

**IN THE HIGH COURT OF SOUTH AFRICA**

**(SOUTH EASTERN CAPE LOCAL DIVISION)**

**CASE No. 475/2007**

In the matter between:-

**FRANCOIS XANDER VAN BILJON**

Applicant

and

**NEIL R CRAWFORD**

First Respondent

**GREY BOYS' HIGH SCHOOL**

Second Respondent

**MEC FOR EDUCATION, EASTERN PROVINCE  
PROVINCIAL GOVERNMENT**

Third Respondent

**MINISTER OF EDUCATION**

Fourth Respondent

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**JUDGMENT**

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**Van der Byl, AJ:-**

**Introduction**

[1] The Applicant, a former pupil of Grey Boys' High School, Port Elizabeth, seeks, in addition to a special order of costs, an order reviewing and setting aside the decision of the First Respondent, the Rector of the Second Respondent, alternatively, the Grey

.../...

Boys' High School (cited as the Second Respondent) taken on or about 22 November 2006 to "*demote*" the Applicant as prefect and to "*remove*" his prefect's badge and tie and an order reinstating the Applicant as prefect and to return his badge and tie and an order that the Second Respondent reinstates the Applicant as prefect and returns his prefect's badge and tie.

[2] It is common cause -

(a) that the Applicant and his best friend, S J Engelbrecht ("SJ") were "*elected*", as it is the usual practice at the school, during the last term of 2006 as prefects for the 2007 school year during which they would have been and were then indeed Grade 12 learners, and that the Applicant, being accommodated in the hostel, was in addition also so elected as house (hostel) prefect;

(b) that, as is apparent from a letter dated 22 November 2006, the First Respondent, has taken a decision to "*demote*" them as prefects and to "*remove*" their prefects' badges and ties on an allegation that they intended to cheat or, in the case of SJ, indeed cheated on 16 November 2006 by having taken crib notes into the examination hall where they sat on the second history paper examination.

[3] The Applicant launched this application on 24 May 2007, ie., more than six months after the decision had been taken.

[4] Apart from the application on the merits, the Applicant launched three

interlocutory applications, namely -

- (a) **firstly**, an application in terms of section 8 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), for the extension of the period of 180 days within which proceedings for judicial review of administrative action must, as provided in section 7(1) of that Act, be instituted;
- (b) **secondly**, an application for condonation for the late filing of the Applicant's replying affidavit which had been filed on 2 August 2007 which is a date some 23 court days after the answering affidavits had been filed;
- (c) **thirdly**, an application for the striking out of Annexure RM 3, being a letter addressed by SJ's father to the First Respondent setting out, in consequence of a discussion with the various teachers involved in this matter, on the issues relevant to this matter, together with paragraph 39.1 of the Respondents' answering affidavit in which reference is made to that Annexure.

[5] The Respondents raised no objection against the second of these applications, but it is in any event apparent from the papers that the parties agreed that the replying affidavit be filed late which renders, if regard is had to Rule 27, the application unnecessary.

[6] In relation to the first of these applications, it is the Respondents contention that the action taken by the Respondents in this regard does not constitute administrative

action as envisaged in the Promotion of Administrative Justice Act, 2000, and that, therefore, this application is in effect misconceived.

The Respondents' contention in this regard is inextricably interwoven with the merits of the matter with which I will deal below.

[7] The third of these applications can be conveniently dealt with the issues relevant to the merits of the matter.

