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

CASE NO: 24611/2011

In the matter between:

JACOBUS DU PLESSIS N.O.	1ST Applicant
ESTELLE BOTHA N.O.	2ND Applicant
GERHARD BOTHA N.O.	3RD Applicant
(In their capacities as Trustees for time being of the Kobot Business Trust (IT969/2009)	

and

MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION, WESTERN CAPE	1ST Respondent
THE GOVERNING BODY OF THE GROOTKRAAL UCC PRIMARY SCHOOL (OUDTSHOORN)	2ND Respondent
GROOTKRAAL UCC PRIMARY SCHOOL (OUDTSHOORN)	3RD Respondent
THE COMMUNITY OF GROOTKRAAL	4TH Respondent
THE INDEPENDENT CHURCH OUDTSHOORN	5TH Respondent
TRUI KIEWIETS	6TH Respondent
KATRINA MEI	7TH Respondent
CENTRE FOR CHILD LAW	8TH Respondent
REGISTRAR OF DEEDS	9TH Respondent
EQUAL EDUCATION	*Amicus Curiae*

SECOND AND THIRD RESPONDENTS' HEADS OF ARGUMENT

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INTRODUCTION

1. The trustees for the time being of the Kobot Besigheid Trust **("the Trust")** seek the ejectment of the Grootkraal UCC Primary School (**"the School"**) from the property comprising portion 40 of the farm De Kombuys number 28 and a 1/9 share in portion 1 of the farm Groenefontuyn number 28 (**"the Property"** alternatively **"Grootkraal"**) on account of an unresolved commercial dispute between the Trust and the Department of Education in the Western Cape (**"the Department"**), represented in this application by the First Respondent (**"the MEC"**).

2. The School has existed at its current premises, in a farming community outside of Oudtshoorn, since 1931 (i.e. some 86 years). It is a public school with separate juristic personality in terms of section 15 of the South Africa Schools Act 84 of 1996 (**"SASA"**) and section 15 of the Western Cape Provincial School Education Act 12 of 1997 (**"the WC Schools Act"**).[1]

3. The School currently has 202 learners[2], and serves a poor farming community. The School is amongst the poorest schools in the country.[3] When these proceedings commenced in 2011 the School had 160 learners.[4]

4. The School forms an integral part of the community that it serves, with the school building functioning, after school hours, as a church for the surrounding community as well as a community hall, clinic and voting station during elections.

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1 Dido AA para 121, Rec. main application p.163.
2 Ozah SA para 12, Rec. main application p.801.
3 Dido AA, para 121, Rec. main application p.163. In terms of section 35(1) of SASA, schools are divided into five categories or "*quintiles*", depending on their level of deprivation. The School is placed in "*national quintile 1*", being the category for the poorest schools.
4 Dido AA para 76 Rec. main application pp. 149-150.

5. The present application is the most recent manifestation of a long-standing and dispute between the Trust, the Department and the Second Respondent (**"the Governing Body"**) as well as the Oudtshoorn Independent Church (**"the Church"**). The dispute between the Department and the Trust has been on going (and has remained unresolved) since 31 May 2010 when the previous lease in terms of which the Department leased the portion of the Property on which the School is situated, expired.[5]

6. During May 2011 the Governing Body[6] was advised of the Department's decision to close the School based on the fact that the Trust did not wish to extend the lease.[7]

7. During this period the Governing Body sought undertakings from the Department that the School would not be closed and would continue to receive all its subsidies.[8]

8. Notwithstanding the Governing Body's attempts to obtain such assurances from the Department, the Department failed and/or refused to engage with the Governing Body in any meaningful manner and appeared to be closed to any further discussion on the matter.[9]

9. As a result the Governing Body had no alternative but to approach this Court for urgent relief, which it did on 29 June 2011. As a consequence of that application an order (per Henney J) was handed down on 15 July 2011.[10]

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5 Botha FA para 10, Rec. main application p.12.

6 The Governing Body is constituted in terms of sections 16(1) and 18 of SASA. It has been allocated the powers in terms of sections 21(1)(a) to (e) of SASA, sections 8(1)(a) to (e) of the WC Schools Act. Dido AA para 120, Rec. main application pp.162 & 163.

7 Dido AA para 68 & 69, Rec. main application p149; Annexures "KD 7" & "KD 8", Rec. main application pp. 191 & 192.

8 Dido AA para 75, Rec. main application p.149.

9 Dido AA para 76-79, Rec. main application pp. 149-150.

10. The salient features of the order of Henney J which have a bearing on these proceedings are:

10.1. The MEC and the Head of the Department (**"the HOD"**) are interdicted and restrained from taking any steps to close or relocate the School from its current premises, without following a process of proper consultation with School and the Governing Body, the parents and the trustees of the Trust unless pursuant to a further lawful decision or order;

10.2. The HOD was ordered to meaningfully engage with the Trust in order to re-negotiate the lease agreement in respect of the School, and the Governing Body and the School were to be kept informed about the progress of these negotiations;

10.3. If any decision was to be made to close, relocate or merge the School with another School, such decision could only take place after a meaningful engagement with all affected parties;

10.4. Any relocation of the School could only take place after:

10.4.1. All procedures required in terms of the law had been finalised and the School, the Governing Body and the parents had been given proper, timeous and adequate notice thereof;

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[10] Dido AA para 80, Rec. main application pp. 152 & 153; annexure FA12 Record pp. 59 – 61.

10.4.2. Suitable accommodation, catering for the health and educational needs of the learners and staff, similar to that which they currently have at the School had been made; and

10.4.3. Proper and adequate means of transport was in place that would ensure the least disruption to the routine and educational programme of the learners.

