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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO: 20009/2017

In the action between:

CITY MISSION TRADING AS CAPE TOWN MISSION

PLAINTIFF

AND

**CITY MISSION EDUCATION SERVICES TRADING AS
CMES**

FIRST DEFENDANT

**MEMBER OF THE EXECUTIVE COUNCIL FOR
EDUCATION, WESTERN CAPE**

SECOND DEFENDANT

CENTRE FOR CHILD LAW

AMICUS CURIAE

**THE SCHOOL GOVERNING BODY OF
CITY MISSION EDUCATION t/a CMES**

THIRD DEFENDANT

And, in the application for leave to appeal and related matters:

**CITY MISSION EDUCATION SERVICES
TRADING AS CMES**

FIRST APPLICANT

**THE SCHOOL GOVERNING BODY OF
THE CITY MISSION EDUCATION**

SECOND APPLICANT

And

**CITY MISSION TRADING AS
CAPE TOWN MISSION**

FIRST RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL
FOR THE DEPARTMENT OF EDUCATION,
WESTERN CAPE**

SECOND RESPONDENT

CENTRE FOR CHILD LAW

THIRD RESPONDENT

DATE OF HEARING (Application for leave to appeal): 28 MARCH 2025

DATE OF JUDGMENT: Judgment was handed down electronically by circulation to the parties and their representatives by email and released to SAFLII. The date for handdown is deemed to be 11 April 2025.

**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL AND RELATED
MATTERS**

[1] This is the return date of an order granted at the conclusion of the trial. The first and third defendants in the trial also applied for leave to appeal together with further ancillary relief. The parties will be referred to as cited in the action and at trial.

PARTIES, LITIGATION HISTORY AND RELIEF APPLIED FOR

- [2] The plaintiff served a combined summons on the first defendant as long ago as 8 November 2017. In the aforementioned action, the plaintiff seeks the eviction of the first defendant from the property situated at 6[...] T[...] Road, Bridgetown, Cape Town, Western Cape ("***the property***"). After several postponements, interlocutory applications and other intermediary skirmishes, the trial proceeded and was finalised on 3 and 4 November and 2, 5, 6 and 9 December 2024.
- [3] On 9 December 2024, the Court gave *ex tempore* reasons for finding that the first defendant is in unlawful occupation of the property. The eviction order was, however, immediately suspended pending finalisation of a draft order that I requested the parties to prepare. Counsel for the plaintiff, Mr Coston and the MEC, Mr Mayosi, provided a proposed draft order, which I granted on Monday afternoon, 9 December 2024, incorporating certain amendments in the terms as set out in my judgment dated 13 December 2024.
- [4] The order of 9 December 2024 read together with the judgment of 13 December 2024 provide *inter alia* that the eviction of the first defendant (only in terms of its schooling activities and in respect of the learners who are currently enrolled according to the Education Department's records with the first applicant) is suspended pending the return date on 28 March 2025. The order further encouraged and required the parties to interact with learners and their guardians and parents about the eviction order granted and the placement of learners by the Department of Education in different schools.
- [5] The purpose of the order was to minimise any possible prejudice for learners and to put their interests first. However, this could only be achieved with the *bona fide* cooperation of all involved. The Department of Education provided uncontested evidence that the best time for transferring students with minimal disruption is during the December holiday before the new academic year starts.

[6] The operation of the eviction order was therefore suspended so that the learners would have the opportunity to relocate to a new school, with or without the assistance of the Department of Education, during December and January before the start of the new academic year and the execution of the eviction order. The first and third defendants were further interdicted from enrolling any new students for the 2025 academic year at the property.

[7] As will be set out hereinafter in greater detail the first defendant, City Mission trading as CMES applies *inter alia* for leave to appeal. However, the school has also failed to comply with any part of the order granted on 9 December 2024. The school is still occupying the property and has enrolled almost double the number of learners it had during the preceding year. Approximately 135 learners are currently enrolled in the school.