**Relevant facts of the matter**

[8] As is apparent from the founding affidavits filed by and on behalf of the Applicant, it is the Applicant's case -

(a) that on the morning of 16 November 2006 he, together with SJ and a friend arrived at the examination hall their examination in the second history paper, a little late where they, the hall having been full, each sat in the third row at the back of the hall close to the door;

(b) that SJ was requested by one of the invigilators to move back so that they were then separated by approximately two desk spaces from each other;

(c) that he immediately started off by answering the source based questions first in order that the answers to such questions provide a framework for answering the essay

question on "*Bismarck's Policy of Alliances*" for which he had not studied a lot;

(d) that about one and a half hours in the examination one of the invigilators, a certain Mr. De Groot, asked him to stand because, so Mr. De Groot indicated, he thought he was cheating on the examination, and asked him to empty his pockets, whereupon, he searched his pencil case, but then instructed him to continue writing;

(e) that at that stage he also became aware that a number of invigilators were busy with SJ who sat behind him;

(f) that when the time for writing the examination was up, Mr. De Groot came up to him, took his answer sheet together with SJ's answer sheet and instructed the two of them to follow him to the office of a certain Mr. McClelland (who, incidentally, is the Deputy Head Master of Grey Boys' High School and who is generally in charge of all investigations relating to any form of misconduct), where they were ordered to wait outside;

(g) that he was called in first where Mr. McClelland sat with the school calendar in his hand (which, incidentally, is admittedly the Applicant's calendar and which had been taken from SJ in the examination hall) and asked him, according to him, in a hostile and threatening manner, "*why did you do this?*";

(h) that, on a question what he was talking about, Mr. McClelland then in a threatening manner said that he should not lie as he wanted to use the school calendar

to cheat in the examination;

(i) that he denied the allegations and told him that it was SJ's writing in the school calendar and that he could call him in and ask him who had written in the school calendar;

(j) that, after an extracted altercation, he was told to leave the office and to wait outside as SJ was then called into the office;

(k) that when SJ came out, visibly upset, he was again ordered in where Mr. McClelland told him that SJ had told them that they had planned everything and that he should stop lying and that he eventually, in desperation, said "*if you say so sir*" or "*sorry if you think I lied to you*";

(l) that he then, having been very upset by the events that had taken place, decided to go to the school counsellor, a certain Mr. Jordan, to whom he told what had happened and who then advised him to phone his parents from his phone and to whom he then said: "*Hulle sê ons het gekrip*";

(m) that he, on then having discussed the matter with SJ, established that the teachers had told him that he, ie., the Applicant, had admitted that they had planned to use the school calendar with SJ's notes therein to cheat in the examination and that, when he was again ordered in, he was confronted with an allegation that SJ had admitted having cheated which, according to SJ, he did not do, since he had the school

calendar containing his notes in his pencil case "by accident";

(n) that he thereafter during the next Tuesday went to the First Respondent to whom he related their version of the events who informed him that he had received a letter from SJ's father (ie., **Annexure RM 3**) and promised that he would again speak to his senior staff;

(o) that the next day he was called in by the First Respondent who informed him that he had no choice than to take away their prefectship;

(p) that the First Respondent, thereupon, on 22 November 2006 addressed a letter, **Annexure B**, to his parents in which he informed them that he and SJ had planned to use notes contained in a school calendar during the examination, that SJ had confirmed that the Applicant had knowledge of these notes, that the Applicant had admitted that they planned to use these notes in the examination and that he had compromised the prefect pledge that he had signed;

(q) that he cannot let this matter lie as he had wrongly been accused and treated in an absolutely unfair manner not having been afforded an opportunity to properly state his case and defend himself and his good name had been tainted in the eyes of the teaching staff, his peers and even their parents.

[9] In a confirmatory affidavit SJ stated -

- (a) that he employed the method of making notes in school calendars for a number of years;
- (b) that the notes in question are notes made available to him by the Applicant, being notes that had been given to the Applicant by his history teacher, Mr. Matthews, and pertained to an essay question on "*Bismarck's Policy of Alliances*" which was one of the questions he identified as likely to be asked in the examination;
- (c) that after the question papers had been handed out he immediately started off by answering the first question, being the essay on "*Bismarck's Policy of Alliances*", being the question he had "*spotted*";
- (d) that some way through the examination session and after he had completed his answer to that question he opened his pencil case and saw it contained a number of school calendars containing notes, including the calendar with the Applicant's name on it, whereupon, he panicked and at first he placed the pencil case on the floor, but later on picked it up and tried to cover it each time an invigilator came close to his desk;
- (e) that towards the end of the examination session, Mr. Mathews approached his desk and picked up the pencil case and removed one of the school calendars and left;
- (f) that a few minutes later Mr. De Groot approached the Applicant and instructed him to stand up and empty his pockets and, thereupon, approached him and searched him for more notes, whereupon, he handed him the other school calendars in his pencil



case;

