

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

2009 -12- 05

CASE NO:

24611/11

CAPE TOWN/KAAPSTAD  
WES-KAAP HOE HOF

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 COUNCIL  
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

NOTICE OF MOTION

**TAK** NOTICE THAT application will be made to the above Honourable Court on  
the 13<sup>th</sup> alternatively the 22<sup>nd</sup> of December 2011 at 10h00 or as soon thereafter as  
counsel may be heard for an order in the following terms:

1. That this matter be treated as one of urgency dispensing insofar as may be  
necessary with the rules relating to forms, service and time periods as provided for  
in Rule 6(12) of the rules of this Honourable Court.

Louw Du Plessis Inc.  
CHRISTO NIMB  
021-8521517

2. That first respondent and all those holding title under him vacate the property commonly known as the farm Grootkraal, being portion 40 of the farm De Kombuys number 28 and a 1/9<sup>th</sup> share in portion 1 of the farm Groenefonteyn number 28 (hereinafter "Grootkraal" alternatively "property").
3. That such respondents and/or persons as may elect to oppose this application pay the costs of same jointly and severally.
4. Such further and/or alternative relief as this Honourable Court may deem meet.

**TAKE NOTICE FURTHER** that the affidavits of Jacobus Botha, Estello Botha and Gerhard Botha annexed hereto will be used in support of this application.

**TAKE NOTICE FURTHER** that applicants appoint the offices of Louw Du Plessis Inc, 31a St James Street, Somerset West c/o Walkers Inc, 15<sup>th</sup> Floor Plein Park, Plein Street, Cape Town at which they will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER** that if you intend opposing this application you are required to:

- (a) Notify applicant's attorney in writing at or before 16h00 on the 6<sup>th</sup> of December 2011. Said notice may be transmitted by fax to 021 - 852 1696 (FAO Mr C Nimb)

(b) To file your answering affidavits, if any, by no later than 16h00 on the 13<sup>th</sup> day of December 2011.


(c) And further that you are required to appoint in such notification an address referred to in Rule 6(5) at which you will accept notice and service of all documents in these proceedings.

If notice of intention to oppose is so received the application will be made to the above Honourable Court on the 22<sup>nd</sup> of December 2011

If notice of intention to oppose is not received, the application will be made to the above Honourable Court on the 13<sup>th</sup> of December 2011

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY

Dated CAPE TOWN this 2<sup>nd</sup> day of December 2011



C Nimb  
Louw Du Plessis  
Attorney for Applicant  
31a St James Street  
Somerset West  
c/o Walkers Inc  
15<sup>th</sup> Floor Plein Park  
Plein Street  
Cape Town

To The Registrar  
Western Cape High Court  
Cape Town

And To Member of the Executive Council for Education, Western Cape  
Grand Central Towers  
Lower Parliament Street  
Cape Town

**And To**      **The Governing Body of the Grootkraal UCC Primary School  
(Oudtshoorn)**  
Grootkraal being portion 40 of the farm De Kombuys number 28 and a  
1/9<sup>th</sup> share in portion 1 of the farm Groenefontuyn  
Situate on R 328, Oudtshoorn

**And To**      **Grootkraal UCC Primary School (Oudtshoorn)**  
Grootkraal being portion 40 of the farm De Kombuys number 28 and a  
1/9<sup>th</sup> share in portion 1 of the farm Groenefontuyn  
Situate on R 328, Oudtshoorn

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

**CASE NO: /11**

In the matter between:

<b>JACOBUS DU PLESSIS BOTHA N.O.</b>	<b>First Applicant</b>
<b>ESTELLE BOTHA N.O.</b>	<b>Second Applicant</b>
<b>GERHARD BOTHA N.O.</b> <b>(In their capacity as trustees for the time being of the Kobot Besigheid Trust (IT 969/2009))</b>	<b>Third Applicant</b>

and

<b>MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION, WESTERN CAPE</b>	<b>First Respondent</b>
<b>THE GOVERNING BODY OF THE GROOTKRAAL UCC PRIMARY SCHOOL (OUDTSHOORN)</b>	<b>Second Respondent</b>
<b>GROOTKRAAL UCC PRIMARY SCHOOL (OUDTSHOORN)</b>	<b>Third Respondent</b>

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**AFFIDAVIT**

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I the undersigned

**JACOBUS DU PLESSIS BOTHA**

do hereby make oath and say.



