

**IN THE INDUSTRIAL COURT OF SWAZILAND
HELD AT MBABANE**

CASE NO. 424/2006

In the matter between:

CLIFFORD MASEKO	1st Applicant
BUSISIWE NGIDI	2nd Applicant
DUDUZILE SIMELANE	3rd Applicant

and

THE HEADTEACHER, ST. CHRISTOPHER'S HIGH SCHOOL	1st Respondent
THE TEACHING SERVICE COMMISSION	2nd Respondent
THE ATTORNEY GENERAL	3rd Respondent

CORAM:

P. R. DUNSEITH:	PRESIDENT
JOSIAH YENDE:	MEMBER
NICHOLAS MANANA:	MEMBER
FOR APPLICANTS:	M. MKHWANAZI
FOR 1ST RESPONDENT:	IN PERSON
FOR 2nd a 3rd RESPONDENT:	Z. MKHWANAZI

J U D G E M E N T - 7/12/2006

1. The 1st Applicant is the Deputy Headteacher of St Christopher's High School, whilst the 2nd and 3rd Applicants are teachers at the same school in the Siswati and Commercial Subjects departments respectively.

2. The 1st Applicant has applied to the Industrial Court for an order restraining and interdicting the Headteacher of the school from

" interfering and/or unlawfully retaining the 1st Applicant's duties as are

contained in the Guide to Schools Regulations and Procedures 1988 and the Teaching Service Regulations of 1983".

3. The 2nd and 3rd Applicants in turn seek an order *"setting aside the demotion of the 2nd and 3rd Applicants from their positions as Heads of Departments in the Siswati and Commercial Subjects departments and declaring such demotion null and void ab initio"*

4. The 1st Applicant produced a relevant extract from "A Guide to School Regulations and Procedures" published by the Swaziland Ministry of Education in 1988. The extract deals with Delegated Authority and the Role of the Deputy Headteacher, and it is apposite to quote certain paragraphs in full:

"DELEGATED AUTHORITY

1. The Head of the School is ultimately responsible for all aspects of school life both administratively and professionally. A wide range of duties may be delegated to other staff members. However, the Head of the School bears final responsibility for the way in which duties are carried out and thus must supervise the work of all those who have responsibilities delegated to them.

2. Members of staff who have substantive positions of authority (e.g. Deputy Head, Senior Teacher, Head of Department) must be provided with an official job description. It is the responsibility of the Head of the School to ensure that teachers holding positions of responsibility carry out all aspects of their work, as laid down and ensure that the duties are carried out effectively.

DEPUTY HEAD (ROLE)

1. Some or all of the following duties are appropriate for the Deputy Head:

1. to advise the Head of the School on matters requiring top-level decision;

2. to deputize for the Head of the School when he is unable to perform his normal duties;

(3) to deal with discipline problems, in the first instance, which teachers cannot handle;

(4) *to supervise staff attendance, punctuality and conduct;*

(5) *to supervise general administration of the school with regard to grounds, daily routines, schools attendance and regulations;*

(5) *to prepare a school timetable within the framework laid down by the school;*

(7) *to supervise students welfare.*

2. *It is the duty of the Head of the School to interview parents."*

5. The status of the Guide to School Regulations and Procedures is unclear. It appears to be a handbook for the guidance of members of the Teaching Service, without any statutory authority. At best it may be regarded as a policy document for the guidance of school administrators and teachers.

6. No formal description of the respective roles and duties of a headteacher and a deputy headteacher is contained in the Education Act, the Education Rules, 1977, the Teaching Service Act, 1982 or the Teaching Service Regulations, 1983.

7. The only relevant reference to the respective responsibilities of Headteacher and Deputy Headteacher appears in Regulation 10 (1) of the Education Rules regarding discipline of pupils, which states:

"Subject to this Rule, the general discipline in a school shall be vested in the headmaster of such school who may, however, seek the advice of his deputy or other members of his staff."

8. Regulation 10(2) provides that both the headmaster and the deputy headmaster shall be members of the school disciplinary committee (together with three other members).

9. Presumably in response to a request from the 1 Applicant to be furnished with an official job description, the 1st Respondent sent the following memorandum on 10 April 2006 to the 1st Applicant.

