



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 28 MAY 2005  
Status: Immediate

**KIMBERLEY JUNIOR SCHOOL  
THE GOVERNING BODY OF THE  
KIMBERLEY JUNIOR SCHOOL**

**FIRST APPELLANT**

**SECOND APPELLANT**

and

**THE HEAD OF THE NORTHERN  
CAPE EDUCATION DEPARTMENT  
PAUL MELVILLE THEUNISSEN  
SEATILE SARAH RANTHO  
DONNA-LEE MARCELÉ BRAND**

**FIRST RESPONDENT**

**SECOND RESPONDENT**

**THIRD RESPONDENT**

**FOURTH RESPONDENT**

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

On 28 May 2009 the SCA upheld an appeal by the Kimberley Junior School and the Governing Body of that school against a judgment of the Kimberley High Court in favour of the Head of the Northern Cape Education Department (HoD).

The matter arose from a decision by the HoD to appoint Mrs Rantho – a black female person – instead of Mr Theunissen – a white male person – as principal of the School. The application by the School and the Governing Body to the High Court for that decision to be reviewed and set aside, was dismissed with costs.

The basis for the High Court's decision was essentially that, in terms of the Employment of Educators Act 76 of 1998 the discretion to make the appointment was bestowed upon the head of the department and that he could not be faulted in the exercise of that discretion.

The SCA found, however, that in terms of s 6(3) of the Act, the HoD's discretion to make an appointment is dependent on the prerequisite of a recommendation by the Governing Body of at least three candidates. On a proper analysis of the facts, so the SCA found, there was no proper recommendation by the Governing Body. Consequently the HoD had no discretion to make any appointment at all. In the result the HoD's appointment of Mrs Rantho was set aside. The request by the

school and the Governing Body that the court should appoint Mr Theunissen was, however, refused, essentially on the basis that that will be for the HoD to consider in the light of a proper recommendation by the Governing Body.