1. I am an adult male currently resident at 34 St Andrews Drive, Greenways, Strand, the first applicant in the above matter in my capacity as a trustee for the time being of the Kobot Besigheid Trust (TT 969/2009) (hereinafter "the trust")
2. The content hereof is both true and correct, and within my personal knowledge except insofar as may appear from the context thereof.

2.1. Where I make submissions of a legal and/or procedural nature I do so on the advice of my legal representatives and verily believe same to be both true and correct.

2.2. I shall of necessity herein relate information gleaned from the affidavits of the respondents filed of record under Western Cape High Court case number 12999/2011. I do so as I cannot state whether or not the respondents intend filing papers and wish to ensure that this Honourable Court has as full a picture as is necessary so as to make an informed decision without the necessity of tasking it with revisiting all the evidentiary matter placed before the court under case number 12999/11.

2.2.1. I shall further herein refer to evidence which can properly be construed as hearsay. In light of the nature of the proceedings and the urgency of same it is asked that such evidence be admitted. Invariably such evidence is in any event of a tangential nature unrelated to the primary question in this application, namely applicants' ownership of the property and respondents' unlawful occupation thereof.



Parties and Property

3. This is an application for the eviction of the first respondent and all those holding title under him, including but not necessarily limited to second and third respondents, from the property known as the farm Grootkraal, being portion 40 of the farm De Kombuys number 28 and a 1/9<sup>th</sup> share in portion 1 of the farm Groenefontuyn number 28 (hereinafter "Grootkraal" alternatively "the property") of which property the trust is the registered owner.

3.1. Second applicant is Estelle Botha N.O. in her capacity as a trustee for the time being of the trust, an adult female currently resident at 11 St Andrews Drive, Greenways, Strand.

3.2. Third applicant is Gerhard Botha N.O. in his capacity as a trustee for the time being of the trust, an adult male accountant currently resident at 4 McLeod Street, Somerset West.

3.3. First respondent the Member of the Executive Council for Education in the Western Cape ("the MEC"), which post is currently filled by Mr Donald Grant, having his *domicilium citandi et executandi* at and indeed his main offices at Grand Central Towers, Lower Parliament Street, Cape Town.



3.4. Second respondent is the Governing Body of the Grootkraal UCC Primary School (Oudtshoorn). I cannot say with any certainty what the nature or otherwise of the legal personality of the second respondent is but infer from documents filed in other proceedings that it is indeed a governing body constituted in terms of sections 16(1) and 18 of the South African Schools Act 84 of 1996, which operates out of the property. I reserve the right to revisit the issue of whether or not second respondent is indeed a governing body properly constituted upon receipt of information provided by the respondents in this regard.

3.5. Third respondent is the Grootkraal UCC Primary School (Oudtshoorn), a public school defined as such in terms of section 15 of Act 84 of 1996.

4. The property is situate and the parties are resident, alternatively situate, in the area of jurisdiction of this Honourable Court. It is accordingly submitted that this Honourable Court has jurisdiction to hear this matter.

4.1. The trust is the registered owner of the property in question and accordingly it is submitted that applicants have *locus standi* to prosecute this application.





4.2. First respondent and those holding under him occupy the farm without any right in law to do so and accordingly applicants are entitled to relief which they seek.

5. Regards the urgency of the application, I shall elaborate on same hereunder but for this court's ease of reference same are in short:

5.1. The third respondent is a primary school which will commence the new school year during January of 2012. It is imperative that provision be made for the children at the school before the commencement of the new school year.

5.1.1. Alternatively, should the parents of any of the pupils wish to relocate the children to other schools they need to be given an opportunity to do so before the new school year commences.

5.1.2. In the event this matter is heard in the ordinary course the pupils at the school run the real risk of a disrupted school year during 2012.