[8] It is therefore necessary to record in some detail how the parties complied with the order of 9 December 2024:

[8.1] On 11 December 2024 the plaintiff caused the Court order to be served on the first defendant by affixing the Court order to the Admin Block Class Room Block, Hostel Block with living quarters and a classroom. A copy of the order was affixed at the entrance of the property and served personally upon Mr Nathan Ramedies as Director of the first defendant and representative of the school governing body.

[8.2] On 10 December 2024, there were no school children in the hostel or on the property as everyone had left for the school holidays. The only people still occupying the premises were teachers or their families. The Court order was similarly served upon these persons.

[8.3] On 17 December 2024 the plaintiff's attorney of record sent an email to the first to third defendants recording the the Court order was served by Sheriff on 11 December 2024, drawing their attention to paragraph 6 of the order in terms of which they were ordered to

inform the parents or legal guardians of learners at school by 13 December 2024 that the school is being evicted from the property and requesting a copy of the written notice to be delivered to the parents and guardians.

[8.4] The first to third respondents were also reminded that they were directed in terms of the Court order to provide the Department of Education with an updated contact list of the parents and guardians by no later than 20 December 2024.

[8.5] On 17 December 2024 Mr van Reenen confirmed per email that he received the Court order.

[8.6] On 19 December 2024 there were some indications that the school intended to vacate the property.

[8.7] On 13 January 2025, Mr Nathan Ramadies, a member of the School Governing Body and principal, attended the property, and parents came to enrol and register the children with the school.

[8.8] On 15 January 2025 the school re-opened and the school continued to operate as normal.

[9] Mr Nathan Ramadies, who is the principal of the school and a member of the school governing body, filed *inter alia* an affidavit titled “*Condemnation Affidavit*”. In this affidavit he explains that upon receipt of the judgment on 13 December 2024 he approached attorney Johnny Millet practicing as Milijiet and Associates. Mr Millet was provided with a complete copy of the Court file and instructed to proceed to file an appeal. It transpired that Mr Millet according to Mr Ramadies failed to execute his mandate and on 7 February 2025 the Board of directors of City Mission Education purportedly resolved that an appeal be instituted against the judgment of 13 December 2024 and that Mr Nathan Ramadies in his capacity as Director of City Mission Education Services be authorised to sign all documents and commit all acts necessary to

give effect to this resolution. The application for leave to appeal was only filed on 14 February 2025. I will assume, for the purposes of the judgment, that the filing of the application for leave to appeal suspended the operation of the order and judgment without getting entangled in any debate over whether the order was interim or final. However, there is no evidence or explanation for why the school enrolled new learners at the premises in clear breach of the order.

- [10] The plaintiff as well as the Department of Education filed detailed compliance affidavits in accordance with the provisions of the 9 December Court order. The Department of Education explains in their compliance affidavit that the first and third defendants were required to provide the Department with an updated contact list of parents and/or legal guardians. The Department received email correspondence from the first defendant but the information provided to the Department was incomplete and was not sufficient for the purpose envisaged by the Court order. Attached to the Department's compliance affidavit appears an email dated 20 December 2024 sent by Mr Nathan Ramadies to Mr Malcolm Williams of the Department of Education. The email reads as follows and I quote:

"Good day Mr Williams

This is the updated list of parents who received notices.

Most of notices was sent via our chat as only a few parents can collect hard copies."

- [11] The aforesaid is the highwater mark of the school's attempts at complying with the Court order. The plaintiff further states in its compliance affidavit that the copies of the order and notices that were affixed to the entrances to the property were promptly removed after it was placed there.
- [12] The Department of Education makes it clear that, to their surprise, the school was operating as before when they visited it on 22 January 2025. It became

clear to the Department after making an investigation that more children enrolled at the school than before. The Department discovered that the school had at 14 March 2025 135 learners. According to the Department's statistics, there are therefore 45 new learners. It is evident from the observations by the Department of Education that the first defendant was going to continue using the premises as a school despite the Court order, and the efforts of the Department to assist with the placement of learners were going to be futile.

- [13] The Department confirmed that it received no enquiries from any parents since it is doubted that the parents were properly informed of the arrangements that were put in place as per the Court order.

