal's statutory power to act on behalf of the HoD is implicated, his non-joinder in this case is not fatal.

¹¹ *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA).

¹² *Ibid* para [12].

¹³ *Burger v Rand Water Board and Another* 2007 (1) SA 30 (SCA) para [7].

¹⁴ *Matjhabeng Local Municipality v Eskom Holdings* 2018 (1) SA 1 (CC) para [92].

[35] I say this because the Member of the Executive Council (MEC) responsible for education in the Free State Province as well as the Minister of Basic Education have been cited. The MEC is responsible for the education portfolio in this province. He is the executive authority of the Department of Education of this province.

[36] Section 2 of the State Liability Act¹⁵ provides as follows:

- “(1) In any action or other proceedings instituted against a department, the executive authority of the Department concerned must be cited as nominal defendant or respondent.
- (2) The plaintiff or applicant, as the case may be, or his or her legal representative must –
 - (a) after any court process instituting proceedings and in which the executive authority of a department is cited as nominal defendant or respondent has been issued, serve a copy of that process on their department concerned at the head office of the Department...”

[37] The executive authority of the Free State Education Department has been joined in these proceedings and the papers were properly served on him. He is responsible for all provincial functionaries within the Provincial Department of Education, including the HoD. The HoD's interests and those of the MEC and the Minister are inextricably linked. In **Ermelo**¹⁶ the Constitutional Court said that the provincial government acts through the MEC for Education who bears the obligation to establish and provide public schools and, together with the Head of the Provincial Department of Education, exercises executive control over public schools and principals.¹⁷ They act in tandem.

[38] The HoD is aware of these proceedings and has knowledge of the relief which the applicant and the union seek regarding the impugned decision. As a matter of fact, he agreed with the contentions of the applicant. In my view the

¹⁵ State Liability Act 20 of 1957.

¹⁶ *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415.

¹⁷ *Ibid* para [56].

failure to cite the HoD separately in these proceedings does not constitute fatal non-joinder.

[39] The first respondent contended that the application ought to be dismissed because there was non-compliance with section 41 of the Constitution. It also contended that the application is premature because it violates the principle of cooperative governance and meaningful engagement envisaged by the partnership model in the Schools Act.

[40] Section 41 of the Constitution provides:

- “(1) All spheres of government and all organs of state within each sphere must-
- (a) preserve the peace, national unity and the indivisibility of the Republic;
 - (b) secure the well-being of the people of the Republic;
 - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
 - (d) be loyal to the Constitution, the Republic and its people;
 - (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
 - (f) not assume any power or function except those conferred on them in terms of the Constitution;
 - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
 - (h) co-operate with one another in mutual trust and good faith by-
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.
- (2) An Act of Parliament must-
- (a) establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
 - (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.

- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.”

[41] The Intergovernmental Relations Framework Act¹⁸ (Framework Act) is one of the acts that give expression to section 41(2) of the Constitution. The Framework Act’s application is limited. Section 2 thereof states the following:

- “(1) This act applies to –
- (a) the national government;
 - (b) all provincial governments; and
 - (c) or local governments.
- (2) This act does not apply to –
- (a) Parliament;
 - (b) the provincial legislatures;
 - (c) the court and judicial officers;
 - (d) any independent and impartial tribunal or forum contemplated in section 34 of the Constitution and any officer conducting proceedings in such a tribunal or forum;
 - (e) any institution established by Chapter 9 of the Constitution;
 - (f) any other constitutional independent institution; and
 - (g) any public institution that does not fall within the national provincial or local sphere of government.”

[42] Neither the SGB nor the principal fall within the scope of the Framework Act. In terms of the Framework Act local government means a municipality. Provincial government means the provincial executive established by Chapter 6 of the Constitution for each province and includes all provincial organs of state in that province.

[43] Section 41 of the Constitution requires all spheres of government and all organs of state within each sphere to cooperate. The first respondent

18 Intergovernmental Relations Framework Act 13 of 2005.

contended that the applicant should have attempted to resolve the dispute before approaching this Court. It contended that section 41(1)(h)(vi) of the Constitution, which binds the principal and the SGB, enjoins organs of state to avoid legal proceedings against one another. It pointed out that in **Welkom and Harmony**¹⁹ the Constitutional Court said “the explicit provisions of section 41(1)(h)(vi) of the Constitution appears to require a form of exhaustion of internal remedies before organs of state within a sphere of government should turn to the courts.”²⁰

[44] Section 239 of the Constitution defines organ of state as follows:

- “(a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –
 - (i) exercising a power or performing a function in terms of the constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;...”