5.2. First respondent is currently occupying the farm without any right in law to do so and without tendering any consideration for such occupation.

5.3. The trust seeks to develop the property which development is being obstructed by first respondent's continued occupation of same.

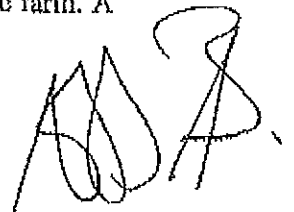


5.4. While this matter has been delayed for some time the reason for such delay is solely due to efforts on the part of applicants to accommodate the first respondent and/or the school and attempts to resolve the matter extrajudicially.

5.5. It was among the applicants decided that this application would indeed not be instituted until such time as the current school year reached finality. The reason for this was that the applicants jointly did not wish to do anything which might cause a disruption to the children's schooling. Further, we will be neighbours, and possibly employers of many of the families of children in the school, and continue to hope for an amicable relationship with them.

#### Applicants Cause of Action

6. In short applicant's case is based on the indisputable facts that it is the registered owner of the property in question, which property was occupied by first respondent by virtue of a written lease agreement, which lease agreement has expired by effluxion of time and despite applicants' best efforts no new agreement has been entered into. It is submitted that the aforesaid is sufficient for the grant of the relief which applicants seek.
7. On or about 7 July 2008 and at Oudtshoorn, Western Cape, first respondent represented by Fajwa Abrahams, duly authorised, entered into an agreement of lease with the estate of the late JWH van der Veen, the then owner of the farm. A



copy of the said written lease agreement is annexed hereto marked "FA 1". The material terms of said agreement relevant hereto were as follows.

- 7.1. The lease would be enforced for a period one year from 1 June 2008 until the 31<sup>st</sup> of May 2009 whercafter first respondent would have the option to renew same for a period of a further one year. (Annexure B clauses 1-2)
- 7.2. The property to be occupied was a brick structure some 245 m<sup>2</sup> in extent. (Annexure A as read with clause 3)
- 7.3. Rental payable would be in the amount of R 881.90 per month.
- 7.3.1. When the lease agreement was indeed renewed for the further one year period the agreed rental was in the amount of R 1008.08 per month.
- 7.4. The terms of the lease agreement were further accepted by one Mr Klaas Dido on behalf of the second respondent. (Annexure C)
8. It should be noted that there had been prior to this other agreements of lease in terms whereof the first respondent, alternatively the further respondents, alternatively the parties legal predecessors, had occupied the land. For all intents and purposes however and by virtue of the provisions of section 12(1) of Act 84 of 1996, the only agreement relevant to the current application is that as contained in annexure "FA 1". A comprehensive history of the school's occupation of the



property is indeed set out in the papers filed under case number 12999/2011 should the court require further elucidation.

9. On 5 February 2010 the trust took transfer of the property pursuant to the purchase of same at an auction. At this time the trust stepped into the shoes of the lessor and accepted the terms and conditions and obligations as contained in the written lease agreement.

9.1. It was further at this time accepted by the first respondent that the trust was the lessor in terms of the lease.

10. The lease agreement was extended for a further period of one year, and accordingly same terminated on the 31<sup>st</sup> of May 2010. Despite almost ongoing negotiations in this regard no further renewal of the lease took place.

11. After the trust had taken transfer of the property and during or about May/June of 2010, I visited the area of the school. What immediately struck me in this regard was that the area occupied by the school was not, as contained in the lease agreement an area of 245 m<sup>2</sup>, but rather an area of approximately 4500 m<sup>2</sup>, including an extension onto one of the few areas of arable land on the property.

- 11.1. For the court's reference I attach hereto marked "FA 2" an aerial image of the relevant portion of the property. The area currently occupied by the school is the triangular portion marked out by the letters A-C.



11.2. I do not know by virtue of what claim of a right to the school has occupied, and indeed fenced off the further area it now in reality occupies. I note that a portion of this land is being used by the school and/or the principal thereof to grow vegetables.

12.1 had furthermore early in 2010 been contacted by the offices of the first respondent through the auspices of one Mr D De Pontos who had indicated that although the lease agreement as per "FA 1" was soon to terminate, whether it would be possible to enter into a further lease agreement for a period of one year.

