WESTERN CAPE RESIDENTS' ASSOCIATION obo WILLIAMS AND ANOTHER v PAROW HIGH SCHOOL 2006 (3) SA 542 (C)

Citation	2006 (3) SA 542 (C)
Case No	9124/2005
Court	Cape Provincial Division
Judge	Mitchell AJ
Heard	September 23, 2005
Judgment	September 23, 2005
Counsel	Applicant in person. M M Maass for the respondent.
Annotations	Link to Case Annotations

B

Flynote : Sleutelwoorde

Constitutional law - Human rights - Enforcement of - *Locus standi* of association to litigate on behalf of individual members whose constitutional rights are being infringed or threatened - Section 38*(e)* of Constitution entitling association to approach Court where rights of *all* members infringed by same act or actions - Subsection not C entitling association to approach Court on behalf of individual members whose *individual* rights infringed or threatened.

Constitutional law - Human rights - Right to human dignity - Withholding privilege of attending year-end function from student who failed to conform to school's D standard of behaviour not amounting to infringement of student's right to human dignity - Constitution, s 12.

School and school board - School - Learners - Misconduct - Learner forfeiting right to attend school function - Welfare organisation seeking to enforce alleged right of members' daughter, B, to attend school function to which she had not been invited - All learners having been informed that right to E attend function being privilege which would be forfeited for misconduct - School adopting attitude that in light of B's disciplinary problems and lack of respect for authority, she had forfeited right to attend function - Granting of privilege as reward for good behaviour acceptable method for schools to teach learners discipline and respect for authority - Withholding privilege not infringing F learner's right to equality or dignity - Right to freedom of expression not entitling learner to be ill-disciplined and rude - School's failure to invite B to function thus not infringing B's right to equality or dignity - Accordingly, application falling to be dismissed. G

Headnote : Kopnota

The applicant was a registered welfare organisation that professed to act on behalf of two of its members whose daughter, B, was a grade 12 learner at the respondent school. It claimed to have *locus standi* to institute the proceedings by virtue of the provisions of s 38*(e)* of the Constitution of the Republic of South Africa, 1996, which entitled an 'association acting in the interests of its members' 'to approach a competent court, alleging that a right H in the Bill of Rights has been infringed'. The applicant contended that B's rights to equality, dignity and freedom of expression were being infringed in that the respondent had organised a function, which was to be attended by invitees only, to which B had not been invited. It appeared that all grade 12 learners had been informed, at the beginning of the school year, that attendance of the function was a privilege and would be accorded only to those learners whose conduct, I both academic and otherwise, merited it. It was a privilege which would be forfeited if the learner's conduct were not acceptable. The respondent adopted the attitude that, in light of B's disciplinary problems and lack of respect for authority, she had forfeited her right to attend the function. The applicant sought an order interdicting the respondent from excluding B from attending the function. J

Held, that the applicant's reliance on the provisions of s 38*(e)* of the Constitution was misplaced: the subsection A entitled an association to approach a court in circumstances where the rights of *all* of its members were being infringed by the same act or actions. It did not entitle an association to litigate on behalf of individual members whose *individual* rights, much less the rights of family members, were being infringed or threatened. The application fell to be dismissed on this ground alone. (At 544D - F.) B
Held, further, that the granting of privilege as a reward for good behaviour was one of the tools that could be used to teach students discipline and respect for authority. Withholding privilege was not an infringement of the student's rights to equality and dignity. In fact, granting a privilege to a student who had not earned it might constitute an infringement of the rights to equality and dignity of those learners who *had* earned it. Obviously, the C right to freedom of expression did not entitle a learner to be ill-disciplined or rude. (At 545B - C.)
Held, further, that B's rights to equality, dignity and freedom of expression had not been infringed by the respondent's declining to invite her to the function. (At 544G.)

Cases Considered

Annotations

Statutes Considered

Statutes D

The Constitution of the Republic of South Africa, 1996, s 38*(e)*: see *Juta's Statutes of South Africa 2004/5* vol 5 at 1-141.

Case Information

Application for an interdict barring the respondent school from barring a student from attending a school function. The facts appear from the reasons for judgment. E

Applicant in person.

M M Maass for the respondent.

Judgment

Mitchell AJ:

The applicant brings an urgent application in which it professes to act on behalf of two of its F members, Mr and Mrs M B Williams, whose daughter, Bernel, is a learner in grade 12 at Parow High School. Parow High School is cited as the respondent in this application.

The relief sought is interdictory in nature and is aimed at ensuring that Bernel attends a function at the school tonight that has been arranged for the grade 12 learners whose period of tuition at the G school will end on their successful completion of the coming matriculation examinations.

A second prayer seeks to restrain an unidentified third respondent from intimidating, abusing or harassing Bernel. As there is no third respondent cited in this application, nothing further needs to be said of this prayer. The application is opposed by the school. H

This application is a sequel to an earlier application launched by the same applicant against the Minister of Education of the Western Cape as first respondent and the school as second respondent. The application sought relief in somewhat wider terms, but was focused on achieving the same principal objective, namely the attendance of Bernel at tonight's function. That application came before Fortuin AJ I on 15 September 2005. After a brief hearing the application was withdrawn and the applicant undertook to pay an amount in respect of the costs of the respondents.