[45] In **Mikro**²¹ the court held that a governing body is an organ of state. It said the following:

“In terms of the definition in the Constitution any institution exercising a public power or performing a public function in terms of any legislation is an organ of state. The second respondent a public school, together with its governing body, the first respondent, is clearly an institution performing a public function in terms of the Act. It follows that it is an organ of state as contemplated in the Constitution.”²²

[46] In **Welkom and Harmony** it was said that ‘the school governing bodies and HoD are organs of state’.²³ The principal on the other hand fulfills a dual role.

19 *Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another* 2014 (2) SA 228 (CC).

20 Ibid para [162].

21 *Minister of Education (Western Cape) v Mikro Primary School Governing Body* [2005] 3 All SA 436 (SCA).

22 Ibid para [20].

23 See footnote 3, para [141].

She or he is an educator appointed as the head of the school.²⁴ The principal, in his official capacity, is also a member of the SGB.²⁵ In terms of section 16A(1)(a) of the Act the principal represents the HoD in the governing body when acting in an official capacity.

- [47] When the principal acts in his or her official capacity as a representative of the HoD he might be construed to be an organ of state. It is however difficult to discern how he or she can be said to be exercising a public power or performing a public function in terms of any legislation when he or she endeavours to protect or promote his or her rights in his or her capacity as an educator. The principal in this matter came to court in order to vindicate his right as an educator or employee to perform the functions entrusted on him by legislation or official policy and for administrative justice. It can hardly be said that section 41 of the Constitution is applicable under these circumstances.
- [48] In any event, it is a bit rich for the first respondent to argue that there was a duty on the applicant to try and resolve this matter before approaching this Court. The first respondent was expressly requested by the HoD to rescind its decision pending an endeavour to resolve the dispute amicably. It was unwilling to do so. The parties unsuccessfully tried to resolve the dispute after their respective attorneys were engaged. The contention of the first respondent lacks merit.
- [49] Every public school is a juristic person, with legal capacity to perform its functions in terms of the Act.²⁶ The governance of every public school is vested in its governing body and it may perform only such functions and obligations and exercise only such rights as prescribed by the Act.²⁷

²⁴ Section 1 of the Act.

²⁵ Section 23(1)(b) of the Act.

²⁶ Section 15 of the Act.

²⁷ Ibid section 16.

[50] The Act bestows varied and extensive functions on governing bodies including governance,²⁸ policy-making,²⁹ budget,³⁰ finance sourcing and control,³¹ administration and control of school property,³² establishing posts for educators and non-educators, and the filling of such posts.³³ It may also apply to the HoD to be allocated additional functions subject to it showing that it has the necessary capacity to perform the additional functions.

[51] Most of the functions of the SGB are original and are not merely delegated. The SGB will, in most cases, not be able to perform all those functions itself. It would therefore be necessary for it to delegate some of its functions. Most of its functions being original functions; the SGB therefore has the right to delegate such functions.

[52] In **Schoonbee**³⁴ the court was also of the view that the SGB may delegate some of its functions. It said the following:

“In my view, the proper interpretation is to regard the principal as having a duty to facilitate, support and assist the SGB in the execution of statutory functions relating to assets, liabilities, property, financial management of the public school and also as a person upon whom specified parts of the SGB’s duties can properly be delegated.”³⁵

[53] In terms of section 30 of the Act the SGB may establish committees. Section 30 provides:

“(1) a governing body may –
(a) establish committees, including an executive committee; and

28 Ibid.

29 Ibid section 6.

30 Ibid section 38.

31 Ibid section 36.

32 Ibid section 20(g).

33 Ibid section 20(4) and (5).

34 *Schoonbee and Others v MEC For Education, Mpumalanga And Another* 2002 (4) SA 877 (T).

35 Ibid at 884B-C.

(b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) a governing body of an ordinary public school which provides education to learners with special educational needs must establish a committee on special education needs.”

[54] It is clear that when the governing body tasks a particular committee to investigate or do something on its behalf it would be delegating its functions to such committee. The Act recognises that the SGB will not be able to perform all its functions itself. The delegation of its powers is therefore necessary for the SGB to function efficiently and effectively. It is also necessary so that the SGB can perform all the functions incidental to its main functions.