(g) that they were then instructed to go to Mr. McClelland's office where the Applicant was first called in;

(h) that he was then called in and accused of cheating in the examination and informed that the Applicant had already admitted that he started off with the source based questions in order for him to answer the essay question whereafter he would hand the notes to him to answer question 1, being the question on "*Bismarck's Policy of Alliances*";

(i) that he was not given an opportunity to respond to all the allegations and that he then said "*ja we did it, whatever*" or words to that effect;

(j) that he and his father met with the First Respondent on 22 November 2006 to discuss this matter on the occasion of which he informed the First Respondent that the Applicant had nothing to do with him being in possession of the school calendar and that they had not planned at cheating as alleged;

(k) that he was called to the First Respondent's office on 23 November 2006 and informed that his prefectship was taken away from him on account of him having been caught with crib notes.

[10] As is apparent from the First and Second Respondents' answering affidavits, it

is their case -

(a) that the Applicant, being a learner in the class of Mr Matthews, should on this morning have filled one of the empty desks near the front of three rows allocated to learners of Mr. Matthews, but instead he took up a place in the third row at the back of the examination hall and that SJ who, being a learner of Mr Allwright, should have taken up a desk elsewhere in the hall where desks were allocated to learners of Mr. Allwright, but instead filled a desk behind the Applicant;

(b) that, despite instructions that they should move to the respective allocated desks, the Applicant and SJ remained at the positions they took up in the third row at the back of the hall;

(c) that Mr. Mathews, reacting to the suspicious manner in which SJ was holding his examination paper over something and having looked over SJ's shoulder observed a standard Grey School diary containing notes on the leading edges of various pages of the diary, confiscated the diary;

(d) that the notes contained in the diary (which later appeared to be the diary of the Applicant), written in the minutest print, appeared to be notes of one of the essay questions in the history paper;

(e) that SJ's examination paper, when it was later compared with the crib notes, appeared to contain an exact version, even with the spelling mistakes, of the crib notes;

(f) that, on having taken their examination papers and having ordered them to Mr. McClelland's office, Mr. McClelland first questioned the Applicant by asking him, referring to the diary containing the crib notes, why he had done that and in the course of the discussion that took place, also indicated to him that he is of the view that he intended to cheat during the examination and that he should do the honourable thing and admit his infraction;

(g) that the Applicant, however, denied the allegations;

(h) that SJ who was then questioned, after having initially denied having cheated, admitted that he cheated in the examination and indicated that he and the Applicant compiled the crib notes so as to use such notes to cheat in the examination;

(i) that the Applicant, on again having been called into the office and on having been informed that SJ admitted that they compiled the crib notes and intended to cheat in the examination, after at first persisting with his denials, eventually hung his head and after a moment's silence said: *"I am sorry that I lied to you"*;

(j) that the Applicant shortly thereafter approached the school counsellor, a certain Mr. Jordan, who suggested that he should phone his parents, whereupon, he then phoned his parents and he was heard having said to them in Afrikaans that he had cheated in an examination that morning, and that, when he later met the Applicant and SJ, they then informed him that they had been forced into admitting to having cheated during the examination;

(k) that the First Respondent thereafter, having considered the contentions of all the parties involved, including the Applicant, SJ and a letter received from SJ's father, decided, cheating in an examination being contrary to the high moral standards expected from a prefect, to remove their prefect badges and ties, whereupon the letter dated 22 November 2006 was addressed to the Applicant's parents.

