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**FREE STATE HIGH COURT, BLOEMFONTEIN
(REPUBLIC OF SOUTH AFRICA)**

CASE NO: 1821/2013

In the matter between:

LERATO RADEBE	1ST APPLICANT
LEHLOHONOLO RADEBE	2ND APPLICANT
SELLOANE MOTLOUNG	3RD APPLICANT
EQUAL EDUCATION	4TH APPLICANT

and

PRINCIPAL OF LESEDING TECHNICAL SCHOOL	1ST RESPONDENT
CHAIRPERSON OF THE SCHOOL GOVERNING BODY, LESEDING TECHNICAL SCHOOL	2ND RESPONDENT
DISTRICT DIRECTOR, LEJWELEPUTSWA DISTRICT	3RD RESPONDENT
HEAD OF DEPARTMENT, BASIC EDUCATION, FREE STATE	4TH RESPONDENT
MEC FOR EDUCATION : FREE STATE	5TH RESPONDENT
MINISTER OF BASIC EDUCATION	6TH RESPONDENT

OPPOSING AFFIDAVIT

I, the undersigned,

KABOTSA VENOLIA SARAH MOIPATLE

do hereby make oath and say:

1.

- 1.1 I am a major and the Chairperson of the Governing Body of Leseding Technical Secondary School, Welkom.
- 1.2 The facts contained herein are to the best of my knowledge true and correct. Unless otherwise stated or indicated by context, they are within my personal knowledge. Where I rely on information given to me by others, I will state the source and confirm my belief that such information to be true and correct. Where I make legal submissions, I do so on advice of my legal representatives and accept such legal advice to be true and correct.

2.

IN LIMINE:

2.1 **URGENCY:**

- 2.1.1 The manner in which this application has been brought constitutes an abuse of process of the above Honourable Court.
- 2.1.2 The application seems to be a concerted effort to embarrass the Leseding Technical School and the other Respondents.

- 2.1.3 The Applicants have known and have been fully aware of all the facts since **10 January 2013**. They now approach the Court on an urgent basis, giving the Respondents approximately three working days to respond to this application.
- 2.1.4 The Applicant sought the assistance from the First Respondent, the local press and radio and the district office of the Department of Education prior to **26 February 2013**.
- 2.1.5 However, even since **26 February 2013**, the Applicant has waited for two months before the Applicants made contact with the Equal Education Law Centre who wrote a letter on **25 April 2013**.
- 2.1.6 There are no reasons or facts provided why the Applicants needed to delay the application from **26 February 2013**. No reason is given why they could not have approached the Court earlier. The Applicants clearly created their own urgency.
- 2.1.7 This is a very important issue. It is unwise and unfair that the Respondents are rushed into making affidavits.
- 2.1.8 The Respondents are scattered over the country from Bloemfontein, Welkom to Pretoria. Politicians are also involved and they were unavailable over the weekend due to an ANC Congress and also on Monday, **13 May 2013**. The

departments involved are not merely individuals. Working with departments is more cumbersome than with individuals

2.1.9 No opportunity has been provided for the legal advisors to investigate the matter, to consult with experts on whether a child can be a member of the Rastafarian religion. Part of the religion is their belief in the use of cannabis (dagga). Whether there is an absolute prohibition on the cutting of hair and whether dreadlocks may be artificially attached to the natural hair needs be investigated.

2.1.10 There was not enough time to consult and to have further consultations following the first consultations where uncertainty arose out of the first consultations. It is unfair to the Respondents to be pressurised into filing affidavits on such short notice in such an important issue without a proper opportunity to prepare their case.

2.1.11 It is also unfair to the Court in not receiving well considered opposing papers.

2.1.12 It is clear, as aforesaid, that the Applicants caused their own urgency.

2.1.13 Applicants approach the Court for final relief. Applicants could and should have approached the Court much earlier for interim relief pending the review of any provision of any school's code of conduct.

2.1.14 The matter, as far as the Respondents is concerned has become moot as will be explained later.

2.1.15 The Court is therefore respectfully requested not to place the matter on the roll due to the lack of urgency.

2.1.16 I respectfully submit that the Applicants have not conducted themselves with the necessary expedition and urgency that one would expect from someone who approaches the Court on an urgent basis.

