IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case No.: 2477/2020

In the matter between:

H CASSIM N.O. Applicant

and

MEC, DEPARTMENT OF SOCIAL DEVELOPMENT, FREE STATE 1st Respondent

HEAD OF DEPARTMENT, SOCIAL DEVELOPMENT, FREE STATE 2nd Respondent

MEMBER OF THE EXECUTIVE COUNCIL, FREE STATE DEPARTMENT OF HEALTH 3rd Respondent

HEAD OF DEPARTMENT, FREE STATE DEPARTMENT OF HEALT 4th Respondent

MEMBER OF THE EXECUTIVE COUNCIL, FREE STATE DEPARTMENT OF EDUCATION 5th Respondent

HEAD OF DEPARTMENT, FREE STATE DEPARTMENT OF EDUCATION 6th Respondent

THE GOVERNING BODY, LETTIE FOUCHE SPECIAL SCHOOL 7th Respondent

LETTIE FOUCHE SPECIAL SCHOOL 8th Respondent

HEARD ON: 04 AUGUST 2020

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 17 August 2020. The date and time for hand-down is deemed to be 17 August 2020 at 10:00

Introduction

[1] The applicant, in her capacity as the *curator ad litem* of a minor girl child aged 12 named Rouliene van Wyk, brought this application against the respondents on a semi urgent basis for relief as set out in the Notice of Motion. The first to sixth respondents filed a notice to abide. The only active respondents opposing the application are the seventh and eighth respondents namely the governing body and the school.

[2] In a nutshell the applicant is seeking a relief compelling the two respondents to grant the minor child access to the school. This must include admission to the hostel in the event that she is not placed in foster care. Although the two respondents opposing the relief sought they do so half-heartedly in that they are not wholly opposing her admission to the school and hostel. They will only enrol her if certain conditions are met which will be discussed in succeeding paragraphs.

Background facts

[3] The minor child is undoubtedly a vulnerable child who is in need of care and protection. She has been diagnosed with foetal alcohol syndrome, has cognitive impairments, behavioural disorder and epilepsy. According to recent reports is that she is now addicted to snuff and has started consuming alcoholic beverages. Given her tumultuous living conditions, she has been exposed to violence at the household level and sexually violated. At 12 years she has not been to school catering for her needs. She was for a brief period at the mainstream primary school and has since been removed.

[4] The applicant was appointed *curator ad litem* by the Court on 15 January 2018. Paragraph 3.7 is instructive in that it authorises her to "engage any person or institution that has the necessary expertise and concomitant obligation to assist Rouliene to realise her rights". It is commendable that she has over the period endeavoured to carry out this task. On 11 November 2018 the fourth and fifth respondent were ordered by the court that on "Rouliene's temporary placement into a Child and youth Care Centre in the Free State, the respondents ensure that she can access a school that is able to cater to her needs". It is apposite to mention that the two respondents were not party to the proceedings at the time

[5] Reading the papers filed of record, it appears that the applicant engaged extensively with different stakeholders to ameliorate the plight of the minor child. Extensive and detailed reports were

compiled as well as engagements with officials of the first to sixth respondents. Despite the lapse of more than two (2) years, covering so much ground at an abstract level, nothing concrete has been achieved to comply with the court orders.

[6] Turning to the two respondents before me, in the undated letter attached to the founding affidavit marked annexure “HC 30”, the minor child is identified as the learner at the eighth respondent. This letter is addressed to SASSA (Social Services Security Agency) apparently to assist her guardian to access a government grant. This explanation does not make sense and it is far-fetched. The letter is co-signed by the social worker identified as C.D. Kruger and the school principal. In the second letter dated 09 July 2019, it is confirmed that the minor child has been correctly placed at the eighth respondent. The letter is co-signed by the Occupational Therapist namely L. van Heerden and the school principal. The reality of the situation is that despite the confirmations, the minor child has not been granted access to the school.