11. It is apparent that the Trust and the Department have been unable to resolve their commercial dispute. However, there is no evidence before this Court as to what steps, if any the MEC or the Department have taken to meaningfully engage with the Trust in order to re-negotiate the lease, as directed by the order of Henney J.

12. The order of Henney J amounts to final interdictory relief. Thus the Department and the MEC may not lawfully seek to implement the decision taken in 2011 to 'relocate' the School. Should they wish to *"close, relocate or merge the School with another School"* they are required to take a fresh decision in that regard and to do so in terms of the relevant statutory procedures and the procedures set out in the order of Henney J.

13. It is of course contemplated in the order of Henney J that a Court could make an order to *"close, relocate or merge the School with another School"*, however, it is not open to this Court, in these proceedings, to make such an order as it would have to do so, *mero motu*, in circumstances where none of the parties before this Court seek such relief.

14. The Supreme Court of Appeal in *Fischer and Another v Ramahlele and Others*[11] has stated that such an approach is inappropriate in civil litigation in that *"it is for the parties either in the pleadings or affidavits, which serve the function of both pleadings and evidence, to set out and define the nature of their dispute and it is for the court to adjudicate upon those issues. That is so even where the dispute involves an issue pertaining to the basic human rights guaranteed by our Constitution ..."*[12]

15. Thus, this Court is called to adjudicate upon the Trust's the eviction application and the counter-application brought on behalf of the Fourth to Seventh Respondents and may only grant relief which arises from the issues in those applications.

THE EVICTION APPLICATION

16. On 5 December 2011 the Trust launched an application seeking an urgent order for the eviction of the School from the Property by the start of the 2012 academic year, being 10 January 2012.[13]

17. The Trust in seeking the eviction order relies on the *rei vindicatio* (based on the Trust's assertion that it is the owner of the Property) and the expiry by the effluxion of time of the lease, as a

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11 *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA)

12 *Fischer* at para 13.

13 The eviction application was initially argued during March 2012, however, the presiding Judge requested that the Centre for Child Law be joined in order to safeguard the interests of the learners and to provide the Court with information relating to the circumstances of the learners, including evidence regarding the impact that the eviction of the School would have on the leaners. Consequently the Centre for Child Law was joined as the Eighth Respondent in this matter on 20 September 2012 and filed its initial affidavit on 18 September 2013. (see Rec. main application pp. 246-290 and Du Toit para 5-8, Rec. main application pp. 246-247) Due to a variety of circumstances including the intervention of the Fourth to Seventh Respondents and their counter-application, the eviction application is once again before this Court for hearing some 5 years later.

consequence of which the Trust asserts that the School no longer has any right in law to occupy the Property. [14]

18. The Trust, by virtue of the application of section 8(2) of the Constitution, has a negative duty not to impede the rights of the learners at the School to basic education as contemplated by section 29(1)(a) of the Constitution.[15]

19. The Trust, however, urges this Court to adopt a wholly private law approach to the adjudication of this matter. It is submitted that the settled legal principles governing the eviction of public schools from privately owned property do not permit such an approach.

The relevant legal principles for the determination of the eviction application

20. The approach adopted by the Constitutional Court in *Juma Musjid* requires that a Court in contemplating an eviction of a school from private property is enjoined to consider all relevant circumstances in determining whether an eviction order is just and equitable in the particular context of the matter.[16]

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14 Botha FA para 6, Rec. main application p. 10. See also para 4.1 & 4.2, Rec. main application pp. 8-9.

15 *Governing Body of the Juma Musjid Primary School and Others v Essay NO and Other*s 2011 (8) BCLR 761 (CC) ('*Juma Musjid*') at para 60.

16 *Juma Musjid* at para 65.

21. This Court is thus enjoined by *Juma Musjid*, to consider:

21.1. The reasonableness of the Trust's actions in seeking an eviction order, bearing in mind the Trust's negative constitutional obligation not to impair the learners' right to education as contemplated by section 29(1) of the Constitution; [17] and

21.2. The impact that the eviction order would have on the learners and their interests, bearing in mind the entrenched rights of the learners and the paramount importance of their best interests.[18]

22. It is only if this Court is able to conclude, on a consideration of all these circumstances, that an eviction order would nonetheless be just and equitable, that the Trust would, at this stage, be entitled to the relief which it seeks.

23. Further, the Constitutional Court in *Juma Musjid* explicitly sets out that property ownership rights are counter-posed to the fundamental right to basic education.[19]

24. Consequently it is submitted that this Court is required to balance out and reconcile the opposing claims of the Trust on the one hand and the learners on the other. This Court must weigh the Trust's ownership rights against the entrenched rights of the learners and the paramount importance of their best interests, taking into account all relevant circumstances.[20]

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17 *Juma Musjid* at para 61-65.
18 *Juma Musjid* at para 66-72.
19 *Juma Musjid* at para 70 and 71.
20 *Juma Musjid* at para 71.

25. It is submitted that the nature of the right to basic education is fundamental to the determination that this Court is called upon to make in regard to whether:

25.1. The relief which the Trust seeks is just and equitable in all the circumstances of this matter (and thus whether the Trust is entitled to an eviction order at this time); and

25.2. If this Court finds that such relief would not be just and equitable, what the appropriate relief in the circumstances of this matter would be.

26. The Constitutional Court in *Juma Musjid* stated emphatically that the right to a basic education entrenched in section 29(1)(a) of the Constitution is *"'immediately realisable' and may only, in terms of s 36(1) of the Constitution, be limited in terms of a law of general application that is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'".*[21]

27. As noted by the Supreme Court of Appeal in *Basic Education For All,* the Constitutional Court took the view that the provisions of section 3 of SASA which makes attendance at school compulsory for learners from the age of 7 until the age of 15 or until he or she reaches the ninth grade, whichever occurs first, read with the entrenched right to basic education in section 29(1)*(a)* of the Constitution, indicates the importance of the right to basic education for the transformation of our society.[22]

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[21] *Juma Musjid* at para 37. See also *Minister of Basic Education and Others v Basic Education For All and Others* 2016 (4) SA 63 (SCA) ('*Basic Education For All*') at para 26

[22] *Basic Education For All* at para 27 and *Juma Musjid* at para 38.

