

IN THE HIGH COURT OF SWAZILAND

Bhekisisa Abraham Bhembe

v

Somnjalose High School

Civil Case No. 825/1998

Coram S.W. SAPERE

For Plaintiff Mr. Shilubane

For Defendant Miss Gama

Judgment

(30/07/98)

This is an application made by a pupil of the respondent for his expulsion from the school to be set aside and for an order that he should be readmitted in the third Form of Study. The application was made in April and came before me as a matter of urgency. For the duration of the time required for the filing of the application I made an interim order that as requested by the applicant that he be returned to the school and that he was to be admitted to the third form.

The matter was then argued before me on papers that had been filed in which disputes of fact had arisen. It is impossible to determine these questions of fact and it would be impractical to order that this matter go to trial. There seems to be little purpose in taking such a course.

It emerges from the affidavit that there is a dispute of whether the applicant was in fact expelled or not or whether he just failed to attend the school. In view of this it would seem to me that the respondent should accept the applicant as a pupil of the

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school subject to whatever disciplinary rights and whatever disciplinary action he like all pupils at the school are subject.

As far as the form to which he must be admitted, I have considered this matter and I do not think the Court has the power to substitute its judgment for the decision of the respondent as to whether the applicant should be placed in Form II or Form III. This does not mean that no regards must be held for the circumstances but it is difficult or impossible for the Court to decide and to impose its decision on the respondent as to in which form or year of studies the applicant should be placed.

For this reason I am leaving it to the respondent to place the applicant in such year of study as it may consider appropriate in order that applicants education may continue, with as little further disruption as possible.

In view of the unresolved questions of fact in dispute I will not make any order as to costs.

I therefore order that the respondent admits the applicant as a pupil at the school and that he be allowed

to continue with his education in such form as the respondent considers appropriate. There will be no judgment as to costs.

S.W. SAPIRE

ACTING CHIEF JUSTICE