PROCEEDINGS AND HEARING ON 28 MARCH 2025

- [14] On the return day on 28 March 2025, it transpired that the first and third defendants were still unrepresented. Mr Ramadies was not present, and Mr van Reenen appeared again in person on behalf of the school, but also in his personal capacity. It is unclear why Mr. Ramadies, the authorised representative of the school according to the resolution adopted on 7 February 2025, did not attend court.

- [15] It transpired that the first and third defendants, being the school and the governing body, filed the following papers:

[15.1] A notice of appeal dated 12 February 2025 and served on the 13th of February 2025;

[15.2] A bond of security dated 12 February 2025 and served on the 13th of February 2025;

[15.3] A condemnation affidavit dated 12 February 2025 and served on the 13th of February 2025;

- [15.4] An application to stay the execution of the eviction order dated 13 February 2025 served on the 14th of February 2025;
- [15.5] A notice of leave to appeal dated 14 February 2025 and served on the 14th of February 2025.
- [16] At the beginning of the proceedings, Mr. van Reenen requested a postponement without prior notice to allow the school to secure legal representation.
- [17] I allowed Mr van Reenen more than sufficient time to motivate the postponement. Mr Coston and Mr Mayosi on behalf of the plaintiff and the Department opposed the postponement. Of significant concern to me was the fact that the outcome of the application for a postponement may affect the learners' interest. At the hearing on 28 March 2025, Western Cape schools were about to break for the Easter holiday. This is a brief holiday, which raises the issue of a possible eviction being enforced if a postponement is denied and the application for leave to appeal is dismissed.
- [18] After having heard the parties at length on the application for postponement I granted an *ex tempore* judgment refusing the postponement. The old saying is that the more things change, the more they stay the same. This is not the first time Mr. van Reenen has applied for a postponement at the eleventh hour, without any reasonable explanation. The school knew since the end of January 2025 and at best for it by 7 February 2025 that it would need to appoint new attorneys of record. Despite the indication that a new attorney has been “*on boarded*” no evidence was provided to substantiate this allegation. There is no new attorney of record and no legal practitioner appeared at the hearing. More than seven weeks have passed since the adoption of the resolution mandating Mr. Ramadies to take all reasonable steps on behalf of the school, with no progress. I am not convinced that the application for postponement is *bona fide* and it is probably nothing more but a further attempt to delay the finalisation of this matter.

APPLICATION FOR LEAVE TO APPEAL

[19] The first and third defendants filed two documents titled “*LEAVE TO APPEAL*” and “*Notice of Appeal*”. For purposes of the argument, all parties involved accepted that the first and third defendants intended to apply for leave to appeal against the whole of the order of 9 December 2025 and the judgment of 13 December 2024. Both the aforementioned documents essentially repeat the defences raised at trial. No new grounds or reasons are provided to challenge the Court’s finding that the school is unlawfully occupying the premises, and no new factual or legal grounds are stated in support of the request for leave to appeal.

THE LEGAL POSITION IN DECIDING IF LEAVE TO APPEAL SHOULD BE GRANTED

[20] Section 17(1) of the Superior Courts Act provides that leave to appeal may only be given where the Judge is of the opinion that:

[20.1] The appeal would have reasonable prospects of success; or

[20.2] There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[21] The prospect of success required in terms of Section 17(1)(a)(i) is to be decided without reference to the parties’ wishes.¹ In ***Mont Chevaux Trust v Goosen***² the Court held that:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable

¹ *Rail Commuter Action Group v Transnet Limited trading as Metrorail* (Number 2) 2003 (5) SA 593 (C)

² 2014 JDR 2325 (LCC)

*prospect that another court might come to a different conclusion, ...The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. ...*³

[22] The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law, that a Court of Appeal could reasonably arrive at a conclusion different to that of the trial Court. In order to succeed, the applicant must convince the Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. There must be a sound, rational basis for the conclusion that there are prospects of success.⁴

[23] Leave to appeal is further granted not in respect of the reasons for the judgment but in respect of the order itself. Therefore, the success of the application for leave to appeal must be related to the outcome of the case and not an argument that fails to dispose of the case in the Appellant's favour.⁵

[24] In the matter of ***Tecmed Africa v Minister of Health***⁶ the Supreme Court of Appeal held:

"[17] First, appeals do not lie against the reasons for judgment but against the substantive order of a lower court. Thus, whether or not a court of appeal agrees with a lower court's reasoning would be of no consequence if the result would remain the same (Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd 1948 (3) SA 353 (A) at 354)."

