

Juma Musjid Primary School v Essay (Constitutional Court of South Africa; 2011)

Case at a glance

Full citation

[Governing Body of the Juma Musjid Primary School & Others v Ahmed Asruff Essay N.O. and Others \(CCT 29/10\) \[2011\] ZACC 13; 2011 \(8\) BCLR 761 \(CC\)](#)

Forum

Constitutional Court of South Africa

Date of decision

11 April 2011

Summary of decision

In this decision, the Constitutional Court of South Africa held that an eviction order obtained by an owner of private land on which a public school was located could not be enforced where it would impact students' right to basic education and the best interests of the child under the [South African Constitution](#) (sections 28 and 29).

Significance to the right to education

The Court held that a private landowner and non-state actor has a constitutional obligation not to impair the right to basic education under section 29 of the Constitution. The Court also held that, unlike other socio-economic rights protected by the Constitution, the right to basic education is immediately realisable and any limitation of this right must be "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom".

Issues and keywords

Regulation of private schools; Duty of non-state actors; State duties; Primary education; Constitutional Court of South Africa; Justiciability; Minimum standards

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Context

Under section 29 of the South African Constitution, all South Africans have the right to a basic education (see box on right). Section 28 also establishes that the best interests of the child are of “paramount importance in every matter concerning the child.”

The [South African Schools Act \(1996\)](#) regulates the organisation, governance and funding of public schools. Under section 14 of the Act, public schools may be established on private property if there is an agreement between the Member of the Executive Council (MEC) for education in a particular province and a private landowner. To be valid, the agreement must set out certain criteria, including security of occupation, use of the property and the governance of the school.

Section 29(1) of the South African Constitution

Everyone has the right - (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

Facts

The Juma Masjid Primary School was established in 1957 as a government-aided, independent Islamic school. In 1997, the Trustees of the Juma Masjid Trust allowed the KwaZulu-Natal Education Department to enlist the school as a public school on its property. The arrangement was made subject to the conclusion of an agreement between the Trust and the MEC for education of KwaZulu-Natal under section 14 of the Schools Act. However, the Trust and the MEC were unsuccessful in concluding a section 14 agreement.

In October 2002, the Education Department declined to pay money demanded by the Trust for reimbursement of expenses. The Trust then decided to re-establish the Juma Masjid Primary School as an independent school. The Trust sent notice to the Department to close the public school. However, by July 2003, the Department had not yet closed the school or left the premises. The Trust sent an official notice terminating the Department’s right to occupy the property. Between 2003 and 2008, the Department made a number of undertakings to vacate the premises and to pay rentals. However, the Department neither vacated the premises nor paid rentals.

In July 2008, the Trust filed an application with the High Court against the Governing Body of the Juma Masjid Primary School for eviction. The MEC did not oppose the application, but urged the High Court to suspend the eviction until the Department finalised a process for closing the school. A group of parents and guardians joined the lawsuit to oppose the eviction and asserted that the MEC had abandoned its responsibility of ensuring that the children’s best interests were considered. Two South African NGOs – the [Centre for Child Law](#) and the [Socio-Economic Rights Institute](#) – also joined the case as *amici curiae* (‘friends of the court’) to argue against the eviction.

The High Court ruled in favour of the Trust and granted an eviction order against the school, holding that:

- The Trust was not performing a public function that required it to observe a fair process towards the school.
- The Trust owed no constitutional obligations, vis-à-vis the right to a basic education, to the MEC or to the students at the school.
- The Trust’s property rights in terms of section 25 of the Constitution must be respected.
- The provision of basic education is the constitutional responsibility of the state, and the parents and guardians should seek enforce the students’ rights against the MEC and not the Trust.

The Governing Body and the group of parents, guardians and caregivers appealed the order to the Constitutional Court.

Issue

At the centre of this dispute is a conflict between the right to education of the students attending Juma Masjid and the property rights of the land owner (the Trust).

The question before the Court was, in relevant part, whether the Trust, as an owner of private property on which a public school is situated, owes a constitutional obligation to the students at the school vis-à-vis their right to a basic education under section 29 of the [Constitution](#).

Decision

The Constitutional Court set aside the eviction order made by the High Court, finding that the order had an impact on the learners' right to a basic education under section 29(1) of the South African Constitution and on the best interest of the child under section 28.

