



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 39189/2021

- (1) REPORTABLE: NO
 - (2) OF INTEREST TO OTHERS JUDGES: NO
 - (3) REVISED

In the matter between:

LESETJA JACOB MOABELA

1ST APPLICANT

PUSELETSO RUTH MOABELO

2ND APPLICANT

and

**CURRO HOLDINGS LTD t/a
CURRO ACADEMY SOSHANGUVE**

1ST RESPONDENT

MR PHILMICK MOHALE

2ND RESPONDENT

**MEC FOR THE DEPARTMENT OF EDUCATION,
GAUTENG PROVINCE**

3RD RESPONDENT

REASONS FOR ORDER HANDED DOWN ON 11 AUGUST 2021

BASSON J

[1] This was an application brought yesterday on urgency in which the applicant sought far reaching urgent relief (mainly) against the first respondent (Curro Holdings Ltd t/a Curro Academy Soshanguve – “Curro”). Although not expressly stated as such in the papers, it would appear that Curro is a private school.

[2] The applicant brought this application as the father of a grade 10 learner (*“the learner”*) who has been a learner at Curro for the past two years until he was requested to leave the school due to the applicant’s non-payment of the learner’s school fees.

[3] The applicant entered into an agreement (the Learner Admission Contract) with Curro in terms of which the learner was enrolled. The applicant confirms that, in terms of the contract, he as the parent is the person responsible for the school fees. More in particular, the applicant agreed to the fee regime as set out in the contract most notably paragraph 5.1 of the agreement (attached to the applicant’s founding affidavit). In terms of paragraph 5.16, the parties agreed that the failure by the parents to settle any school fees owing and payable in terms of the contract, shall constitute a breach of the contract. Parents are, in terms of the said contract, afforded a specified time in order to remedy the breach in respect of the fees. Should the parents not remedy the breach, Curro would be entitled to cancel the contract and require the learner to leave the school. A period of 30 days is afforded to allow the learner to find an alternative school.

[4] It is not in dispute that the applicant has defaulted in paying the school fees and that Curro has terminated the contract as a result thereof. According to a fee statement from Curro attached to the papers dated 30 July 2021, an amount of R54 217.24 was

due and payable to the school. Furthermore, an amount of R33 374.74 has already, according to this statement, been outstanding for a period of 180 days.

[5] The applicant has now elected to come to court on an urgent basis to restore the learner to the school. In effect that applicant is requesting this court to overlook his breach of the contract and order the school to continue to allow the learner to the school.

[6] As to the reasons why the school fees has not been paid, the court was referred to an agreement between the applicant and the Department: Military Veterans (*"the Department"*) in terms of which the applicant's children are afforded an education bursary to the value of R42 500.00 per child as part of the applicant's exit package due to ill-health.

[7] The Department has, according to the applicant, defaulted on payments to the school hence Curro's termination of the contract due to non-payment which constitutes a breach of the Learner Admission Contract.

[8] The applicant also informed the court that the Department has required certain information from the school as far back as February this year (such as confirmation of Curro's bank account). The applicant now blames Curro for not having supplied the documents to the Department although the letter has been sent to Curro as far back as February 2021. There is no explanation on the papers why the applicant himself did not pursue the matter and why he himself did not obtain the information from the school to furnish it to the Department.

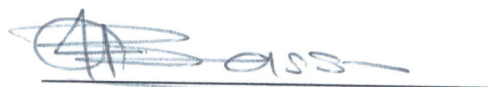
[9] The applicant does not assert in his papers that the termination of the Learner Admission Contract was unlawful except for alleging that the school did not investigate whether the applicant has the financial means to satisfy the financial demands. There is no merit in this argument: On the one hand he says that Curro did not properly investigate whether he (the applicant) could afford the school fees but on the other hand he says that Curro was aware that the learner had received a bursary from the Department. Furthermore, on the one hand the applicant concedes that he had entered into the Learner Admission Contract and that he remains liable for the school

fees but on the other had he seemingly challenges Curro to furnish him with the contract he entered into.

[10] The applicant now seeks an order that the court sets aside the school's decision to exclude the learner from the school on the basis that the school fees has not been paid and effectively order Curro to continue with a contract that was breached by him (the applicant). I can find no reason to grant the relief. I should also mention that the applicant submitted that the court should consider that the learner has a right to education. I have duly taken that into account. I am not persuaded that the learner has been deprived of that right. The learner is only prevented from attending Curro (which is not a government school) due to the non-payment of school fees. The applicant also did not place any facts before this court to show what steps have been taken by him to enroll the child in any other school.

[11] I have indicated to the applicant that the relief sought is not competent against Curro. From the papers annexed to the founding affidavit and the fee statements, the applicant (by his own admission) is liable to pay the fees. Curro is not party to the agreement between the applicant and the Department. The applicant's course of action lies with the Department and not Curro.

[12] For these brief reasons I have dismissed the application. Because the matter was unopposed, no order is made as to costs.



AC BASSON

JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 August 2021.

APPEARANCES

For the Applicant:

ADV. K S MOTENO

Instructed by:

MMUSETSI SEFANYETSO ATTORNEYS

For the Respondents:

NO APPEARANCE

Date of hearing:

11 August 2021 (virtual hearing)

Date of judgment/reasons:

12 August 2021