[55] In **Makhitshi v School Governing Body Ntilini JSS**³⁶ it was held that a “SGB has no right to delegate its statutory powers. It is simply not empowered to do so by the Employment of Educators Act.”³⁷ The assertion that the SGB does not have the right to delegate its statutory powers was stated in the context of the Employment of Educators Act (EEA) and not as a general statement applicable to all the SGB’s functions. We are dealing with the SGB’s right to delegate in terms of the Act.

[56] Delegation ‘postulates revocable transmission of subsidiary authority’.³⁸ Since the SGB may delegate some of its functions it therefore has the right to revoke such delegation. If the delegation or revocation has to be preceded by a formality (such as it must be in writing) in terms of legislation or policy then that legislation or policy must be complied with before a delegation may be said to be lawful. Where no formality is prescribed the repository of the power or function may delegate or revoke it without complying with any formality or the rules of natural justice.

³⁶ Unreported Judgment Eastern Cape High Court Mthatha, Case no 615/08, delivered on 20 March 2009.

³⁷ Ibid para [17].

³⁸ *Executive Council, Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC) para [173].

- [57] However, when a function is conferred upon a statutory body it is intended that that function should be exercised by that body.³⁹ Should such body allow the power of function to be exercised by another who was not chosen by it or the legislation it will have abdicated its power and functions and will not have complied with the law.⁴⁰
- [58] In this case, counsel for the SGB correctly conceded that there was no express or tacit delegation of power by the SGB to the principal. The SGB therefore abdicated its power or functions in as far as the principal exercised functions that were in the exclusive preserve of the SGB. It can therefore be said that the principal usurped the powers and functions of the SGB. It must however be noted that the principal can only usurp powers or functions which are not functions and responsibilities entrusted to him by the Act, any other legislation or policy. If the Act, any other legislation or policy allows him or her to exercise a function or power that the SGB is also empowered to exercise then there cannot be any unlawful exercise of power.
- [59] As stated above, the SGB could not revoke a delegation that it did not give. The decision of the SGB was therefore not a revocation of a delegation but denuding the principal of certain powers or functions. Was the decision to denude the principal of those powers or functions administrative action?
- [60] Administrative action is defined in the PAJA as follows:
- “**administrative action** means any decision taken, or any failure to take a decision, by –
- (a) an organ of state, when –
 - (i) exercising a power in terms of the constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; or
 - (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

³⁹ Baxter : *Administrative law*, Juta 1984 at 434.

⁴⁰ Ibid.

which adversely affects the rights of any person and which has a direct, external legal effect,...”⁴¹

[61] In **Minister of Defence and Another v Xulu**⁴² the court said the following:

“The Constitutional Court, citing Grey’s Marine with approval, has broken down the definition into seven components, namely that ‘there must be (a) a decision of an administrative nature; (b) by an organ of state or natural or juristic person; (c) exercising a public power or performing a public function; (d) in terms of any legislation or an empowering provision; (e) that adversely affects rights; (f) that has a direct, external legal effect; and (g) that does not fall under any of the listed exclusions.”⁴³

[62] The first respondent’s counsel did not dispute that the first respondent is an organ of state and that its decision was administrative action as defined in PAJA, if PAJA was applicable. He, however, contended that PAJA was not applicable because the first respondent merely revoked a delegation. The applicant’s and the intervening party’s counsel on the other hand contended that PAJA was applicable.

[63] The first respondent is an organ of state. When it took the decision it exercised a public power, purportedly, in terms of the Act. The decision had an adverse effect on the applicant’s right to manage the school. The decision had a direct external legal effect because it is a binding decision. The principal lost his right to manage the school in terms of legislation and policy which gives him a mandate to manage certain facets of the school. None of the exceptions mentioned under the definition of administrative action is applicable in this matter. The decision constituted administrative action. It is therefore subject to review in terms of section 6 of PAJA.

[64] Section 6 of PAJA reads as follows:

⁴¹ Section 1 of PAJA.

⁴² *Minister of Defence and another v Xulu* (337/2017) [2018] ZASCA 65 (24 May 2018).

⁴³ *Ibid* para [34].