In overruling the decision of the High Court, the Constitutional Court ruled that:

- The Trust has a constitutional duty to respect the right to basic education under section 29 of the Constitution.
- While **the government has a positive obligation to provide access to schools** in fulfilling the right to a basic education, the **Trustees have a negative obligation not to infringe that right** under section 8 of the Constitution.
- In order the school's eviction, the High Court should have considered the best interests of the students vis-à-vis their right to a basic education.

The Court reasoned that: “[u]nlike some of the other socio-economic rights, **[the right to basic education] is immediately realisable**”. Therefore, any valid limitation of this right must be “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

The Court recognised that the right to basic education is an immediately realisable right—an interpretation consistent international standards (see 'Relevant Legal Provisions' box above). Furthermore, according to section 28 of the Constitution and the Convention on the Rights of the Child, the best interests of the child are of paramount importance. Therefore, the Court reasoned that other human rights, such as property rights, may be limited in order to ensure that the best interests of the child is upheld.

In August 2010, the Constitutional Court issued a provisional order that directed the MEC to meaningfully engage with the Trust and the school to resolve the dispute and to allow for the continued operation of the school or to secure alternative placements for the learners.

The MEC subsequently found alternative schools for the students. Once satisfied that the learners' right to a basic education would be protected, the Court granted a final eviction order on 11 December 2010. The Court held that if the Trust could prove that the learners' right to education could be sufficiently administered at alternative schools in the local area, then the eviction may be enforced.

Relevant Legal Provisions

National

- Articles 28 and 29 of the [Constitution of South Africa \(1996\)](#)
- Section 14 of the [South African Schools Act of 1996](#)
- *Khumalo and Others v Holomisa* [2002 \(5\) SA 401 \(CC\)](#)

International

- [General Comment No. 13](#), UN Committee on Economic, Social and Cultural Rights
- Article 26, [Universal Declaration of Human Rights](#)
- Article 28, [Convention on the Rights of the Child](#)
- Articles 13 and 14, [International Covenant on Economic, Social and Cultural Rights](#)

Commentary

This decision is significant because **the Court held that a private, non-State actor – the Trust – has a constitutional duty not to impede or obstruct the right to education.** This case therefore stands for the principle that **non-state actors have an obligation to respect the right to education** – although they may not owe a direct public duty, they must not act in a way that prevents the right from being realised. This decision is in line with international standards on the duty of non-State actors to respect human rights.

The Court also confirmed that the right to basic education, unlike other aspects of the right to education, is immediately realisable as an unqualified socio-economic right. The fulfilment of the right to basic education is therefore not subject to ‘progressive realisation’ or ‘available resources’ – as is the case with other socio-economic rights, such as the right to housing. Thus, unlike other socio-economic rights, individuals have a direct claim against the government if their right to basic education is violated, and the government is under a direct duty to provide basic education to all students. This interpretation is in line with international law—in particular the Convention on the Rights of the Child and the International Convention on Economic, Social and Cultural Rights.

Related Cases

Du Plessis Botha & others v Member of the Executive Council for Education, Western Cape and others (Case No. 2461/11)

In this ongoing case, Grootkraal UCC Primary School, a rural public primary school in Oudtshoorn, Western Cape, is facing eviction by a private landlord seeking to redevelop the land for commercial purposes. The Grootkraal community challenged the eviction, and the Centre for Child Law, Lawyers for Human Rights and Equal Education were added to the proceedings as respondents and amicus curiae.

For more information on the case, see Equal Education, [Grootkraal Primary School Case](#), which includes links to all court documents, and Dmitri Holtzman (2013), [Expropriation as a Means to Protect the Right to Basic Education: The Case of a Farm School on Private Property Facing Eviction](#). Interights Bulletin, Vol. 17 No. 2.

Additional Resources

Human Rights Law Centre (April 2011). [South African Constitutional Court Considers the Nature and Scope of the Right to Education](#).

Socio-Economic Rights Institute of South Africa and Centre for Child Law. [Amici Curiae Heads of Argument](#).

Oxford Pro Bono Publico (June 2013). [Obligations of Independent Schools in South Africa: Report for the Centre for Child Law, University of Pretoria](#).

Ann Skelton, De Jure (2013). [The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law](#).

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