28. Similarly the Constitutional Court in *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another*[23] recognised the importance of education in redressing the entrenched inequalities caused by apartheid and the significance of education in transforming our society.[24]

29. The Constitutional Court in *Hoërskool Ermelo* stated that section 29 of the Constitution was enacted with the express purpose of achieving the *"radical transformation of public education in particu*lar" in order to address the enduring legacy of social unevenness which resulted from the *"unequal distribution of skills and competencies acquired through education"*.[25]

30. It is through this lens that the respective rights and obligations of the Trust and the MEC must be viewed.

The factual matrix relevant to the determination of the eviction application

31. It is submitted that the specific socio-economic context that existed at the commencement of this matter and which remains relevant to the adjudication thereof includes the following:

    31.1. The School serves a poor, rural community and forms an important part of the social fabric of that community[26];

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23 *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC) ('*Hoërskool Ermelo*')

24 *Hoërskool Ermelo* at para 45-47.

25 *Id*.

26 Stal RA para 5, Rec. main application p. 348 & para 21 Rec. main application p. 352.

31.2. The unique challenges faced by rural schools including the high drop-out rate of leaners attending rural schools;[27]

31.3. The history of Bantu education which has entrenched patterns of disadvantage and inequity in the provision of education to black children;[28]

31.4. The dire consequences faced by rural communities where there is no security of tenure in respect of public schools on private land;[29] and

31.5. The specific challenges faced by learners at the School.[30]

32. It is submitted that there can be no doubt of the overwhelmingly negative impact that an eviction order, if granted at this juncture, will have on the learners at the School if regard is had to the largely uncontroverted evidence which has been placed before this Court by the Eighth Respondent, the Centre for Child Law (**"the CCL"**) in its two affidavits.[31]

33. The Trust, in its affidavit in reply to the first affidavit filed by the CCL, does not take issue with any of the factual averments made in regard to the impact of the proposed eviction on the learners.

34. None of the other parties to these proceedings have filed affidavits that take issue with the specific factual averments contained in the CCL's first affidavit. Thus, the factual averments in

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27 Isaacs SA para 25.2, Rec. interlocutory applications p. 42.
28 Stal RA para 37, Rec. main application p. 356; Isaacs SA para 13 – 17 Rec. interlocutory applications pp. 36-37.
29 Stal RA para 36, Rec. main application p. 356; Isaacs SA para 17 – 20, Rec. interlocutory applications pp.37-38.
30 Stal RA para 29 – 31, Rec. main application pp. 354 & 355; para 34, Rec. main application p. 355; Dido AA para 184, Rec. main application p. 181.
31 Du Toit, Rec. main application pp. 246-290;

that affidavit must be accepted by this Court, in that it is trite that, in motion proceedings, evidence that is not denied should be treated as factually correct and as not in dispute.[32]

35. The School and the Governing Body in their initial answering affidavits took issue with the adequacy of the proposed the alternative facilities on the grounds of the Voorbedag School (**"Voorbedag"**) to which the MEC at the time proposed (and apparently continues to propose) that the School be 'relocated'.

35.1. Voorbedag is 17 kilometres away from the current school site. Many learners already have a considerable commute to the School – this includes a long walk or bicycle ride to a 'pick-up' point, and a bus trip of up to 20 kilometres (each way). If an eviction were to be ordered and the School 'relocated' to Voorbedag, the learners will face a daily commute of 80 kilometres.[33]

35.2. The MEC at the time failed to clarify in the affidavits filed on her behalf how the learners would be transported to Voorbedag. The MEC simply made a bald allegation that transport would be provided for learners.[34]

35.3. When the interdictory proceedings came before Henney J during July 2011 there was no indication as to how or when transport service providers would be appointed or when such information would be conveyed to parents.[35] The MEC did not address any of

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32 *Traut v Fiorine and Another* [2007] 4 All SA 1317 (C) para 35.
33 Dido AA para 184, Rec. main application p. 181.
34 Lyners AA para 35, Rec. main application p. 105.
35 Dido AA para 189 Rec. main application p. 182.

these issues in the first answering affidavit filed in this application on her behalf despite these concerns having been placed before the Court in the interdictory proceedings.

35.4. In the interdictory proceedings before Henney J it became apparent that the transport route envisaged by the Department would cater only for 139 learners while 160 attended the School at that time.[36] No indication was given as to how the additional learners would be transported. Again this was not addressed in the MEC's first answering affidavit despite these concerns having been placed before the Court in the interdictory proceedings.

35.5. In the interdictory proceedings it became apparent that the transport tender granted at that time was only valid for the period until 30 September 2011 and there was no guarantee that the learners would be transported thereafter.[37]

35.6. The MEC did not provide any information as to where the pick up points would be for learners who come from outlying areas. This is of particular concern in a rural community where many of the learners travel great distances by foot or bicycle to reach established pick up points.

36. The information provided by the MEC when this matter first came before this Court in 2012 regarding the suitability of the Departments proposed alternative arrangements in the event that an eviction was ordered, was woefully inadequate and did not provide the parties or the Court with sufficient information to properly assess the adequacy of the proposed measures.

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[36] Dido AA para 190, Rec. main application p. 182.
[37] Dido AA para 192, Rec. main application p. 182.

37. Despite the passage of some five years since the matter first came before this Court, regrettably the Court (and the learners and their parents) have even less information as to the proposed measures to be put in place should an eviction be ordered.

