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**REPUBLIC OF SOUTH AFRICA**



**SOUTH GAUTENG HIGH COURT, JOHANNESBURG**

**CASE NO: 6172/2011**

**DATE:06/12/2011**

**NOT REPORTABLE**

In the matter between:

**B C F**

Applicant

and

**M F**

First Respondent

**PRETORIA BOYS HIGH SCHOOL**

Second Respondent

**RIVONIA PRIMARY SCHOOL**

Third Respondent

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**REASONS FOR JUDGMENT**

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[1] On 10 November 2011, having read the documents filed of record and having heard argument and considered the matter, I ordered that this application be dismissed with costs.

[2] On 18 November 2011, the applicant requested full reasons for my aforementioned judgment.

[3] On 23 November 2011, the applicant filed a notice of application for leave to appeal in this matter.

[4] The reasons for my aforementioned order are detailed below.

### **Relief sought**

[5] The applicant initially applied for an order in the following terms:

1. Declaring the first respondent exempt from the payment of school fees in respect of the three minor children:

1.1 T F, a girl aged 11;

1.2 C F, a boy aged 11; and

1.3 J M F, a boy aged 14 (the minor children)

In accordance with the provisions of Regulation 4 of the Regulations to the South African Schools Act, 84 of 1996;

2. Alternatively to 1 above, that the first respondent be ordered to complete fully and in all respects the application for exemption of payment of school fees in respect of the three minor children:

2.1 T F, a girl aged 11;

2.2 C F, a boy aged 11; and

2.3 J M F, a boy aged 14 (the minor children), timeously and for each successive year until the three minor children have completed their respective school going years.

3. Costs of this application;
4. Further and/or alternatively relief.

### **The facts**

[6] In support of the application, the applicant recorded that he had been divorced on 4 March 2004. A copy of the divorce order and deed of settlement were annexed to the papers. In terms of the deed of settlement he

was ordered to pay maintenance in respect of the minor children in the amount of R700,00 per month, including payment of their Medical Aid.

[7] Subsequent to the divorce, the relationship between the applicant and first respondent became increasingly acrimonious, resulting in a High Court application during 2008 to enforce his rights of access and two Magistrate's Court maintenance enquiries during 2006 and 2009.

[8] On 20 October 2006 the divorce order was amended in terms of a maintenance order, which provided that the applicant was ordered to pay the minor children's school fees. A copy of this consent to maintenance order in terms of Section 17 of the Maintenance Act No 99 of 1998 is annexed to the papers as Annexure "3".

[9] This was further confirmed on 23 January 2008 in a further consent to maintenance order in terms of Section 17 of the Maintenance Act, at the Randburg Magistrate's Court, when it was confirmed yet again that the applicant was required to pay full school fees for the three minor children. A copy of this order appears as Annexure "4" to the founding papers.

[10] The applicant contends that he has been paying the school fees since 1 November 2006 in accordance with the consent order that appears as Annexure "3". He thus makes the following payments in respect of school fees for the minor children:

10.1 T – R1,410.00 per month;

10.2 C - R1,410.00 per month;

10.3 J M – R2,000.00 per month;

10.4 Totalling R4,820.00 per month for 10 months of the year totalling R48,200.00 per annum;

10.5 Plus deposit, second respondent R4,800.00;

10.6 Plus deposit, third respondent R1,750.00

10.7 Totalling R54,750.00 per annum.

[11] The applicant further claims that he is eligible for at least a reduction of 38% of the total amount, equating to a saving of R20,805.00 per annum. This would leave his liability in respect of school fees in the sum of R33,945.00 per annum, which equates to a monthly school fee payment of R3,394.50 as opposed to R5,475.00 per month.

[12] He further states that this exemption would, to the best of his belief, be available to him for at least the next 7 years, but lays no foundation for such contention and belief.

[13] He further states that he is severely prejudiced by the first respondent's unreasonable conduct and persistent refusal to cooperate by not completing the application forms for such discount, whereas in truth, according to the applicant, the first respondent would not be prejudiced by doing so.

[14] There was an exchange of correspondence between the parties' respective attorneys relating to this matter.

[15] In response thereto, Antony David Reeler, the Head Master of the second respondent, filed an affidavit in which it was stated that the second respondent would not be opposing the applicant but would also not be supporting it. It would abide by the outcome.