"RE: JOB DESCRIPTION FOR DEPUTY HEADTEACHER

This serves to inform you that your job description is described on page 11 of "A Guide to School Regulations and Procedures".

Only 1 (5) and (7) of the duties will be retained by the Headteacher for dose monitoring.

Your cooperation is highly expected".

The clear meaning of this memorandum is that the 1st Respondent retains for himself the duties of supervising general administration of the school and student welfare, and the 1st Applicant's job description is restricted to the remainder of the duties set out in the Guide to School Regulations and Procedures under the heading "Deputy Head (Role)."

The 1st Applicant alleges that the 1st Respondent, in his capacity as headteacher of St Christopher's High School, has usurped duties which are reserved for the deputy headteacher, resulting in confusion and erosion of the 1st Applicant's status and dignity

The 1st Applicant alleges that the 1st Respondent, in addition to appropriating for himself the duties of supervision of general administration and student welfare, as stated in the memorandum of 10th April 2006, has also usurped or curtailed other duties of the deputy headteacher as follows:

22. he effected drastic changes to the school timetable without seeking the 1st Applicant's advice;
23. he excludes the 1st Applicant from the disciplinary process and expels pupils willy-nilly in consultation with the boarding master without involving the disciplinary committee;
24. he has usurped the 1st Applicant's duties to supervise staff, particularly regarding attendance, punctuality and conduct;
25. he demoted the 2nd and 3rd Respondents from their positions as Heads of Department without consulting the 1st Applicant.

The 1st Applicant cites various instances where he says the heavy-handed conduct of the 1st Respondent has created tension at the school between the teachers and administration and between the teachers themselves.

The 1st Applicant's founding affidavit is supported by affidavits made by 2nd and 3rd Applicants and nine other teachers, who confirm that:

26. there is confusion at the school regarding from whom the teachers should take instructions as between 1st Applicant and 1st Respondent, since the latter has taken virtually all the duties of the former;

27. the 1st Applicant is not consulted when top-level decisions are taken.

14.3 the demotion of the 2nd and 3rd Applicants as Heads of Department was done in a humiliating and arbitrary manner, during school assembly and without any prior notice.

In her affidavit, the 2nd Applicant states that she held the position of head of the Siswati department for at least 5 years, and she was removed from the position without prior hearing.

The 3rd Applicant also states in her affidavit that she held the position of head of the Commercial Subjects Department for at least 5 years, and she too was removed from the position without prior hearing.

The 1st Respondent in response states that the 1st Applicant is his deputy and he is responsible for delegating duties to him on a day to day basis. He affirms that the 1st Applicant's job description is that set out in the memorandum of 10th April 2006.

In response to the 1st Applicant's specific complaints, he states that:

28. the controversy over a time table related to an examination preparation timetable. He prepared such timetable in good faith in what he perceived to be the best interests of the pupils, but the 1st Applicant produced a counter-timetable which resulted in confusion;

29. regarding discipline, no pupil has ever been expelled from the school, and the disciplinary committee has never had occasion to meet to

hear disciplinary charges. Expulsion of pupils from the boarding hostel does not require the involvement of the disciplinary committee, and he only consults with the Boarding master regarding hostel discipline. He denies that he interferes with daily discipline administered by the 1st Applicant.

30. he denies that it is the duty of the deputy headteacher to supervise staff attendance, punctuality and conduct, and he says the 1st Applicant has never performed such duty, instead he appeases staff to the detriment of good discipline;
31. He denies that 2nd and 3rd Applicants were ever appointed as heads of department. They were merely subject representatives whom he was entitled to replace in his discretion.

The 1st Respondent denies that he has usurped the 1st Applicant's duties. He complains that 1st Applicant does not perform his duties competently, and he persists in undermining and defying the headteacher by gossiping about him to pupils, teachers and the community.

The 2nd and 3rd Respondents filed an answering affidavit deposed to by the Executive Secretary for the Teaching Service Commission. Whilst refraining from entering the fray of allegations and counter-allegations between the deputy and headteacher, the deponent discloses that the Commission is presently considering ways and means of separating the Headteacher and his deputy for the smooth running of the school, and for the welfare and best interests of the pupils. Such intervention is long overdue, bearing in mind that the Commission was made aware of the breakdown in the relationship more than 6 months ago. The court need not dwell on the destructive effect of acrimony between senior school administrators to teacher morale, student welfare and the reputation of the school as a whole.