[11] The contents of this letter, in so far as it relates the factual averments of the incident, accord primarily with the Respondents' case as set out in the answering affidavits.

In this letter the Applicant's parents are informed -

- (a) that during the history paper 2 written on 16 November 2006 a school calendar containing written notes was removed from SJ during the course of the examination;
- (b) that subsequent investigation revealed that written notes contained therein related to two essays which could have been asked in the examination;
- (c) that, as it turned out, the first of these written notes was in fact Essay Question 1A on Bismarck's Policy of Alliances;
- (d) that the Applicant's name appeared on the cover of this calendar which had given rise to both of them being questioned at the conclusion of the examination;

(e) that the Applicant denied all knowledge of the written notes, but that when SJ confirmed that he and the Applicant planned to use these notes in the examination and when the Applicant was questioned a second time, he admitted that he was aware of the notes and that they planned to use these notes in the examination;

(f) that whilst he (apparently because of the intervention of the invigilators) never received the notes it was clear that he was waiting to receive it as he had not attempted Question 1A at the start of the examination as SJ was in possession of the notes;

(g) that it was strange that the Applicant had not attempted Question 1A immediately since he indicated at the start of the investigation that he had "*spotted*" Bismarcks' Policy of Alliances;

(h) that the Applicant subsequently spoke to Mr. Jordan, the school counsellor, where he also admitted having lied during the investigation and also stated that "*a lot of others were cribbing so why should we got caught*";

(i) that it was clear that the Applicant was part of a plan to cheat although this never came to fruition and that his paper will therefore be marked, but that his involvement in the plan has compromised the Prefect's Pledge so that it leaves him with no option other than to demote him as a prefect and to remove his Prefect's badge and tie.

[12] It is, furthermore, apparent from the papers that the Applicant and SJ thereafter continued with their school activities in 2007 during which, incidentally, SJ was named

and appointed as Captain of the first rugby team and the Applicant was appointed as vice-captain of the first hockey team.

[13] In his replying affidavit the Applicant in effect denies each and every material allegation contained in the answering affidavits which leaves the papers riddled with factual disputes on, particularly, the occurrences in the examination hall and the question whether the Applicant and SJ voluntarily admitted having, in the case of SJ, indeed cheated, and, in the case of the Applicant, intended to cheat in the examination hall.

[14] If regard is had to the facts stated above, I must say that I for at least two reasons fail to understand the ratio for the order claimed that the Applicant be reinstated as prefect and that his badge and tie be returned to him, being an order which the Applicant, as indicated by Mr. Malan who appeared on behalf of the Applicant on a question posed by me, persisted with.

The first reason why I find it difficult to understand the Applicant's persistence, is the fact that the school year in respect of which the Applicant has been appointed as prefect has expired at the time of the hearing of this application so that, as I see it, his reinstatement (and even the return of his badge and tie) will be an exercise in futility.

The second reason why I find it so difficult, is the fact that the Applicant could not have taken up his prefectship since his prefectship has in effect been withdrawn before the commencement of the school year in respect of which he has been appointed as

prefect.

The evidence also does not, at least explicitly, show whether he had already been handed a prefect's badge and tie.

**Submissions made on behalf of parties**

[15] In relation to the review application, it is contended on behalf of the Applicant -

(a) that the Second Respondent, represented by the First Respondent, is an organ of State;

(b) that the decision to "demote" the Applicant and to "remove" his prefect's badge and tie constitutes "*administrative action*" as envisaged in the provisions of the Promotion of Administrative Justice Act, 2000, being the Act enacted to give effect to section 33 of the Constitution;

(c) that it was bound, if regard is had to these provisions and the South African Schools Act, 1996 (Act 84 of 1996), the Eastern Cape Schools Education Act, 1999 (Act 1 of 1999), and the regulations made thereunder, to ensure that such action was lawful, reasonable and procedurally fair.