[16] Mr Reeler however, assisted the Court by providing the following legal background:

16.1 Both the second and third respondents were public schools as contemplated in the South African Schools Act, No 84 of 1996 ("SASA");

16.2 The determination of payment of such school fees is governed by the provisions of Chapter 4 of SASA;

- 16.3 Sections 40 and 41 of SASA render every parent (i.e. in this instance both the applicant and the first respondent) liable for payment of school fees;
- 16.4 This meant that the applicant and the first respondent are liable for payment of their children's school fees, irrespective of the arrangement between them as to who is to pay and in particular irrespective of the terms of the divorce order;
- 16.5 SASA provides for a system of exemption (partial or complete) from liability to pay school fees. This is contained in Sections 39(4) and 41 of SASA as read with the Regulations for the exemption of parents from the payment of school fees, 2005, published under GNR1052 of 18 October 2006 and amended by GNR1149 of 17 November 2006 (*"the Exemption Regulations"*);
- 16.6 The determining factor for either partial or total exemption was primarily the parents' combined annual gross income. This meant *"the annual gross income of the parents, calculated together, or, if a learner has only one parent, the total annual gross income of such parent."*;
- 16.7 Thus in order to determine whether the applicant and first respondent were entitled to any form of exemption, one had

to have regard, not just to the income of the applicant, but also to that of the first respondent;

16.8 Thus, once one knew the annual gross income of the applicant and the first respondent, it may be that they were not entitled to even partial exemption. This in turn could mean that the first respondent would have to pay the school fees, even if the applicant qualified, and then, an obligation would be cast upon the first respondent to recover same from the applicant. Alternatively, if the applicant was in fact unable to afford to pay those school fees, he would have to seek a variation of the maintenance arrangement;

16.9 Put crisply, the point to be made was that the inability of one parent to pay school fees, did not excuse both, and did not excuse the other, from that obligation;

16.10 In the premises, and in order for it to be determined whether the applicant was entitled to partial or complete exemption, one had to have regard not only to his gross annual income, but also to that of the first respondent;

16.11 In the circumstances, the applicant did not qualify for relief in terms of prayer 1 of his notice of motion and exemption (whether partial or total) from payment of school fees was



determined in accordance with the criteria and procedures outlined in SASA and in the Exemption Regulations.

[17] The applicant did not take issue with any of the submissions made by Mr Reeler.

[18] The first respondent opposed the relief sought on the basis that the applicant had agreed in 2008 in terms of the settlement agreement, which was made an order of Court on 23 January 2008 to be fully responsible for payment of the school fees for the three minor children from 1 February 2008 until their school education was completed.

[19] Essentially, the first respondent contended that she paid all the other expenses in respect of the three minor children and she denied that the applicant could not afford to pay the schooling fees, he having consented thereto. Furthermore, she contended that the applicant had failed to disclose to the other respondents the material information relating to his finances and the existing maintenance order.

[20] In response thereto, the applicant contended that he was perplexed by this answer, had not seen his children for at least 3 years, was unable to keep up with the school fees and was entitled to apply for an exemption from school fees but required the first respondent's assistance to do so.

[21] At no stage did the applicant explain to the Court why he qualified for any type of reduction in school fees. In particular, he never disclosed his monthly or annual gross income.

[22] Thereafter the applicant's attorney of record, Paul Lategan confirmed that Mr Reeler's affidavit was a fair and detailed exposition of the legal issues pertaining to this matter and confirmed that this Court was not in a position (based on the facts set out in the founding affidavit) to grant the relief prayed for in prayer 1 of the notice of motion.

[23] During the argument of this matter, it became clear that neither the applicant nor the first respondent had declared their monthly or annual income. This was the most significant factor required in order to determine whether the applicant qualified for a reduction or exemption of school fees.

[24] In the absence of this information, it was not possible to determine whether the applicant would be an appropriate candidate and entitled to apply for and be granted any form of exemption from the payment of school fees in respect of the minor children.

[25] The applicant bore the onus of proof in this matter and in this particular regard, had failed to satisfy same. Consequently the matter fell to be dismissed with costs.

[26] It was on this basis, and having explained my view in this regard to the applicant's Counsel, that I dismissed the matter with costs.

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**L M HODES S.C**  
**ACTING JUDGE OF THE SOUTH GAUTENG**  
**HIGH COURT, JOHANNESBURG**  
**6 December 2011**