- “(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.
- (2) 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;
 - (ii) acted under a delegation of power which was not authorised by the empowering provision; or
 - (iii) was biased or reasonably suspected of bias;
 - (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action was procedurally unfair;
 - (d) the action was materially influenced by an error of law;
 - (e) the action was taken-
 - (i) for a reason not authorised by the empowering provision;
 - (ii) for an ulterior purpose or motive;
 - (iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
 - (iv) because of the unauthorised or unwarranted dictates of another person or body;
 - (v) in bad faith; or
 - (vi) arbitrarily or capriciously;...”

[65] The effective management of the school requires all the partners to work together in the best interests of the school and the learners. In **Welkom** and **Harmony** it was said:

“Given this legacy, the state’s obligation to ensure “are” is used in the judgment that the right to education is meaningfully realised for the people of South Africa are great indeed. The primary statute setting out these obligations is the Schools Act. That Act contains various provisions governing the relationship between the Minister, Members of Provincial Executive Councils responsible for education (MEC’s), HOD’s, principals and the governing bodies of public schools. It makes clear that public schools are run by a partnership involving school governing bodies (which represent the interests of parents and learners), principals, the relevant HOD and MEC, and the Minister. Its provisions are carefully crafted to strike a balance between the duties of these various partners in ensuring an effective education system.”⁴⁴

[66] The decision of the SGB in this case fantastically achieves the opposite. It deliberately minimised the role and input of one partner: the principal. It then inadvertently or by design created, at the same school, an additional principal, to not only manage some of its functions but also most of the functions that are reserved for the principal. The decision disturbs the delicate balance intended by the Act and in one foul swoop it created fertile ground for tension, strife, discontent and mismanagement of the school.

[67] The professional management of the school vests in the principal. His or her duties, functions and responsibilities are inter alia set out in section 16A of the Act. Some of the functions of the SGB and the principal have succinctly been captured in **Welkom** and **Harmony**, where the court said:

“A principal must, in discharging his or her professional management duties, amongst other things, implement educational programs and curriculum activities, manage educators and support staff, perform functions that are delegated to him or her by the HOD under whose authority he falls and implement policy and legislation. In contrast, a school governing body’s governance functions include promoting the school’s best interests and striving to ensure the provision of quality education to all learners at the school, developing a mission statement for the school, adopting a code of conduct for learners and administering school property (subject to certain constraints).”⁴⁵

[68] This brief background leads me to an appraisal of the component parts of the decision of the SGB.

A. Management of school finances.

[69] The SGB gave Mr Geldenhuys the authority to manage the school’s finances on its behalf, to the extent that those powers do not specifically vest in the principal in terms of the Act. What exactly was delegated to Mr Geldenhuys? Was the intention that Mr Geldenhuys should be in charge of the functions set out in section 37 of the Act? Section 37 of the Act reads as follows:

45

Ibid para [39].

- “(1) The governing body of a public school must establish a school fund and administer it in accordance with directions issued by the Head of Department.
- (2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.
- (3) The governing body of a public school must open and maintain one banking account, but a governing body of a public school may, with the approval of the Member of the Executive Council, invest surplus money in another account.
- (4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.
- (5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.
- (6) The school fund, all proceeds thereof and any other assets of the public school must be used only for—
 - (a) educational purposes, at or in connection with such school;
 - (b) educational purposes, at or in connection with another public school, by agreement with such other public school and with the consent of the Head of Department;
 - (c) the performance of the functions of the governing body; or
 - (d) another educational purpose agreed between the governing body and the Head of Department.
- (7) (a) Money from the school fund of a public school may not be paid into a trust or be used to establish a trust.
- (b) If a trust was established from a school fund of a public school or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the school fund.
- (c) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use such money or contributions to establish or fund a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund.”

[70] Was Mr Geldenhuys going to be responsible for the preparation of the budget, if the interim period extended beyond the current financial year?⁴⁶ Section 42 of the Act provides:

46

See section 38 of the Act.

“The governing body of a public school must –

- (a) keep records of funds received and spent by the public school and of its assets, liabilities and financial transactions; and
- (b) as soon as practicable, but not later than three months after the end of the financial year, draw up annual financial statements in accordance with the guidelines determined by the member of the Executive Council.”

[71] There are so many financial functions which vests in the SGB that cannot just willy-nilly be delegated to someone else. In terms of section 16A(h) the applicant has a duty to assist the SGB with the management of the school’s funds. Such assistance includes the provision of information relating to any conditions imposed or directions issued by the Minister, the MEC or the HoD in respect of all financial matters of the school. He also has a duty to give advice to the SGB and financial implications of decisions relating to financial matters of the school. How these functions were going to be executed whilst the ‘school manager’ is still in charge is not clear.