Preliminary Issues

Urgency

[7] The applicant submitted that the matter involves a minor child in a vulnerable situation. At the moment she cannot attend school. Her circumstances have drastically changed in that her grandmother, who was the pillar of support, has since passed away. Although its gravity is unknown, the minor child at the moment is sliding into the murky world of addiction to snuff and

alcohol. The delay can result in irreparable harm. To that extent there is a compelling case that the matter be heard on an urgent basis

[8] The two respondents are taking issue with the fact that the applicant is approaching court on a semi urgent basis requesting non-compliance with the time limits as set out in the Uniform Rules of Court. The nub of the opposition as articulated in the papers is that the case made out in support of urgency is sparse and lacking in particularity. The reasons as stipulated in the founding affidavit are watered down as sympathy and hardship allegedly experienced by the minor child. The other ground is that the country is in lockdown as promulgated by the President of the Republic which necessitated the closure of schools. Therefore, there will be no real reason to decide this matter at this stage. Presumably because the order granted in favour of the applicant cannot be given effect during this period.

[9] In **Jiba v Minister of Justice**[1], Van Niekerk J in the Labour Court settled the issue of urgency in the following manner:-

> **"Rule 8 of the Rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules."**

[1] **2010 (31) ILJ 112 LC at para 18**

[10] I broached the issue of urgency with counsel for the two respondents and she conceded, correctly so, that the matter was a bit urgent. The arguments raised in the papers in the opposition for urgency bears no merit. The court will always come to the aid of the vulnerable where their welfare and life is under threat and ignored by those tasked with the responsibility to protect them. What makes this matter urgent is that it involves a vulnerable child who has endured more than her fair share of wallowing in the periphery of society in her few years of existence. Is true that this country (and the world) is gripped in uncertainty as a result of the pandemic. To hold the view that this matter can be put in abeyance until the lockdown is lifted is an absurdity. The situation of the minor child is in state of flux and cannot be shifted to the back burner. Therefore in the exercise of my discretion I am satisfied that the urgency is not self-created and that the applicant be condoned as prayed.

Main issues

[11] There is no dispute that the minor child was admitted as a learner but later refused entry. Her admission is conditional that her behavioural impediments and addictions be dealt with to facilitate admission to the hostel. The contention is that this is unlawfully preventing her physical attendance to the premises of the eighth respondent. The respondents argue that they do not have the facilities, trained personnel and experience to deal with such matters. Importantly that her admission will put other learners at risk.

[12] It is trite that the court is the upper guardian of all dependent and minor children with authority to establish what is in the best interest of the children.[2] The importance of this is amplified in section 28 (2) of Act 108 of 1996 that "a child's best interests are of paramount importance in every matter concerning the child". This means that in matters of this nature, the court is enjoined to adopt a child centred approach. I pause to mention that this does not mean that the best interests referred above will take precedence over everything else. It simply means that the necessary and adequate weight must be given to them.

[13] The integral part connected to the development and upliftment of every child is education. Section 29 of Act 108 of 1996 recognises the right of everyone to basic education including adult basic education. Access to school has been recognized as a necessary condition for the achievement of this right.[3] In order to give effect to the prescripts of the law and pronouncements by the courts, the admission regulations and policies must be in accordance with the law. In terms of the Schools Act a school must admit learners and serve their educational requirements without unfairly discriminating in any way.[4] This applies to the eight respondent being a public school for learners with special education needs.

[14] The parties part ways on a very narrow point. The respondents argue that they will allow the minor child to attend school and enter hostel once her other issues (already stated) are attend to. On a factual level it must be stated that the only time the officials

---

[2] **Children's Act 38 of 2005**
[3] **Juma Mnsjid Primary School and Others v Essay NO and Others 2011 (8) BCLR 761 (CC)**
[4] **School Act 84 of 1996**

of the eighth respondent had sight of her was during the assessment. It is on these basis that the conditions are set. It is my considered opinion that these conditions constitute an unlawful action.