2.1.17 As I have stated above, the Applicants were in a position to approach this Court much earlier and to afford Respondents sufficient time to respond to any application. To act in the manner that they are currently doing, constitutes a gross abuse of the process of the Honourable Court and prejudices the Respondents in the conduct of their case.

2.1.18 In these circumstances I respectfully request the Honourable Court not to entertain the application for lack of urgency as a result of the fact that the Applicants created their own urgency in bringing the application this late and that they are abusing the process of this Honourable Court.

2.2 NON JOINDER:

2.2.1 I have been advised that the Court will not make any order where any other person, not being cited, has a direct or substantial interest in the order or if such order cannot be

sustained or carried out in effect without prejudicing or affecting another party.

2.2.2 Prayer 9 seeks an order, directing the Human Rights Commission, to provide a workshop to officials and employees within one month of the date of the order. The Human Rights Commission is not a party to the present proceedings.

2.2.3 The Fourth Applicant is just cited as "*Equal Education*". Applicants failed to provide any particulars in the founding affidavit, indicating the reasons why Fourth Applicant possesses any legal standing. Annexure "L4", however, indicates Equal Education as a division of the Equal Education Law Centre Trust, seemingly registered under trust certificate number ID2966/2011. A trust is not cited as a party to the present proceedings. No trustee is mentioned or cited.

2.2.4 It is very unfortunate for the Second, Third and Fourth Applicants to cite a young child as an Applicant in these proceedings. There is no information in the founding affidavit that this child is properly assisted by her father or mother or natural guardians.

2.3 MOOTNESS:

2.3.1 The present application is aimed at the code of conduct of the Leseding Technical Secondary School.

2.3.2 From the Applicants own papers it is evident that Lerato has been admitted in another school and has been registered, at the request and instance of the Second Applicant, at the Thotagauta Secondary School. The Court is respectfully referred to annexure “C” and “LR5” to the founding affidavit. After Lerato was admitted and registered in another school, she was deregistered at the Leseding Technical School and is no longer involved in the education of Lerato.

3.

CODE OF CONDUCT:

3.1 Section 8 of the South African Schools Act, 84 of 1996 obliges a Governing Body of a Public School to adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.

3.2 Section 20 of the South African Schools Act, deals with the functions of all governing bodies and again obliges all governing bodies to adopt a code of conduct for learners at the school. The governing body of the Leseding Technical Secondary School followed the due process before adopting a code of conduct for learners. The code of conduct for learners is attached to the founding affidavit as annexure “A”. Section 4 thereof deals with the dress code and appearance of learners. Of relevance is the following:

“4.3.3 Hairstyle must be neat and short. No elaborate style (such as parting, shaving paths, steps, dies, fizzes, dreadlocks and hair

pieces) are allowed. Girls may have long hair or simple braids, but long hair must be tied back out of the face. Boys must shave, no beards or moustaches are allowed.”

- 3.3 The code of conduct defines how the school community establishes a disciplined and purposeful school environment. The code of conduct is an agreed set of behaviour that is acceptable within our school. It informs the learners of the way they should conduct themselves in preparation for their conduct and safety in civil society and clarifies the role and responsibilities of all stakeholders in the learning environment.
- 3.4 Learners are also represented on the school governing body which lays down the responsibilities of parents or guardians to see to it that their children attend school in good health and conform to generally accepted norms of personal cleanliness and neatness.
- 3.5 I have been advised that in accordance with a decision of the Supreme Court of Appeal, the adoption by a school governing body of a code of conduct and the code in itself are administrative decisions. Even if policies adopted are unconstitutional, and even if school governing bodies are not empowered by the Act to adopt such policies, or if the policies were unconstitutional, the governing body's decision to adopt them stands and results in valid legal consequences until a Court of Law sets them aside. The process of reviewing and setting aside this administrative decision was not done by the Applicants. I have been advised that the correct procedure, would have been an interim interdict during **January 2013**, pending an application for review.

4.