The applicant is a registered welfare organisation. Although it does not appear from the papers, I was advised by the applicant's general J

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secretary, Mr Nziami, that the applicant's objects include the promotion of a popular culture of caring for families and persons in A need who are threatened, abused, exploited or victimised, particularly children, youths, widows, the disabled and single parents. These objects are praiseworthy indeed. I asked Mr Nziami whether he considered that the applicant was empowered to institute proceedings such as these on behalf of its members, rather than assisting and supporting its members in bringing such applications themselves. B

Relying on the provisions of s 38*(e)* of the Constitution of 1996, he argued that the Association did have *locus standi* to do so. Section 38 provides that 'anyone listed in this section has the right to approach a competent court alleging that a right in the Bill of Rights has been infringed'. Subsection C *(e)* reads 'an association acting in the interests of its member'. In my opinion the applicant's reliance on s 38*(e)* is misconceived. The subsection empowers an association to go to court where the rights of all of its members are infringed by the same act or actions. It ameliorates the situation that would otherwise obtain, namely that each of the members would have to D join as co-applicants in order to enforce his or her individual rights. The subsection does not entitle an association to set itself up as a litigator on behalf of individual members whose individual rights, far less the rights of another family member, are allegedly infringed or threatened.

This point was made by Fortuin AJ at the previous hearing. She E advised the applicant to seek proper legal representation for Mr and Mrs Williams if they wished to pursue the matter. This advice has fallen on deaf ears. The applicant has ignored it and launched this application which, on this ground alone, falls to be dismissed.

Notwithstanding the fact that the point is fatal to the application, F I consider it appropriate nevertheless to make some further comments, lest it be thought that an apparently technical point has prevented the redress of a legitimate grievance.

I asked Mr Nziami which rights of Bernel Williams were being infringed by the school's refusal to allow her to attend tonight's function. He said that these were her right to equality, her right to dignity and her right to freedom of expression. I do not agree that any G of these rights have been infringed. The function organised for the grade 12 learners, which takes place tonight, is to be attended by invitees only. Bernel has not been invited. All of the grade 12 learners were informed before the beginning of their final school year that attendance at this function was a privilege and that it would be H accorded to those whose conduct, both academic and otherwise, merited it. It was a privilege that could and would be forfeit if the behaviour of the learner was not acceptable.

It appears from the affidavits filed by the respondent that Bernel Williams is a learner who had presented with disciplinary problems from the start of her high-school career. She also has an I unfortunate and aggressive attitude towards authority figures that has been displayed towards various of the educators at the school. In April of this year she and a number of other learners were informed that their conduct was such that they would not receive invitations to the function. While some of these learners reformed their behaviour so as to merit a reconsideration J

MITCHELL AJ

and the issue of such an invitation to them, Bernel and the remainder chose not to adapt their behaviour. As a A result their privilege remains forfeit.

Two of the important lessons that a school must teach its learners are discipline and respect for authority. The granting of privilege as a reward for good behaviour is one tool that may be used to teach such lessons. The withholding of such privilege can therefore not be claimed B as an infringement of a right to equality or to dignity. Indeed, the granting of the privilege in the absence of its having been earned may well constitute an infringement on the rights to equality and dignity of those who have merited the privilege. The right to freedom of expression, of course, does not equate to a right to be ill-disciplined or rude. The system of rewards for good behaviour permeates all walks C of life and to learn the system at an early age can only benefit the learner later on in his or her life. I see nothing of constitutional concern in the use of such a system in schools.

It follows that I do not consider that the application, even if brought by the correct applicant, would have had merit. D

Mr Nziami spent some time this afternoon submitting to me that the applicant needed an opportunity to reply to the answering affidavits filed by the school. He said that he considered that much of what Mr Smit (the principal of the school) had said in these affidavits, was subject to challenge. I invited him, if he wished to do so, to file affidavits setting out which aspects of the answering papers were in dispute. He was unable to do so because, he said, time constraints E prevented it. This, of course, is something which is due to the applicant's actions in bringing the application at a late stage and not to anything that the respondent has done.

Ms Williams was advised in April of this year that she would not be F receiving an invitation to the function. Since then, and until the application before Fortuin AJ was launched on 13 September, nothing was done to procure relief, if the learner was entitled to such relief. Instead, this application was brought as a matter of urgency. I have little doubt that the respondent would have argued, if it had been given the opportunity to do so, that the application should be G dismissed because the urgency with which it was brought was self-made. There is no doubt that if proceedings had been launched timeously, Mr and Mrs Williams would have had an opportunity to reply to the allegations made and, if necessary, to have those allegations tested by oral evidence. That was not done and as a result the applicant must suffer if the allegations of the respondent are unchallenged. In H any event, on the application of the ordinary rules in opposed motion proceedings, final relief will only be granted if the admitted facts together with the facts alleged by the respondent warrant the granting of such relief. That is clearly not the case in this application. I

The respondent has asked that, if the application is dismissed, a costs order should be made and that the costs should be paid on the scale as between attorney and client. I was comforted, as I am sure the respondent was, by Mr Nziami's statement that his members were all satisfied that they would be responsible to pay any costs that are ordered against them. In my opinion, an award of attorney/client costs is justified J

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in this matter, if for no other reason, on the grounds that the applicant was advised by Fortuin AJ a matter of days ago that A this was the

incorrect procedure to follow, that the applicant lacked *locus standi* to bring such proceedings and that the applicant has chosen to ignore that advice.

In the circumstances the application is dismissed, with costs, such costs to be taxed on a scale as between attorney and client. B

Respondent's Attorneys: *Heyns & Partners Inc*. C

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