38. In particular the inaction of the Department and the MEC, during this period has added a further, concerning dimension to the relief which is sought by the Trust. In essence the MEC has placed no factual averments before this Court regarding any concrete plans for how the learners are to be accommodated should an eviction be ordered.

39. The CCL's supplementary affidavit raises serious concerns as to the consequences should the proposed 'relocation' of the School to Voorbedag take place.

40. None of the parties save for the MEC have filed any affidavits in response to the supplementary affidavit filed on behalf of the CCL.

41. It is submitted that the MEC's attempts to contest the factual averments in the CCL's supplementary affidavit as to the inadequacy of the facilities at Voorbedag are so vague as to be meaningless. Thus, this Court is bound Court to accept that the CCL's averments.[38]

42. The MEC in in the supplementary affidavit filed on her behalf states that in 2011 Voorbedag was merged with Matjiesrivier Primary School (**"Matjiesrivier"**).[39]

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[38] See *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 4 SA 234 (C) 235E-G. Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted.

[39] Lyners SAA para 19 Rec. main application p.706.

43. In that affidavit averments are made as to the alleged adequacy of facilities at Voorbedag to accommodate the 202 learners at the School without any reference to how the merger of Voorbedag with Matjiesrivier has affected the nature and extent of the facilities that were previously utilised only by Voorbedag.[40] Nor is any explanation provided as to how, despite the merger of Voorbedag with Matjiesrivier it is envisaged that the School may nonetheless be accommodated on the premises of Voorbedag.

44. The MEC further seeks to make averments as to the alleged adequacy of the Department's official learner transport system to provide for the learners at the School without providing any details as to the nature and extent of the specific transport provisions that the Department intends to provide for these specific learners.[41]

45. In the previous affidavit filed by the School and the Governing Body concerns were raised as to the adequacy of the mobile classrooms proposed by the Department, as well as the adequacy of the ablution facilities at Voorbedag and the state of the playground area at Voorbedag.[42] None of these concerns have been addressed in the MEC's supplementary answering affidavit.

46. Should the School be 'relocated' to Voorbedag there would be 258 learners in total who would have to be accommodated on the Voorbedag premises.[43]

47. In July 2011 the existing ablution facilities at Voorbedag consisted of two toilet blocks, one for female learners and teachers and another for male learners and teachers. The toilets in these

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40 Lyners SAA para 25-35 Rec. main application pp. 707-709.
41 Stal SAA para 24 Rec. main application p. 746.
42 Dido AA para 172.1, 172.3, 176 , 177 & 178 Rec. main application pp. 178-180.
43 Stal SAA para 35, Rec. main application p. 749.

blocks were pit latrines, not flush toilets. At the time that the School and the Governing Body's previous affidavit was filed one new toilet block was being constructed which contained 5 flush toilets. [44]

48. The MEC makes no attempt to explain how 5 flush toilets and a few pit latrines could possibly accommodate 258 learners as well as all the teachers of both Voorbedag and the School.

49. Beyond stating that the property is large enough to accommodate both schools, the MEC provides no factual basis for the allegation that the premises of Voorbedag can accommodate 14 classrooms, as well as a computer room and a staff room (the Department states at 9 new mobile classrooms, a computer room and a staff room are planned to be erected on the Voorbedag premises). [45]

50. No detail whatsoever is provided as to how it is envisaged both schools are to operate on the same premises as separate schools, save to state that *"suitable arrangements to have both schools operate simultaneously, i.e. commencement times, interval times and ending times, are not insurmountable"*. [46]

51. It is submitted that the averments as to the alleged adequacy of the arrangements currently in place at the merged Voorbedag/Matjiesrivier school and the averments as to the yet to be determined transport arrangements are so devoid of detail as to be meaningless.

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44 Stal SAA para 36, Rec. main application p. 749.
45 Stal SAA para 38, Rec. main application p. 750.
46 Stal SAA para 39, Rec. main application p. 750.

52. The high water mark of the MEC's submissions is that if an eviction is ordered, she will at that stage commence planning for how to deal with the practical effects of the eviction order[47] and she asks that this Court defer the execution of any eviction order until such time as the Department is able to put in place certain facilities and processes for the so-called 'relocation' of the School to the premises of the Voorbedag School.[48]

53. An analysis of the adequacy of transport, teaching and sanitation facilities at the Voorbedag School (or any alternative proposed in the event of an eviction being granted) is fundamental to the determination which this Court is called upon to make, i.e. the extent to which the relief sought by the Trust and the proposed solution offered by the MEC would impact on the learners' entrenched rights in terms of section 29(1)(a) of the Constitution and whether such an order would be in their best interests.

54. It is submitted that the Department and the MEC have failed to place sufficient information before this Court to enable it to make a determination as to whether the eviction of the School would be in the best interests of the learners at the School and whether such an order would be just and equitable, and thus constitutionally appropriate.

55. The Constitutional Court has recognised the impact that apartheid education policy continues to have on the current educational environment that remains characterised by deep disparities in both resources and infrastructure.[49] O'Regan J captures this point succinctly in her partially dissenting judgment in *MEC for Education: KwaZulu Natal v Pillay*:[50]

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47 Lyners SAA para 21, Rec. main application p. 706.
48 Lyners SAA para 23, Rec. main application pp. 706-707.
49 *Hoërskool Ermelo* at para 45-47.
50 *MEC for Education: KwaZulu Natal v Pillay* 2008 (1) SA 474 (CC) (*'Pillay'*).