12.1. As the trust was still developing its plans as regards the development of the property, I instructed the trust's erstwhile attorney of record to contact the offices of the first respondent and indicate that the trust would be prepared to lease the property to the first respondent for a further year beginning on 1 June 2010. A copy of this letter is attached hereto marked "FA 3".

12.2. By virtue of the fact that I had established that the school was in fact occupying some 4000 m<sup>2</sup> as opposed to the 245 m<sup>2</sup> stipulated in the lease agreement, I did mention further that the trust would be prepared to lease the property to the Department in the event the lease agreement made provision for all the land occupied by the school. I further offered to make an alternative portion of land available to the Department in order to relocate the school. A copy of the letter setting out these requests and offers is attached hereto marked "FA 4"



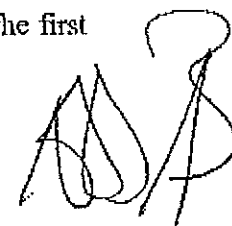
12.2.1. As regards the disparity between the area occupied by the school, the area of 4000 m<sup>2</sup> was an estimate whereas the true extent, namely 4500 m<sup>2</sup> was established when the area was recently surveyed.

12.3. I should note further in this regard that as of 1 June 2010 the first respondent failed to pay the rental as agreed or indeed any consideration for its continued occupation of the property. As stipulated the rental payable as at the 1<sup>st</sup> of May 2010 was in the amount of R 1008.08 per month.

12.3.1. In that first respondent has neither vacated the property nor paid any amount since May of 2010 the said monthly amount remains due and payable.

12.4. I was however informed by the Department through the offices of the trust's erstwhile attorneys, that the Department was only prepared to pay rental for the building occupied by the school and not for the further land occupied by them. The amount that the Department was prepared to pay was between R 5 and R 7 per square metre. A copy of a letter from the Department reflecting same is attached hereto marked "FA 5"

12.5. I was not prepared to enter into an agreement on these terms, but in light of the difficulties that would be experienced by the first respondent if the school was closed down on short notice and in order so as not to prejudice the pupils at the school I instructed our attorneys of record to relate to the first



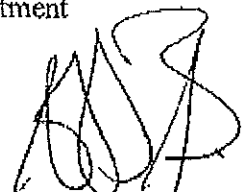
respondent that the terms they proposed were not acceptable but that the first respondent would only have to vacate the property by the end of June 2011 so as to coincide with the midyear school holidays. A copy of this letter dated 17 August 2010 is attached hereto marked "FA 6".

12.5.1. As is apparent the trust was prepared to afford the Department and the further respondents a period of some 10 months grace within which to make alternative arrangements.

12.5.2. As is further apparent from "FA 6" a further tender to make an alternative portion of land available to the Department was made.

12.6. Even hereafter however the trust's attorneys continued to liaise with the Department in an attempt to negotiate a new lease agreement. The invariable sticking point in this regard however was that the Department was only prepared to pay a nominal amount of rental and only for one of the buildings which was occupied by the school. As appears from a letter dated 27 January 2011, a copy whereof is attached hereto marked "FA 7", it appears that the determination of rental is unfortunately a matter that is subject to a degree of bureaucratic inflexibility.

12.7. As a result of the above, and indeed as a result of further factors as set out hereunder, the trust then decided that there was little or no hope of entering into a feasible lease agreement with the Department and accordingly again on 17 March 2011 requested written confirmation from the Department



that the property would indeed be vacated by the end of June 2011. A letter from the trust's attorneys to the Department in this regard is attached hereto marked "FA 8"

12.8. Consequent hereto on the 5<sup>th</sup> of May 2011 a letter was received from the Department indicating that they would indeed take steps to close the school by the end of June 2011, pay the outstanding arrears and relocate the pupils elsewhere. A copy of this letter is attached hereto marked "FA 9"

12.9. On 1 July 2011, at which time the property was still occupied contrary to the undertaking given by the Department, an e-mail message was directed to Mr Lodewyk de Klerk who was also at the time engaged in negotiations with the Department on behalf the trust, in terms whereof it was stipulated that the pupils at the school would be beginning the third term at Voorbedag Primary School located nearby. A copy of this e-mail is attached hereto marked "FA 10".

