

The Head of Department, Department of Education, Limpopo Province v Settlers Agricultural High School and Others

Constitutional Court – CCT 36/02

Judgment date: 2 October 2003

Media Summary

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The Head of Department for the Department of Education, Limpopo Province appointed Ms Mashamaite, a black female educator instead of Mr Viljoen, a white male educator as principal of the Settlers Agricultural High School, contrary to the recommendation made by the school's governing body. The governing body successfully applied to the High Court for an order declaring that Mr Viljoen was entitled to be appointed as the principal.

An application to the Pretoria High Court for leave to appeal against that decision was dismissed. A further application to the Supreme Court of Appeal was dismissed on 19 November 2002. The applicant thereafter approached the Constitutional Court for leave to appeal.

In a unanimous judgment the Court dismissed the application with costs. It stated that the matter raised socially and legally complex matters touching on the intricate relationship between the rights of school governing bodies to make decisions on suitable candidates for employment, and the need for transformation to overcome racial and gender imbalances in education. Nevertheless, so much water had passed under the bridge in the present matter that it would not be in the interests of justice to condone the long delay in lodging the appeal.

The Court went on to deal with claims made that the applicant had ignored orders for costs made against him. If the claims were true, the Court said, it would indicate an unacceptable lack of respect for court orders. The Court stated that it was important that steps be taken to establish whether or not the orders for costs have been paid, and if not, to ensure that the court orders are complied with without further delay. The Court took into account that the applicant had not had an opportunity of replying to the averments made with regards to the costs orders. The Court therefore directed the Registrar of the Constitutional Court to forward the judgment to the Member of the Executive Council of the Limpopo Province responsible for education, with a request that a report be made to the Court on this issue by 16 October 2003. The Registrar was also requested to forward a copy of the judgment to the Premier of the Limpopo Province.