

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No. 24611/2011

In the matter between:

JACOBUS DU PLESSIS BOTHA N.O

First Applicant

ESTELLE BOTHA N.O

Second Applicant

GERHARD BOTHA N.O

Third Applicant

(In their capacity as trustees for the time being  
of the Kobot Besigheid Trust IT 969/2009)

and

MEMBER OF THE EXECUTIVE COUNSEL  
FOR EDUCATION, WESTERN CAPE

First Respondent

THE GOVERNING BODY OF THE GROOTKRAAL  
UCC PRIMARY SCHOOL (OUDTSHOORN)

Second Respondent

GROOTKRAAL UCC PRIMARY  
SCHOOL (OUDTSHOORN)

Third Respondent

and

EQUAL EDUCATION

Amicus Curiae

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SECOND RESPONDENT'S REPLYING AFFIDAVIT

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*J.S. 2012*  
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I, the undersigned,

**LIDIA STAL**

do hereby make oath and say:

1. I am an adult female and a member of the Second Respondent. I am duly authorized to depose to this affidavit and do so in my own name and as a member of the Second Respondent.
  - 1.1 I am 39 years old, and I have been married for fourteen years to Johannes Stal. My husband is also a member of the Second Respondent and both of us received our primary school education at the Grootkraal Primary School ("**the School**").
  - 1.2 This matter is therefore close to both of us, not only as members of the Second Respondent, but also as ex-learners of the School as well as members of the broader community that will be affected by the outcome of this case.
  - 1.3 My husband and I have four children namely, Lee-Jo (19 years of age), Leandro (15 years of age), Torcha-Lee-Ann (10 years of age) and Imran (8 years of age). All my children also attended the School for their primary school education.

2. The facts contained herein are, in every respect true and correct and unless the contrary appears from the context hereof within my own knowledge. Where I make legal submissions in this affidavit, unless otherwise indicated, such submissions are made on the basis of advice given to me by the Second and Third Respondents' legal advisors and I believe such advice to be correct. Where I rely on information conveyed to me by others I believe that such information is true and correct.
  
3. On 5 January 2012 his Lordship Mr. Justice Bozalek granted an order admitting Equal Education as *amicus curiae* in this matter and granting it leave to file its principal submissions or its affidavit by 26<sup>th</sup> January 2012. On 27<sup>th</sup> January 2012 Equal Education filed an affidavit deposed to by **DORON MOSS ISAACS** on the Second Respondent's attorney of record. I have read the aforementioned affidavit and depose to this affidavit in response thereto.
  
4. This affidavit is filed in terms of paragraph 3 of the order granted by Mr. Justice Bozalek. It is being filed two days later than the date specified in the aforementioned order. This affidavit is filed late as I live in Oudtshoorn and my attorney is in Cape Town and I am unable to travel or get time off work easily in order to consult with my attorney. Our consultations have thus been done telephonically and after hours. Further delays have been occasioned by the logistical difficulties necessitated by having to have the affidavit signed and commissioned in Oudtshoorn and subsequently served in Cape Town. My attorney and I have endeavoured to finalise this affidavit as quickly as possible in

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order to minimise any prejudice to the other parties. I apologise for any inconvenience which this delay may cause to the other parties and ask that this Court condone the late filing of my affidavit.

5. I have read the founding affidavit of the First Applicant, **JACOBUS DU PLESSIS BOTHA**, and note the content of that affidavit. In particular, I note that the Applicants want this Court to evict the Third Respondent from the current premises and effectively thereby deprive a poor and rural community from an important community institution with a long history and which fulfils an important role in this community.
6. I have also read the answering affidavit of **KLAAS DIDO**, who is known to me as the chairperson of the Second Respondent. I can confirm that the contents of that affidavit are true and correct, particularly in so far as reference is made to the background of this matter and to the history of the establishment of the School and the dealings between the School, the Applicants and the First Respondent.
7. I have also read the affidavit of **JOHN HILTON LYNERS** on behalf of the First Respondent ("**the MEC**"), and note the content of that affidavit. In particular, I note that the First Respondent has chosen to abide by the decision of this Court.
8. Further, as pointed out by Mr. Dido in paragraph 90 of his answering affidavit, "*the MEC has not deposed to an affidavit in this matter, instead the Deputy Director-General (Institutional Development and Co-ordination) ("the DDG") has filed an*

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*affidavit in which he purports to set out "certain facts which might assist this Honourable Court in reaching its decision".* I believe Mr. Dido has, in his affidavit, sufficiently and adequately dealt with this issue and other constitutional issues relevant hereto.

