

ST GEORGE'S COLLEGE PARENTS TEACHERS ASSOCIATION (PTA)
and
MUDIWA ASHLEY MUNDAWARARA
Versus
THE MINISTER OF EDUCATION, SPORTS AND CULTURE
And
THE COMMISSIONER OF POLICE
And
THE HEADMASTER OF ST GEORGE'S COLLEGE

HIGH COURT OF ZIMBABWE
KAMOCHA J
HARARE 11 MAY 2004

Urgent Chamber Application

Mr *G.M. Crosland* with him Mr *Chagonda*, for the applicants
Mr *Ruzive*, for the respondents
3rd respondent in person

KAMOCHA J: After hearing arguments from counsel representing the parties, I issued the following order.

IT IS ORDERED THAT:-

- 1) the 3rd respondent be and is hereby directed to open St George's College;
- 2) the purported closure of St George's College by the 1st respondent with the assistance of the 2nd respondent be and is hereby declared null and void;
- 3) the 1st and 2nd respondents pay the costs of this application jointly and severally on a legal practitioner and client scale; and
- 4) this order shall remain effective notwithstanding the noting of an appeal on the part of the respondents.

I indicated that my detailed reasons leading to the issuing of the

above order would follow later. These are they.

On 4 May 2004 the Minister of Education, Sports and Culture - ("the minister") closed some 46 private schools in Zimbabwe including St George's College. Members of the police force were placed at the entrances of the affected schools to prevent pupils from entering the schools to commence the second term of 2004.

It had been widely reported in the Herald Newspaper and also on the radio and television that the Minister had closed down the private schools for allegedly charging exorbitant school fees. The Minister had made it clear that such schools would remain closed until they had complied with a directive not to increase fees until they have been granted approval to do so and in the meantime, they had to accept levels of fees stipulated by him.

Concerned by this turn of events the P.T.A. held a meeting on 4 May 2004 and authorised Mudiwa Ashley Mundawarara who is also a parent to represent it. Mundawarara averred that there were approximately 760 pupils at St George's College who were sitting at their homes and not receiving school education following the forced closure of the school notwithstanding their fundamental rights to such education as set out in part II of the Education Act "the Act" [*Chapter 25:04*]. I shall pose here and quote the relevant provisions of the Act.

"PART II

FUNDAMENTAL RIGHTS AND OBJECTIVES OF EDUCATION IN
ZIMBABWE

4) Children's fundamental right to education in Zimbabwe

- 1) Notwithstanding anything to the contrary contained in any other enactment, but subject to this Act, every child in Zimbabwe shall have the right to school education."

Mundawarara further averred that the second term of the school year was a very important term particularly to those pupils who were preparing for public examinations. The school had been contracted by the parents to teach their children and the forced closure of the school by

the Minister with the assistance of the police was prejudicial to such pupils.

It was also his assertion that the ongoing dispute pertaining to the school fees charged by St George's College was a matter between the minister and the Board of Governors of the school. He however, stated the P.T.A. had, at its Annual general Meeting held on 3 March 2004, mandated the Board of Governors for fees to be set at the requisite levels to maintain educational standards. Mr Mundawarara attached a copy of St George's College, Parents Teachers Association constitution indicating that the P.T.A. is a body corporate with perpetual succession capable of suing and being sued in its corporate name.

Attached also was an order by this court issued by consent five days ago. Its terms are identical but the order relates to Hartmann House Preparatory School which is the junior school of St George's College situate next to it along Borrowdale road. Apart from the headmaster the 1st and 2nd respondents also appear in the Hartman House Parents Teachers Association matter.

In that case the respondents had conceded that the purported closure of Hartmann House preparatory School by the Minister be declared null and void. The applicant *in casu* therefore submitted that the Minister still had no lawful authority to close down St George's College and to require the police force under the control of the Commissioner of Police to assist him to do so and to ensure that the school remained closed pending the resolution of the dispute over the school fees. The Act does not give the minister the right to close the school.