13. I can only surmise that as a result of the decision to relocate the school elsewhere, on 29 June 2011 the second and third respondent instituted proceedings under Western Cape High Court case number 12999/11, which in short asked for interim relief preventing the relocation or merger of the school or any interference with its continued operation, and thereafter a review of the decision in terms where of the school would be directed to merge with some other school alternatively to relocate to Voorbedrag Primary School.





- 13.1. Insofar as this matter was almost exclusively as between the respondents in the instant matter the trust did not enter into the fray, but rather elected to reserve its rights in terms of a settlement agreement, a copy whereof is attached hereto marked "FA 11".
- 13.2. The matter was duly argued and on 15 July 2011 Mr Justice Henney granted an order in the terms as set out in annexure "FA 12" hereto.
- 13.3. As is apparent from the content of the order it is clear that relocation of the school should not take place during the 2011 school year and further that the Department was called upon to engage with the trust in order to attempt to facilitate a new lease agreement.
- 13.4. While there was no direct relief granted as against the trust in this matter the trustees decided to approach the order in this spirit that it was clearly intended and immediately once again decided to liaise with the Department in an attempt to find a solution to the impasse.
- 13.5. A meeting between the representatives of the Department and the trust was accordingly held on 26 July 2011 and various proposals were discussed.



13.5.1. Firstly the possibility of a new lease agreement for a further limited period on more equitable terms was put forward and the parties agreed to discuss the various terms thereof.

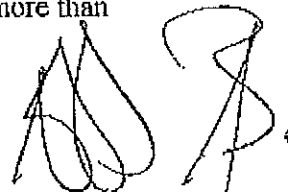
13.5.2. Secondly the possibility of subdividing an alternative portion of the farm and selling same to the Department was put forward.

13.5.3. Thirdly I informed the representatives of the Department that one of my neighbours, one Mr Larry Marcus who owned the farm on the other side of the road from the school had indicated that he would also be prepared to subdivide off and sell to the Department a portion of his farm.

13.5.4. The Department further undertook to investigate the possibility of alternative state land in the area. Unfortunately it appears that this did not bear fruit and no such other land is indeed available.

13.6. As regards the possibility of a new lease agreement, the offices of the state attorney on behalf of the first respondent contacted the trust's attorneys on 10 August 2011 and undertook to pay rental in the amount of R 5 500-00 per month for a lease agreement to continue for a further two years. A copy of this missive is attached hereto marked "FA 13"

13.6.1. This was unfortunately a mere continuation of the department's earlier stance. Although the amount of rental was considerably more than



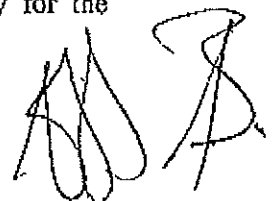
the Department had been paying until May of 2010, it was still in no way relative to the area of the property in fact occupied by the school.

13.6.2. Applicants' response to the above proposal is set out in a letter dated 16 August 2011, a copy whereof is attached hereto marked "FA 14". The rental amount set out herein was in accordance with the amounts stipulated by the Department is being the amount per square metre that it was prepared to pay as rental as read with the area of the property actually occupied by the school.

13.7. The above was stipulated by the representatives of the Department as being negotiable although it expressed reservations about the amount of rental mentioned.

13.8. Accordingly on 15 September 2011 the trust's legal representatives once again directed a letter to the Department setting out the revised proposals, which significantly reduced the total amount of rental requested and indeed only charged rental for the area of the property used by the school for school related activities (buildings, ablutions, playground etc.) It should be noted that the remaining 2500 m<sup>2</sup> occupied by the school are apparently used for unrelated activities such as agriculture. A copy of the letter setting out the trust's proposals in this regard is attached hereto marked "FA 15".

