



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Governing Body of the Juma Masjid Primary School & Others v Ahmed Asruff Essay N.O.  
and Others**

**CCT 29/10**

**Hearing Dates: 31 August 2010 and 25 November 2010  
Date of judgment: 11 April 2011**

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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.*

On 11 April 2011, the Constitutional Court delivered judgment in a case concerning the right to a basic education where a private property owner sought to evict a public school conducted on its property. The applicants, the School Governing Body (SGB) of the Juma Masjid Primary School (school) and the parents and guardians of the learners enrolled at the school, appealed against an order granted by the KwaZulu-Natal High Court, Pietermaritzburg (High Court), which upheld the Juma Masjid Trust's (Trust) application to evict the MEC for Education, KwaZulu-Natal (MEC) and, effectively, the learners and educators of the school, from the private premises owned by the Trust.

In granting the eviction order, the High Court held that: (a) the Trust was not performing a public function that required it to observe fair process towards the school; (b) the Trust owed no constitutional obligations to the MEC or to the learners at the school; and (c) the Trust's right to property in terms of section 25 of the Constitution must be respected. The High Court further held that the obligation to respect the learners' right to a basic education lies with the MEC, and not with the Trust. The SGB unsuccessfully applied for leave to appeal to the Full Court of the High Court, as well as the Supreme Court of Appeal.

In its application for leave to appeal to the Constitutional Court, the SGB challenged the conduct of: firstly, the Trust in enforcing its rights under section 25 of the Constitution as a private owner of land; secondly, the High Court in its failure to exercise its constitutional obligation to develop the common law to protect the learners and thirdly, the High Court's failure to craft an appropriate order. Finally, the SGB contended that, in making its decision, the High Court failed to take into account the paramountcy of the best interests of the children. The Centre for Child Law and the Socio-Economic Rights Institute (*amici curiae*) made useful submissions on this issue.

The Court heard the parties' oral submission on two separate occasions, after which, on each occasion, the Court handed down orders. The reasons for these orders are provided in the judgment.

The first hearing was on 31 August 2010. After this hearing, the Constitutional Court provisionally set aside the eviction order made by the High Court. It held that the order had an impact on the learners' right to a basic education under section 29(1) of the Constitution and on the learners' best interests under section 28 of the Constitution. The Court ruled that (a) the Trustee had a constitutional duty to respect the learners' right to a basic education under section 29 of the Constitution, (b) having regard to all the circumstances of the case, including that obligation, the Trustees had acted reasonably in approaching the High Court for an eviction order but that that was not sufficient reason for the High Court to grant the eviction order and that (c) in considering the eviction application, the High Court failed to consider properly the best interests of the learners and their right to a basic education. The Court held that the MEC had a primary positive obligation to provide access to schools in respecting the learners' right to a basic education, but the Trustees had a negative obligation in terms of Section 8 of the Constitution not to infringe that right.

Because of the imminent end of the 2010 school-year, the provisional order directed the MEC to engage meaningfully with the Trustees and the SGB in an effort to resolve the dispute to allow for the continued operation of the school. If this failed, the Court ordered the MEC to take steps to secure alternative placements for the learners. The MEC was required to file a report setting out, among other things, the steps she had taken to ensure the learners' right to a basic education was respected. The Trustees were granted leave to apply directly to the Court on supplemented papers for an order that would be just and equitable, including an eviction order.

The parties were heard for a second time on the 25 November 2010 and the Court received the first report submitted by the MEC. It became clear to the Court that the closure of the school had become inevitable. The parties had not reached an agreement and the dispute remained unresolved. As a result, the Court ordered the MEC to submit a further report to indicate that the MEC complied with the obligation to provide alternative schooling.

A second report was then filed by the MEC setting out sufficient information regarding the schools where the learners would continue their schooling. The Court was satisfied that alternative arrangements for the placement of the children for the 2011 school-year had been made and that the learners' right to a basic education would be protected. The Court then considered the eviction application by the Trust, which was made on supplemented papers, and was satisfied that a case for eviction had been established and the learners' rights had been given effect to. The final eviction order was granted on 11 December 2010.

As to costs, the Court found the MEC's conduct wanting. The MEC was therefore ordered to pay the costs of the litigation in the High Court, SCA and the Constitutional Court.