This time around the respondents opposed the application on the basis that the P.T.A. should not be recognised in law as it was performing the functions of the School Development Committee a body recognised in law since 1992. They contended that the closure of the school was a direct result of the school's failure to comply with section 21(1) of the Act. Hence the Minister was obliged to close the school in order to compel it to comply with the Act, so their argument went. They concluded that the

P.T.A. was approaching this court with dirty hands because it was party to the school's failure to abide by the Act. It was their submission, therefore, that the P.T.A should not be heard by the court until it complies with the Act.

The relevant provisions of the Act are found in part V thereof in section 21 which reads:

"21 Fees payable at Non-Government Schools

(1)_ No responsible authority shall -

- a) charge any fee or levy; or
- b) increase any fee or levy by more than the prescribed amount or percentage in any period of twelve months;

in respect of any pupil attending a non-governmental school, unless the fee or levy or increase therein, as the case may be, has been approved by the Secretary."

The Act imposes criminal sanctions in section 21(6) as read with section 67 in the event of any responsible authority failing to comply with the above provisions. Section 21(6) reads as follows:-

"(6) Any person who contravenes or fails to comply with any notice in terms of subsection (5) shall be guilty of an offence."

The penalty is stipulated in section 67 in the following terms:

"67 Penalties

- 1) Any person who is guilty of an offence in terms of this Act shall be liable to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- 2) A conviction for an offence in terms of this Act shall not, in the case of a continuing offence, be a bar to further prosecution for that offence."

Part V of the Act enjoins the secretary with powers of registration of non-government schools, the issuance of certificate of registration, cancellation of provisional registration or registration and approval of fees payable at non-government. These functions are not carried out by the Minister.

Where a responsible authority contravenes the provisions of section 21(1) or 21(5) the secretary should report the matter to the police so that such a responsible authority is prosecuted. In the event that the responsible authority continues to break the law, the secretary ought to continue to have the responsible authority prosecuted as empowered by section 67(2) *supra*. He, however, may not decide to close down the school as that would be *ultra vires* the powers given him by the Act. Put in another way the Act does not give him the power to close down a non-governmental school. If he purports to do so his actions would clearly be unlawful.

Similarly the Act does not empower the Minister to close down a non-governmental school. He therefore would have no lawful authority to do so. *In casu* the Minister's actions were unlawful since there was no legal basis for closing the school. This illegality was going to be perpetrated until the school complied with a directive not to increase fees until it has been granted approval.

In the light of the foregoing I find the submission that the parents, whose children are being unlawfully denied their rights to school education, have approached this court with dirty hands and should not be heard to be untenable. The ongoing dispute relating to the school fees charged by the school is a matter between the Minister and the Board of Governors of the school. The P.T.A. is not responsible for increasing the fees or levies. The fact that it gave a mandate to the Board of Governors to set the fees at appropriate levels to maintain education standard does not make its hands dirty. The decision that of a particular level still remains that of the Board of Governors.

At the hearing it was submitted on behalf of the applicants that the 1st and 2nd respondents should be ordered to pay punitive costs. I am inclined to accede to that request. Here is why. The respondents knew that they had no legal basis for closing down the school. They conceded that point some five days ago in the Hartmann House case but decided *in casu* to oppose the matter on spurious grounds. This is a proper case

where the court should express its displeasure by an award of costs on an attorney and client scale against the first and second respondents.

A further request was made by the applicants that the order to make effective notwithstanding any noting of an appeal by the 1st and 2nd respondents. I accede to that request too as it seems to me that any appeal that may be noted in this case would just be frivolous and vexatious and would clearly further prejudice the pupils of the school.

In the result of the foregoing I granted the order sought in terms of the amended draft.

Atherstone & Cook, applicant's legal practitioners

Civil Division of the Attorney-General's Office, 1st and 2nd respondent's legal practitioners