BACKGROUND:

- 4.1 Before answering the founding affidavit, it is necessary to place the correct facts before the Court. Most of the correct facts are not disclosed by the deponent. The deponent is not frank with the Court and does not present the facts with the necessary candour to the Honourable Court.
- 4.2 I was present during the consultation with the principal and officials of the district office. For sake of brevity I will refer to the background facts.
- 4.3 On **13 October 2012** a meeting was convened with all parents intending to apply for admission of their children to the Leseding Technical School. All interested parents or guardians were invited to attend the meeting where the admissions were discussed.
- 4.4 The grandmother of Lerato attended this meeting. For reasons unknown to me, the grandmother of Lerato, Mameka E Radebe raised her three grandchildren, of which the Second and Third Applicant are the biological parents. She is also raising another grandchild from another son.
- 4.5 The grandmother, M E Radebe, attended this meeting. During this meeting the principal and a SGB member read and explained the full code of conduct for the learners to the parents and guardians. The

code of conduct deals with a dress code and the appearances of learners. The specific rules were read out and explained, including rule 4.3.3, advising the parents and guardians that dreadlocks were not allowed. After the meeting and explanation of the code of conduct, the application forms were distributed. Two application forms were completed by the grandmother as parent "*guardian*" of the learners. The application forms were completed and signed on **15 October 2012** and returned to the school. A copy of the relevant application form is attached hereto, marked annexure "**O1**".

- 4.6 The grandmother and parents had an opportunity to register Lerato in another school that allowed the wearing of dreadlocks. There are schools in the immediate vicinity which allow this.
- 4.7 The grandmother accepted the code of conduct and completed the application form, confirming that they will abide by the fully explained code of conduct. Neither the grandmother nor the parents informed the school that they are not going to abide by the code of conduct. The school was unaware of Lerato going to attend school with dreadlocks, contrary to the code as explained to all the parents.
- 4.8 On **9 January 2013**, Lerato attended school and the teachers reported her hairstyle, which was contrary to the code of conduct. The principal phoned the grandmother and asked her to attend to a meeting at the school on **11 January 2013** in regard to the hairstyle of Lerato. The school gave Lerato a letter to invite her guardian to come to school and discuss the matter.

- 4.9 In the application form there is a specific space to indicate the religion of the learner. This was not completed and left open. The school accepted that the grandmother, M E Radebe, was the guardian of the children enrolled at the Leseding Technical Secondary School. The other learner for which a form was signed, was Mpho Radebe, also in grade 8. The grandmother was also raising this child as she was raising the three siblings of the Second and Third Applicants.
- 4.10 Instead of the grandmother, the biological parents of Lerato presented themselves on **10 January 2013**. They were invited to the office of the principal to present their case. The principal was assisted by the Deputy Principal and Mrs. Ntima, an educator.
- 4.11 According to the Principal she has never encountered such a rude encounter before. The Second Applicant was aggressive, insulting and plainly rude. He refused to reason or to attempt to find a solution and raised his voice when he left. He slammed the door behind him. He shouted more or less the following remarks:

“I am going to change the school.”

“This is not your school.”

“You are living in a small yard, you do not own this school.”

“Who do you think you are?”

“I am going to take the matter further.”

“He is coming for the SGB.”

“SGB is but nothing, I am coming to change the school.”

“I am connected, I am going to take it further with my connections.”

- 4.12 Mrs. Motloung, the Third Applicant tried to calm her husband but he refused to listen to me, his wife or Mrs. Ntima. He refused to listen to reason and just raised his voice louder and louder.
- 4.13 The Second Applicant was clearly prepared for a showdown. After he left the office, he returned after a while and falsely represented that the persons with him were from the district office. They were in actual fact persons from the Lefika MF Local Radio Station. The station manager is also a Rastafarian. He also did not want to listen to reason or discuss the matter to reach a kind of solution. They stormed out of the office, saying that the principal might think that she is connected, but the Second Applicant is going to take it further with his connections.
- 4.14 The principal thereafter phoned Lerato’s grandmother. She seemed to be a reasonable and level headed person. She was invited for a meeting to discuss the situation on **11 January 2013** to see whether a solution could not be founded. The grandmother attended this meeting. Of importance is the following:
- (a) The First Applicant, Lerato, is not a Rastafarian.

- (b) The other two children of the Second and Third Applicant, also cared for by the grandmother, cut their hair regularly. The grandmother cut their hair to comply with the prescriptions of their school code.
- (c) The grandmother confirmed that they were aware of the code of conduct which was discussed during the holidays with the father and mother. The grandmother indicated that she would see to it that Lerato would return to school without the dreadlocks. She was however then insulted and threatened by the Second Applicant if she cut the dreadlocks of Lerato.
- (d) The grandmother, since the very tender years of the children, has taken full care of the children. The grandmother and the three children of the Second and Third Applicant have been regular churchgoers for many years. They attend the Roman Catholic Church. The grandmother raised the three grandchildren and as far as she is aware they were never part of the Rastafarian religion or faith. There was never any problem with her cutting the other two children's hair regularly. Their hair was also cut before the reopening of the school in **January 2013**.
- (e) I further refer the Court to the supporting affidavit of Mrs. Monosi who attended a Roman Catholic Church service on **17 March 2013**. The church's name is the Mofumahadi Wa Rosari, Thabong, Welkom. There she noticed Lerato with two other girls. All three girls partook in Holy Communion. If the priest is present, it is regularly announced that only Roman Catholics are supposed to participate in Holy Communion. If they are of any other religions they are not permitted to participate. It is the general

assumption and accepted that all of those who participate in the Holy Communion are members of the Catholic faith.

- (f) As a compromise she could plait Lerato's hair, but not in dreadlocks. This compromise was seemingly flatly rejected by the parents of Lerato.
- 4.15 Leseding is a technical school and the danger of dreadlocks was also discussed and agreed upon between the school and the grandmother. Because of the machines and chemicals being used, it is also a danger to the learner.
- 4.16 I respectfully refer the Court to the supporting affidavit of Berry Tshabangu of the district office, Welkom, in regard to all the endeavours to find an alternative solution.
- 4.17 A meeting of all parents was arranged for **10 February 2013** to explain and discuss the problem experienced with the parents of Lerato. The parents of the other children were highly upset. One of the facts and problems raised was that it is an acknowledged fact that Rastafarians, as part of their religion use cannabis (dagga) as part of their spiritual and inspirational purposes. The use of cannabis forms part of their religion observance. How a child can be allowed the use of cannabis for observance of their religion was highly upsetting. It is a well-known fact that cannabis is harmful and only a stepping stone to the use and eventually the abuse of and dependence on other more harmful drugs.

- 4.18 All the parents were also unanimous in their agreement with the code of conduct and not to change the code to accommodate the one learner. This as others might take advantage of the leniency shown to one learner. This could cause a flood of other unfortunate incidents.
- 4.19 The HOD of the Department of Education, through the district office, was actively involved in taking steps to address the possible disadvantages caused to Lerato. He initiated processes to redress this possible disadvantage to the benefit of Lerato. It was, however, the actions of the First Respondent which prevented Lerato from receiving her education. The Court is again referred to the supporting affidavit of Mr. Tshabangu.
- 4.20 The Court is respectfully referred to annexure “C” to the founding affidavit. The idea of placing Lerato in another school was the initiative of the Second Applicant. He told Mr. Tshabangu that he had an altercation with the principal of Leseding School and he was afraid that the principal and staff might victimise his child. He mentioned that he did not want, in the first place, his child to be registered at the Leseding Technical School. He preferred his child, Lerato, to be placed at the Thotagauta Secondary School, Welkom or the Lenakeng Technical High School, Welkom.
- 4.21 Mr. Tshabangu said to him, that he would then phone the principal at the Lenakeng Technical High School. However there was no place for Lerato there as the school was already fully enrolled. He then phoned the principal at the Thotagauta Secondary School and briefed him about the problem. The principal said that he foresaw no

problem if Lerato was to be enrolled by the Thotagauta Secondary School as long as she abided with the code of conduct of the school. He talked to the Second Applicant, explaining to him that there is also a hairstyle prescript, but the Second Applicant advised Mr. Tshabangu that he would adhere to their code of conduct.