> *"Education is the engine of equal opportunity. Education in South Africa under apartheid was both separate and deeply unequal. ... Things have improved somewhat but the pattern of disadvantage engraved onto our education system by apartheid has not been erased. ... There is much to be done to achieve educational equality of opportunity. ... [A]lthough the law no longer compels racially separate institutions, social realities by and large still do."*[51]

56. It is submitted that this Court, is enjoined by the judgments of the Constitutional Court in *Juma Musjid*, *Hoërskool Ermelo,* and *Pillay* to consider the particular impact that the legacy of apartheid education continues to have on rural learners such as those affected by the relief sought by the Trust, in assessing whether an eviction order is in fact a just and equitable remedy in the circumstances of this matter.

57. Consequently, even if this Court were to find that the Trust, as owner of the Property, has acted reasonably in seeking an eviction order, given the history of fruitless engagement with the MEC and the Department, this does not mean that the Trust is nevertheless entitled to an eviction order at this time.

58. In the present context, there can be no doubt that an eviction order will have the likely result of depriving the learners of their constitutionally entrenched right to education and thus will not be in their best interests.

59. It is submitted that the Trust has not established that such limitation would be reasonable and justifiable in the circumstances of this matter.

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[51] *Pillay* at para 121 to 124.

60. However, the School and the Governing Body are mindful of the fact that this Court cannot simply ignore the Trust's property rights.

61. This Court is nevertheless required to interpret such rights in a manner that balances the Trust's property rights with the rights of the learners to basic education and with their best interests.

62. As such this Court is this called upon to take creative steps including the consideration of alternatives short of eviction to ensure just and equitable remedial action under section 172(1)(b) of the Constitution.

63. It is submitted that the remedy proposed by the School and the Governing Body would be an appropriate means for the parties to achieve finality in this matter and for all the respective parties' rights to be adequately protected.

THE STANCE ADOPTED BY THE MEC AND THE DEPARTMENT OF EDUCATION

64. The MEC has chosen to abide by the decision of this Court. However, it appears from the affidavits filed on her behalf that she associates herself in some measure with the relief sought by the Trust.

65. The Department and the MEC have a duty to ensure that the relevant evidence is placed before this Court.[52] A state department is required not merely to indicate that it will abide by the Court's decision where a state obligation falling under its administration is before a Court.[53]

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52 *Khosa & Others v Minister of Social Development & Others: Mahlaule v Minister of Social Development & Others* 2004 (6) SA 505 (CC) at para 18.

66. It is submitted that the affidavits filed on behalf of the MEC do not meet this obligation and consequently the MEC has not fulfilled her duty to place the Court in a position where it is able to make a just and equitable order.

67. Further, the MEC appears to completely ignore the fact that in terms of the order of Henney J she is interdicted and restrained from acting in terms of the decision taken in 2011 to 'relocate' the School.

68. It is clear from the supplementary affidavit filed on her behalf that the MEC's position is that, in the event that an eviction is ordered, she may proceed to 'relocate' the School on the basis the 2011 decision taken in this regard. However, the MEC fails to explain on what basis she is of the view that she is entitled to do so despite the express terms of the order of Henney J.

69. As set out below, the School and the Governing Body maintain that there is no lawful basis on which the MEC may in any event take a decision to 'relocate' the School.

70. Further the MEC has placed no facts before this Court as to the steps that she has taken to comply with the order of Henney J to date,

71. In the first answering affidavit filed on behalf of the MEC, an attempt is made to explain why the attempts to conclude an agreement between the Department and the Trust were unsuccessful. It is stated on behalf of the MEC that:

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[53] *Gory v Kolver NO & Others (Starke & Others Intervening)* 2007 (4) SA 97 (CC) at para 63-64.

> *"…the Department attempted to renegotiate the agreement it had with the Applicant. The Department cannot within its available resources pay a monthly rental of R31 500,00. It has as a last attempt to secure tenure offered to pay a monthly rental of R10 000,00. This rental is similar to rental paid by the Department in respect of a similar agreement concluded recently in respect of private property just outside Oudtshoorn. The Department considered this amount reasonable."*[54]

72. The Department did not explain why it rejected the offer by the Trust proposing a rental amount of R7.00 per square metre with the area of School being restricted to approximately 2000 square metres which would have amounted to a rental amount of R14 000.00 per month.[55]

73. It appears from the correspondence attached to the Trust's application[56] that the Department simply ignored this attempt by the Trust to reach a mutually acceptable solution within the Department's stated rental formula[57] and continued to offer an amount of R5 500,00 per month as rental.

74. It thus appears as though the contractual negotiations foundered substantially on the basis that the Department had a certain policy concerning what it was prepared to pay for rental in respect of a rural public school are on private property.

75. It is of concern that some five years later the Department and the MEC have not moved at all in their stance in this regard.[58] Whilst the Department states that it is willing to negotiate a new lease agreement,[59] it has placed no evidence before the Court as to what it considers to be a

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54 Lyners AA para 26, Rec. main application p.102.
55 Annexure "FA 15", Rec. main application pp. 65 & 66.
56 Annexures "FA 13" to "FA 17", Rec. main application pp.62 to 69.
57 Lyners AA para 14, Rec. main application p. 98.
58 Lyners SAA para 13 Rec. main application p. 704.
59 Lyners SAA para 15 Rec. main application p. 704.

reasonable rental amount, nor has it stated that its approach to the negotiating any new lease agreement would be any different than its previous, unlawful approach.

76. It is trite that while the adoption of policy guidelines is both lawful and sensible this is subject to certain constraints.

77. In *MEC for Agriculture, Conservation, Environment and Land Affairs, Gauteng v Sasol Oil and Another* [60] the Supreme Court of Appeal recognised that adopting policy to guide the discretion of decision-makers was "*legally permissible and eminently sensible*".[61] However, the Supreme Court of Appeal stressed that a policy "*must not be applied rigidly and inflexibly*".[62] An affected party must have an opportunity to demonstrate that there is something exceptional about its case that warrants a departure from the policy.

