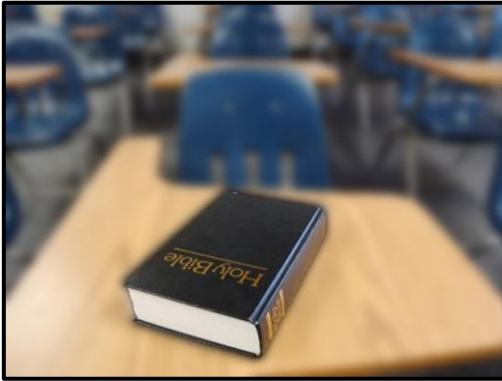


JUDGEMENT ON CHRISTIANITY IN PUBLIC SCHOOLS

The good, the reasonable, the success, the judgement and the perspective.



By: Mike Burnard

On Wednesday, 28 June 2017, the South Gauteng High Court in Pretoria handed down a judgement, that public schools cannot promote one religion. This judgement came a mere six weeks after the case was argued in Court and could have far-reaching effects for public schools who promote a single religion as part of the ethos of the school.

The Department of Basic Education has welcomed the ruling, stating: “This ruling is consistent with the department’s own policy, informed by the South African Schools Act and the Constitution, that no one religion should be promoted above another,” the department said. It added that it will study the judgement in detail. The DBE had not opposed the relief sought by the applicants.

The case was brought before the court by the Organisation for Religious Education and Democracy (**OGOD**) against Solidarity, who represented the six schools in question.

OGOD argued that there is religious bias in South African public schools while the trade union, Solidarity - which represents the six schools the case was brought against – maintained that the Constitution allows public schools to identify with one religion and promote it.

THE GOOD

OGOD

<http://www.ogod.org.za/>

Is an organisation that endeavours, through public activism, to:

- Promote in-depth, fact-based education about religions of the world.
- Eradicate religious indoctrination through public schools.
- Identify and expose religious counter knowledge and magical thinking.
- Shield children from the psychological dangers of religious damnation.
- Promote a democratic, secular and human rights-based South African society.
- Eradicate religious elitism.

First, the good news, from a Christian perspective, is that the department has reiterated that the aim of the ruling is **not to ban religious (or Christian) practices in schools**, but about protecting children and emphasising that schools should engage in religion education rather than religious instruction and not promote one religion over another.

Handing down the judgment Judge Van der Linde said:

"Religious observances **may be conducted at state or state-aided institutions**, provided that:

- a. Those observances follow rules made by the appropriate public authorities;
- b. They are conducted on an equitable basis; and
- c. Attendance at them is free and voluntary".

Secondly, and quite significantly, the judgment confirms that South Africa is not a secular State and further upholds section 15(2) of our Constitution, in terms whereof religious observances (which have to be given an “expansive meaning” and includes “all forms of external manifestation of religion, conscience and belief”) **may be conducted** at State or State-aided institutions (which includes public schools), on the following conditions:

- a. That those observances follow rules made by the appropriate public authorities, which the Court interpreted as referring to the School Governing Bodies (SGBs) in consultation with the Department of Education. In this regard, it is also important to note the Court’s finding that if outside religious instructors were to be permitted on school premises, it will occur only if the SGBs laid down the conditions under which this would occur;
- b. That observances are conducted on an equitable basis, which the Court interpreted as “demand[ing] the State [to] act even-handedly in relation to different religions”; and
- c. That attendance is free and voluntary.

THE REASONABLE

From a Christian perspective, the judgement is reasonable and should be appreciated by those who seek to display Christ in a multi-religious society.

The Court ruling included the following:

- a) It is declared that it offends s7 of the Schools Act, 84 of 1996 for a public school –
 - To promote or allow its staff to promote that it, **as a public school**, adheres to only one or predominantly only one religion to the exclusion of others; and
 - To hold out that it promotes the interests of any one religion in favour of others.
- b) The remainder of the relief claimed is refused.
- c) There is no order as to costs.

It is important to note that the judgement, and the case, was never against Christianity or Christian schools. The case was about **PUBLIC SCHOOLS**, adhering to only one or predominantly **ONLY ONE RELIGION** to the **EXCLUSION OF OTHERS**. This request is reasonable and could in the future even protect Christian children attending a school in a predominantly Muslim neighbourhood.