- 4.22 The First Applicant, Lerato, was then admitted in the Thotagauta Secondary School, Welkom. It is the duty of the HOD to administer the admission of learners at schools in the Province and Mr. Leepo, duly represented the Department in admitting Lerato to the Thotagauta Secondary School.
- 4.23 The principal of the Leseding Technical School was thereafter informed of the First Applicant being admitted as a learner in another school and the First Applicant was removed from the register of the Leseding Technical School. For all practical purposes Lerato is presently admitted at the Thotagauta Secondary School, Welkom. The Court is respectfully referred to annexure “**C**” and paragraph 4 of annexure “**LR5**” to the founding affidavit.
- 4.24 Everybody was thereafter satisfied that the problem had been resolved. However, after approximately a week, the First Applicant came to the Leseding Technical Secondary School unaccompanied.
- 4.25 The SGB of the Leseding Technical Secondary School again reported on the matter and the HOD, through the district director, again made further enquiries. He found another school, the Unitas Secondary School in Welkom which was willing to accommodate Lerato and which did not have a code of conduct which could be

breached by the hairstyle of Lerato. The Second Applicant was phoned and he undertook to fetch the letter, placing Lerato in the Unitas Secondary School, early the next morning. Notwithstanding the promises, he did not arrive. He was again phoned and he said that he did not possess any transport and that his wife must be contacted. His wife was contacted and she promised to fetch it in the morning before 9am.

4.26 When she did not comply with her promises she was phoned again. She then informed the district office that she was advised by Equal Education not to go and fetch the letter. A copy of this letter is attached hereto, marked “**O2**”.

4.27 The principal, Mr. Mahlatsi of the Unitas Secondary School was fully aware of the whole situation and willing to assist Lerato. The Department also explained in this letter, to the Second Applicant, that they will provide remedial assistance to Lerato to assist her with adjustments and to support her as far as possible. The Court is respectfully referred to paragraphs 15, 16, 17 and 18 of annexure “**LR5**” to the founding affidavit.

4.28 I now return to answering the founding affidavit.

5.

AD PARAGRAPH 1 THEREOF:

It is denied that Lerato is being unlawfully prevented from attending school. The exact opposite is the true situation. It is the Second Applicant who is preventing Lerato from attending school.

6.

AD PARAGRAPH 2 THEREOF:

It is denied that the facts are true and correct. The deponent is selective with the facts presented to Court. Any averment contrary to what has already been stated, is denied.

7.

AD PARAGRAPH 3 THEREOF:

It is denied that the three children, Lerato, Imeru and Lebohang are members of the Rastafarian religion. The grandmother, raised all three children from their tender years. She is adamant that they are not members of the Rastafarian religion. I respectfully refer the Court to what has already been stated above.

8.

AD PARAGRAPH 4 THEREOF:

The Court is respectfully referred to what has been said in regard to the legal standing of "*equal education.*"

9.

AD PARAGRAPH 5 THEREOF:

The Court is respectfully referred to what has already been said in regard to the alleged urgency of the application. The Applicants created their own urgency. It is denied that Lerato is denied access to education by the Respondents. Exactly the opposite is the truth. It is the Second Applicant who is denying his own child access to education.

10.

AD PARAGRAPHS 6, 7, 8, 9, A0 AND 11 THEREOF:

The contents are admitted for purposes hereof.

11.

AD PARAGRAPH 12 THEREOF:

It is denied that the matter is urgent and it is respectfully submitted that the Applicants created their own urgency. It is denied that Lerato is prevented from attending classes. It is the Second Applicant who is preventing Lerato from attending school and classes. The question of her wearing dreadlocks is now a moot question in the light of the Second Applicant requesting that his child be registered with another school which was done on his insistence. Applicants are now dragging the dreadlocks into the arena and the Rastafarian religion which are presently irrelevant.

12.

AD PARAGRAPH 13 THEREOF:

It is denied that the matter has not been resolved. The Court is respectfully referred to what has been stated above and the affidavit of Mr. Tshabangu. On the insistence of the Second Applicant the problem was solved and Lerato was admitted as a learner as early as **4 February 2013**. The Court is again respectfully referred to annexure “**C**” to the founding affidavit.

13.

AD PARAGRAPHS 14, 15 AND 16 THEREOF:

13.1 I respectfully submit that the religion of the Applicants is irrelevant in the light of what has transpired on **4 February 2013**.

13.2 I reiterate that the grandmother, who raised the three children of the Second and Third Applicant, is adamant that they never attended or were part of the Rastafarian religion. During all these years that she raised the three children, they attended the Roman Catholic Church. The other two children’s hair is cut normally without any detrimental effect or comments from the Second and Third Applicant. If Lerato’s hair is plaited, but not in the Rastafarian style, there would be no need to cut her hair.