21. The Executive Secretary of the Commission alleges that the 2nd and 3rd Applicants were never appointed as heads of department. Such appointment must be effected by the Commission, and this never occurred. They do not qualify for such appointment, because they are not holders of a university degree. They have never been paid on the salary scale applicable to heads of department. The Respondents annexed a copy of the establishment register for St Christopher's High School which verifies the allegations of the Executive Secretary.

32. The 2nd and 3rd Respondents submit that the 2nd and 3rd Applicants were never demoted since they were never appointed in the first place. They cannot be appointed because they do not qualify.
33. In his replying affidavit, the 1st Applicant turns around to concede that 2nd and 3rd Applicants may never have been appointed, but states that they performed the duties of heads of department and were regarded as such. Similar allegations are made in reply by 2nd and 3rd Applicants and the other 9 teachers supporting them.

ANALYSIS

24. Counsel for the Applicants filed comprehensive heads of argument which inter alia set out the requirements he must establish to obtain a final interdict. Borrowing from his heads, I quote from Harms: Civil Procedure in the Supreme Court at page 500 - 501:

"The first requisite to be established for the granting of a final interdict is a clear or definite right....."

Whether an Applicant has a right is a matter of substantive law. The Applicant has to prove on a balance of probability facts which in terms of substantive law give him a right."

The 1st Applicant avers that his substantive right arises from the provisions contained at page 11 of A Guide to School Regulations and Procedure. That page however explicitly states that the Head of the School is ultimately responsible for all aspects of school life both administratively and professionally. He may delegate his duties, but he bears final responsibility for the way in which the duties are carried out and thus he must supervise the work of all those who have responsibility delegated to them, and ensure that the duties are carried out effectively.

The headteacher is enjoined to provide members of staff who have substantive positions of authority, such as the deputy headteacher, with an official job description. The Guide then sets out a list of duties, and states that some or all of such duties are appropriate for the Deputy Head.

27. By use of the words "some or all" and "appropriate", the Guide merely offers the Headteacher some guidance in his formulation of the duties to be included in the deputy's job description. He is under no obligation to allocate all such recommended duties to the deputy headteacher.

28. Moreover, the duties listed are the substantive responsibility of the headteacher which he is delegating to his deputy. He has a discretion as to which duties to delegate and which to retain for himself.

29. The deputy headteacher exercises the powers and duties delegated to him in the name and on behalf of the headteacher. The headteacher has ultimate responsibility for, and control over, the exercise of such powers and duties. He may vary and even revoke the delegation of his duties provided he does so in good faith.

30. Although it is the duty of the 1st Applicant to give advice on top-level decisions when sought by the headteacher, in our view the headteacher is not bound to seek such advice from the 1st Applicant. Where the relationship of trust and mutual cooperation has broken down, the headteacher may prefer to seek advice elsewhere. This is a regrettable state of affairs, but it does not amount to an unfair labour practice or a breach of the 1st Applicant's contract of employment.

31. The disputes of fact regarding the preparation of a timetable and the handling of school discipline render it unwise for the court to venture any opinion as to whether the rights of the 1st Applicant were infringed in these matters. Suffice it to say that the headteacher has the ultimate responsibility, authority and prerogative in the running of the affairs of the school, and where a conflict arises it is incumbent on the deputy to submit to the decision of his principal. If the decision is manifestly unreasonable, his remedy lies with the Ministry and/or the Commission, not in fomenting discontent and rebellion amongst the teachers. *Tinkunzi letimbili atihlalelani* (There cannot be two bulls in one kraal).

32. In respect of the 2nd and 3rd Applicants, the Respondents have shown that they were never appointed as heads of department, nor were they paid as heads of department. It appears that they acted as representatives for their respective departments only. They performed additional duties and

responsibilities for a number of years without remuneration. The court deprecates the manner in which their role as subject representatives was abruptly and humiliatingly terminated. Nevertheless, they have not been demoted as Heads of Department and the court cannot grant them the relief for which they have prayed in the notice of application

33. For all the above reasons, the Applicants have failed to establish that they have a clear right to the relief sought.

The application is dismissed.

There is no order as to costs.

The members agree.

**P.R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT**