



Basic Education
Justice and Constitutional Development



NATIONAL SCHOOLS
Moot Court Competition



SOUTH AFRICAN NATIONAL SCHOOLS MOOT COURT COMPETITION (NSMCC)

HYPOTHETICAL CASE 2020

Mjondolo Combined School is a public school in Braamfontein, in Gauteng province. For a number of years, the school has had a problem with discipline and a high incidence of absenteeism among learners and teachers alike. The pass rate is low, with the school achieving a matric pass rate of 53% in 2018. Instead of paying attention in class, many learners are on social media on their cellphones. Some teachers complain that they find it difficult to teach in these conditions.

In January 2019, a new principal, Ms Khoza, is appointed. She takes ‘tough love’ as her motto and insists that ‘We need to get discipline back into the school.’ She announces that absenteeism will be dealt with firmly and classes will start on time. Learners are punished even for small transgressions and some teachers apply corporal punishment, without being reprimanded.

There is much resistance against the new measures, and Ms Khoza is given the nick-name of General, even by the teachers. However, after a year the matric pass rate has increased to 72%, and for the first time 10 learners achieve bachelor passes. While it’s a constant battle, many of the learners and educators agree with the need for greater discipline.

After a consultative process, the School Governing Body (SGB) decides to introduce a Code of Conduct regulating the use of cellphones at school. Section 4 of the Code of conduct states that:

“The use of cellphones, whether on or off, by learners on school premises shall at all times be prohibited. Any learner that is found in possession of a cellphone shall have that phone confiscated and may be suspended”.

The Code of Conduct is adopted and implemented with immediate effect.

Sfiso Cele is 17 years old and in grade 11. One morning while in class, his cellphone drops out of his pocket, and his teacher, Mr Mkhize, sees it and immediately confiscates it. In addition to this, Sfiso undergoes a disciplinary hearing, resulting in his suspension for the rest of the year. Ms Khoza warns that as from the next day all cellphones, on or off, will be confiscated and those who are defying the ban will be suspended with immediate effect.

The principal orders a search of the bags of all learners, and six are found. Three were switched off. The six owners of the cellphones are immediately suspended from school for the rest of the year.

The six learners meet up outside the school gates after they have been told to leave the schools premises, discussing the unfairness of the situation. Precious (16 years of age) suggests that they stage a protest. Thato (17 years) and Aphiwe (16 years old) enthusiastically agree and start dragging large bins into the street in front of the school to block the premises. Eddie (17 years old) agrees to join the protest. Crystal (15 years old) and Mbali (14 years old) are less enthusiastic, but they remain with the group. The six of them stand together, with the bins, blocking the street. This leads to a confrontation with road users.

Around this time, the school bell rings for the end of the day, and the remaining learners emerge. A cluster of approximately ten learners join the first six and get involved with the protest, saying one of the teachers had used corporal punishment that day, although it is illegal. The police arrive, and they tell the learners it is an illegal gathering because notice had

not been given. Precious speaks on behalf of the learners. She explains that they just walked from the school yard and formed a group spontaneously, so there was no need to give notice, and no violence has been used. The police direct them to remove the bins, and to leave the scene.

The six who were suspended all go to Precious' house and start making posters for a new protest to be carried out the next day and they are together until around 6 pm. The posters denounce the strict ban on cellphones and the use of corporal punishment. That evening there is a fire in the administration block at the school. The fire brigade arrives and gets it under control. The police also inspect the scene, but no culprits are identified.

Precious, Thato and Aphiwe are recognized by the police as the ones who were leading the protest outside the school the day before, and they are arrested and detained.

Ms Khoza sends a text to the parents of all the learners in the school, saying if mistakes have been made this must be discussed and a way forward must be found. She calls an urgent meeting for 6 pm that evening. However, the news of the arrest and detention of the three learners has reached the broader group of learners. Eddie sends a WhatsApp message to Crystal and Mbali to bring their posters to the school for a protest at 5.30 pm. They arrive, together with approximately 40 other learners who are showing their solidarity. Together, the protesting learners block the entrance to the school and the meeting cannot take place.

The next morning, learners arrive at school as usual, but now approximately 100 learners convene outside the gate with posters saying 'It's Koz of Khoza!', 'Khoza is the Koz of this!', and 'Free speech!'. It is impossible for other students to gain access through the gates, most join in or go home, and the school is closed. The learners spend most of the morning outside school, and wander off in groups as it starts to get hot around 11 am. The fire brigade is called again as a rubbish bin is set on fire outside the side gate of the school, close to the teacher's car park. Again, no culprits are identified. That afternoon, Eddie is arrested. His WhatsApp messages to Crystal and Mbali are read by the police, so they are also arrested. All six of the arrested learners are released by police into the care of the parents and are referred to a diversion programme.

Ms Khoza sends out a message saying she recognizes the learners have the right to complain but she still considers cellphones to be disruptive. However, corporal punishment will be stopped. The school governing body calls an urgent meeting and decides to suspend, for the maximum period, the six learners who were arrested.

The six learners decide to challenge the decision of the SGB in the High Court, arguing that their suspensions were unconstitutional as they were merely exercising their right of peaceful assembly. The Court rules in favour of the SGB. The learners apply for leave to appeal to the Supreme Court of Appeal (SCA), but leave is refused. Thereafter the learners applied for leave to appeal the decision of the High Court to the Constitutional Court (CC). Leave was granted and the matter is set to be heard in October 2020.

For the Applicant (six learners) you must argue that:

1. Section 4 of the School Code of Conduct is unconstitutional, and violates the learner's rights to privacy and basic education in terms of sections 14 and 29 of the Constitution; and
2. The SGB's decision is unconstitutional as it violates the learner's right to peaceful assembly in terms of section 17 of the Constitution.

For the Respondent (Mjondolo Combined School) you must argue that:

1. Section 4 of the School Code of Conduct is not unconstitutional, and does not violate the learner's rights to privacy and basic education in terms of sections 14 and 29 of the Constitution; and
2. The SGB's decision is not unconstitutional and does not violate learner's right to peaceful assembly in terms of section 17 of the Constitution.