9. I have also had the opportunity of reading the replying affidavit filed on behalf of the First Respondent in response to Equal Education's affidavit. I note that the MEC has still not deposed to an affidavit in this matter despite the important constitutional issues addressed by Equal Education as well as the potentially far-reaching implications of their submissions in respect of the MEC's statutory and constitutional duties.
10. I have also read the affidavit of **DORON MOSS ISAACS** on behalf of Equal Education, the *amicus curiae* in this matter, and note the content of that affidavit. In particular I have taken note of the issue of expropriation that has been raised by Equal Education. My legal representatives have endeavoured at length to explain to the members of the Second Respondent the legal meaning of expropriation, how serious a step it is, the historical background of this constitutional remedy and the impact it has on any person's right to own property in South Africa.
11. I submit that it is important for the Court to have a context for my submissions in support of the issues raised by Equal Education. I therefore propose to first deal with my personal background and how any eviction order will impact on me personally and my children who currently attend the School as well as the impact it

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will have on the rest of the broader community before dealing with the issues raised by Equal Education.

**MY PERSONAL BACKGROUND:**

12. I was born on the farm *De Kombuys* also known as Grootkraal ("the Farm") on 11<sup>th</sup> June 1972. I lived there with my parents until I got married. My parents still reside on the Farm.
13. My parents also attended the School and have resided on the Farm for their entire lives. I was fortunate enough to meet and know my grandparents, as we all lived together in the same house and can confirm that my grandparents also attended the School.
14. As mentioned above, my husband and all my children also attended the School. In fact, Torcha-Lee-Ann is currently 10 years of age and in Grade 6 at the School and Imran is currently 8 years of age and in Grade 3 at the School.
15. Apart from being a member of the Second Respondent, I am also currently employed as a caretaker and cook at the School. This is my second job since leaving school in 1993. My first job was a shop assistant in the butchery on the farm Schoemanshoek.

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16. My husband was fortunate enough to be employed by the Oudtshoorn Municipality as a caretaker at the Cango Mountain Resort where we have also been provided with accommodation. We currently reside on the resort in a Municipality owned house.

**THE IMPACT OF ANY EVICTION ORDER:**

17. Any eviction order will result in a large proportion if not the majority of the learners at the School, including perhaps mine, being forced to remain out of school as no viable alternatives are currently available to accommodate the learners.
18. The reasons for this are adequately set out in Mr. Dido's affidavit and I will not burden the Court with a repetition of these issues, save to state that as a parent I am simply not convinced of the MEC's bona fides in this matter. Neither the MEC nor the officials of the Western Cape Department of Education ("the Department") have made any real effort to communicate with us as to the practical implications of any relocation/merger/closure of the school.
19. The attitude of the MEC and the Department officials has to date simply been to advise us of decisions which have already been made. There has never been any meaningful attempt to consult with the parents or the members of the Second Respondent about any of these decisions. Throughout this process it has been my impression that the MEC and the Department have made decisions and have expected us to meekly go along with them without questioning the reasons for

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such decisions or questioning whether such decisions were in fact in the best interest of the learners at the School.

20. The School serves as a church for the surrounding community. It also serves as a community hall, clinic and voting station during elections. It is therefore clear that the School is important to us and forms an integral part of the community as a whole.
21. In this respect I submit that the School is different to an urban school in that it forms a part of the social fabric of the community which it serves. It is not just a place where our children receive their education. I submit that the MEC and the Department have failed to take into account the role that the School plays in the community as a whole in its decisions relating to the closure and relocation of the School.
22. I am aware that the Department claims to have made provision for the relocation of the School to the premises of Voorbedag School. I am also aware that Mr. Dido has addressed that issue in his Answering affidavit. I am also advised that the Court will be referred to the terms of the final interdict issued by Mr. Justice Henny handed down on 15 July 2011 interdicting and restraining the MEC from unlawfully relocating the School and setting certain conditions for any relocation of the School.

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23. Many, if not all, of my neighbours, friends and family in the area are farm workers and are very poor. Most of them are not properly schooled because of the history of rural schools as well as the conditions on the farms where they reside which resulted in most of them having been forced to leave school and to work on the farms to meet the economic needs of the family.
24. In my experience many rural children continue to drop out of school because of the frustrating situation of getting to and from school.
25. Unlike in urban areas where schools are widely available and there is sufficient public transport to allow learners to travel to and from schools, in this community, as in many other rural communities, there is only one school that serves a very large rural community and there is no public transport at all.
26. I am advised that in terms of section 35(1) of SASA, the School has been placed in "national quintile 1", which places it amongst the very poorest schools in the country.
27. There are children attending the School who live on farms on the lower slopes of the Swartberg Mountain. Their parents have to bring them, usually as pillion passengers on a bicycle, to the main road through the harsh weather conditions in the area. The School buses then collect the children and transport them to the School.

