

Sneller Verbatim/lks

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 4377/02

2004-05-06

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DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	
DATE <u>2004-06-08</u>	SIGNATURE <u>Mailula</u>

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In the matter between

KAREN PERREIRA

Applicant

and

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THE BUCCLEUCH MONTESSORI PRE-SCHOOL

AND PRIMARY (PTY) LTD

First Respondent

SISTER HELGA CRECHE (PTY) LTD

Second Respondent

THE MINISTER OF EDUCATION

Third Respondent

THE MINISTER OF SOCIAL DEVELOPMENT

Fourth Respondent

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J U D G M E N T

(Application for leave to appeal)

MAILULA, J: This is an application for leave to appeal against the judgment and order handed down by this court on 25 February 2004.

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The main grounds of appeal are as follows:

1. that the court erred in failing to determine the matter on the undisputed facts;
2. the court erred in adopting a so-called robust approach but failing to give due consideration to the issues and onus which were required should be determined in an assessment of whether or not to grant the constitutional declarator sought;
3. the court erred in failing to consider whether the common cause facts fell within the ambit of indirect discrimination as provided for the equality section of the Bill of Rights of the Constitution and, in particular, section 9(4) and failing to have regard to the deeming provision contained in section 9(5).

Argument was presented on behalf of the application in support of the grounds upon which the appeal is based. Ms Weiner, with her Ms Grenfell, argued that the mere fact that Ms Haywood, on behalf of the respondent, did suggest to the applicant that the application for admission of the minor child Tholakele, who is HIV positive, should be deferred until she is past the biting stage, that in itself constitutes indirect discrimination as envisaged in the provisions of the Act.

I do not agree that in the present matter there has been discrimination against the minor child, whether directly or indirectly. The suggestion by Ms Haywood for the defendant of the application did not constitute any decision on her part to in fact defer that application or to exclude the child from the nursery school and I am not persuaded that another court might come to a different conclusion and in the premises I am of the view that the application is to be dismissed with costs and that is the order.