

ATT: COMEVEN

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IN THE EASTERN CAPE HIGH COURT, BHISHO
(REPUBLIC OF SOUTH AFRICA)

CASE NO. _____

In the matter between:

EQUAL EDUCATION

First Applicant

**THE INFRASTRUCTURE CRISIS COMMITTEE OF
MENZIWA SENIOR SECONDARY SCHOOL**

Second Applicant

**THE INFRASTRUCTURE CRISIS COMMITTEE OF
MWEZENI SENIOR PRIMARY SCHOOL
and**

Third Applicant

THE MEC FOR EDUCATION: EASTERN CAPE

First Respondent

THE GOVERNMENT OF THE EASTERN CAPE PROVINCE

Second Respondent

THE MINISTER OF BASIC EDUCATION

Third Respondent

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Fourth Respondent

THE MEC FOR EDUCATION: FREE STATE

Fifth Respondent

THE MEC FOR EDUCATION: GAUTENG

Sixth Respondent

THE MEC FOR EDUCATION: KWAZULU-NATAL

Seventh Respondent

THE MEC FOR EDUCATION: LIMPOPO

Eighth Respondent

THE MEC FOR EDUCATION: MPUMALANGA

Ninth Respondent

THE MEC FOR EDUCATION: NORTHERN CAPE

Tenth Respondent

THE MEC FOR EDUCATION: NORTH WEST

Eleventh Respondent

THE MEC FOR EDUCATION: WESTERN CAPE

Twelfth Respondent

**THIRD APPLICANT'S SUPPORTING AFFIDAVIT:
MWEZENI SENIOR PRIMARY SCHOOL**

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I, the undersigned :

NOKHULULEKILE MSHUMAYELI

do hereby state under oath as follows :

1. I am the chairperson of the Infrastructure Crisis Committee of Mwezeni Senior Primary School ("the Mwezeni Committee"). I have one child who attends Mwezeni SPS. They are in grade 3.

2. I am duly authorised to depose to make this application on behalf of the Mwezeni Committee, the third applicant in this matter, and its members, as appears from the resolution annexed hereto marked "NM1". The Mwezeni Committee was formed at a meeting held on 14 June 2011 and the minutes and attendance register of that meeting are attached hereto as annexure "NM2".

3. The facts set out in this affidavit are, to the best of my knowledge and belief, both true and correct. By virtue of my involvement in the Mwezeni Committee and in the school's affairs prior to that, I have personal knowledge of the facts, unless otherwise stated or the contrary is apparent from the context. Where I make legal submissions, I do so upon the advice of the Mwezeni Committee's legal representatives.

4. I have read in draft the founding affidavit of Yoliswa Dwane in this matter and confirm that its contents are true insofar as they relate to Mwezeni Senior Primary School. I confirm that the Third Applicant seeks the relief sought in Part

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A of the Notice of Motion, on the grounds set out in that affidavit.

5. This affidavit is intended to deal with two issues:

5.1. The standing of the third applicant; and

5.2. The facts related to the conditions of Mwezeni SPS.

STANDING

6. The Mwezeni Committee and its members approach this Court on the following bases:

6.1. In terms of section 38(a) of the Constitution, in their own personal interests;

6.2. In terms of section 38(b) of the Constitution, in the interests of the learners of Mwezeni-SPS who rely upon the education provided by Mwezeni SPS and who are entitled to receive basic education in a safe and appropriate learning environment. By virtue of the fact that they are young children, their poverty and lack of access to legal resources, and their numbers, they are unable individually to act in their own names.

6.3. In terms of section 38(c) of the Constitution, in the interests of the learners of Mwezeni SPS and parents of the learners of Mwezeni SPS;

6.4. In terms of section 38(d) of the Constitution, in the public interest of improving the functionality of and the equality within the South African education system; and

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- 6.5. In terms of section 38(e) of the Constitution, in the interests of the members of the Mwezeni Committee.
7. As indicated above, the Mwezeni Committee was established on 14 June 2011 to address the critical and dangerous lack of infrastructure at Mwezeni SPS. Any parent who wishes to participate in the Mwezeni Committee's activities may become a member. The Mwezeni Committee was established with awareness that it might be necessary to litigate to achieve its objectives.
8. In the circumstances, I respectfully submit that the Mwezeni Committee is a voluntary association with legal personality. In the alternative, if the Mwezeni Committee is not a voluntary association with legal personality, the members of the Mwezeni Committee have standing to approach the court ourselves.

MWEZENI SENIOR PRIMARY SCHOOL

9. Mwezeni SPS is in the Mbashe Local Municipality, approximately sixty kilometres south-east of Mthatha. It is located in a rural village where the majority of the population is indigent.
10. Mwezeni SPS is mandated to provide basic education to 295 children in grades R to six. It has eight teachers. It is a public school as contemplated in Chapter 3 of the South African Schools Act 84 of 1996. The school has been classified as a "no-fee school," meaning that school fees are not levied. This is because

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Mwezeni SPS was placed in quintile one of the five quintiles, which is the poorest quintile. The Department of Education ("the DOE") places schools in quintiles by using the poverty ranking system prepared by the National Treasury.