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28. Other children have to walk almost 3 kilometres downhill from their homes in De Hoek to the closest pick up point every morning to get to the School. In the afternoons, they get dropped off at that same spot to take the same 3 kilometre walk up the hill to get to their homes.
29. This type of situation is the norm in this area, as most, if not all of our children, from as young as 6 years of age, travel far distances to get to and from the School.
30. The weather conditions in this part of the world are extremely harsh. In summer the temperatures often reach 40 degrees or higher and in winter we often experience snow and heavy rainfall.
31. Many of the children who attend the school have no shoes and are not able to afford suitable cold weather clothing. They simply make do with what they have.
32. The site to which the Department wants to relocate the school is not the ideal solution for this community. I believe that Mr. Dido has extensively and adequately dealt with this issue and the legal requirements in his affidavit. Therefore, the issue raised by Equal Education should, under the current circumstances, be considered as a viable alternative.
33. To expect that our children who already face harsher conditions than those experienced by any urban school to simply add a further 40 kilometre round trip to their arduous journey to school is unreasonable and indicates a distinct lack of

understanding of the unique difficulties faced by rural communities in attempting to secure decent education for their children.

**THE ISSUES RAISED BY THE AMICUS:**

34. I have read the affidavit filed by Equal Education in this matter and note that they have raised the role that expropriation of land can play in ensuring security of tenure for rural schools.
35. As noted by Equal Education, this matter clearly illustrates the dire consequences faced by rural communities where there is no security of tenure in respect of public schools on private land.
36. The history of colonialism and apartheid has resulted in racially based private land ownership in rural areas of South Africa. The history of Bantu education in rural areas has further resulted in a deeply inequitable situation as regards the provision of education to rural children which situation is exacerbated by the lack of security of tenure faced by rural schools on private property.
37. I am advised that the provisions of Section 58 of SASA empowers the MEC to consider expropriation of land if it is in the public interest to do so for any purpose relating to school education in the province.

38. I am further advised that Section 25 of the Constitution (“**the Property Clause**”) allows for expropriation in the public interest or for a public purpose subject to appropriate compensation.
39. I am further advised that the provisions of the Property Clause emphasise the importance of the need for land reform and the importance of security of tenure on land. The Property Clause was formulated to ensure that the constitutional protection of property would not impede the important social and political purpose of land reform.
40. I am further advised that Sections 25(4) to (9) of the Constitution highlight the need for the redress and transformation of the legacy of unequal distribution of land in this country.
41. I submit that the constitutional commitment to social transformation requires that the protection of private property rights be balanced with the need to redress the consequences of racial dispossession of land.
42. I am advised that the Constitution and our courts have recognised the important role that land plays in the culture, identity and dignity of communities.
43. I am further advised that both SASA and WC Schools Act were enacted with a view to redressing the past system of education which was based on racial inequality and segregation.

44. In addition both SASA and WC Schools Act recognise the crucial role that the new education system plays in redressing these past injustices and providing education which advances the democratic transformation of society, and which contributes to the eradication of poverty.
45. I am further advised that in terms of the WC Schools Act the MEC is empowered to determine educational policy in the province taking into account *inter alia* the principles that education must be directed towards achieving equitable education opportunities and the redress of past education inequality and that education must ensure broad public participation in the development of education policy and the representation of role-players in the governance of all aspects of the education system.
46. I submit that the history of Bantu education in rural areas cannot be divorced from broader land reform issues in this country. Both Bantu education and racial dispossession of land resulted from the racially discriminatory policies of apartheid.
47. The legacy of these policies is still keenly felt in rural communities such as my own. I submit that it is incumbent on the MEC in exercising his duties under SASA and the Western Cape Schools Act as well as the Constitution to give real consideration to expropriation in this matter.

