

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE HIGH COURT: BHISHO) CASE NO. 603/12**

In the matter between:

PALESA FAITH MANYOKOLE	First Applicant
EQUAL EDUCATION	Second Applicant
MADIMO EMILIA MOUTHLOALI	Third Applicant
and	
DISTRICT DIRECTOR: MALUTI DISTRICT EASTERN CAPE DEPARTMENT OF BASIC EDUCATION	First Respondent
THE HEAD OF DEPARTMENT OF BASIC EDUCATION: EASTERN CAPE	Second Respondent
MEC FOR EDUCATION: EASTERN CAPE	Third Respondent
THE DIRECTOR GENERAL: DEPARTMENT OF BASIC EDUCATION	Fourth Respondent
THE INTERVENTION TEAM	Fifth Respondent
MR LEEU	Sixth Respondent
MINISTER OF BASIC EDUCATION	Seventh Respondent
THE SCHOOL GOVERNING BODY: MOSHESH SENIOR SECONDARY SCHOOL	Eighth Respondent

REPLYING AFFIDAVIT

I, the undersigned,

YOLISWA DWANE,

declare the following under oath:

1. I am an adult female and the head of the Policy, Communication and Research Department at Equal Education ("EE"), Second Applicant in this matter.
2. I have read the answering affidavit deposed to by the Third Respondent ("the MEC") dated 12 December 2012 and filed on behalf of the Respondents. This affidavit is made in reply to the answering affidavit in support of the affidavit submitted by the first applicant in this matter. I turn now to deal with the allegations made in the MEC's answering affidavit, paragraph by paragraph in so far as they relate to the second applicant.

AD PARAGRAPH 38

3. I admit that my statement that Moshesh is the worst case of mismanagement I have ever encountered is my opinion. However, I point out that given my background and experience. I am well placed to form such an opinion.

AD PARAGRAPH 40

4. Attempts were made to interact both with the chairperson of the School Governing Body and the principal of Moshesh. The investigation was aimed at establishing the veracity of the learners' claims. I submit that it smacks of irony that the respondent's complain that there is little detail on the nature of the applicant's investigation when they expect this Court to rely on a vague reference to serious issues of teacher misconduct as resolved after investigation without revealing the nature of those investigations.

AD PARAGRAPH 41

5. I stand by my allegations and this assertion by the Respondents has no bearing on the case and the matters at hand.

AD PARAGRAPH 42.1 & 42.2

6. It is denied that the second applicant's task team did not attempt to engage with the School Governing Body (SGB). Indeed the MEC's own version shows that there was indeed an attempt to engage with the chairperson of the School Governing Body. The chairperson of the School Governing Body had indicated that he would meet with EE at the school. When EE arrived at the school it soon became apparent that the SGB chairperson had no intention of meeting.

AD PARAGRAPH 42.3

7. Whilst the second applicants did arrive at the school it is denied that they claimed to have donors wanting to make donations to the school. They identified themselves and made their presence known to the principal as indicated by the visitors log book. It is denied that the principal was asked to list problems at the school in order to secure these donations. The purpose of the visit was to attempt to engage with the principal in relation to the very serious allegations made by the learners. At no point did the second applicant indicate that it intended to make donations to the school.

AD PARAGRAPH 42.4

8. It is denied that the second applicant was seeking only negative issues about Moshesh. It is denied that EE sought to mislead the principal under the guise of donations. When the EE task team first visited Moshesh it visited the school but this was during the winter vacation period.

AD PARAGRAPH 42.5

9. It is denied that the school has been “operating satisfactorily”. The quality of leadership provided by the principal is questionable in view of the fact that the First Respondent (district director) has himself admitted that *“the principal is not managing the school well.”*¹ In addition, annexure MS17 (which the Respondents purport to be a “school log book” documenting departmental visits to the school)² in an entry indicates that *“NSNP financial reports have not been submitted since March 2011 despite support that has been given, the principal is hereby instructed to submit all the outstanding reports not later than 14/9/2012.”*³
10. The qualifications of the two School Governing Body members referred to are beyond my personal knowledge. However, I submit that it is telling that other than the confirmatory affidavit provided by the chairperson of the SGB, no other member of the School Governing Body has submitted an affidavit to counter the allegations that the school is dysfunctional, management is weak and the School Governing Body has failed to discharge its functions

¹ Annexure MS25 of answering affidavit – Fuzile report.
² Respondents affidavit annexure MS17 entry dated 15/9/2012.
³ Respondents affidavit annexure MS17.

effectively. The third applicant is a member of the SGB and fully supports this application.⁴ We stand by our allegation.