[72] Hoexter says the following:

“There are a number of well-recognised ways in which one administrator may abdicate power while another usurps it. The most common of these, and certainly the most important in practice, is the unlawful transfer or delegation of power. Another is ‘acting under dictation’ and a third is unlawful referral or ‘passing the buck’. These last two kinds of illegality are so closely related as to be indistinguishable in some cases, and indeed nothing turns on the diagnosis of one or the other.”⁴⁷

[73] Baxter says the following about ‘passing the buck’:

“An official who is expected to exercise his own discretion might be tempted to avoid responsibility by referring the decision to someone else. This also constitutes an unlawful abdication of power.”⁴⁸

⁴⁷ Hoexter C : *Administrative law in South Africa*, 2nd ed page 262.

⁴⁸ Ibid 443.

- [74] It is clear that the SGB did not apply its mind to the delegation of its functions to Mr Geldenhuys at all. It deferred all its financial management or governance functions wholesale to Mr Geldenhuys. There were no terms or limits regulating the delegation. The Act does not provide for delegation. I have found that the SGB may delegate some of its functions. The Act certainly does not envisage an unbridled delegation of functions as happened in this case.
- [75] In terms of the Personnel Administrative Measures (PAM)⁴⁹ the principal's professional management of the school includes keeping various kinds of school accounts and records properly and to make best use of the funds of the school for the benefit of the learners in consultation with the appropriate structures.⁵⁰ How would he be able to perform these functions under the regime imposed by the decision? The delegation of those functions was vague, unstructured and unlawful.

B. Management of extra-curricular activities, like sport and culture.

- [76] School activity is defined in the Act as 'any official educational, cultural, recreational or school activity of the school within or outside the school premises'.⁵¹ Sports and culture can be extra-curricular activities. The veritable question, however, is whether they are school activities. Section 8A reads as follows:

- “(1) Unless authorised by the principal for legitimate educational purposes, no person may bring a dangerous object or illegal drug onto school premises or have such object or drug in his or her position on school premises or during any school activity.
- (2) Subject to section (3), the principal or his or her delegate may, at random, search any group of learners, or the property of a group of learners, for any dangerous object or illegal drug, if a fair and reasonable suspicion has been established –

⁴⁹ Personnel Administrative Measures which were gazetted by the Minister of Basic Education and published in Government Gazette No. 39684 of 12 February 2016.

⁵⁰ Clause 3.1.3.

⁵¹ Section 1 of the Act.

- (a) that a dangerous object or an illegal drug may be found on school premises or during a school activity; or
- (b) that one or more learners on school premises or during a school activity are in possession of dangerous objects or illegal drugs...”

[77] It is clear that a school activity is defined very widely in the Act. Whether it is an extra-curricular or extra-mural activity matters not, as long as it is a school activity. If it is a school activity the principal has a duty to manage it, (by *inter-alia* ensuring the safety of learners and that the activity will be a drug-free activity) or delegate somebody to manage it.

[78] In terms of the PAM the principal must play an active role in promoting extra and co-curricular activities in the school, plan major school functions and encourage learners’ voluntary participation in sports, educational and cultural activities organised by community bodies.⁵² The Act does not empower the SGB to strip the principal of these functions.

C. Management of school campus and assets including the hostels

[79] In terms of the PAM, part of a principal’s general administrative functions are to make regular inspections of the school to ensure that the school premises and equipment are being used properly and that good discipline is maintained. And to be responsible for the hostel and all related activities including the staff and learners, if one is attached to the school.⁵³ The SGB could not strip him of these functions which were expressly given to him in the PAM.

D. Management of personnel, where they are not performing academic functions.

[80] The principal must, in undertaking the professional management of a school, carry out duties which include the management of all educators and support staff.⁵⁴ The Act does not limit the principal’s management function with

⁵² Clause 3.5.2 of PAM.

⁵³ Clauses 3.1.5 and 3.1.6.

⁵⁴ Section 16A(2)(a)(ii) of the Act.

regard to educators to their academic functions only. The principal may for example delegate and manage an educator who was requested by the principal to perform the functions in section 8A(2). This injunction seeks to strip the principal of those powers too. The Act does not allow this. Support staff is personnel. They do not necessarily perform academic functions. Does this mean that the applicant may not manage them?