[15] The minor child is effectively being barred to attend school until the two respondents are satisfied that she has been "cured". That loses sight of the fact that she is growing up and is purportedly receiving therapy and on medication. Other than that there is no tangible evidence that she is a danger to other learners at the respondent. This is in contravention of the law because every child who is admitted to a school must be allowed to attend the school.

[16] The conditional admission is against the core principles of the Screening, Identification, Assessment and Support (SIAS) policy, approved by the Ministry of Basic Education.[5] The SIAS policy is designed to address the barriers to learning and development. It recognises that learners are faced with numerous challenges emanating from classroom, home and community or a result of health conditions or disability. The main focus is that all the support must be given to the learner to facilitate access to education without predicaments. The emphasis is that tests are not the sole measure to include or exclude a learner

[17] Chapter 5 of SIAS at paragraph 16 (5) provides that:-

> **"Educational support systems should make use of and promote the establishment of a network of support through the Care and**

[5] **Government Gazette No 1044, 19 December 2014**

Support for Teaching and Learning (CSTL) framework, which coordinates all existing services, including other government departments, community services, private professionals, non-government organisations (NGOs), disabled people organisations (DPOs), early intervention providers and community-based rehabilitation services."

[18] It is incumbent on the respondents to adopt an integrated approach in order to assist the minor child to exercise her right to education. This means that in the process of receiving education, other aspects of her life must also be attended to. Indeed the respondents may not have the facilities but can do so when a combined effort to assist the minor child is embarked upon as envisaged in paragraph 16 (5) of the SIAS policy. There is no cogent reason advanced why the programme for rehabilitating her can run at the same time that she will be attending school. The thinking that the minor child can only be admitted once all impediments have been dealt with is susceptible to perpetuating exclusivity. A plan must be put in place with other stakeholders to achieve the best interest of the minor child.

[19] It is on these basis that I conclude that the application ought to succeed as prayed in the Notice of Motion. This also include being liable for costs on the part of the seventh and eighth respondents.

[20] I make the following order:-

20.1 Condoning the non-compliance with the forms and service provided for in the Uniform Rules of Court and disposing of the application as a matter of semi urgency.

20.2 The first and second respondent are directed to:

20.2.1 Within 14 days of this court order ensure Rouliene van Wyk's ("Rouliene") placement in a temporary place of safety, which place of safety must guarantee sufficient one-on-one care;

20.2.2 Assess Rouliene for the purpose of treatment for addiction and rehabilitation, and formulate a rehabilitation plan, both of which must be done and finalized within 14 days of this order;

20.2.3 Ensured that the abovementioned rehabilitation plan is implemented within 5 days of its finalization;

20.2.4 Provide feedback on her rehabilitation and treatment on the last Friday of every month of 2020, beginning on 28 August 2020;

20.2.5 Place Rouliene in a child and youth care centre ("CYCC") within 35 days of this court order, which CYCC must provide the care and services to a child of her age and with her condition/s, which includes her behavioural disorder, epilepsy and addiction;

20.3 The third and fourth respondents are to ensure consistent access to a healthcare team to attend to her medical, therapeutic, psychiatric and psychological

needs, as well as access to the facilities required for her medical, therapeutic, psychiatric and psychological needs. Both the team and facilities must be available to Rouliene for as long as such care is required;

20.4 The fifth, six, seventh and eighth respondents are to ensure:

20.4.1 Rouliene's access to Lettie Fouche School, a school that has been identified as being able to cater to her educational needs. Such access must be granted as soon as Rouliene is placed into temporary safe care as per paragraph 20.2.1 and

20.4.2 Admission to the Lettie Fouche School hostel if considered to be an appropriate alternative to 20.2.1 above.

20.5 The costs of this application are to be paid by the seventh and eighth respondents.

_____

M. A. MATHEBULA, J

On behalf of the Applicant:	Adv. H. Cassim
Instructed by:	Webbers Attorneys BLOEMFONTEIN

On behalf of the Respondent 7 & 8:	Adv. A.S. Boonzaaier
Instructed by:	State Attorneys BLOEMFONTEIN

/roosthuizen