AD PARAGRAPH 42.6

11. I cannot comment on the frequency of the meetings held between the School Governing Body and the principal. I do, however, point out that the mere holding of regular meetings in and of itself is not a sufficient indicator that a School Governing Body is performing its obligations properly. I submit that it is quite telling that the formal minutes of meetings held prior to 29 August 2012 (notably before EE intervened) *"have been misplaced at the school"*. I submit that this statement highlights the deficient record keeping and lack of accountability and speaks to the poor quality of the way in which Moshesh is being managed and governed.

AD PARAGRAPH 42.7

12. I point out that the mere fact that district officials visited Moshesh does not detract from the problems occurring at Moshesh school and the lack of an effective response from the district in addressing those problems. From the obscure entry "enough progress on recovery plan" it is unclear what recovery plan is being referred to and whether it relates to teaching and learning or some other aspect of the school. If it does relate to teaching and learning what grades was the official was referring to, or if the curriculum was covered in all subjects? To the extent that the MEC seeks to rely on this entry to portray that backlogs to address the

⁴ Applicants founding papers affidavit of the third applicant, Modimo Mouthloali.

gaps in learning and teaching for the 2012 academic year were sufficiently addressed this is denied.

AD PARAGRAPH 42.8


13. The “comprehensive 2012 improvement plan” referred to appears to be an implementation plan accompanying the district improvement plan which all districts are expected to compile.⁵ What the Respondents fail to make available is a comprehensive improvement tailored specifically to the needs of Moshesh.

14. Significantly, section 58B of SASA contemplates a plan that seeks to address the underlying causes of underperformance at a specific school. This plan does not address the particular failures at Moshesh. What steps will be put in place to address the ineffective teaching and learning, to ensure that learners do not sit untaught for months at a time? To ensure that teachers do not arrive at school intoxicated? To ensure that the poor management and governance at the school are addressed? It appears that the Respondents still remain unaware of their statutory obligations to compile and effectively implement a comprehensive plan to deal with the problems at Moshesh specifically.

AD PARAGRAPH 42.9

15. I submit that given the significant reduction in the number of learners actually sitting for matric examinations at Moshesh it is disingenuous of the MEC to point to an improvement

⁵ Respondents answering affidavit annexure MS18.

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in the national senior certificate results at the school in an attempt to portray a school that has managed to turn things around.

AD PARAGRAPH 42.10

16. The short term plan states that for grade 10 learners "intensive teaching" will be done "for subjects where teaching has not been done due to lack of teachers". The plan thus acknowledges that there were an inadequate number of teachers for grade 10 learners. The short term plan does not address how they will deal with allegations of teacher misconduct. Palesa Manyokole has stated in her reply that when extra classes were arranged most teachers did not arrive to teach the learners. To the extent that the short term plan seeks to suggest that effective remedial measures were put in place to address the deficiencies in teaching and learning, this is denied.
17. This plan does not address the problems at the school relating to absent teachers and the school's failure to adequately cover the curriculum. Nor does it address the hostel issues or the school textbook issues. The plan essentially makes out a case that the school's management and teaching is incompetent and dysfunctional and then lays out a plan to expand the school to include grade 8 and 9 learners. There is also no indication as to whether the department accepted this plan as adequate or whether it worked with the school to develop an adequate plan pursuant to section 58B. I draw the court's attention to a letter marked "YDRI" from the National Minister and Seventh Respondent which reveals that no provincial department in the country has complied with the reporting requirements under

this section to ensure that underperforming schools receive the targeted support they require.

AD PARAGRAPH 42.11

18. I submit all three models proposed in MS23 still show a shortage of educators and do not, in fact, effectively address the staff shortages that are revealed in the 2013 staff establishment.

AD PARAGRAPH 42.12

19. I submit that it is telling that the SGB's Constitution was only adopted in November 2012, after the school was placed under the spotlight for its failures. The introduction of a Constitution cannot serve as a guarantee that school management moving forward will in fact perform all of the obligations that it is statutorily obliged to perform.

20. It is worrisome that the School Constitution has an unlawful clause which records that learners will be denied entry into school where parents fail to notify School Governing Bodies of their inability to attend meetings. It calls into question whether the School Governing Body properly understands its statutory powers and the limitations thereto.