[16] In this regard I have specifically been referred to the regulations promulgated under section 9(3) of the South African Schools Act, 1996, by Provincial Notice 10 of

2003 in Provincial Gazette No. 978 of 21 February 2003 ("*the regulations*") in which it is provided -

(a) in regulation 2, that a learner who cheats in a test or examination may be found guilty of "*serious misconduct*" which, per definition, may lead to the suspension of the learner concerned from attending school as a correctional measure or his or her expulsion from a school;

(b) in regulation 3 -

(i) that the principal may, if a learner is accused of serious misconduct, appoint a person as an investigator who will be charged with the function of collecting evidence so as to enable the principal to determine whether the transgression warrants a disciplinary hearing by a disciplinary committee;

(ii) that, should the principal decide that the transgression warrants a disciplinary hearing, the investigator should draw up a charge sheet, the charge must be accompanied by a written notice calling on the learner and his parents to attend the hearing, the notice must contain sufficient particulars to enable the learner to identify the incident and to respond to it and all witnesses must be notified to be present at the hearing;

(iii) that no person who had anything to do with the investigation, including the principal, may serve on the committee or be present at the meeting of the



school governing body when the report of the disciplinary committee or recommendations are discussed and a decision is taken on punishment;

(iv) that the learner be afforded an opportunity to be assisted or represented, to be informed of the charge, to plea to the charge, to question witnesses and to state his case.

[17] In so far as the Respondents failed to follow this procedure, the Applicant is, so the argument went, entitled to an order reviewing and setting aside the decision taken by the First Respondent.

[18] It was submitted on behalf of the Respondents -

(a) *in limine* -

(i) **firstly**, that the corrective measures taken against the Applicant were not in conflict with the South African Schools Act, 1996, and the regulations made thereunder;

(ii) **secondly**, that the actions of the Respondents does not constitute administrative action as envisaged in the Promotion of Administrative Justice Act, 2000;

(iii) **thirdly**, that the issues sought to be reviewed are academic issues which

are not reviewable; and

(b) on the merits, that, relying on the principles enunciated in the case of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635A*, the Respondents' version that both the Applicant and SJ voluntarily admitted to the infraction and that the notes were prepared with the intention to cheat during the examination must be accepted and that on that basis alone the application should be dismissed.

[19] I do not mean any disrespect to counsel if I do not deal with all the points mentioned in the very able and articulate heads of argument and submissions before me, but in my opinion this application can be dealt with on one issue only, namely, whether in the circumstances the First Respondent was bound to follow the prescribed procedures and, if not, whether the decision was reached in a procedurally fair manner.

#### **Procedural fairness of decision taken by First Respondent**

[20] In this matter the First Respondent, relying obviously on the alleged admissions made by the Applicant and SJ, decided, having clearly been of the view that this is not a matter that requires the suspension or expulsion of the Applicant and SJ, to dispose of the matter in an informal manner.

[21] In this regard, this matter being a review application, it is not for me to decide whether or not the First Respondent's decision was right or wrong.

In *Shidiack v Union Government (Minister of the Interior) 1912 AD 642 at 651-2*

Innes ACJ held in this regard as follows:

*'Now it is settled law that where a matter is left to the discretion or the determination of a public officer, and where his discretion has been bona fide exercised or his judgment bona fide expressed, the Court will not interfere with the result. Not being a judicial functionary no appeal or review in the ordinary sense would lie; and if he has duly and honestly applied himself to the question which has been left to his discretion, it is impossible for a Court of Law either to make him change his mind or to substitute its conclusion for his own. . . . There are circumstances in which interference would be possible and right. If for instance such an officer had acted mala fide or from ulterior and improper motives, if he had not applied his mind to the matter or exercised his discretion at all, or if he had disregarded the express provisions of a statute - in such cases the Court might grant relief. But it would be unable to interfere with a due and honest exercise of discretion, even if it considered the decision inequitable or wrong.'*

[22] On this basis the question is whether the First Respondent acted in bad faith or from ulterior and improper motives or whether he applied his mind to the matter or exercised his discretion at all or disregarded the express legal provisions. No allegations of bad faith or ulterior and improper notices have been raised.