13.9. On 11 October 2011 it appeared that there was indeed some hope of a resolution to the problem when the letter of the state attorney for the

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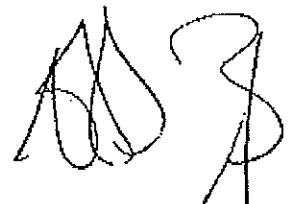
Department, a copy whereof is attached hereto as "FA 16" was received. It appeared however that the question of rental payable in the future was not one which the Department was prepared to negotiate.

13.10. Accordingly on 1 November 2011 applicants' attorneys informed the representatives of the Department that their offer was unacceptable.

13.11. I should like to point out that this was not a decision lightly taken. The other applicants and I remained hopeful that a lease agreement beneficial to both parties could be entered into for at least a limited period. The simple fact of the matter however is that the amount of rental tendered by the Department is hopelessly disproportionate to the value of the right of occupation. Indeed in the bigger scheme of things the amount tendered by the Department is in fact simply a nominal amount and accrues effectively no benefit to the trust.

13.12. Our final communication with the Department in this regard was a letter dated the 25<sup>th</sup> of November 2011, a copy whereof is attached hereto marked "FA 17".

14. When the trust purchased the property it did so with the intent of developing same as a game farm/resort. The property is located at the entrance road to the Congo Caves in the Oudtshoorn area, one of the top four natural tourist destinations in South Africa together with Robben Island, Table Mountain and the Drakensberg.



- 14.1. I attach hereto in this regard marked "FA 18" an aerial photo of the property showing its location on the R328 and the area of the caves, the caves being in the area marked portion 89.
- 14.2. The property itself is unfortunately, but for the very small area immediately adjoining the school, of which a portion is of course now occupied by the school, not suitable for any form of commercial agriculture. The area is not blessed with abundant rain and due to its mountainous nature and not suitable for irrigation from the water source adjacent to the school.
- 14.3. In the circumstances crop farming is not a viable financial alternative and there is insufficient grazing for any large-scale livestock production.
- 14.4. Accordingly had the trust wished to use the property for farming it could only have done so at what can effectively only be a subsistence level and its only alternative is to tap into the obvious source of revenue available to it, namely the tourist market in the area.
- 14.5. There are currently no other facilities nearby to the caves where any but the smallest numbers of tourists can stay overnight. Furthermore there is a dearth of one of South Africa's other great tourist draw cards, namely game reserves. Happily, while the farm is not suitable for livestock, supporting game can indeed be accomplished on the property with its otherwise meagre natural resources.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a vertical line extending downwards.

14.6. Accordingly what is intended is that the property will be encircled by a game proof fence and a private game reserve established as well as guest accommodation. I refer in this regard to the plans and business proposals drawn up in support of this project attached hereto marked "FA 19".

15. I wish to emphasise this point. It has always been the trust's intent to develop the property in this way. It bought the property with this intent but also in the knowledge that the school had a right to occupy the property which right would be terminating in the near future. Despite the plans for the property the trust has been prepared to hold them in abeyance in order to accommodate the pupils in the school and in no way wishes to prejudice their education. In order to protect the interests of the pupils at the school the trust has been prepared to hold in abeyance its plans to develop the property, but it is apparent that despite the best efforts of the trust, and indeed the Department of education, that the issue of the schools occupation will simply drag on indefinitely if proactive steps are not taken to bring a final resolution thereto.

16. I turn now with some reluctance to certain issues that the trust has had with the school which are indeed a cause of some concern. I believe however that the majority of these issues are matters more properly raised as between the Department of Education and the governing body of the school and/or the school itself but wish to very briefly include them here in so as to demonstrate that it does not in any event appear that the continued operation of the school is indeed in the best interests of the children.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

17. I attach hereto a diagram of the school marked "FA 20" as well as photographs of the relevant structures marked "FA 20A - 20F"

17.1. The area occupied by the school indeed comprises some 4500 m<sup>2</sup>, and on same are emplaced some 5 structures.

17.1.1. Building A is a structure comprising five classrooms of about 30 m<sup>2</sup> each plus additional office space. The total area of the building is some 245 m<sup>2</sup>.

