



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION



MINI MBA FOR HEADMASTERS

A PRACTICAL ANALYSIS OF THE GREY CASE



The parties to the case



- The applicant : mr Deon Scheepers, the Grey headmaster
- The first respondent : The Grey SGB
- The Second respondent : The MEC for education in the Free State
- The Third respondent : Mr Jurie Geldenhuys, headmaster, Grey primary School
- The fourth respondent : The minister of National education (DBE)
- The SAOU : Intervening in terms of the separation of powers and if a SGB is entitled to act as a de facto employer

The application of the different parties (1)



- THE APPLICANT :That the decisions taken by the Grey SGB at a special meeting of 15 May 2018, that (a) All delegated SGB powers are recalled from Mr Scheepers (b) Mr Jurie Geldenhuys (*Headmaster of Grey primary*) 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. ..
- THE SAOU AS INTERVENING PARTY : That the SGB - decisions of 15 May be set aside , alternatively , that the management functions under discussion forms part of professional management and cannot be retracted by the SGB

The application of the different parties (2)



- THE FIRST RESPONDENT: Opposes and delivers conditional counter-application: conditional upon the 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.

SO WHAT REALLY HAPPENED? (1)



- 3 May 2018: Grey SGB Exec sends a letter to members to call the meeting on the 15th, informing them that the purpose is to retract some delegated functions from Mr Scheepers
- Mr Scheepers wrote several mails, enquiring which functions were to be retracted, as he wanted to prepare himself for the meeting. Chairman eventually answered that he wasn't "prepared to set out those rights and responsibilities because the applicant was aware of the provisions of the Act."
- The subsequent meeting took the form of a disciplinary as Mr Scheepers was also cross-examined. Mr Scheepers' requests to prepare was denied.

SO WHAT REALLY HAPPENED? (2)



- First respondent subsequently concluded that trust relationship had broken down. Voted 14 – 3 to retract “delegated” functions and appoint Mr Geldenhuys
- On 16 May, a letter went out to the community from the SGB to inform them about his, and, mention the powers taken away :
 - The management of the school finances
 - Management of the extra-curricular activities, like sport and culture;
 - Management of the school campus and assets, including the hostels;

SO WHAT REALLY HAPPENED? (3)



- Management of the personnel, where they are not performing academic functions;
- Communication and liaison, internally and externally;
- Representing the school at all non-academic forums, for example the “Reunie”;
- Internal and external liaising;
- Management of the school's ethos, mission, values and spirit within school context;
- Management of discipline.

MAIN HEADINGS ON WHICH CASE WILL BE HEARD



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

THE FIRST 3 :



- Urgency
- *No longer a live issue*
- Non-joinder (Of The HOD)
- *HOD aware of proceedings – not fatal to the case*
- Pre-maturity;
- *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 contention of the first respondent lacks merit.*

THE NEXT 2 :



- Whether the SGB may delegate any of its functions;
- *Yes – not able to perform all its functions as attributed by SASA*
- Whether the SGB may retract its delegated functions
- *Yes – the nature and definition of ‘delegation’*
- *But, since no delegation actually took place, the SGB decision meant headmaster was denuded (robbed) of his powers*

THE NEXT 2 :



- Whether the decision of the SGB was an administrative action;
- *Yes – Definition in PAJA*
- If so, whether the decision withstands section 6 of PAJA scrutiny;
- *Par 65 & 66*
- *My opinion: Also section 3*

THE 'DELEGATED FUNCTIONS' ACCORDING TO THE GREY SGB



- Finances
- *No unbridled delegation / SASA 16 (f) – (k) / PAM 3.1.3*
- Extramural activities
- *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. / PAM 3.5.2*
- Management of the school campus and assets, including the hostels; *PAM 3.1.5 and 3.1.6*
- Management of the personnel, where they are not performing academic functions; *SASA 16 A (2) (ii)*

THE 'DELEGATED FUNCTIONS' ACCORDING TO THE GREY SGB



- Communication and liaison, internally and externally;
- *PAM 3.7, esp. 3.7.9*
- Representing the school at all non-academic forums
- *PAM 3.7.2;3.7.6;3.7.9*
- Internal and external liaising; *The same*
- Management of the school's ethos, mission, values and spirit within school context;
- *Issue of job specification: policy on SA standard for principalship*
- Management of discipline. *SASA 16 A (2) (d) & (e)*

AND, TO SUMMARIZE IT ALL...



[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.

Furthermore it is clear that the decision was not preceded by a procedurally fair process. The applicant was for all intents and purposes ambushed.

SUMMARY (CONTINUED)



- The disrespect shown to him was done in front of learners at the school
- 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.
- 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.

SUMMARY (CONTINUED)



- EEA – EMPLOYER MAY SECOND, NOT THE SGB
- DISMISSES THE FIRST RESPONDENT’S APPLICATION BECAUSE CONDITION “NOT TRIGGERED”
- The SGB’s decision ...must be set aside because the Act does not authorize the SGB to strip the principal of his powers.
- He was not given a reasonable opportunity to be heard. It acted in a procedurally unfair manner.
- It appointed Geldenhuys unlawfully
- Order for costs



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Thank you

