

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

CASE NO. **81/2012**

In the matter between:

EQUAL EDUCATION

First Applicant

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

Second Applicant

**INFRASTRUCTURE CRISIS COMMITTEE OF
MKANZINI JUNIOR SECONDARY SCHOOL**

Third Applicant

and

MINISTER OF BASIC EDUCATION

First Respondent

MEC FOR EDUCATION: EASTERN CAPE

Second Respondent

GOVERNMENT OF THE EASTERN CAPE PROVINCE

Third Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Fourth Respondent

MEC FOR EDUCATION: FREE STATE

Fifth Respondent

MEC FOR EDUCATION: GAUTENG

Sixth Respondent

MEC FOR EDUCATION: KWAZULU-NATAL

Seventh Respondent

MEC FOR EDUCATION: LIMPOPO

Eighth Respondent

MEC FOR EDUCATION: MPUMALANGA

Ninth Respondent

MEC FOR EDUCATION: NORTHERN CAPE

Tenth Respondent

MEC FOR EDUCATION: NORTH WEST

Eleventh Respondent

MEC FOR EDUCATION: WESTERN CAPE

Twelfth Respondent

MINISTER OF FINANCE

Thirteenth Respondent

CERTIFICATE OF URGENCY

1. I the undersigned, Jason Brickhill, am an advocate of the High Court of South Africa, practising at Thulamela Chambers Sandown and the Legal Resources Centre, Johannesburg. I have read the papers in this matter and am of the view that the relief that the Applicants seek should be considered on an urgent basis and justifies a departure from the ordinary time limits and provisions relating to service set out in the Rules of the High Court.
2. The applicants do not seek to have the matter set down immediately. The settlement agreement between the parties which gives rise to this application recorded that in the event of a breach of the agreement, the applicants could return to court to enforce the terms of the agreement on two weeks' notice. The first respondent (the Minister) therefore agreed to truncated time periods in the event of a breach.
3. The applicants seek to have this matter placed on the opposed motion roll for 11 July 2013, just over one month from the date of filing, and considerably longer than the two weeks' time frame agreed to. I believe this will allow the respondents sufficient time to file answering papers and prepare adequately for the hearing of this matter considering the urgent nature of the relief sought in the notice of motion.
4. In the notice of motion the applicants request that the notice to oppose be filed within two days of service of the notice of motion, the answering affidavits be filed within seven days of the service of such notice of opposition, and the replying affidavits five days thereafter. I suggest that the court directs that three days later the applicants file their heads of argument, four days later the respondents will file their heads of argument, with the matter to be heard on 11 July 2011. This will allow the parties sufficient time to deal with the relief sought in a comprehensive manner without

allowing the matter to await hearing in the ordinary course, to the extreme and ongoing prejudice of many learners in the Eastern Cape Province.

5. The applicants seek the following court order:

5.1. A declaration that the Minister has failed to fulfill her obligation in terms of paragraph 1 of the settlement in that she failed to prescribe minimum uniform norms and standards for school infrastructure in terms of section 5A(1)(a) and 5A(2)(a) of the South African Schools Act (the Act) on or before 15 May 2013;

5.2. Directing the Minister to make regulations that prescribe minimum uniform norms and standards for school infrastructure in terms of section 5A(1)(a) and 5A(2)(a) of the Act within 45 calendar days of the date of this order;

5.3. Directing the Minister to pay the costs of this application on an attorney and client scale, including the costs of two counsel.

Background

6. Equal Education (EE), the First Applicant, is a community and membership based organisation. It advocates for quality and equality in the South African education system, and engages in evidence-based activism for improving the country's schools.

7. EE has approximately 1500 members and consists of learners, parents, teachers, and community members. EE has spent more than three years campaigning to convince the Minister to promulgate regulations that prescribe minimum norms and

standards for school infrastructure (the Regulations) in terms of section 5A of the South African Schools Act (the Act). Once it was clear that the Minister had no intention of prescribing binding Regulations, the main application was launched. In the main application, EE sought an order directing the Minister to make Regulations within three months of the date of judgment.

8. The main application was filed on 3 March 2012. After lengthy delays by the Minister in filing an answering affidavit, the matter was set down for argument on 20 November 2012. One week before the hearing, the Minister's legal representatives approached EE's attorneys requesting a meeting between the parties and proposing that the matter be settled. A settlement agreement was signed in terms of which the Minister undertook to publish binding Regulations in terms of the Act on or before 15 May 2013. The Minister has not promulgated the Regulations and is in breach of the agreement. She has unilaterally declared that she needs approximately six more months in which to finalise the Regulations.

9. The Minister's request for more time is just one of many delays which are described in the founding affidavit of this application. The applicants submit that unless there is a court order directing the Minister to comply with the agreement and promulgate the norms within 45 days of a court order, it is very likely that there will be many more delays.

10. EE submits that the Minister's three reasons for needing a six month extension are irrational. The founding affidavit to this application sets out why the Minister does not need to publish the draft regulations for yet another round of public comments;

why she does not need to consult the Council of Education Ministers (CEM) and Heads of Education Departments Committee (HEDCOM) yet again after they have had numerous opportunities to make input; and why the Minister does not need to give the National Economic Development and Labour Council (NEDLAC) an extended opportunity to make comment, particularly when the Council itself had indicated it did not wish to delay promulgation beyond the agreed date of 15 May 2013 .

11. The long history of broken promises and delays by the Minister is evidence that without court action she is likely to keep delaying the promulgation of the Regulations. Every day without norms and standards for school infrastructure is another day that learners' constitutional rights are violated.

Urgency

12. This application is by its nature urgent. It is urgent that the Minister of Education abide by the settlement agreement she signed and make Regulations that prescribe norms and standards for school infrastructure. Poor school infrastructure is a rampant problem in South Africa, especially in townships and rural communities. Thousands of poorly built schools are hazardous to learner and teacher health, as well as a serious impediment to effective learning and teaching.

13. There are thousands of schools across South Africa that are operating without adequate resources and in unsafe conditions. Government reports, most notably the National Education Infrastructure Management System Report (NEIMS), detail

the lack of resources at public schools in the country. Relevant pages of the most recent NEIMS Report, published by the national Department of Basic Education (DBE) in May 2011, are attached as annexure YD10 to the main application. The Report notes that of the 24 793 public ordinary schools:

- a) 3 544 schools still do not have electricity, while a further 804 schools have an unreliable electricity source;
- b) 2 401 schools have no water supply, while a further 2611 schools have an unreliable water supply;
- c) 913 schools do not have any ablution facilities while 11 450 schools are still using pit latrine toilets;
- d) 22 938 schools do not have stocked libraries, while 19 541 do not even have a space for a library;
- e) 21 021 schools do not have any laboratory facilities, while only 1 231 schools have stocked laboratories;
- f) 2 703 schools have no fencing at all; and
- g) 19 037 schools do not have a computer centre, while a further 3267 have a room designated as a computer centre but are not stocked with computers.

14. Unless the matter is heard on an urgent basis as sought, the Minister is likely to be able to continue in breach of the settlement agreement to delay prescribing the Regulations. The school year is likely to come to an end without minimum norms

and standards for school infrastructure, which the Minister formally undertook to prescribe by 15 May 2013.

15. I respectfully submit that this matter is urgent and should be heard on 11 July 2013.

A handwritten signature in black ink, appearing to read 'Jason Brickhill', written in a cursive style.

Jason Brickhill

Chambers, Johannesburg