48. Expropriation would ensure that the learners right to education is secured, that the School has security of tenure and that the role of the School as part of the broader community is protected.
49. I submit that in the context of rural education in this country, the need for a proper consideration of expropriation would also ensure that providing rural schools with security of tenure redresses the legacy of past discriminatory practices.
50. I submit that the MEC must be required to consider expropriation in every circumstance where the security of tenure of a rural school on private property is threatened such as in this case. I am advised that requiring that such a policy be put in place would accord with the stated aims of SASA, the Western Cape Schools Act and the Constitution of ensuring social transformation through redress of past inequalities in land ownership and education.
51. I further submit that the principle of representation of role-players in the governance of all aspects of the education system requires that the MEC proactively engage in a meaningful manner with the Second Respondent as well as with the broader parent body of the School in respect of decisions which materially and adversely affect the rights of learners at the School. I submit that the MEC's high-handed approach thus far does not accord with this principle.

## CONCLUSION

52. I submit that this matter requires that the Court find a just and equitable remedy which balances the rights of the learners at the School to education; the rights of the broader school community to have its dignity respected and protected, the constitutional duty of the MEC to ensure transformation and equality in the provision of education in rural communities and the Applicants' right to own their property.
53. I submit that the Applicants' property rights should not trump the rights of rural communities to the provision of education which reflects the broad transformative ethos embodied in our Constitution, particularly in the light of our country's history of Bantu education and forced removals.
54. I submit that the Applicants have not made out a case for the relief sought and ask that this application be dismissed with costs.
55. Alternatively and only in the event that this Court finds that the Applicants are entitled to the relief sought I submit that a just and equitable remedy in this matter would entail the following orders being made by this Court: -
- 55.1 The MEC be ordered to consider expropriation of the Farm for the purposes of securing the tenure of the School;

55.2 The Court to issue an appropriate supervisory order in terms of which the MEC is to report back to the Court as to whether expropriation was considered; the factors which the MEC took into account in such consideration; the decision which the MEC has made in respect of expropriation and the reasons for such decision;

55.3 In the event that the MEC decides that expropriation is not appropriate in this matter, and that the closure or merger the School is appropriate, the Court issue an appropriate supervisory order in terms of which the MEC is ordered to report back to the Court on the following aspects: -

55.3.1 Whether the appropriate statutory notices have been published;

55.3.2 The manner in which the Second Respondent and the parents were granted a reasonable opportunity to make representations to the MEC in relation to the proposed closure/merger of the School;

55.3.3 The time, place and manner in which public hearings were conducted to enable the broader community to make representations to the MEC in relation to the proposed closure/merger of the School;

55.3.4 The manner in which the MEC gave due consideration to any representations received;



55.3.5 The reasons for any decision made by the MEC;

55.3.6 The arrangements in respect of transportation of all learners to the new school site, including the location of pick-up sites, the number of learners to be transported, the duration of the availability such transport facilities;

55.3.7 The availability and nature of classrooms and other teaching facilities including computer facilities at the new school site;

55.3.8 The availability and nature of water sanitation facilities at the new school site.

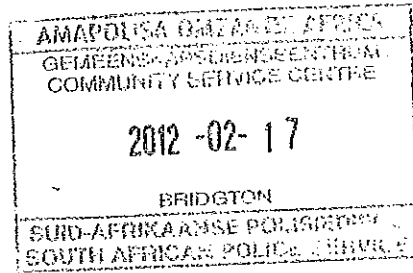
56. I submit that this Court has a wide discretion to make a just and equitable order in which takes into account the broader constitutional imperatives of transformation and equality and I ask that the Court do so in this matter taking into account my submissions as set out above.

  
LIDIA STAL

I hereby certify that on the 16th day of FEBRUARY 2012 in my presence at OUDTSHOORN the deponent signed this Affidavit and swore and acknowledged that she:

- (a) know and understood the contents thereof;
- (b) had no objection to taking this oath;

- (c) considered this oath to be binding on her conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".



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WASHKELLA F.C. / 0  
COMMISSIONER OF OATHS

Full Names:

Francine Curious Mashela

Business Address:

Springbok Rd Bridgton

Designation:

WARRANT OFFICER

Area:

SOUTHERN CAPE.

IN THE HIGH COURT OF SOUTH AFRICA  
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(In their capacity as trustees for the time being  
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MEMBER OF THE EXECUTIVE COUNSEL  
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Third Respondent

and

EQUAL EDUCATION

Amicus Curiae

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CONFIRMATORY AFFIDAVIT

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I, the undersigned,

**KLAAS DIDO**

do hereby make oath and say that:

1. I am an adult male and the chairperson of the governing body of the Grootkraal UCC Primary School.
2. The facts herein contained are, unless the contrary appears from the context hereof, within my own knowledge and are in every respect true and correct.
3. I have read the answering affidavit of **LIDIA STAL**, who is known to me as a member of the governing body of the Grootkraal UCC Primary School.
4. I confirm that the contents of that affidavit are true and correct, particularly in so far as reference is made to me and/or the governing body.