AD PARAGRAPH 43

21. I submit that it is not evident that the issue of teacher misconduct at the school has been properly investigated by the department.

AD PARAGRAPH 44

22. I note that the Respondents' acknowledge that they were aware since at least August 2011 of allegations by learners that no effective teaching was taking place at the school, teachers are frequently absent or simply arrive late or leave early. Yet the Respondents' still have not addressed what measures have been taken to discipline teachers and what mechanisms have been put in place to ensure that the situation is not repeated. I deny that there are sufficient textbooks for all learners in each subject at Moshesh.

AD PARAGRAPH 45

23. I draw this Honourable Court's attention to the Respondents' allegation that they will "consider" the district's recommendations. This is not even a commitment to address issues such as the shortage of teacher posts which the director acknowledges is a problem. This is unsurprising given that the MEC takes the position that there was always adequate staff at Moshesh. This stance demonstrates why it is necessary for this court to intervene in Moshesh by granting the relief sought in the notice of motion. The inaction of the MEC and the Department

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over time has led to the deterioration of teaching and learning conditions at the school. It is the learners not the Respondents who pay the price for this inaction.

AD PARAGRAPH 46

24. The Respondents failure to adequately respond to our allegation that to no disciplinary action being instituted against teachers bears noting.

AD PARAGRAPH 47

25. It is incomprehensible that the MEC now seeks to assert that the principal has "obvious capacity" and has fulfilled his obligations towards the learners of Moshesh given the evidence of his poor management of the school which had amounted to a charge of misconduct by the district office. This charge is pending as the district is awaiting confirmation of a SADTU representative's availability to attend proceedings.

26. I deny that the School Governing Body has "obvious capacity" and has fulfilled its obligations towards learners at Moshesh. In this respect, I draw the Honourable Courts attention to annexure MS22 five year plan which states that *"The Governors of the school do not have the capacity to create a healthy learning environment."*⁶

27. Furthermore, the Respondent's report notes that *"Agricultural Science and Accounting are taught by teachers who are paid by the SGB"* and that *"The teachers only joined the school*

⁶ Respondents answering affidavit annexure MS22 five year plan at page 236.

in July".⁷ These two subjects are some of the subjects that had no educators for learners in grade 10 and 11. It is clear that the employment of these educators was the responsibility of the governing body.

AD PARAGRAPH 48

28. The contents of this paragraph has been addressed previously in this affidavit. To the extent that the allegations are in conflict with the contents of the applicants affidavits, they are denied.

AD PARAGRAPH 49

29. The content of this paragraph is denied. The attitude of the Respondents towards these learners is indicative of the state of neglect that learners at Moshesh have been subjected to. The situation of Reatile Leoatle and Reabetswe Ranqabang and the fact that they did not pass their Grade 12 after they missed a 6 months of their schooling because of the unlawful actions of school principal is puzzling. The fate of these students is exemplary of what could happen to current learners at the school.

AD PARAGRAPH 50

30. I deny that governance and management at Moshesh have been adequately addressed. I deny that the relief sought is inappropriate and unnecessary. The MEC's answering affidavit

⁷ Respondents answering affidavit annexure MS 25 (page 265).

has served to confirm the necessity of approaching the court for the relief sought in these proceedings.

AD PARAGRAPH 52

31. I deny that the Applicants are being mischievous in pointing to the reality behind the percentage pass rate at Moshesh. I submit the fact that so few learners are progressing to grade 12 is indicative of the problems at the school and the need for effective intervention.
32. The fact that so few learners progress to grade 12 is a reflection of the school's teaching and learning practices. If the school can boast that it has increased matric results as evidence of its functionality, then it should also be assessed on the rate of learners who have been adequately prepared to take the matric exam rather than being held back in grades 10 and 11. The fact remains that there are vast discrepancies at the school between the number of students enrolled in the grade 11 and 12 classes. While the percentage of students passing the exam has increased, fewer learners have actually passed. As a result of the school's practices, only 12 learners passed the matric exam in 2011 and 14 passed in 2012. This is not far off from when a mere 8 learners passed in 2008 when the school had a 10% matric pass rate and is fewer than the 22 passes that the school had in 2009 when the school had a 22% pass rate. I refer the court to annexure "PFMR1" attached to the reply of the first applicant.

AD PARAGRAPH 53 – 54

33. The answer by the Respondents points out that the MEC admit Moshesh is an underperforming school and admits to contents of section 58B obligations.