E. Communication and liaison, internally and externally.

[81] The PAM states that the principal's duties and responsibilities, with regard to communication, *inter alia*, include to:

1. meet parents concerning learners' progress and conduct;
2. liaise with other relevant government departments, e.g. Department of Health, Public Works, etc., as required;
3. cooperate with universities, colleges and other agencies in relation to learners' records and performance as well as INSET and management development programs;
4. participate in departmental and professional committees, seminars and courses in order to contribute to or update professional reviews/standards; and
5. maintain contact with sports, social, cultural and community organisations.

[82] The policy on South African standard for principals⁵⁵ states the following:

"The principal, working within the SMT and SGB, should build collaborative relationships and partnerships within and between the internal and external school community for their mutual benefit. Schools exist within particular social and economic communities that have an influence on and may be influenced by the school. The wider community that the school serves can provide a source of support and resources for the school. The school itself can play an important role in the well-being and

⁵⁵

Policy on the South African Standard for Principalship: enhancing the professional image and competencies school principals 2015. Published in Government Gazette number 39827 on 18 March 2016. Published in terms of section 3(4) of the National Education Policy Act 1996, (Act No 27 of 1996).

development of the community. School improvement and community development complement each other.”⁵⁶

It is clear that these various policies give the principal a duty to communicate internally and externally on behalf of the school. The SGB did not have the power to strip the principal of those functions.

F. Representing the school at all non-academic forums

[83] As stated above, the principal has a duty to represent the school in the community and to communicate with stakeholders. He has a duty to maintain communication with community organisations. The community might create fora for interaction with the school. Does this mean that the principal may not interact with those community fora? This cannot be right. The SGB had no power to denude the principal of representing the school at non-academic fora.

G. Internal and external liaising.

[84] I have already dealt with this issue. Nothing more needs to be said about it.

H. Management of the school ethos, mission, values and spirit within school context.

[85] The principal’s duty is set out in the policy on the South African standard for principalship as follows:

“The principal works within the SGB, the SMT and with parents in the school’s community to create and implement a shared vision, mission and strategic plan to inspire and motivate all who work in and with the school and to provide direction for the school’s ongoing development. The vision and mission identified by the SGB, encapsulates the core educational values and moral purpose of the school and should take into account national educational values and traditions of the school’s community and values enshrined in the Constitution of the Republic of South Africa. The strategic

planning process is fundamental for shaping and sustaining school improvement on a continuum.”⁵⁷

How can a principal professionally manage a school and not at the same time manage the vision, mission and values of the school as espoused by the SGB? The policy recognises that the principal is central in the management and implementation of the vision and mission as developed by the SGB. The SGB overreached in stripping the principal of his management function in this regard. The Act does not allow it to do so.

I. Management of discipline.

- [86] Section 16A(2)(d) of the Act states that the principal must assist the governing body in handling disciplinary matters pertaining to learners. Section 16A(2)(e) provides that the principal must assist the HoD in handling disciplinary matters pertaining to educators and support staff employed by the HoD. The Act clearly enjoins the principal to assist the SGB in handling disciplinary matters pertaining to learners. The SGB has no power to denude the principal of this competency. In any event it is not clear what the SGB means by management of discipline. Does this entail that the principal’s power to assist the HoD with disciplinary matters is also taken away?
- [87] It is clear that the SGB was not entitled to take the decision that it took because the Act and other policy instruments which covers the role responsibilities and functions of the principal does not sanction it. The SGB therefore did not have the necessary authority to do what it did. The SGB was not authorised by the Act to take the decision that it did.
- [88] Furthermore it is clear that the decision was not preceded by a procedurally fair process. The applicant was for all intents and purposes ambushed. When he requested time to prepare himself that was refused. He was faced with a myriad of accusations or allegations which he had to answer immediately. Regardless of his protestations and request for time to prepare

himself he was literally bulldozed into proceeding in the manner elected by the first respondent. The entire inquisition, for that is what it was, was unnecessary, because, as I indicated above, if the purpose was to revoke a delegation that could have been done without humiliating the applicant.

