THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case No: 219/2008

HOËRSKOOL ERMELO	First Appellant (1st Applicant a quo)
SCHOOL GOVERNING BODY OF HOËRSKOOL ERMELO	Second Appellant (2nd Applicant a quo)
and	
THE HEAD OF DEPARTMENT OF EDUCATION: MPUMALANGA	First Respondent (1st Respondent a quo)
J KHUDAIJA	Second Respondent (2nd Respondent a quo)
D MUNERA	Third Respondent (3rd Respondent a quo)
E AYOOB	Fourth Respondent (4th Respondent a quo)
C VAN GREUNEN	Fifth Respondent ((5th Respondent a quo)
Q NQELE	Sixth Respondent (6th Respondent a quo)
J KRUGER	Seventh Respondent (7th Respondent a quo)
THE MINISTER OF EDUCATION	Eighth Respondent (8th Respondent a quo)
N M MASILELA	Ninth Respondent (9th Respondent a quo)

Neutral citation: Hoërskool Ermelo v The Head of Department of Education: Mpumalanga (219/08) [2009] ZASCA 22 (27 MARCH 2009)

Coram: Harms DP, Brand, Cloete, Ponnan, Snyders JJA

Heard: 12 MARCH 2009

Delivered: 27 MARCH 2009

Summary: Schools – language policy – ss 22 and 25 of Schools Act 84 of 1996 – language policy remains the exclusive function of the governing body of an existing school

---

ORDER

On appeal from: High Court, Pretoria (Ngoepe JP, Seriti J and Ranchod AJ sitting as court of first instance).

1. The appeal is upheld.
2. The order of the court a quo is set aside and replaced by the following:

'a The first respondent's decision to withdraw the function of the governing body of Hoërskool Ermelo to determine the language policy of the school is set aside.

b The first respondent's decision to appoint an interim committee to perform the function of the governing body to determine the language policy of Hoërskool Ermelo is set aside.

c The decision of the interim committee to amend the language policy of Hoërskool Ermelo from Afrikaans medium to parallel medium is set aside.

d Learners that have enrolled at Hoërskool Ermelo since 25 January 2007 in terms of a parallel medium language policy

shall be entitled to continue to be taught and write examinations in English until the completion of their school careers.

e The costs of the application are to be paid by the first and eighth respondents jointly and severally, the one paying, the other to be absolved.'

3. The costs of the appeal are to be paid by the first and eighth respondents jointly and severally, the one paying, the other to be absolved.

JUDGMENT

SNYDERS JA (HARMS P, BRAND, CLOETE and PONNAN JJA concurring)

[1] The first appellant is the Hoërskool Ermelo (the school), a public school as defined in the South African Schools Act 84 of 1996 (the Act), and the second appellant is its governing body. The first respondent is the Head of Department of Education in Mpumalanga (head of department) and the eighth respondent is the Minister of Education of Mpumalanga. They are the only respondents opposing the appeal. The second to sixth respondents are members of an interim committee appointed by the head of department to determine the language policy of the school. The seventh respondent is the principal of the school. The ninth respondent is a parent of one of the learners who sought tuition in English and was joined for purposes of one of the interim applications that do not feature in this appeal.

[2] The appellants applied in the court a quo (Ngoepe JP, Seriti J and Ranchod AJ sitting as a court of first instance) for an order reviewing and setting aside three decisions:[1] the decision of the head of department to withdraw the function of the governing body to determine the language policy of the school; the appointment by the head of department of an interim committee to change the language policy of the school; and the decision of the interim committee to change the language policy of the school from an Afrikaans medium school to a parallel medium school. The court a quo dismissed the application for leave to appeal. The appellants subsequently obtained leave from this court.

[3] This case is not, as at first blush appears, about language policy at schools, a highly emotive issue in the South African context, but rather about the principle of legality and the proper exercise of administrative power.

[4] The strife between the department of education, the school and its governing body about its language policy started as far back as 2001. Events during the course of that year culminated in the head of department suspending the principal and disbanding the governing body of the school on 12 December 2001, the afternoon after school broke up for the December holidays. Following the suspension the head of department appointed an acting principal and promptly instructed him both to change the language policy of the school and to admit learners to the school to be taught in English.