13.3 The Court is also respectfully referred to the affidavit of Mrs. Monosi, confirming the attendance of Lerato at the Catholic Church on **17**

March 2013 and partaking in the Holy Communion. It is a clear indication that Lerato is of the Catholic religion.

13.4 The deponent also neglects to inform the Court of their adoption to use cannabis as part of their religion. There is no proof whatsoever that the children belong to a Rastafarian faith. The only letter, on the letterhead of the alleged church, is annexure “J”. This letter is also signed by the Second Applicant himself and not by any official of the alleged church.

13.5 Any averment contrary to what has already been stated or which has not been addressed, is denied.

14.

AD PARAGRAPHS 17, 18 AND 19 THEREOF:

14.1 I reiterate that the subject is now moot and the dreadlocks irrelevant.

14.2 Any averment contrary to what has already been stated or not addressed is denied.

15.

AD PARAGRAPHS 20, 21 AND 22 THEREOF:

15.1 It is denied that Lerato plaited her hair as discussed with her grandmother. This was refused by her father. I am not aware of when or where the photograph was taken. It seems, however, that

this is not plaited normally but still plaited in the Rastafarian style of dreadlocks.

- 15.2 It is denied that any girl in the school have synthetic extensions, similar to dreadlocks. It is denied that any educator in the school is wearing dreadlocks.
- 15.3 I am not aware of the deputy principal of the Thotagauta Secondary School wearing dreadlocks. It is in any event the school into which Lerato was admitted and registered since **4 February 2013**. It is the Second Applicant who decided to embarrass the First Respondent, not to enrol his child at the Thotagauta Secondary School but to insist, after he agreed on the compromise, to return his child to the First Respondent.
- 15.4 Any averment contrary to what has already been stated or not addressed is denied.

16.

AD PARAGRAPHS 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 AND 34 THEREOF:

- 16.1 I respectfully refer the Court to what has already been stated in the paragraph dealing with the background.
- 16.2 Any averment contrary to what has already been stated is denied.

- 16.3 It is evidently not true that the grandmother only has custody of all the important documents. She raised all the children and cared for the three children of the Second and Third Applicant.
- 16.4 I reiterate that on the insistence of the Second Applicant, his daughter was removed from the register of the First Respondent and admitted to the Thotagauta Secondary School, Welkom.
- 16.5 It is abundantly clear that the Second Applicant is bent, to the detriment of his daughter, not to allow her to be educated or to receive ordinary and normal education in another school, a school which the Second Applicant requested his daughter to be placed. There is also another school that is, without any reservation, willing to accept Lerato. The Second Applicant and now also Equal Education, wish to deny Lerato basic education. I respectfully submit that their attitude is unreasonable to the detriment of the child.
- 16.6 Any averment contrary to what has already been stated or not specifically addressed is denied.

17.

AD SUPPLEMENTARY AFFIDAVIT:

- 17.1 This affidavit is almost a repetition of what has already been stated.
- 17.2 I respectfully refer the Court to the paragraph dealing with the background of this case.

17.3 Any averment contrary to what has already been stated or contrary to the further supplementary affidavits, is denied and also any averment not specifically addressed.

18.

The Department of Education is anxious to have Lerato attend the school of her father's choice, namely Thotagauta Secondary School or Unitas Secondary School. The Department of Education was obliged to address a letter to the father, which a copy of is attached hereto, marked annexure "03".

19.

In the premises the Court is respectfully requested to dismiss the application. I was advised by my legal representatives that I should request a cost order against the Applicants in the circumstances. There is still an open invitation for Lerato to attend a proper school in the vicinity and to continue with her education and an open invitation that the Department of Education will provide remedial assistance to assist her with adjustment and of any loss occasioned by her absence from school. The only person preventing Lerato from receiving her basis education is the Second Applicant.

K V S MOIPATLE

I CERTIFY that this affidavit has been sworn to and signed before me at _____ this _____ day of _____2013 by the abovementioned deponent who declared that she is acquainted with the contents of this affidavit and understands same, that she has no objection to taking the prescribed oath and further, that she considers the said oath as binding on her conscience, which oath was properly taken by me, as required by law.

COMMISSIONER OF OATHS

FULL NAMES :
ADDRESS :
CAPACITY :
AREA :