



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **MEC for Education in Gauteng Province and Others v Governing Body of Rivonia Primary School and Others**

**Case CCT 135/12**

**Date of hearing: 09 May 2013**  
**Date of judgment: 03 October 2013**

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#### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court upheld, in part, an appeal against a judgment of the Supreme Court of Appeal, holding that the Head of Department, Gauteng Province (HOD) had the power to admit a learner in excess of Rivonia Primary School's (the school) admission policy. The Court declared, however, that the HOD had failed to exercise that power in a procedurally fair manner.

In 2010, a Grade 1 learner was refused a place at the school for the 2011 academic year and was placed on a waiting list. The mother of the learner lodged a complaint with the Gauteng Department of Education (Department). The mother also lodged an appeal to the Member of the Executive Council for Education in Gauteng Province (MEC).

The HOD took the view that the school could admit the learner into one of its Grade 1 classes, overturned the school's refusal of the application and issued an instruction to the principal to admit the learner. On 7 February 2011, the learner's mother brought the learner to the school. She insisted that the school admit the learner but the principal refused. The following day, the Department's officials arrived at the school and physically placed the learner in one of its Grade 1 classrooms, seating her at an empty desk.

The school brought an application in the South Gauteng High Court, Johannesburg (High Court), seeking a declaration that it had the power to make the admission policy and admit learners in accordance with that policy. The High Court dismissed the application.

The school appealed to the Supreme Court of Appeal, which held that the Department did not have the power to override the school's admission policy. The Court declared that the HOD's instruction to the principal to admit the learner, contrary to the school's admission policy, was unlawful, as was placing the learner in the school.

On appeal to the Constitutional Court, the majority of the Court, in a judgment written by Mhlantla AJ, concluded that the HOD had the power to admit the learner. It held that the school governing body may, in terms of the Schools Act, determine capacity as part of its admissions policy. However, this power is subject to other provisions of the Schools Act, which states that the Department maintains ultimate control over the implementation of the admission decisions. Further, the provincial Regulations afford the HOD the specific power to overturn a principal's rejection of a learner's application for admission. Moreover, the Court held that the capacity determination as set out in the schools admission policy could not inflexibly limit the discretion of the HOD.

The majority further held that the HOD had not exercised his power in a procedurally fair manner. Finally, the Court held that co-operation is the compulsory norm in disputes between school governing bodies and national or provincial government. Such co-operation is rooted in the shared constitutional goal of ensuring that the best interests of learners are furthered and that the right to basic education is realised.

In a minority judgment, Jafta J (Zondo J concurring) agrees with the majority judgment that leave to appeal be granted and that the HOD was empowered to instruct the principal to admit the learner in excess of the limit in the school's admission policy. The minority, however, disagreed with the majority judgment's finding that the power was exercised in a procedurally unfair manner. The minority held that the declaration was not justified because the question of procedural fairness was not before the Court and it was therefore not open to the Court to decide the issue.