[1] The urgent interim application that was granted and later set aside is not relevant to the appeal.

[5] Litigation between, amongst others, the principal and the governing body of the school on the one hand and the head of department on the other hand, achieved the reinstatement of the principal and the governing body early in January 2002 in terms of a judgment by Moseneke J in *Schoonbee v MEC for Education, Mpumalanga.*[2] One hundred and thirty-two charges were compiled by the department against the principal, but were never pursued.

[6] At the beginning of 2006 the department approached the school to enrol 27 grade 8 learners who had to be taught in English. A compromise was reached: the learners were enrolled at a neighbouring English medium school but accommodated on the premises of the school. At the beginning of 2007 those learners were all accommodated in English medium schools in the area.

[7] During 2006 it was evident that there was a need for English tuition in the Ermelo circuit beyond the available capacity. The department was aware of this at the time as the head of department wrote to the school on 1 March 2007 that:

'You will recall that in 2006 my department had a crisis of the learners for the Grade 8 level who could not be accommodated in all the schools within the Ermelo 1 Circuit'.

It came as no surprise when, on 15 August 2006, the manager of the Ermelo circuit of the department wrote to the principals of all schools in the circuit as follows:

'You will recall that in 2006, a Grade 8 English Medium Class of approximately 46 learners could not get accommodation at Ligbron Academy of Technology and Ermelo Combined

[2] 2002 (4) SA 877 (T).

School since these are the only institutions in the Circuit where English FIRST Language is utilized as medium of instruction in Grade 8 – 12. This still remains a crisis.
Against this background, the Circuit would therefore request each and every principal to give advice as to what other avenues could be explored to resolve accommodation crisis in 2007 in our circuit schools, specifically for First English Medium Grade 8 learners.'

[8] Suggestions were made in response to the invitation to utilise the old 'Kommando' building, the 'convent' and the 'Spoornet building'. Those suggestions all entailed the establishment of a new school in separate premises to provide a long term solution for the growing number of learners requiring tuition in English. None of these suggestions found favour with the department, as (according to the answering affidavit deposed to by the head of department) the buildings 'do not fall under the jurisdiction of the department and would have to be rented or acquired from their present owners. They would also require substantial renovations in order to make them suitable as classroom facilities for learners'.

[9] The matter apparently received no further attention from the department until Monday 8 January 2007, two days before the official opening of schools in the Ermelo circuit for the new academic year. On that day the principal and the chairperson of the school governing body were summoned to a meeting with the head of department to be held the following day. The head of department did not attend the meeting but sent officials who handed a letter to the principal in terms of which he was instructed 'to admit learners [to be taught in English] at Hoërskool Ermelo for the 2007 academic year with effect from 10/01/2007', contrary to the language policy of the school.

[10] On 10 January 2007 a group of learners that required tuition in English, their parents and officials from the department arrived at the school for the purpose of enrolling the learners. The principal, on the express written instruction of the chairman of the governing body, adhered to the language policy of the school, with the result that the pupils were not enrolled and school commenced without them.

[11] On Thursday 25 January 2007 the head of department addressed a letter in terms of s 25 of the Act to the second to sixth respondents (to whom I shall refer collectively as 'the interim committee') informing them of the issue between the department and the school and appointing them 'with immediate effect to determine the language policy of Hoërskool Ermelo'. In the last paragraph of the letter the members of the interim committee were 'requested to ensure that the Language policy determined by yourself will enable the learners to be admitted at Hoërskool Ermelo as a matter of urgency'. The interim committee was also called upon, albeit not in the letter, to attend a meeting at 12:00 on the same day. At the meeting an official of the department (who deposed to an affidavit in these proceedings confirming this) told the members of the interim committee that they were appointed to revise the language policy of the Ermelo High School, in order to make it possible for the 113 learners who cannot be accommodated elsewhere to attend the said school. At 14:30 that very day, after the conclusion of the meeting of the interim committee,[3] a letter from the head of department to the school governing body, purporting to have been written in terms of s 22 of the Act, was delivered to the school. It said that the head of department had 'decided

[3] According to the minutes of the meeting it terminated at 13:45.

to withdraw [the governing body's] function of determining the language policy of the "Hoërskool" Ermelo with immediate effect'.