FINDING – LEAVE TO APPEAL

³ At para 6

⁴ *S v Smith* 2012 (1) SACR 567 at 570, para 7

⁵ *Goodwin Stable Trust v Duoohex (Pty) Ltd* (2) [1996] 3 All SA 119 (C)

⁶ [2012] 4 All SA 149 (SCA)

- [25] I have considered all of the defences raised by the first and third defendants during the trial based upon the evidence presented by both the plaintiff and the first, second and third defendants.
- [26] In the premises, there is no reasonable prospect of another Court coming to a different conclusion on the totality of the evidence before the Court or as a matter of law.
- [27] The Court cannot enquire into details that fall outside the scope of the pleadings or the admitted facts. The grounds of appeal and the argument presented do not demonstrate that the legal issues raised are of substantial importance or of public importance. There is no compelling reason why an appeal should be heard or that it is necessary to attain legal certainty regarding these issues.

APPLICATION TO STAY EXECUTION

- [28] Paragraph 1 of the Notice of Motion filed in the stay of execution application provides that the execution of the eviction order granted in favour of the first respondent/plaintiff under the above case number be stayed pending the final determination of the appeal.
- [29] In light of the fact that the application for leave to appeal was unsuccessful, the application to stay execution is stillborn. There is no appeal pending.
- [30] Despite this, I have considered the application to stay execution. It contains, in main, a repetition of the grounds upon which the first and third defendants attempted to defend the claim against them at the trial as well as that on which leave to appeal was sought. In paragraph 8 of the affidavit filed in support of the application the following is stated regarding the balance of convenience and irreparable harm:

“8. The balance of convenience strongly favours the Applicant, as:

- 8.1. *The students who rely on the Applicant's facilities will be severely affected by an eviction, whereas the First Respondent will suffer no material prejudice if the execution is suspended until the finalisation of the appeal.*
- 8.2. *The public interest in ensuring access to education outweighs any financial or procedural prejudice the First Respondent may claim.*
- 8.3. *The Applicant has a strong legal case on appeal and allowing the eviction to proceed before the appeal is adjudicated would render the appeal moot and unjustly prejudice the Applicant.*
- 8.4. *If the eviction order is carried out, the harm to the students and academic program will be irreparable, and reinstating the status quo post eviction would be impractical and disruptive."*

[31] It would serve no purpose to gaze into a crystal ball to try and predict when and how the different role players in this matter may take any further steps, albeit with regard to the execution of the order or a possible appeal.

[32] I have dealt in detail with the interest of the child in the judgment of 13 December 2024, but also the interest of the plaintiff. Justice denied remains justice denied, and there needs to be finality in litigation. Certainty needs to be attained regarding the school's presence at the property in the interest of the learners, their guardians and parents.

[33] The doctrine of precedent is an intrinsic feature of the rule of law. Rule 45A provides that the Court may, on application, suspend the operation and execution of an order for such period as it may deem fit; provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.

[34] In **Janse van Rensburg v Obiang and another**⁷ this Court held and I quote:

“In addition to Rule 45A, the Superior Courts have inherent power, in terms of s 173 of the Constitution, to protect and regulate their own process, taking into account the interest of justice. Such power includes the inherent discretion to order a suspension of execution of any order. The SCA confirmed the court’s power to order a stay of execution in Van Rensburg NO and Another v Naidoo NO and Others; Naidoo and Others NNO v Van Rensburg NO and Others when it held:

“[51] Apart from the provisions of Uniform rule 45A a court has inherent jurisdiction, in appropriate circumstances, to order a stay of execution or to suspend an order. It might, for example, stay a sale in execution or suspend an ejectment order. Such discretion must be exercised judicially. As a general rule, a court will only do so where injustice will otherwise ensue.

[52] A court will grant a stay of execution in terms of Uniform Rule 45A where the underlying causa of a judgment debt is being disputed, or no longer exists, or when an attempt is made to use the levying of execution for ulterior purposes. As a general rule, courts acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such action.”