PARTIAL SUCCESS

FOR SA

<http://forsa.org.za/>

FOR SA's vision is to be a voice for the Christian Church in South Africa to government and to society, on issues affecting our freedom of religion, freedom of religious expression, freedom of association and the rights of religious communities in South Africa.

All of these are fundamental rights entrenched in our Constitution. As such, the State as well as the citizens of South Africa have an obligation to respect, protect and promote these rights.

Freedom of Religion South Africa (FOR SA), who has been actively involved in the case, reports that the success of *OGOD* is only a partial success. Their report reads as follows:

OGOD was only partially successful in its application in that:

“On the one hand the Court, as a matter of principle, agreed with *OGOD* that public schools may not favour one religion over another, and issued a **DECLARATORY ORDER** (applying to all 24,000 public schools in SA) in these terms. *(The effect of a declaratory order is simply that: it is a declaration of legal rights or status, without also ordering a party to do (or not to do) something.)*

On the other hand, the Court, for technical reasons, was not prepared to go so far as to grant the interdictory relief (*i.e. an order restraining the schools from partaking in 71 different practices, ranging from religious singing and prayer to teaching creationism*) asked for by *OGOD* against the schools.”

THE JUDGMENT

The judgment, which was delivered by Judge van der Linde (with Judges Lamont and Siwendu concurring), identifies the true issues as follows:

- a. Whether a public school may hold itself as a Christian school, and if so to what extent;
- b. Whether a public school may conduct religious observances, and the extent to which these may be religion-specific; and
- c. Whether a learner may be asked to convey whether or not he/she adheres to a particular (religious) faith.

In answering these questions, the Court turned to the Constitution as the starting point and found that in view of the fact that “*South Africa belongs to all who live in it, united in our diversity*”, the approach to be adopted is one of neutrality and even-handedness; the State should not be seen to be picking sides in matters of religion.

The final pages of the judgment, focused on the issue of “single faith branding”. The question the Court asked, was, “May a public school, through rules laid down by its SGB relative to say its heraldry, hold out that it is exclusively a Jewish, or a Christian, or a Muslim, or a Buddhist, or an atheist, school” – even when 100% of the learners / parents in that school, are Jewish, Christian, Muslim, Buddhist or atheist?

In this regard, the Court found as follows: *Public schools are juristic entities and organs of State. The Constitution recognises that the society within which public schools function, is diverse. Our Constitutional Court has on many occasions recognised the need to celebrate this diversity, and the concept of the unity of our nation from this diversity. This is echoed by the Schools Act. SGBs are thus required to respect this overarching constitutional theme of diversity. Neither the Constitution, nor the Schools Act confers on a public school or SGB the right to adopt the ethos of one single religion to the exclusion of others.*

Turning then to the question posed at the outset, namely whether a public school may hold out that it has adopted one religion to the exclusion of others, the Court “suggested” that the answer is “no” for the following reasons:

- a. First, feeder communities continually evolve and must be encouraged to evolve (in other words, the argument that the feeder community of the school is virtually 100% Christian and for that reason the school has a Christian ethos, is not sustainable);
- b. Second, in the case of the minority religion (or non-religion) affiliated learning who has not choice but to attend a particular school with a religious ethos other than his/her own, “could” (although this will not always and not necessarily be the case) feel a sense of inferior differentness; and
- c. Third, a single faith brand that excludes others, would misrepresent the legally required position (that learners of all faiths are / should be welcome).

It is open to any of the parties to appeal the judgment (probably to the Supreme Court of Appeal) within the required time periods for applications for leave to appeal, which is three weeks from the day of judgment.

FROM A CHRISTIAN PERSPECTIVE

From a Christian perspective, it is always good to keep the heart of Christ as a firm foundation in responding to issues of this nature:

Christ never took upon Himself the role of victim, neither should the Church.
Christ never sought religious elitism, neither should the Church.
Christ never condemned, neither should the Church.
Christ never demanded His rights, neither should the Church.
Christ never reacted, neither should the Church.

Christ always embraced, so should the Church.
Christ always pursued dignity, so should the Church.
Christ always responded, so should the Church.
Christ always included, so should the Church.
Christ always obeyed, so should the Church.
Christ always humbled himself, so should the Church.

SOURCES:

<http://forsa.org.za/breaking-news-court-says-public-schools-may-not-promote-a-particular-religion/>
<http://www.iol.co.za/capeargus/news/schoolsreligion-court-nixes-promotion-of-one-dominant-religion-10007963>



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