THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 25 October 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Pringle v Mailula (773/2023) [2024] ZASCA 146 (25 October 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal from the Limpopo Division of the High Court, Polokwane (the high court) with no order as to costs. It further set aside and substituted the order of the Limpopo Division of the High Court, Polokwane (the high court).

The appellant was the principal of Eenheid Primary School (the school) in Modimolle, and the respondent's minor child was a pupil at the school. Both the parties were members of the school's governing body (the SGB), the appellant *ex lege*, and the respondent, as an elected parent. Soon after the respondent became a member of the SGB, he addressed email correspondences to the appellant seeking information regarding the operations of the SGB. The appellant answered some of the emails and referred others to the chairperson of the SGB.

After numerous interactions between the appellant and respondent, wherein the respondent, inter alia, requested the school's demographic record; requested the school's PAIA manual; enquired about the lawyers appointed by the SGB; enquired about his son's school report; accused the appellant of having a corrupt relationship with certain SGB members and threating her with formal complaints; and made it known that he does not accept the school's code of conduct for SGB members, the respondent, on 1 June 2021 at 08h23, accused the appellant of 'denying [him] access to the school and access to information'.

At meeting held on 1 June 2021, (the June meeting) the majority of the SGB members resolved to suspend the respondent from the SGB. In response to this, the respondent went into a rage and pointed his finger at Mr Chisi, the chairperson of the SGB, calling him a joke. He further pointed a finger at three white SGB members, which included the appellant, and stated that 'I will deal with Verwoerd's kids' and, continuing to point at the remainder of the SGB members, threatened to deal with them as well.

The appellant said in an affidavit that she considered the remark as defamatory, racist and a threat. As a result, she removed the respondent from the SGB's WhatsApp group and blocked his cellular telephone number on her personal cellular telephone. Undeterred, the respondent used an alternate cellular telephone number to contact the appellant. Consequently, on 3 June 2021, the appellant approached the clerk at the magistrates' court and applied for a protection order in terms of the Protection from Harassment Act 17 of 2011 (the Act). The magistrate granted the interim order which also prohibited the respondent from attending SGB meetings, with the return date set for 14 June 2021.

To the return date, the respondent appeared in person and the magistrates' court reconsidered the order prohibiting the respondent from attending SGB meetings and removed that prohibition. Thereafter, the matter was postponed to afford the respondent an opportunity to seek legal representation. The respondent deposed to his answering affidavit on 21 July 2021 but filed it on 16 August 2021. In this affidavit, the respondent explained that the June 2021 meeting had not been called to 'specifically address problems arising from emails and letters sent by [him]', instead, it was to deal with his complaints against members of the SGB, as well as complaints against him from members of the SGB. He confirmed his temporary suspension from the SGB pending referral to a tribunal consisting of independent specialists. In denying that his communications with the appellant had been either 'oppressive or unreasonable', he stated that his communication was 'to enable [the respondent] to discharge [his] duties as a duly elected member of the SGB, and the parent of a pupil of Eenheid Primary school'. In essence, the respondent maintained that the conduct complained of had been, at best, unattractive and denied that the appellant had met the test for an interdict.

On 16 August 2021, the appellant filed a comprehensive replying affidavit that included a recording of the June 2021 meeting which the respondent had included in email correspondence to her. She alleged that the recording had been edited and challenged the respondent to place the full recording before the court which he did not do. In her replying affidavit, the appellant set out the time frame and subject matter of an annexure which the respondent had attached to his answering affidavit. She further attached a victim impact statement compiled by Rhoda van Niekerk, a clinical social worker and criminologist in private practice.

At the hearing, on 18 August 2021, both parties were legally represented, and the respondent raised points *in limine* to the effect that (a) the appellant had failed to prove repetitive behaviour on his part; (b) the appellant impermissibly introduced new facts in reply seeking to introduce a new cause of action; (c) the appellant should have sought the court's permission to amplify her case in reply; and (d) he would be prejudiced if the new facts were allowed as he has had no opportunity to respond thereto. The magistrates' court dismissed the points *in limine*, allowed the further evidence and gave the respondent an opportunity to apply for a postponement if he needed time to deal with new or further evidence in the appellant's replying affidavit. The respondent's attorney, after an adjournment to consult, indicated that the respondent was ready to proceed and would not seek a postponement due to possible costs implications. After the evidence was led, the magistrate confirmed the interim order with no order as to costs.

On appeal, the high court did not deal with the merits of the application and, instead, it criticised the magistrates' court handling of the points *in limine*. Ultimately, the high court upheld the appeal and set aside the magistrates' court's order, holding that the respondent's right to a fair trial had been violated.

The issues before the SCA related to: (a) whether the respondent's right to a fair trial was compromised by the admission of further evidence contained in the replying affidavit; and (b) whether, on the merits, the appellant met the requirements for a final order.

In addressing the first issue, the SCA did not to agree with the finding of the high court that the respondent was denied a fair trial. It held that, after the parties' arguments, the presiding magistrate exercised a discretion to allow the evidence, in compliance with s 9 of the Act, as it was relevant to the determination of the matter. Thereafter, the magistrate allowed the respondent ample opportunity to consider how he wanted to deal with the further evidence and, as the respondent elected to proceed with the hearing and closed his case without leading any evidence, his choice to do so had consequences.

In addressing the second issue, the SCA held that respondent's zeal went far beyond what could reasonably be expected of the appellant to tolerate from a concerned parent and SGB member. It held that his personal attacks on the appellant (coupled by a flurry of emails sent outside normal business hours) were a cause for concern. In conclusion on this point, the SCA held that the cumulative effect of the electronic communications, the aggressive stance the respondent took in his dealings with the appellant which culminated in racial slur and a threat, brought his behaviour within the definition of

harassment. The SCA therefore agreed with the court magistrates' court in holding that the appellant met the requirements for a final order.

In the result, the SCA made an order in which it upheld the appeal with no order as to costs and further set aside and substituted the high court's order.

--------oOo--------