[23] As I have already indicated, it has been contended on behalf of the Applicant that, on a proper interpretation of regulation 3 of the regulations, the First Respondent was in law bound to follow the "due process" procedure prescribed in that regulation once he decided to take disciplinary action. When he decided that disciplinary action had to be taken against the Applicant and SJ on account of the allegation that they have cheated or intended to cheat in the examination, he was, so it was submitted, enjoined to follow the procedure prescribed in that regulation, namely, the appointment of an investigator, the consideration by the First Respondent of a report submitted by the

investigator on the evidence he collected, the drawing of a charge sheet and a hearing by a disciplinary committee.

[24] In my opinion regulation 3 of the regulations are not capable of such a rigid and inflexible interpretation.

[25] This is evident from the provisions of regulation 3(1), read with regulation 2 and the definition of "*serious misconduct*" in regulation 1, of the regulations.

Regulation 3(1) reads as follows:

*"(1) If a learner is accused of serious misconduct the principal may appoint a person as an investigator. The investigator must collect evidence to enable the principal to determine whether there are grounds for a disciplinary hearing. The investigator must submit a written report to the principal. The principal must decide whether the transgression warrants a disciplinary hearing."* (My underlining)

Regulation 2, in so far as it is relevant for present purposes, reads as follows:

*"A learner at a school who -*

*(a) - (d) .....* ;

*(e) intentionally and without just excuse -*

*(i) - (iii) .....*

*(iv) cheats in a test or examination;*

*(v) - (x) .....* ;

*(f) - (m) .....*,

*may be found guilty of serious misconduct."*

The definition of "*serious misconduct*" reads as follows:

*"serious misconduct' means conduct contemplated in regulation 2 which may lead to the suspension of a learner from attending school as a correctional measure, or the expulsion of a learner from a school;"*

[26] It is apparent from these provisions -

(a) that this regulation applies to a situation where a learner is accused of serious misconduct which includes the cheating in a test or examination and which, per definition, lead to the learner's suspension from attending school or his or her expulsion from the school;

(b) that the principal has in such a situation a discretionary power to appoint an investigator which will then set in motion a process that may eventually lead to the appointment of, and a hearing by, a disciplinary committee.

[27] It clearly appears from the papers that the First Respondent did not regard the infraction by the Applicant and SJ to have been so serious that it may require their suspension from attending school or their expulsion from the school which placed the matter outside the ambit of regulation 3 so that he was not bound to set the disciplinary process prescribed by that regulation in motion.

[28] It could never have been the intention of the Legislator that this process should

be set in motion in all cases, whether or not suspension or expulsion was envisaged, which fall within the ambit of regulation 2, such as, for example, fighting or swearing or threatening a fellow learner. It is imaginable that there may be degrees of seriousness of any of the infractions specified in regulation 2. If the First Respondent is held to be enjoined to set each and every infraction referred to in that regulation, no matter the degree of seriousness thereof, it would obviously render the management of the school impossible.

[29] My conclusion in this regard is fortified by the guidelines determined by the Minister of Education in terms of section 8(3) which must in the event of any conflict with provincial legislation take preference over provincial legislation (see: **section 146 of the Constitution**).