AD PARAGRAPH 55

34. I do not understand how the Respondents' can deny that there has been a serious break down in the way school has been managed when their own papers reveal that learners were left untaught for months at a time and the principal was absent for about nine months.

AD PARAGRAPH 56

35. I point out that the Respondents have failed to indicate that a single one of the remedial measures listed under section 58B has been undertaken. This shows that the Respondents do not understand their obligations towards Moshesh as an underperforming school and require court oversight in order to assist them in better understanding and properly discharging their obligations.

36. I am advised that it is appropriate in cases such as this to seek the relief sought in the notice of motion, namely in the form of a structural interdict requiring the respondent to implement certain measures and report to the court on the remedial actions taken. It will be argued at

the hearing of this matter that this is an appropriate case for the granting of such relief, and that a proper case has been made for it.

AD PARAGRAPH 58

37. The Respondents still do not respond to the call for results of investigations, if any, against teachers and any recommendations arising from those investigations.

AD PARAGRAPH 59

38. The fact that the principal was absent from the school for a prolonged period and that the mandatory statutory reporting aimed at improving an underperforming school did not occur underscores the need for court supervised relief.

AD PARAGRAPH 60

39. I submit that action plans mean nothing in the presence of poor management. In this respect, I would like to highlight the acknowledgment by the district director that the principal has managed the school poorly and the school's own five year plan which indicates that the *"governors of the school do not have the capacity to create a healthy learning environment."*

40. In addition, I submit that the action plan falls short of what the school requires as it does not address all of the problems at the school.

AD PARAGRAPH 61

41. The Respondents cannot hide behind classification in order to circumvent their obligations. The question is whether learners are being compelled directly or indirectly out of necessity to stay at the hostel facilities, to further their educational needs and thus whether a need exists. I submit that grade 12 learners out of necessity have no option but to stay in the hostels, and the school encourages this. The school makes provision for the learners in the form of providing meals and after hour programmes to improve their learning opportunities, under circumstances where the likelihood of success is bleak based on the previous years' pass rates. The Respondents are therefore duty bound to ensure that the learners' living conditions are safe and that they have the necessary adult supervision.

AD PARAGRAPH 62

42. I submit that the guidelines are of application.

AD PARAGRAPH 64

43. The number of learners bravely voicing their struggles cannot detract from the substance of our complaints. The contents of this paragraph are denied. I cannot understand how the respondent seeks to paint our depiction of the lack of effective teaching and learning at our school as "*baseless assertions*" and yet they list Moshesh as a school:

- i. Without teachers in certain subjects (annexure MS12);

- ii. Where grade 10 learners need “intensive teaching” “for subjects where teaching has not been done due to a lack of teachers” (Annexure MS21-234);
- iii. Where most subjects in grade 10 and 11 stood untaught for five months and where *“The morale of the school in general does not support learning and teaching. Though extra classes are planned absenteeism and non-cooperation need to be worked on.”* (Annexure MS22-237);
- iv. Where the grade 12 *“accounting, agriculture and tourism have not received sufficient teaching”*.(Annexure MS25); and
- v. Where the *“governors of the school do not have the capacity to create a healthy learning environment”* and that the principal of the school is “not managing the school well (annexure MS25)

AD PARAGRAPH 65

44. I deny that the learning deficits attributable to the lack of teachers or teacher absenteeism have been sufficiently addressed. I point out that the Respondents appear to be admitting that learners were without educators for periods of time.

AD PARAGRAPH 66

45. The applicants are entitled to the relief sought.

AD PARAGRAPH 67.1

46. The contents of this paragraph are denied.

AD PARAGRAPH 67.2

47. It is denied that the Respondents have “demonstrated a fully functional SGB”. I submit that what the Respondents have “demonstrated” is a principal who has failed the learners of Moshesh dismally. Whilst it is denied that there were sufficient textbooks for all learners in the 2012 academic year, I point out that the responsibility of the Respondents goes beyond the mere provision of textbooks and stationary. I submit the Respondents are obliged to take all reasonable steps to improve the quality of teaching and learning at Moshesh. It is noteworthy that none of the plans which the Respondents refer to contain the steps which the HOD is statutorily obliged to consider implementing including: implementing the incapacity code for poor work performance, withdrawing governing body functions, appointing persons to perform function(s) of the governing body, the counselling of the principal or appointing an academic mentor to take over the functions and responsibilities of the principal for a period of time.