78. The Constitutional Court has similarly, in the context of socio-economic rights, stressed the need for programmes (and presumably policies) to be *"sufficiently flexible"*.[63]

79. In the present case, the MEC appears to have acted with no regard for these requirements. The Department's policy appears to be that it is willing to pay no more than R10 000.00 per month for rental[64] – but MEC does not explain:

79.1. Whether the Department ever considered a departure from that policy in respect of this School; or

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60 *MEC for Agriculture, Conservation, Environment and Land Affairs, Gauteng v Sasol Oil and Another* [2006] 2 All SA 17 (SCA) (*'Sasol'*).
61 *Sasol* para 19.
62 *Id.*
63 *Government of the Republic of South Africa & others v Grootboom & others* 2001 (1) SA 46 (CC) at para 34 .
64 Lyners AA para 26, Rec. main application p. 102.

79.2. If it did consider a departure, why the Department deemed such departure inappropriate in the circumstances of this School; or

79.3. Why the Department refused to consider the Trust's request that the Department pay R14 000.00 per month for rental.

80. It is submitted that a number of factors which arise in this matter might have justified a departure from the Department's policy and ought at least to have been considered by the MEC, including:

80.1. That the School is located on private property in a rural area of the Western Cape with no alternative land in the vicinity for school facilities, meaning that the rental amount proposed by the Trust may have been appropriate in the circumstances;

80.2. That the School has been in place for a long period of time, is a significant part of the local community and has operated to the benefit of the public and the State; and

80.3. That a failure to reach an agreement might lead to the School being evicted and having to close.

81. It is clear that the MEC and the Department did not provide the Trust or the Governing Body with any opportunity to engage with them regarding the appropriateness of the agreement proposed by the Trust.

82. There is no suggestion in the MEC's affidavits that she took any of the aforementioned factors into account. Rather, the MEC has blindly adhered to the Department's policy and applied such policy rigidly, in the face of facts and circumstances that might have justified a departure therefrom. This is unlawful.

83. Neither the MEC nor the Department have made any real effort to communicate with the Governing Body as to the practical implications of any relocation/merger/closure of the School.

84. The attitude of the MEC and the Department officials has to date simply been to advise the Governing Body of decisions which have already been made. There has never been any meaningful attempt to consult with the parents or the Governing Body about any of these decisions.

85. The approach adopted by the MEC and the Department in dealing with the School and the Governing Body falls foul of the order of Henney J and is inconsistent with the MEC's obligations under sections 7(2) and 29(1)(a) of the Constitution.

86. Further the MEC clearly misconstrues the nature of the right to basic education with her repeated reference to *"available resources"*.[65]

87. As the Constitutional Court and the Supreme Court of Appeal have stated, the right to a basic education in section 29(1)(a) of the Constitution contains no internal modifiers or qualifications. In this regard it is different to other socio-economic rights. Thus the purported lack of resources could never be a lawful justification for the MEC's inaction in this matter.

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[65] Lyners AA para 26, Rec. main application p.102; Lyners SAA para 10, Rec. main application p. 703.

88. The recalcitrance of the MEC and the Department in dealing with the commercial dispute with the Trust is the direct cause of the current impasse. Furthermore the Department's response to the offer by the Trust cannot in any sense be construed as constituting compliance with the meaningful engagement directed by the order of Henney J.

89. Had such meaningful engagement taken place the present litigation may have been avoided.

THE INEVITABLE CLOSURE OF THE SCHOOL IF AN EVICTION IS ORDERED

90. The Trust is asking this Court to make an order that will in effect lead to either the closure or merger of the School with Voorbedag without reference to the MEC's statutory duties or the order of Henney J.

91. The MEC has chosen to abide by the decision of this Court, however, she has filed affidavits wherein she and the Department associate themselves with the relief sought by the Trust. They specifically associate themselves with the submission by the Trust that the School and the learners can be *'accommodated'* at Voorbedag.

92. It is clear that the MEC in 2011 took a decision that amounts to a closure and/or merger of the School.

93. On the bases set out below it is submitted that this decision was plainly *ultra vires*[66] and unlawful.[67]

94. The Department does not have the power to close the School or merge its operations with another school. This power resides solely with the MEC.

95. In terms of section 33(1) of SASA, read with section 18 of the WC Schools Act, a public school may only be closed by the MEC by notice in the Provincial Gazette. Similarly, in terms of section 12A of SASA and section 12A of the WC Schools Act, the MEC must merge schools by notice in the Provincial Gazette.

96. Section 33(2) of SASA continues that the MEC may only close a school after she has: -

> "*(a) informed the governing body of the school of his or her intention so to act and his or her reasons therefor;*
>
> *(b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;*
>
> *(c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and*

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66 Section 6(2)(a)(i) of PAJA.
In *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) at para 50, the Court (per Ngcobo J, as he then was) explained the *ultra vires* principle in the following terms:
"*In exercising the power to make regulations, the Minister had to comply with the Constitution, which is the supreme law, and the empowering provisions of* [relevant legislation]. *If, in making regulations, the Minister exceeds the powers conferred by the empowering provisions of the* [relevant Act]*, the Minister acts ultra vires (beyond the powers) and in breach of the doctrine of legality. The finding that the Minister acted ultra vires is in effect a finding that the Minister acted in a manner that is inconsistent with the Constitution and his or her conduct.*"
In *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) at para 173 the Court (again per Ngcobo J) similarly observed that –
"*the rule of law principle requires that the actions of all those who exercise public power must comply with the law, including the Constitution. It is central to the conception of our constitutional order that those who exercise public power including the President, are constrained by the principle that they may exercise only those powers and perform only those functions which are conferred upon them by the law. Their sole claim to the exercise of lawful authority rests in the powers allocated to them under the law. The common law principle of ultra vires is now underpinned by the constitutional doctrine of legality which is an aspect of the rule of law.*"

67 Section 6(2)(b), (d) and (f)(i) of PAJA.

(d) given due consideration to any such representations received."