STORM DAMAGE TO THE SCHOOL

11. Mwezeni SPS was founded in 1991. It originally consisted of two rondavels built by the community.
12. In 2007, the community built a block of four mud structure classrooms to accommodate the growing number of children at the school. Photographs of the rondavels and the community built classrooms are attached as annexure "NM3"
13. Three permanent classrooms were built using cement and bricks in 2009. This was paid for with an amount of R100 000 obtained from then Premier Nosimo Balindlela's Emergency Classroom Fund. The school used this money to contract local builders to build these classrooms, which currently house grades five and six and the staff room. While these classrooms remain standing, they are of inferior quality and are unlikely to conform to national health and safety building regulations.
14. Mwezeni SPS's infrastructure was severely damaged by heavy rains during January and February 2011. As a result of this damage, portions of the five mud structure classrooms that house grades R, one, two, three, and four have

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collapsed. The remaining classrooms are in imminent danger of collapsing on the learners.

- 15. After the damage to the classrooms, 220 children in grades R to 4 were taught outside because of the instability of the remaining standing classrooms. These students had insufficient desks and chairs, and no protection whatsoever from the elements. During periods of rain, learners did not attend school. The table below depicts the desperate situation during this period.

<u>Grade</u>	<u>Number of Learners</u>	<u>Size of Classroom in m²</u>	<u>Seating Spaces on Benches</u>	<u>Number of Desks</u>
R	48	Outside	Learners bring own chairs	0
1	43	Outside	20	20 (very poor)
2	41	Outside	18	18 (very poor)
3	42	Outside	30	30 (very poor)
4	46	Outside	28	28 (good)
5	38	49	28	28 (good)
6	37	49	22	22 (good)

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16. When the weather became unbearably cold, the 220 learners were unable to continue to learn outside. Left with no other option, the children were forced to move back into the remaining classrooms, despite the fact that they were extremely unstable and unsafe.
17. Currently, the entire structure of the remaining mud structure classrooms is at a steep downward slant. Deep cracks are visible in the walls that support the school. The walls have also received significant damage at their foundation. The cumulative effect of this damage is that the classroom structures are in an exceedingly precarious position. Photographs depicting the damage to the classrooms are annexed in annexure "NM4".
18. This storm damage has placed the children at Mwezeni SPS in immediate physical danger of the school collapsing upon them. Parents and school staff members fear for the children's lives because of the hazardous nature of the classroom structure. The school is in an emergency state and requires immediate assistance.
19. The current structures are not only physically dangerous, but also detrimental to the educational environment. The inadequate structure of Mwezeni SPS affects both teacher and student morale. The patently inadequate environment severely impacts the ability of the students to attain their constitutional right to a basic education. Teacher morale is extremely low, and teachers feel they have been abandoned by the government. Teachers are extremely frustrated by the

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deteriorating conditions in which they are expected to work. Roofs leak in many classrooms; the mud walls have serious problems with damp; many of the classrooms are overcrowded; there is a severe shortage of furniture; and classrooms are dark because of a lack of windows.

20. Teaching and learning is extremely difficult in these conditions. There has been a noticeable increase in learner absenteeism, which corresponds directly with the deterioration of the school's infrastructure.

ATTEMPTS BY MWEZENI SPS TO IMPROVE INFRASTRUCTURE

21. Mwezeni SPS submitted numerous letters and oral requests to the school's Circuit Manager, as well as the district's DOE physical planning officer, over a period of approximately six weeks following the damage to the school in January and February 2011. To date, Mwezeni SPS has received no response to any of these requests.
22. The Circuit Manager orally informed the principal, Temba Vinqishe, in late February 2011 that there was no money available for improvements to be made.
23. On 30 March 2011 the Legal Resources Centre sent a letter to the First and Third Respondents, as well as the Superintendent General of Education in the Eastern Cape, describing the deplorable conditions at the school and requesting emergency intervention. A copy of the letter and proof of transmission thereof is attached as annexure "NM5". To date, no response has been received.

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24. Following the damage, and in spite of the immediate danger to the children, Mwezeni SPS was informed by the physical planning manager in late February 2011 that no funds were available to assist the school in any way.
25. Despite its repeated attempts to reach out for assistance, Mwezeni SPS has not been given any information regarding any future assistance in terms of its infrastructure. Specifically, it has not been notified of any plans to supply the school with either temporary or permanent classrooms during this period of crisis.

DOE PLANS TO IMPROVE INFRASTRUCTURE AT MWEZENI SPS

26. On the DOE's 2008/2009 Budget Statement, Mwezeni SPS appears under the project description "General Education and Training," which was scheduled to begin in April 2009 and finish on March 2010, for a total cost of R442, 000. The specific meaning of this project is unclear, but no construction was done on Mwezeni SPS during this time period. Mwezeni SPS has not been informed of any pending improvements on the school.
27. Mwezeni SPS again appears on the DOE's 2009 Budget under the project name "Early Childhood Development Centres," listed as costing R858 000. Again, no construction was done on the school during this time period.
28. Mwezeni SPS does not appear on the DOE's most recent budget statement, updated on 25 May 2011, suggesting that there are no current plans to improve infrastructure at the school.

CONCLUSION

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29. I respectfully pray that an order is granted in terms of Part A of the Notice of Motion to which this affidavit is attached.

Nokhululekile Mshumayeli

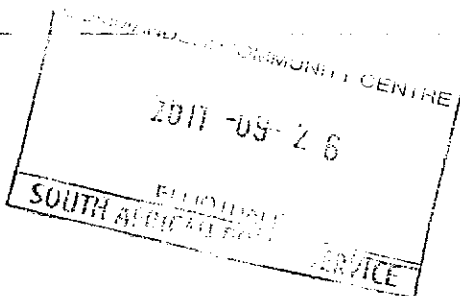
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I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at Elliotsdale on this the 26 day of SEPT 2011, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

[Signature]

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