**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 3 September 2026

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Equal Education v MEC for Education, Western Cape Government and Others* (298/2024); *South African Democratic Teachers' Union v MEC for Education, Western Cape and Others* (351/2024) [2026] ZASCA 113 (3 September 2026)

Today the Supreme Court of Appeal (SCA) dismissed two applications for leave to appeal with no order as to costs.

The appellants, Equal Education (EE) and the South African Democratic Teachers' Union (SADTU), appeal against the order and judgment of the Western Cape Division of the High Court, Cape Town (the high court), delivered on 17 January 2023 dismissing their applications which were consolidated and heard together, with no order as to costs.

Because of the commonality of the parties and the issues, the high court deemed it convenient to hear the applications together. The high court had granted leave to appeal to this Court in terms of s 17(1)*(a)*(ii) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). on the basis that the issues raised therein concerned the interpretation of relevant provisions in various legislation concerned with public education. The high court considered these issues as novel and weighty and therefore as compelling reasons that deserved the attention of a higher court.

The constitutional right to basic education of children and the paramountcy of the best interests of a child, are at the core of both appeals. The first respondent (MEC for Education) in both appeals effected significant amendments to the Western Cape Provincial Schools Education Act 12 of 1997 (the Act), which were brought about by the Western Cape Provincial School Education Amendment Act 4 of 2018 (the Amendment Act). The amendments provide for the establishment of 'collaboration' and 'donor funded' public schools, 'intervention facilities' for learners found guilty of serious misconduct, and an independent schools evaluation authority for the Western Cape Province (WCSEA).

EE, a non-profit organisation that advocates for quality and equality in education, and SADTU, a trade union that represents educators, are challenging the constitutionality of the legislative framework establishing the aforenamed. The basis of their challenge is that the impugned provisions of the Amendment Act infringe the constitutional rights protected in ss 28 and 29 of the Constitution.

The high court found, in so far as collaboration and donor funded schools are concerned, that the constitutional requirements that first, parents must be meaningfully engaged in the teaching of their children and second, that SASA carves out an important role for parents and other stakeholders in the

governance of public schools, have not been undermined or disturbed by any of the impugned provisions. The high court rejected assertions that intervention facilities are unfair and held that their existence is manifestly in the best interest of children. Their manifest purpose, the high court opined, was to avoid the expulsion of a child from school, resolve her or his behavioural problems and successfully reintegrate that child into her or his school.

The SCA rejected SADTU's contention that the legislation establishing collaboration and donor-funded schools conflicted with the South African Schools Act 84 of 1996 (SASA). This Court found that the Constitution permits both national and provincial governments to legislate in the field of education, which is a concurrent legislative competence. This Court further held that the legislation had to be interpreted in a manner that avoided unnecessary conflict between the national and provincial statutes. Importantly, the Court held that collaboration schools and donor-funded schools are public schools, but they are not ordinary public schools of the type contemplated by the relevant provisions of SASA.

The provincial legislation was therefore capable of establishing these additional forms of public schools. The Court considered sections 12C and 12D of the Western Cape Act together with sections 12C(18) and 12D(10), which provide that, except where specifically provided otherwise, the legislation and other applicable laws regulating public schools continue to apply to collaboration and donor-funded schools. The Court concluded that the special provisions governing representation of operating partners and donors operate alongside the applicable provisions of SASA.

In rejecting the challenges to the establishment of intervention facilities, the SCA held that s 12E(1) of the Act empowers the Provincial Minister, subject to available resources of the Western Cape Education Department (WCED), to establish an intervention facility for learners who have been found guilty of serious misconduct. Section 12E must be read together with various provisions in s 45 of the Act which deal with suspension and expulsion of learners at public schools. This provision creates a process for learners to be referred to intervention facilities. Referral to an intervention facility can only occur if the parents, the SGB and the HOD all concur that it is in the learner's best interests. Section 63(1)*(c*L*)* of the Act provides that the MEC may make regulations and where applicable, subject to any national norms and standards contemplated in s 146(2) of the Constitution, as to the norms and standards for an intervention facility.

There is no evidence as yet of how an intervention facility operates, or how any learner has been referred to such a facility against their best interests. This Court agreed with the WCED that the absence of promulgated norms and standards at this stage makes the challenges to be only abstract. Having considered the purpose and context in which intervention facilities were created, and in particular the positive outcomes seen from the pilot project, it becomes difficult to argue that they are not, generally, in the best interests of learners.

SADTU's challenge against WCSEA, was confined to a single argument namely, that the establishment of the WCSEA violates its members' right to collective bargaining in terms of s 23(5) of the Constitution because it undermines its existing collective agreement.

This Court held that SADTU's reasoning is not only illogical but also untenable as it would make the power to legislate by parliament or provincial legislatures subservient to the results of collective bargaining. The Constitutional Court has made it clear that 'no matter how broadly the term 'collective bargaining' is construed in s 23(5), it cannot include the right of a union to bargain with a legislator on the content of law'. In light of what I have stated above and bearing in mind the clear positive results yielded by the WCSEA and its obvious benefits to learners, there is no limitation of any right in terms of s 23(5) of the Constitution. Bearing in mind the clear positive results yielded by the WCSEA and its obvious benefits to learners, there is no limitation of any right in terms of s 23(5) of the Constitution.

The SCA accordingly dismissed both the appeals by SADTU and EE. As these appeals concerned the vindication of rights under the Constitution, there will be no order as to costs.

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