97. Similarly, section 12A(2) of SASA requires that before schools are merged, the MEC must :-

"*(a) give written notice to the schools in question of the intention to merge them;*
(b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
(c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
(d) consider such representations; and
(e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law."

98. None of the procedural requirements prescribed by the statutory framework have been met by the MEC.

99. In the initial answering affidavit filed on behalf of that the MEC the position is adopted that MEC had not taken any decision to close the School.[68] The position of the MEC if regard is had to the supplementary affidavits filed on her behalf, remains that the School is to be 'relocated'. [69]

100. Thus, the MEC attempts to suggest that in the event of the Trust being granted the relief sought by it, the School will not be closed or merged with Voorbedag, but its operations will merely be moved to an area on the grounds of Voorbedag.

101. By this re-characterisation, the MEC attempts to escape the requirements of section 33 and section 12A of SASA.

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68 Lyners AA para 29, Rec. main application p. 103.
69 Lyners SAA para 52-53, Rec. main application pp. 714-715.

102. Neither SASA nor the WC Schools Act makes any reference to the 'relocation' of a school. Such a power simply does not exist in the current statutory framework from which the MEC derives her powers.

103. In *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*[70] the Constitutional Court held:

> *"[I]t is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law — to the extent at least that it expresses this principle of legality — is generally understood to be a fundamental principle of constitutional law."*[71]

104. Later in the same judgment it is said that *"[i]t seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution."*[72] [emphasis added]

105. The Constitution now states explicitly that the rule of law is a foundational value of our legal order.

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70 *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC)

71 *Fedsure* at para 56.

72 *Id*. at para 58.

106. It follows that the MEC may only relocate the School if the power to do so is conferred on her by law. As has been demonstrated, she has no such power, and as such any decision to 'relocate' the School would be unlawful.

107. The MEC's attempt to create an artificial fine distinction between a closure/merger (on the one hand) and a mere decision to 'relocate' the School must, with respect, be rejected.

108. In *Commissioner for the South African Revenue Service v NWK Ltd*[73], the Supreme Court of Appeal stated that the true nature of a transaction must be determined with regard to its purpose and overall "*commercial sense*". Similarly in *Erf 3183/1 Ladysmith (Pty) Ltd v CIR*[74], the Appellate Division (as it then was) held the well-established principle that it will "*not be deceived by the form of a transaction: it will rend aside the veil in which the transaction is wrapped and examine the nature and substance*".

109. In the same manner, it is submitted that this Court should consider the true nature of the MEC's proposed action.

110. The practical effect of the decision to abide and the MEC's submissions is that the School will cease to exist as a separate body; and it will be operationally melded with Voorbedag.

111. It is not possible to have two schools being run independently while using the same facilities at the same time. It will for all intents and purposes be merged with Voorbedag.

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73 *Commissioner for the South African Revenue Service v NWK Ltd* 2011 (2) SA 67 (SCA) at para 42-55.
74 *Erf 3183/1 Ladysmith (Pty) Ltd v CIR* 1996 (3) SA 942 (A) at 951C.

112. The provisions of SASA and the WC Schools Act are designed to deal with the practical considerations of two schools operating from the same grounds. This is the very reason for the statutory requirements that must be followed before schools may be merged. It would render the legislative framework meaningless if the Department could escape the strictures of the law through the simple expedient of calling a merger by a different name.

113. The School will for all practical purposes be subjected to closure and subsequently to a merger with Voorbedag were the relief sought by the Trust to be granted and that as such the MEC is required to follow the procedures set out in SASA and the WC Schools Act. The order of Henney J recognises this fact.

114. None of the statutory procedures have been followed or even commenced at this stage, nor is there any allegation that the MEC intends following the statutory procedures in respect of closure and/or merger of the School.

115. The procedures in the WC Schools Act and SASA are peremptory and as such it is not open to the MEC to simply choose not to comply with the relevant statutory procedures, notwithstanding the financial dispute between the MEC and the Trust.

116. Furthermore the Trust cannot by evicting the School ensure that the School is closed in violation of the statutory requirements and the MEC's statutory duties must be fulfilled irrespective of any eviction order.

117. It is submitted that the MEC's stance in this case does not measure up to the requirements of rationality or reasonableness.

118. In the first place, the MEC fails in her primary duty to act in the best interests of the learners and her duty to ensure all children's right of access to basic education as upheld by the Constitutional Court in *Juma Musjid*.

119. The Constitutional Court in *Juma Musjid* criticised the failure of the MEC and the High Court in that matter to respect the rights of learners, and asserted that private land owners have a duty to ensure that learners are not deprived of their education. Similar criticisms are equally applicable in this case.

120. It is therefore submitted that this Court should, given the Department and the MEC's recalcitrance in fulfilling their constitutional duties toward the leaners at the School, exercise its discretion to issue the supervisory order suggested by the School and the Governing Body to ensure that the MEC fulfils her duties and places sufficient information before this Court to enable it to make a just and equitable order.

EXPROPRIATION

121. The *Amicus Curiae*, has raised the issue of the MEC's duty under section 58 of SASA to consider expropriation of land in appropriate circumstances.

122. 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.

123. It is submitted that particular circumstances of this matter the MEC ought to exercise the powers conferred on her by section 58 of SASA in order to ensure that the entrenched rights of the learners are protected.

124. Both SASA and WC Schools Act were enacted with a view to redressing the past system of education that was based on racial inequality and segregation.[75] Further, both SASA and WC Schools Act recognise the crucial role that the 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.[76]

125. 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[77] 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.[78]

126. The history of apartheid education in rural areas cannot be divorced from broader land reform issues in this country.