[35] The aforesaid principles were explained by Binns-Ward J in **Stoffberg NO and another v Capital Harvest (Pty) Ltd**⁸ as follows:

“[26] The broad and unrestricting wording of rule 45A suggests that it was intended to be a restatement of the courts’ common law discretionary power. The particular power is an instance of the courts’ authority to regulate its own process. Being a judicial power, it falls to be exercised judicially. Its exercise will therefore be fact specific and the

⁷ 2023 (3) SA 591 (WCC) at 40

⁸ [2021] ZAWCHC 37 (2 March 2021) para 26

guiding principle will be that execution will be suspended where real and substantial justice requires that. 'Real and substantial justice' is a concept that defies precise definition, rather like 'good cause' or 'substantial reason'. It is for the court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment; and, if they are, on what terms any suspension it might be persuaded to allow should be granted."

- [36] The plaintiff has been awaiting justice since 2017. It obtained a final eviction order, the operation of which was in part suspended pending the return date. The plaintiff is entitled to execute upon the order. However, I must not lose sight of the interests of the learners, who are innocent and merely exercising their constitutional right to basic education. As the upper guardian of children, I am obliged to consider their best interest, which outweighs those of any of the other parties.
- [37] As was the case during the trial, I again debated with Counsel the most opportune time to evict the school. I cannot accept the plaintiff's submission that this can be done successfully during the Easter holiday. Mr Mayosi on behalf of the Department of Education submitted that prejudice to learners could be circumvented by suspending the execution of the eviction order until the end of the June winter holidays. This will again afford learners, their parents and guardians almost three months during which they could consider alternatives.
- [38] From a practical point of view it would further mean that should there be any step taken in seeking leave to appeal from the Supreme Court of Appeal, that any application in terms of section 17(1) of the Superior Courts Act read with Uniform Rule 49 would have had to be filed during May which would in turn again trigger the suspension of the Court order.
- [39] Mr Mayosi further referred me to the Western Cape Provincial School Education Act 12 of 1997 and the regulations published in terms of the

aforesaid Act in the provincial notice number 341/2011 with specific reference to Regulation 8 which deals with the withdrawal of registration and closure of independent schools. The Head of Department may, subject to the provisions of regulation 8 withdraw the registration of an independent school if he/she is convinced on reasonable grounds that such an independent school is not complying with all the registration requirements or conditions referred to in regulation 2. Before withdrawing the registration of an independent school, the Head of Department shall follow the procedure outlined in regulation 8(2). In terms of regulation 2 an independent school must in accordance with section 28 of the Act have buildings and grounds that offer the space, design and facilities which conform to the standards appropriate to the context in which the school will operate taking into account comparable standards at public schools.

[40] In particular regulation 2(c)(ii) reads as follows:

“... Tenure of the school buildings and grounds must be secured for a period of twelve months following the registration of the school.”

[41] It goes without saying that should an eviction order be executed against the school, the first and third respondents could find themselves in breach of regulation 2(1)(c)(ii).

[42] Compliance with the provincial regulations is however not anything upon which this Court expresses any view. It is however of relevance in deciding upon the stay of execution. According to the Western Cape Education Department’s website, schools close at the end of the second school term on 27 June 2025 to re-open on 22 July 2025.

[43] If the eviction order is not executed before the end of the current academic year, it would mean that the first and third defendants succeeded in delaying, if not frustrating, the plaintiff for one additional year. In the circumstances, I am satisfied that, given the safety measures I intend to include in the order, it

would be reasonable to stay the execution of the eviction order until Monday, 21 July 2025.

COSTS DE BONIS PROPRIIS

[44] Mr van Reenen was called upon to show cause on 28 March 2025 why he should not be ordered to be liable jointly and severally with the first and third defendants for the plaintiff's costs *de bonis propriis* on the scale as between attorney and client. In this regard I refer to paragraphs 58 to 60 of my judgment in which I dealt with the issue of costs which should be read together with the evaluation of Mr van Reenen's testimony and conduct during the trial as set out in the judgment of 13 December 2024.