[12] At the meeting of the interim committee it was decided that the language policy of the school be changed. The formulation of the new language policy took place after the meeting and ultimately read, '[t]he language of teaching and learning at the school will be English and Afrikaans (Parallel Medium)'. It was common cause that this decision was taken without consultation with relevant parties or the gathering of relevant information other than information supplied by representatives of the department at the meeting.

[13] The appellants rushed to court to obtain interim relief pending a review of the respondents' decisions and actions, but were ultimately unsuccessful in all applications. In the result the language policy of the school has remained as amended by the interim committee. Twenty learners were admitted in 2007 in terms of the amended language policy and are being taught in English. The appellant has undertaken that regardless of the outcome of this appeal, all learners admitted in terms of the amended language policy will receive tuition in English until the end of their school careers.

[14] These facts show that the department of education has, since 2001, regarded changing the language policy of the school as the solution to its obligation to provide tuition in English to learners. In his answering affidavit the head of department emphasises the fact that the school has fewer learners per available classroom than any other school in the Ermelo circuit. Whilst that fact may have presented an attractive option for the department it

had to remind itself, before action was taken, that the right to receive tuition in English in a public educational institution provided by the State,[4] if reasonably practicable, is a right against the State and not a right against each and every public school.[5] Furthermore, whatever action the head of department took that involved the school had to comply with the principle of legality as determined in the Act and the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[15] With regard to the particular action taken by the head of department it is useful to first look at certain key provisions of the Act to get an appreciation of the composition of the governing body and its powers. The Act vests in the governing body the governance of the school. The governing body 'may perform only such functions and obligations and exercise only such rights as [are] prescribed by the Act'.[6] Section 6 of the Act grants authority to the governing body of a public school to 'determine the language policy of the school subject to the Constitution,[7] this Act and any applicable provincial law' on a non-racial basis within the norms and standards for language policy as determined by the Minister of Education.[8] The governing body comprises elected parents of learners, educators, members of staff who are not educators, learners, the principal in his or her official capacity and co-opted

---

[4] Section 29(2) of the Constitution of the Republic of South Africa, 1996.

[5] *Minister of Education, Western Cape v Governing Body, Mikro Primary School* 2006 (1) SA 1 (SCA) para 31.

[6] S 16(1).

[7] The full text of s 6 reads: '(1) Subject to the Constitution and this Act, the Minister may, by notice in the *Government Gazette*, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.
(2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.
(3) No form of racial discrimination may be practised in implementing policy determined under this section.
(4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.'

[8] Such norms and standards were published in Government Gazette 18546 on 19 December 1997, but do not play a role in this case.

members, without voting rights, provided that the number of parent members 'must comprise one more than the combined total of other members of a governing body who have voting rights'.[9] This composition of the governing body provides for broad participation in the decision-making process with particular emphasis on the contribution by parents of learners.

[16] Aside from authorising the governing body to determine the language policy, s 20 confers on it certain core functions that include adopting a constitution and a code of conduct for learners; developing a mission statement; determining times of the school day; administering and controlling the property of the school, and recommending the appointment of educators and non-educator staff to the head of department.

---

[9] Section 23: (1) Subject to this Act, the membership of the governing body of an ordinary public school comprises – (a) elected members; (b) the principal, in his or her official capacity; (c) co-opted members.
(2) Elected members of the governing body shall comprise a member or members of each of the following categories: (a) Parents of learners at the school; (b) educators at the school: (c) members of staff at the school who are not educators; and (d) learners in the eighth grade or higher at the school.
(3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2)(a).
(4) The representative council of learners referred to in section 11(1) must elect the learner or learners referred to in subsection (2)(d).
(5) The governing body of an ordinary public school which provides education to learners with special needs must, where practically possible, co-opt a person or person with expertise regarding the special education needs of such learners.
(6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.
(7) The governing body of a public school contemplated in section 14 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.
(8) Subject to subsection (10), co-opted members do not have voting rights on the governing body.
(9) The number of parent members must comprise one more than the combined total of other members of a governing body who have voting rights.
(10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must temporarily co-opt parents with voting rights.
(11) If a parent is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28(d) within 90 days after the vacancy has occurred.
(12) If a person elected as a member of a governing body as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the governing body.'