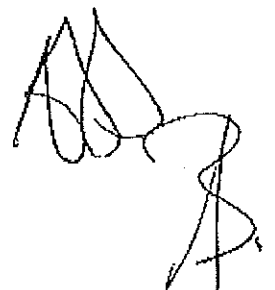
17.1.2. Building B is a prefabricated structure which is used as a kitchen.

17.1.3. Building C comprises two outside toilets. These toilets do not have plumbing and I assume some alternative provision is made for the removal of human waste.

17.1.4. Building D is a bathroom and toilet some 24 m<sup>2</sup> in extent.

17.1.5. Building E is a further classroom some 36 m<sup>2</sup> in size.

17.1.6. There are further two shipping containers placed adjacent to the school on the verge of the road the purpose where of I am unable to ascertain.



17.1.7. As is apparent the area available for classrooms in the school comprises some 186m<sup>2</sup>, as for the school which apparently accommodates some 160 pupils. It accordingly appears that both the available classroom space and indeed sanitary facilities are wholly inadequate for a school of this size.

17.2. I understand from my discussions with representatives of the first respondent that the reason for the size of the school is that it was initially used for that which it was intended to be, namely a small school servicing the children of persons employed on farms and immediately adjacent area. I understand further that until very recently the number of children in the school ranged from some 15 to 20.

17.2.1. Subsequent to the appointment of the current headmaster of the school however, one Mr Mctembo, the number of children at the school has increased exponentially to the amount of approximately 160 which attend there at present.

17.3. As stated children attending school do not all live in the immediate area.

17.3.1. I understand that some 42 of the children in fact are brought to the school from Oudtshoorn some 25 km away.





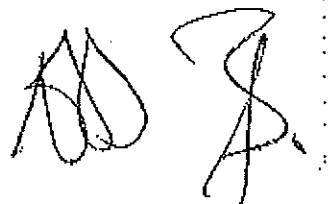
17.3.2. From my observation of the comings and goings at the school I have noted that only 11 children at the school seem to live in walking distance and arrive by foot every morning.

17.3.3. The remainder of the children attending school appear to live along the R328 leading into Oudtshoorn and then also on farms further up in the Swartberg mountains. There does not appear to be any provision made for the safe transport of the children to and from the school and indeed they appear to be conveyed in conditions which are dangerous if not illegal.

17.4. The principal of the school has further affected certain unauthorised alterations to the property, including but not limited to the erection of a three phase power supply to the school.

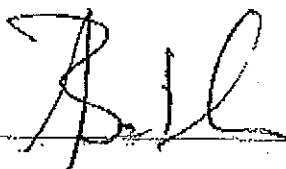
17.5. As has already been stated it appears that someone at the school, I can only assume that this is on the instruction or with the knowledge of the principal, commenced farming on the land that it has occupied, growing primarily beetroot and onions which are irrigated using the municipal water supply.

18. In the event that the relief sought is granted I understand that the Department has in fact made provision for the relocation of the children, and indeed the school, elsewhere. As I can ascertain from the affidavit filed by Penelope Vijnnevold on behalf of the first and second respondents under case number 12999/11, until such

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time as a permanent structure can be obtained to house the school it will be temporarily relocated to the premises of a nearby school known as Voorbedag Primary School and provision will be made for the safe transportation of the children to the school for as long as necessary.

19. I accordingly submit that a proper case has been made for the relief which applicants seek and indeed that the grant of the relief as sought in the notice of motion is in the best interests of all parties.



**DEPONENT**

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit and this is the truth to the best of his knowledge, which affidavit was deposed and sworn to before me at *Somerset West* on this the 2<sup>nd</sup> day of December 2011 and that the provision of the regulations as contained in the Government Notice no 3619 of 21 July and no. 1648 of 19 August 1972, had been adhered to.



**COMMISSIONER OF OATHS**

CHRISTIAAN FREDERIK SWART  
KOMMISSARIS VAN EDEI  
COMMISSIONER OF OATHS  
PRAKTISERENDE PROKUREUR RSA/  
PRACTISING ATTORNEY RSA/  
49 REITZ STRAAT/STREET, SOMERSET-WEST