- [89] He was put through an ordeal that was palpably hostile. The disrespect shown to him was done in front of learners at the school. That process must have eroded the respect that these learners had for the applicant. Many of the members of the SGB were not even aware of all these complaints or charges against the applicant. The chairperson sat with a list of charges and confronted the applicant with them and he was expected to respond to it. It is noteworthy that all the charges pre-date the election of the current members of the SGB. Many members of the SGB were therefore not aware of the charges that will be brought against the principal at the meeting, yet they were requested to vote; which they did.
- [90] I have also indicated that the decision was taken without proper consideration of the Act, other legislation and policy documents. The decision effectively stripped the principal of powers, duties and functions which are entrusted to him by legislation and official policy.
- [91] The unlawfulness of the act did not end there. The SGB summarily and unlawfully appointed Mr Geldenhuys as the school manager of Grey College Secondary School. There is no evidence that there is such a post on the establishment of the school. Mr Geldenhuys was the principal of Grey College Primary School. His transfer or temporary secondment to Grey College Secondary School was done without the intervention or authorisation of the HoD.
- [92] In terms of section 33(2) of the EEA⁵⁸ the employer may order an educator to perform duties on a temporary basis other than those duties ordinarily assigned to the educator which are appropriate to the grade, designation or

classification of the educators post. The employer in terms of the EEA in this context is the HoD. In terms of section 6 of the EEA the appointment of any person, or the promotion or transfer of any educator in the service of the Provincial Department of Education shall be made by the HoD. In terms of section 8(1)(c) of the said Act the HoD may transfer any educator in the service of the Provincial Department of Education to any other post in that department. Nowhere in the EEA is the SGB given the power to transfer or appoint, on a temporary or permanent basis, an educator who is in the employ of the Provincial Department of Education. The decision to appoint Mr Geldenhuys as the interim school manager ought to be set aside.

- [93] Counsel for the SGB properly decided not to pursue the conditional counter-application. The first respondent all but abandoned the counter-application because the antecedent condition was not triggered. It ought to be dismissed.
- [94] In summary, a SGB is an organ of State. PAJA is applicable to its decisions. The SGB may delegate some, not all, of its functions. It may delegate some of its functions to a principal. The SGB *in casu* did not delegate any functions to the applicant, it abdicated its functions and allowed the applicant to perform them. The Act does not allow the SGB to denude the principal of functions entrusted to him by legislation, policy or the HoD. The SGB *in casu* stripped the principal of functions that he must perform in terms of the Act and policies of the Department of Basic Education. The SGB's decision fell afoul of section 6(2)(a)(i) of PAJA. It must be set aside because the Act does not authorize the SGB to strip the principal of his powers. It therefore took a decision which it may not take in terms of the Act. Even if it had the power to take the decision to strip him of his functions it may not do so without giving him a reasonable opportunity to be heard, because his rights were affected by the decision. It did not give him a reasonable opportunity to prepare. Preparation is an essential element of presentation. He was not given a reasonable opportunity to be heard. It acted in a procedurally unfair manner.⁵⁹ It appointed Geldenhuys unlawfully. It does not have the authority to appoint,

⁵⁹ See section 6(2)(c) of PAJA.

transfer or deploy educators in the employ of the Provincial Department of Education.

[95] The applications of the applicant and the intervening party have the same effect. The success of the applicant and that of the intervening party coincide. All the parties were in agreement that whatever costs order is made should include the costs occasioned by the employment of two counsel. The opposition to the application to intervene was unreasonable and the first respondent should be ordered to pay the costs of that application. Likewise it should be ordered to pay the costs of the striking out application.

[96] I therefore make the following order:

1. The first respondent is ordered to pay the costs, including the costs of two counsel, of the intervening party in respect of the application to intervene and the striking out application.
2. The conditional counter-application is dismissed with costs, including the costs of two counsel.
3. Paragraphs 1 and 2 (excluding the alternative to paragraph 2) of the applicant's notice of motion and paragraph 2.1 of the intervening party's notice of motion are granted with costs, including the costs occasioned by each of them employing two counsel. Such costs to include the costs of 8 June 2018.

C.J. MUSI, AJP

I concur.

C. VAN ZYL, J

Appearances:

For the applicant: Adv Kemp SC
Assisted by Adv van Aswegen
Instructed by Peyper Attorneys
Bloemfontein

For the 1st respondent: Adv Du Toit SC
Assisted by Adv Merabe
Instructed by Horn & Van Rensburg Attorneys
Bloemfontein

For the Intervening Party: Adv Snellenburg SC
Assisted by Adv Pienaar
Instructed by Lovius Block Attorneys
Bloemfontein