[17] In addition to these functions a governing body may apply in terms of s 21 to the head of department to be allocated further functions. This application may be refused only if the governing body concerned does not have the capacity to perform such functions effectively.[10] Functions capable of allocation are those set out in s 21(1):

'Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:

(a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;

(b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;

(c) to purchase textbooks, educational materials or equipment for the school;

(d) to pay for services to the school;

(dA) to provide an adult basic education and training class or centre subject to any applicable law; or

(e) other functions consistent with this Act and any applicable provincial law.'

[18] These functions are either non-essential to the functioning of the school, (s 21(1)(dA)) or, if not allocated, are performed by the department. It is because the department is usually responsible for these functions that they can only be allocated to the governing body if the latter has the capacity to perform them effectively. This is the only sensible distinction between the functions contained in s 21 and those elsewhere in the Act. If there was no distinction, there is no reason why the legislature would have made separate provision for them in s 21 instead of simply including them in s 20.

[10] See s 21(2).

[19] Section 22(1) authorises the head of department to withdraw a function of a governing body, on reasonable grounds. In s 22(2) the procedure to be followed in the event of a withdrawal of a function is set out. It involves the furnishing of reasons, calling for representations and due consideration thereof. Section 22(3) provides for the urgent withdrawal of a function and prescribes a similar procedure to s 22(2) except that it takes place after the urgent withdrawal. Subsection (4) allows the head of department to reverse or suspend the urgent withdrawal of a function 'for sufficient reasons'.[11]

[20] The court a quo found the head of department's decision in terms of s 22(3) to have been validly taken. This decision was based on the factual issue whether urgency prevailed that allowed action in terms of s 22(3). The applicability of s 22(3) to the facts was not considered. The appellants contend that s 22 is not applicable to the facts, as the function of determining the language policy of the school is not allocated by the head of department in terms of s 21 and cannot be withdrawn by him in terms of s 22.

---

[11] Section 22 reads as follows: '(1) The Head of Department may, on reasonable grounds, withdraw a function of a governing body.
(2) The Head of Department may not take action under subsection (1) unless he or she has –
(a) informed the governing body of his or her intention so to act and the reasons therefor;
(b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
(c) given due consideration to any such representations received.
(3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter –
(a) furnishes the governing body with reasons for his or her actions;
(b) gives the governing body a reasonable opportunity to make representations relating to such actions; and
(c) duly considers any such representations received.
(4) The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).
(5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.'

[21] Language is a sensitive issue. Great care is taken in the Act to establish a governing body that is representative of the community served by a school and to allocate to it the function of determining the language policy. The Act authorises only the governing body to determine the language policy of an existing school and nobody else. As nobody else is empowered to exercise that function, it is inconceivable that s 22 was intended to give the head of department the power to withdraw that function, albeit on reasonable grounds, and appoint somebody else to perform it, without saying so explicitly.

[22] The structure of the Act sheds further light. As s 22 follows immediately after s 21 and a distinction exists between the functions allocated in s 21 and elsewhere in the Act, it logically follows that s 22 is designed to deal with the withdrawal of functions allocated in terms of s 21. The logical default position if functions allocated in terms of s 21 are withdrawn is that they revert to the department of education. This would explain why s 22, unlike s 25, does not provide for the appointment of others to perform the functions that are withdrawn.

[23] The respondents relied on the decision of this court in *Minister of Education, Western Cape v Governing Body, Mikro Primary School*[12] that the head of department could make use of s 22 to withdraw the function of determining the language policy. In that case a similar situation to the present had arisen and the court a quo found that the head of department had acted unlawfully when he imposed a directive that amended the Afrikaans language policy of the Mikro Primary School and in that way purported to force that

[12] See note 5 above.

school to enrol learners who required tuition in a different language. It was argued on appeal that a finding that the directive was unlawful would leave the head of department without a remedy if a governing body unreasonably refused to change its language policy. The court rejected this argument and expressed the opinion in an *obiter dictum* that the head of department would inter alia have been entitled to make use of the provisions of ss 22 and 25 of the Act.