[45] Regarding the joinder of persons in their personal capacity to proceedings in which costs orders *de bonis propriis* are sought, the Court held in **Cawood NO, and Another v Claassen and Another**⁹ that:

"...[31]If the main application is dismissed with costs, it would mean that Joluza, in business rescue, would have to pay such costs. That would be an inappropriate order as there is no reason why the creditors of Joluza or any of the affected persons should be prejudiced indirectly. Mr Cawood cannot avoid an order against him personally on the basis that he was not cited in his personal capacity. The issue was clearly and patently raised by the respondents under oath and he had full opportunity to respond thereto. He was duly warned that a punitive costs order would be sought against him as will be shown hereunder. Mr Reinders pointed out that Joluza should not be prejudiced by granting costs against it. According to him, Mr Cawood knew that his locus standi was in dispute. Mr Van Zyl, on the other hand, submitted that Mr Cawood did not want to be guilty of a dereliction of duties and did what was required of him in accordance with the Companies Act. Therefore, he shall not be penalised with a costs order as requested.

[32] Orders de bonis propriis are punitive orders and are not usually made except in exceptional circumstances. There must have been egregious conduct on the part of the party acting in a representative capacity to attract such an order of costs. The assessment of the gravity of the conduct is objective and lies at the discretion of the court. Such orders are made as a mark of the court's displeasure with the conduct of the particular party.

[33] It is also appropriate to refer to Herbstein & Van Winsen. I quote:

"An award of costs de bonis propriis may be made only when a person acts or litigates in a representative capacity.

It is unusual to order a litigant in a fiduciary position to pay costs de bonis propriis, and good reason for such a course should be shown, such as want of bona fides, negligent or unreasonable action, or improper conduct by a trustee or executor. The basic notion is material departure from the responsibility of office, which includes absence of locus standi. Other litigants who institute or defend proceedings in a representative capacity, such as executors, guardians, sureties or agents, or public officers such as a mayor, are in a similar position. Thus, costs have been awarded de bonis propriis against a trustee whose conduct was actuated by an ulterior motive, and because he did not believe it was for the benefit of the estate, and against an executor who was clearly pursuing his personal interest, the estate having no funds. In Kohlberg v Burnett, where the executor's real reason for deciding to appeal was a personal interest (intestacy, being to his financial advantage), the court dismissed the appeal with costs, as it would have been inequitable to have ordered that the executor's costs of appeal should come out of the estate of the deceased.

A representative litigant whose conduct is so unreasonable as to justify this special order can, despite acting in good faith, be ordered to pay the costs de bonis propriis. The court will not, however, make such an order lightly, and mere errors of judgment will not be sufficient. It has been held that such an order should not be granted in the absence of some really improper conduct, and that the fairness or unfairness of proceedings honestly brought should not be scrutinised too closely. The criterion has been stated to be actual misconduct of any sort or recklessness, and the reasonableness of the conduct should be judged from the point of view of the person of ordinary ability bringing an average intelligence to bear on the issue in question, not from that of the trained lawyer.

Costs de bonis propriis, if sought, should be specially asked for, or an application for an order for the payment of costs de bonis propriis should be made at the hearing, but the court may entertain a subsequent application if made within a reasonable period.

In a proper case the court will also order company directors, liquidators, administrators or even insolvents to pay costs de bonis propriis." (footnotes omitted)

[34] An order de bonis propriis shall not be made against a person or party unless he or she had been afforded an opportunity to respond to the allegations in question and to state his or her case..."

[46] Mr van Reenen again repeated the same submissions that he made at trial. He could not explain why the school or, for that matter, himself had not sought any legal advice since December 2024. He again applied for a postponement without providing a good reason and did not present any objective evidence regarding the learners' interests, their financial and day-to-day needs, or any

other facts that could have persuaded me. His argument that he is motivated by the interests of “poor children” is merely paying lip service to a very important matter that should have required far greater consideration and effort. I find it ironic that Mr van Reenen himself repeatedly referred me to the advice given to him by Justice Steyn earlier in the proceedings regarding the appointment of legal representation and that he “*should not let the ball drop*”. Mr van Reenen clearly decided that he would not pass the ball, or rely upon legal advice but that he would persist in the course on which he started out on. The old saying goes that the path to hell is paved with good intentions. Not all good intentions are reasonable viewed in context. I again allowed Mr van Reenen more than sufficient time to address the Court and to convince me of the merits of the application for postponement, the application for leave to appeal, the stay of execution and the reasons why he should not be ordered to pay costs.