  
\_\_\_\_\_  
**KLAAS DIDO**

I hereby certify that on the 17<sup>th</sup> day of February 2012 in my presence at OUTSHOORN the deponent signed this Affidavit and swore and acknowledged that he:

- (a) know and understood the contents thereof;
- (b) had no objection to taking this oath;

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GERHARD BOTHA N.O

Third Applicant

(In their capacity as trustees for the time being  
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MEMBER OF THE EXECUTIVE COUNSEL  
FOR EDUCATION, WESTERN CAPE

First Respondent

THE GOVERNING BODY OF THE GROOTKRAAL  
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Second Respondent

GROOTKRAAL UCC PRIMARY  
SCHOOL (OUDTSHOORN)

Third Respondent

and

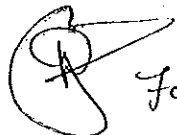
EQUAL EDUCATION

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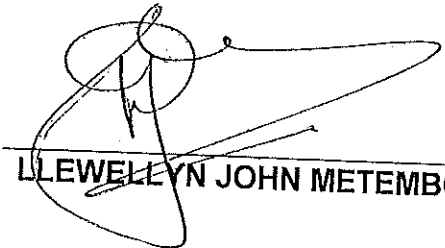
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I, the undersigned,

**LLEWELLYN JOHN METEMBO**


do hereby make oath and say that:

1. I am an adult male and the principal of the Grootkraal UCC Primary School.
2. The facts herein contained are, unless the contrary appears from the context hereof, within my own knowledge and are in every respect true and correct.
3. I have read the answering affidavit of **LIDIA STAL**, who is known to me as a member of the governing body of the Grootkraal UCC Primary School.
4. I confirm that the contents of that affidavit are true and correct, particularly in so far as reference is made to me and/or the school.

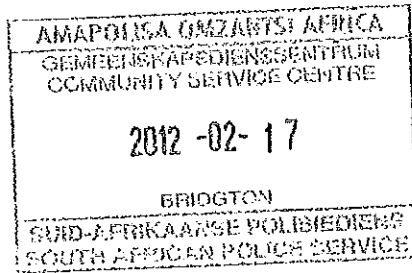
  
**LLEWELLYN JOHN METEMBO**

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- (b) had no objection to taking this oath;

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- (c) considered this oath to be binding on his conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".



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M. MATHIEN F.C.  
COMMISSIONER OF OATHS

Full Names:

Francis Curo Mathien

Business Address:

Springbok Rd Oudtshoorn

Designation:

Blomant Officer

Area:

Southern Cape



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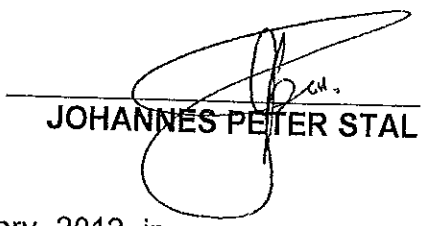
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I, the undersigned,

**JOHANNES PETER STAL**

do hereby make oath and say that:

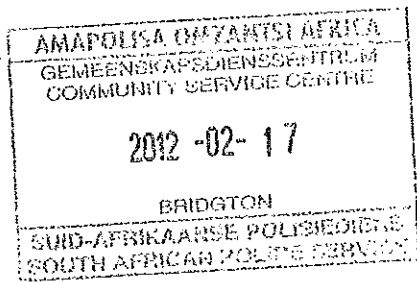
1. I am an adult male and the deputy chairperson and treasurer of the Governing Body of the Grootkraal UCC Primary School.
2. The facts herein contained are, unless the contrary appears from the context hereof, within my own knowledge and are in every respect true and correct.
3. I have read the answering affidavit of **LIDIA STAL**, my wife, who is also a member of the governing body of the Grootkraal UCC Primary School.
4. I confirm that the contents of that affidavit are true and correct, particularly in so far as reference is made to me.

  
\_\_\_\_\_  
**JOHANNES PETER STAL**

I hereby certify that on the 17<sup>th</sup> day of February 2012 in my presence at OUTDSHOORN the deponent signed this Affidavit and swore and acknowledged that he:

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(c) considered this oath to be binding on his conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".



455025-8 7  
M. HETTINGER  
COMMISSIONER OF OATHS

Full Names: Franklin Cedus Madohe Hla.  
Business Address: Springbok Rd Crestwood  
Designation: Warrant Officer.  
Area: Fouries & Cape