[24] The considerations expressed above concerning the purpose of s 22 and the distinction between the functions of a governing body contained in ss 20 and 21 were not considered in *Mikro*.

[25] The error in the interpretation of s 22 in *Mikro* becomes even more apparent when s 25 is considered. The head of department purportedly appointed the interim committee in terms of s 25(1) to perform the function of the governing body and change the language policy of the school. Section 25 reads:

'(1) If the Head of Department determines on reasonable grounds that a governing body has ceased to perform functions allocated to it in terms of this Act or has failed to perform one or more of such functions, he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) If a governing body has ceased to perform its functions, the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions.'

[26] The clear language of s 25(1) requires that before the head of department could make use of the authority granted in the section, he would have had to have determined, on reasonable grounds, that the governing body had ceased to perform its functions. In this case the facts do not support a reasonable conclusion that the governing body ceased to determine the language policy of the school. The head of department was dissatisfied with the result of the governing body's determination but relied on the interpretation of s 25 in *Mikro* to submit that the governing body ceased to perform that function when he withdrew it in terms of s 22. In *Mikro,* s 25 was found applicable in similar circumstances on the basis of the interpretation that '[i]f a function is withdrawn, the governing body ceases to perform that function, and s 25 becomes applicable'.[13]

[27] The effect of the interpretation in *Mikro* is in my respectful view unacceptable because it enables the head of department to create the state of affairs that would entitle him or her to act in terms of s 25(1) whereas the language of s 25(1) requires that state of affairs to have arisen as a prerequisite, reasonably established, before the head of department has the power to act in terms of s 25(1). The interpretation in *Mikro* enables a functionary to abuse power and makes possible indirectly that which cannot be attained directly.

[13] Para 41.

[28] The governing body of the school did indeed perform the function of determining the language policy of the school. This is not the kind of function that is performed on a daily or weekly or even yearly basis, but one that persists in its effect, once performed, until changed or amended by the governing body. The governing body historically decided the language policy and the school continued to implement it by admitting learners consistent with that policy.

[29] The rest of s 25 also illustrates why the interpretation in *Mikro* does not stand scrutiny. Sufficient persons are to be appointed by the head of department in terms of ss (1) to perform the function or functions that the governing body has ceased to perform and to do so for a period not exceeding 3 months. The period of 3 months can be extended by the head of department for further periods of 3 months, but not for a total period of more than 1 year.[14] Those appointed are obliged to 'build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions'.[15] The head of department is also obliged to 'ensure that a governing body is elected in terms of [the] Act within a year after the appointment of persons contemplated in subsection (1)'.[16] This shows that the aim of s 25 is to ensure that when a governing body ceases to perform its functions, in the worst case scenario, a fully functional governing body should be in place to continue performing its functions within a maximum period of one year. These provisions are clearly inconsistent with an interpretation that

[14] Subsection (2).
[15] Section 25(4).
[16] Section 25(3).

a head of department could simply take away the functions of a fully operational governing body and then proceed to comply with the rest of s 25. In addition, if ss 22 and 25 are utilised together, as in this instance, the requirements of s 25 strip the consultation and reconsideration envisaged in ss 22(3), (4) and (5) of any meaning. Counsel for the head of department and the Minister was constrained to submit that once reinstated, the governing body could change the language policy back to what it was. The untenable situation that would result underlines the fallacy of attempting to apply the two sections together.

[30] For the abovementioned reasons I am of the view that the *obiter dictum* in *Mikro* on the interpretation of ss 22 and 25 is clearly wrong. The court a quo followed *Mikro* and its decision is to be set aside for the same reasons.