In terms of these guidelines -

(a) every educator is responsible for discipline at all times at the school and has full authority and responsibility to correct behaviour of learners whenever correction is necessary (**paragraph 7.5**);

(b) any corrective measures or disciplinary action must commensurate with the offence or infraction (**paragraph 7.6**);

(c) punishment is a corrective measure or a penalty inflicted on an offender who has to suffer the consequences of misconduct in order to maintain the orderly society of the

school (*paragraph 8.1*);

(d) corrective measures, such as, eg., verbal or written warning, supervised school work, suspension from school activities, etc., may be applied as corrective measures in the case of "*minor offences*" (*paragraph 10.1*);

(e) suspension may only be considered after every effort has been made to correct the behaviour of the learner (*paragraph 10.2*);

(f) provincial legislation must be consulted in the compilation of offences which may lead to suspension of a learner (*paragraph 11*);

(g) a governing body may, after a fair hearing, suspend any learner who has been found guilty of contravening stipulations of the Code of Conduct (*paragraph 12.1*);

(h) due process must be applied before a learner may be suspended (*paragraph 13.1*).

It is in my view quite apparent from the foregoing that certain offences which do not require suspension or expulsion may be dealt with in an informal manner as has been done in this case.

[30] In so far as the First Respondent dealt with this matter informally, note must be taken of the dispute on the papers between the parties as whether the Applicant and SJ

indeed admitted in having cheated or having intended to cheat in the examination.

[31] As I have already indicated, there is a serious factual dispute on this issue and the circumstances surrounding the admission, but it is obvious that the First Respondent accepted the information that the Applicant and SJ have indeed admitted in having been dishonest in relation to the examination.

On whether or not such admission had indeed been made, the disputes must be dealt with in accordance with the principles enunciated in the case of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635A*, be resolved on the facts as alleged by the respondents and the undisputed facts set out by the Applicant.

Mr. Malan urged me to consider referring the disputes to oral evidence.

I am not inclined to do so.

This seems to me to be *par excellence* a situation in which a robust approach to the alleged disputes of fact must be adopted (see: *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1163; Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635C*).

As I have already indicated, it is the Applicant's contention that having had his prefectship taken away has severely tainted his good name and reputation in the eyes



of the teaching staff, his peers and their parents. The school year during which the Applicant and SJ would have, had it not been for this incident, been prefects have, however, expired. They have both matriculated and have left the school. They in any event lived with the consequences of the actions taken by the First Respondent through the year. It seems to be fairly unlikely, if regard is had to the fact that SJ had been elected as Captain of the first rugby team and the Applicant has been elected as vice-captain of the first hockey team, that their good names have been seriously affected by the First Respondent's actions in this regard.

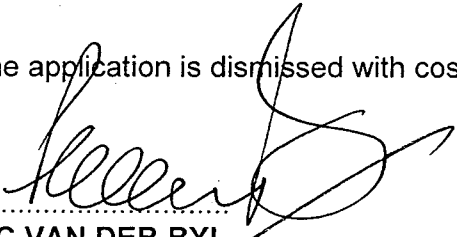
[32] By way of summary, I accordingly hold -

(a) that the First Respondent, having regarded the offences not to be offences which called for the Applicant's suspension or expulsion, was not bound to follow the formal procedure prescribed by regulation 3 of the regulations;

(b) that there was in any event no need for such a procedure since the Applicant, on the Respondents' version, admitted having committed the offence.

[33] For the reasons set above, I make the following order:

The application is dismissed with costs.

  
.....  
P C VAN DER BYL  
ACTING JUDGE OF THE HIGH COURT

**ON BEHALF OF THE APPLICANT**

**ADV J MALAN**

**On the instructions of:**

**GOLDBERG & DE VILLIERS INC  
13 Bird Street  
Central  
PORT ELIZABETH  
Ref: H Bekker/Irma/Krug 9002**

**ON BEHALF OF THE FIRST AND SECOND RESPONDENTS ADV A BEYLEVELD**

**On the instructions of:-**

**McWILLIAMS & ELLIOTT INC  
83 Parliament Street  
Centra  
PORT ELIZABETH  
Ref : C S Beyleveld/emaan/W45572**

**DATE OF HEARING**

**14 February 2008**

**JUDGMENT DELIVERED ON**

**13 March 2008**