AD PARAGRAPH 67.3

48. The Respondent seek to reason that they acknowledges that Moshesh is an underperforming school but, it should be trusted to properly implement one now in the absence of court oversight. This is despite their past record of not having a comprehensive plan in place or

effectively implementing a plan. The statutory obligations on the Head of Department required him to ensure that a plan was put in place when Moshesh was first recognised as an underperforming school. I submit that the plans which the Respondents put forth (which were notably put in place and endorsed only after EE intervened in this matter) fail to indicate an effective turnaround strategy. In light of the Respondents complete dereliction of duty in effectively managing the school/ensuring the school is properly managed to begin with, and its complete failure to implement any remedial measures notwithstanding a history of underperformance. We submit that the only effective remedy to ensure the protection of learners rights is if the court stands guardian over learners rights by supervising the Respondents to ensure they discharge their obligations effectively.

AD PARAGRAPH 67.4

49. It is denied that the District Director and department are “actively involved” in the oversight of the school. Even if this Court concludes that they are actively involved, deny that they are effectively involved in the oversight of the school. It is incomprehensible that the MEC seeks to assert the position that the district director and department have discharged their obligations towards the learners of Moshesh when it is clear that the department was aware since August 2011 of learners’ complaints about the principal poorly managing the school and problems concerning teacher discipline. Disciplinary charges against the principal only were only instituted following the second applicant’s involvement. The 2013 academic year has already commenced and yet it appears principal is yet to have his disciplinary hearing. The department’s delay in addressing these very serious issues raised by the learners, as

early as 2011, is inexcusable and demonstrates its failure to effectively oversee Moshesh SSS.

AD PARAGRAPH 67.5

50. It is and has always been the intention of the second applicant to ensure that access to an adequate education is possible for all South African learners.

AD PARAGRAPH 67.6

51. It is an overstatement to say that the department has "*addressed the behaviour of the principal*". The department is only now addressing the behavior of the principal. It appears from the MEC's papers that whilst the principal has been charged he is yet to face a disciplinary hearing. The delay on the side of Department to hold the principal accountable for his misconduct means that the school remains subject to the leadership of a principal who in the District Director's own words "*does not manage the school effectively*".

AD PARARAPH 67.7

52. This paragraph indicates the Respondents' failure to properly comprehend problems at Moshesh, how it violates the rights of learners and the need to effectively address it. It has never been the learners' complaint that because other schools are in a more privileged position their rights are being denied. The learners simply assert that their right to basic education be protected and fulfilled by the Respondents and that, the failure of the Respondents to fulfill their constitutional and statutory obligations effectively denies them quality education.

AD PARAGRAPH 67.8

53. Contents are denied.

CONCLUSION

54. I submit that the Respondents' response reveals that it has failed to exercise the requisite oversight to ensure that effective teaching and learning takes place at Moshesh. It also shows that the Respondents appear to lack a proper understanding of its obligations towards Moshesh. I submit that court oversight is necessary in order to ensure that the learners' rights as learners are protected and pray for an order as sought in the Notice of Motion.


YOLISWA DWANE

SIGNED and SWORN to BEFORE me at KHAMEUTSIA on this the 02nd day of February 2013, after the Deponent has acknowledged that she knows and understands the contents of this Affidavit, that it is the truth, that she has no objection to taking the prescribed oath and that she regards the prescribed oath as binding upon her conscience.



COMMISSIONER OF OATHS
S.F. NTSHATI

SWATHI AFFIDAVIT POLICE SERVICES
COMMISSIONER OF OATHS
2013-02-01
AMANTHOLE POLICE STATION / SWAZI

CONSTABLE

YDR 1



basic education

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Ms Lisa Natalie Draga
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By email: lisad@eelawcentre.org.za

Dear Ms Draga


REQUEST PURSUANT TO THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000.

The Department of Basic Education has received a request for access to information in terms of Promotion of Access to Information Act, with respect to reports submitted to the Minister in terms of section 58B (7) of the South African Schools Act 84 of 1996 (SASA) from your office, dated 23 November 2012.

I regret to advise that we are not in possession of the documents you request access to. We have however put in place processes to tighten the monitoring in this area.

The DBE has also written to the MECs for Education through the office of the Minister, reminding them of their obligations in this regard.

Yours sincerely


MR PB SOOBRAYAN
DIRECTOR-GENERAL

DATE: 12/12/2012

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