[31] The woes of the respondents do not end with the interpretation of the relevant sections of the Act. The steps that were purportedly taken in terms of the Act failed, in several respects, to comply with the Promotion of Administrative Justice Act.[17] The head of department made the appointment of an interim committee in terms of s 25 to determine the language policy of the school before he had withdrawn that power from the governing body; the consequence of this premature purported appointment was that the language policy was changed by the interim committee before the power of the governing body to do so was withdrawn; far from allowing the interim committee to reach their own decision the head of department, in the letter of appointment addressed to them, instructed them to 'ensure that the Language

[17] Section 6(2).

policy determined by [them] will enable the learners to be admitted at Hoërskool Ermelo as a matter of urgency' and this was reinforced by a member of the department who attended the meeting; it does not appear that the interim committee was afforded the opportunity to consider all relevant and available information before taking an 'urgent', prescribed decision. In the light of the conclusion that ss 22 and 25 did not empower the head of department to act as he did, it is not necessary to discuss the detail of the contraventions of PAJA. It suffices to say that these contraventions were sufficient in themselves to have obliged the court a quo to grant the relief sought by the appellants.

[32] As in *Mikro* the concern was expressed on behalf of the respondents that this conclusion leaves them without a remedy in similar circumstances. It does not. PAJA prescribes the standard for all administrative action. The respondents are entitled to review the language policy determined by a governing body of a school if they make out a case in terms of PAJA.

[33] I therefore conclude that the head of department's withdrawal of the governing body's function to determine the language policy of the school was unlawful; that the head of department's appointment of the interim committee was unlawful; and that the decision taken by the unlawfully appointed interim committee was invalid.

[34] In the result the following order is made:

1. The appeal is upheld.
2. The order of the court a quo is set aside and replaced by the following:

‘a The first respondent’s decision to withdraw the function of the governing body of Hoërskool Ermelo to determine the language policy of the school is set aside.

b The first respondent’s decision to appoint an interim committee to perform the function of the governing body to determine the language policy of Hoërskool Ermelo is set aside.

c The decision of the interim committee to amend the language policy of Hoërskool Ermelo from Afrikaans medium to parallel medium is set aside.

d Learners that have enrolled at Hoërskool Ermelo since 25 January 2007 in terms of a parallel medium language policy shall be entitled to continue to be taught and write examinations in English until the completion of their school careers.

e The costs of the application are to be paid by the first and eighth respondents jointly and severally, the one paying, the other to be absolved.’

3. The costs of the appeal are to be paid by the first and eighth respondents jointly and severally, the one paying, the other to be absolved.

_____

S Snyders
Judge of Appeal

BRAND JA

[35] I have had the advantage of reading the judgment of my colleague Snyders JA. I agree with both her reasoning and conclusions. But I am sure it

will not go unnoticed that I also agreed with the *obiter dictum* in *Mikro,* which Snyders JA overrules in para 30 above. With the wisdom of hindsight I agree that, for the reasons given by her, the interpretation we gave to sections 22 and 25 of the Act in *Mikro* cannot be sustained. Perhaps this is a good illustration why *obiter dicta* should be resorted to sparingly for the very reason that they are not tested against the outcome of a real life dispute.

[36] Without the benefit of a real life dispute, the rather cynical abuse to which the *Mikro* interpretation gave rise in this case could hardly have been anticipated. What the head of the department did in this case was exactly what *Mikro* eventually decided he has no right to do, namely to change the language policy of a school. The fact that he did so through the medium of an interim committee which he used as a ventriloquist's dummy can hardly make any difference. To add insult to injury, he purported to employ the urgent procedure in s 22(3), which meant that the language policy of the school had already been changed before the school governing body had had the opportunity to make the representations contemplated by the section as to why their function should not be withdrawn. In fact, as we know, it happened even before the governing body was informed of the decision to withdraw their function. Because of this cynical abuse, I was compelled to reconsider the interpretation of sections 22 and 25 which has led me to the conclusion that the *Mikro* interpretation was wrong.

_____

F D J BRAND
JUDGE OF APPEAL

APPEARANCES:

For appellant:	J I Du Toit SC
	Instructed by: Johan van der Wath Ingelyf, Pretoria Schoeman Maree Ingelyf, Bloemfontein
For respondent:	B R Tokota SC D T Skosana
	Instructed by: The State Attorney, Bloemfontein