- [47] I was again left disappointed since he could not convince me of his good intentions but rather, through his actions, cemented my dissatisfaction in the manner in which he conducted himself in these proceedings. Having considered the evidence presented at trial and the submissions made to me at the hearing on 28 March 2025, I am not convinced that the learners' interests were paramount to the school's defence and Mr. Van Reenen's actions in this matter. Far too little, if any, substantive evidence was presented by Mr. Van Reenen regarding the plight of poor children and the role that the school purportedly fulfils as an independent school. Yet again, Mr. Van Reenen did not speak to the new learners who were enrolled, the school and their financial means, or any realistic engagement with the reality that the lease agreement was cancelled or terminated due to the effluxion of time and that the school will need to find alternative accommodation. Mr. Van Reenen presented no reason why my findings were incorrect, nor did he explain why his participation in the trial and the apparent defences relied upon by the school were motivated, in essence, by his own personal vendettas unrelated to the real issue at hand. Mr. Van Reenen is not uneducated and again emphasised during his address on 28 March 2025 his experience, financial qualifications (including some legal knowledge), and business and social

connections. I find his actions during the trial and at the hearing of 28 March 2025 unreasonable. He conducted himself recklessly without regard for the unavoidable facts and clear contradictions in his testimony. The school does not employ Mr. Van Reenen. He chose, of his own volition, to represent the school. By his own will, he persisted in associating himself with the meritless defences presented.

[48] In the premises, the following Court order is granted:

- (1) The application for postponement is refused.
- (2) The application for leave to appeal is refused.
- (3) The application for the stay of execution of the Court order dated 13 December 2024 is refused.
- (4) The operation of the order dated 9 December 2024 is postponed and suspended until 21 July 2025.
- (5) The plaintiff's legal representatives are requested and directed to take the following steps forthwith to inform all learners, their parents and guardians of the confirmation of the eviction order in the following terms:
 - (a) A permanent notice board is to be erected at the main entrance of the premises and maintained until the eviction order is executed, on which the notice referred to hereunder must be displayed along with a copy of this order informing all learners, their parents and/or guardians that:
 - (i) The first defendant is in unlawful occupation of the property.
 - (ii) That the eviction of the first defendant is postponed and suspended until 21 July 2025.

- (iii) That the Sheriff of the above Honourable Court is authorised to effect the eviction order dated 9 December 2024 if so instructed by the plaintiff on any date after 21 July 2025.
- (b) The plaintiff's attorney is requested to prepare a notice addressed to the school's learners, their guardians and parents providing adequate information regarding the order dated 9 December 2024 and this order including the contact details of the Department of Education, Western Cape should they wish the department to assist with the placement of learners in alternative school ("the notice").
- (c) Copies of the notice must also be distributed at the property's entrance between 07:00 and 09:00 on three school days in the first week of the academic term after the Easter school holiday.
- (d) The plaintiff's attorneys are directed to send a copy of the notice by electronic means, including email and/or WhatsApp, as per paragraph 6 hereunder.
- (e) A copy of this judgment and order must be served upon the first and third defendants.
- (6) The first and third defendants are directed to cooperate with the plaintiff in providing access to and/or details of any email list, the contact details or user details of any WhatsApp group or electronic chat group to which learners, their parents and/or guardians may belong through which notice can be given of this order.
- (7) The plaintiff's attorneys are directed to file a service affidavit regarding the steps taken in compliance with this order by no later than 9 May 2025.

- (8) The first and third defendants along with Mr Andrew Charles van Reenen (Identity number 6[...]) are ordered to pay the costs of the action as well as the costs of the application for postponement, application for leave to appeal, application for the stay of execution and the argument on 28 March 2025 on the scale as between attorney and client.

BY ORDER

VAN DEN BERG AJ