127. The legacy of the racially discriminatory policies of apartheid in regard to land and education is still keenly felt in rural communities. It is therefore incumbent on the MEC in exercising her

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75 SASA Preamble; WC Schools Act Preamble.
76 SASA Preamble; WC Schools Act Preamble.
77 WC Schools Act Section 3(1)(d)(ii).
78 WC Schools Act Section 3(1)(d)(v).

duties under SASA and the WC Schools Act as well as the Constitution to give real consideration to expropriation in this matter.

128. The MEC has advanced no constitutionally justifiable reason for why she has failed and/or refused to consider expropriation in this matter. In particular since expropriation would ensure that the learners' right to education is secured in their best interests, that the School has security of tenure and that the role of the School as part of the broader community is protected.

129. Section 58 is framed in permissive terms. Thus the fundamental question that arises in this instance is whether the grant of the permissive power to expropriate in terms of SASA also imports an obligation on the authority to use the power in certain circumstances. It is submitted that in this case such a duty arises.

130. In *Levy v Levy*[79], the Supreme Court of Appeal held that a statutory enactment conferring a power in permissive language may nevertheless have to be construed as making it the duty of the person or authority in whom the power is reposed to exercise that power when the conditions prescribed as justifying its exercise have been satisfied. The Court went on further to state that whether an enactment should be so construed depends on a) the language in which it is couched, b) the context in which it appears, c) the general scope and object of the legislation, d) the nature of the thing empowered to be done and e) the person or persons for whose benefit the power is to be exercised.

131. Even though the words in section 58 of SASA are only empowering *"it has been so often decided as to have become an axiom that in public statutes words only directory, permissory or*

[79] *Levy v Levy* 1991 (3) SA 614 (AD) at para 32.

enabling may have a compulsory force where the thing is to be done for the public benefit or in advancement of public justice".[80]

132. In this matter, the MEC bears a constitutional obligation to protect the learners' entrenched rights to education in their best interests.

133. It is submitted that an order directing the MEC to consider expropriation in terms of section 58 of SASA would constitute the flexible and adaptive application of the duties imposed on the MEC by (a) SASA to achieve equitable education opportunities and the redress of past education inequality and (b) sections 28 and 29(1)(a) of the Constitution to protect the learner' entrenched rights to education in their best interests.

134. It is further evident that the Department and the Trust will not reach an agreement as to a new lease in respect of the School.

135. In these circumstances the only reasonable course of action available to the MEC in order to avoid the dire consequences which would result from the inevitable closure of the School in the event of an eviction being ordered is for the MEC to acquire the portion of the Property on which the School is situated.

136. Although this Court may not order her to do so by reaching a purchase agreement with the Trust, the Court is clearly at large to direct the MEC to exercise her statutory powers, if the exercise of those powers is the only reasonable course of action open to her.

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[80] *R. v. Tithe Commissioners* 14 C.B. 474, cited with approval in *South African Railways And Harbours v Transvaal Consolidated Land And Exploration Co Ltd* [1961] 2 All SA 576 (A) at 609.

137. Those powers, although permissive rather than mandatory, are clearly intended to *"effectuate a legal right"*.[81] The object of expropriating the portion of the Property on which the School is situated is clearly *"for the public benefit or in advancement of public justice"*.[82]

COSTS

138. The recalcitrance of the MEC and the Department in dealing with the commercial dispute with the Trust has been a direct cause of the current litigation. Furthermore neither the MEC nor the Trust has meaningfully engaged with the Respondents as required by the order of Henney J in the interdictory proceedings.

139. It is submitted that had such meaningful engagement taken place the present litigation could have been avoided as a consequence it is submitted that the MEC and the Trust should bear the costs of this application jointly and severally.

140. If the School and the Governing Body are wrong in every previous respect, it is nonetheless submitted that in the circumstances of this case that this Court should hold that because the Governing Body is a juristic person with few resources which was, in good faith, attempting to vindicate the constitutional rights of the learners of the school essentially in the face of dilatory behaviour on the part of the Department, the Governing Body should not be mulcted in costs. In

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81 See *Noble & Barbour Appellants v South African Railways and Harbours Respondent* 1922 AD 527 p. 540 where the Court cited with approval the concurrent opinion of Lord Blackburn who held that *"the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right"*.

82 Note 80 above.

this regard we rely on the Constitutional Court's decision in *Biowatch Trust v Registrar Genetic Resources and Others*.[83]

141. It is submitted that the Department's on going failure to take appropriate steps to safeguard and protect the rights of learners and the MEC's failure to raise and deal adequately with the important constitutional issues raised by this application necessitated the Governing Body's defence of this application in the best interests of the learners at the School.

CONCLUSION AND REMEDY

142. It is submitted that the MEC's affidavits, far from assisting this Court in determining the important constitutional issues raised in this matter, leave the determination of those issues in a continuing state of uncertainty.

143. Despite the passage of more than five years since this dispute began, the MEC has consistently failed to appreciate that to prevent the inevitable violation of the best interests of the learners at the School, and their rights to basic education which would result if an eviction is granted, requires creative steps and just and equitable remedial action under section 172(1)(b) of the Constitution.

144. It is submitted that appropriate relief in this case is relief that effectively ensures the breach of these rights does not take place.

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[83] *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC) at para 56 where Sachs J held that *"the general point of departure in a matter where the state is shown to have failed to fulfill its constitutional and statutory obligations, and where different private parties are affected, should be as follows: the state should bear the costs of litigants who have been successful against it, and ordinarily there should be no costs orders against any private litigants who have become involved. This approach locates the risk for costs at the correct door - at the end of the day, it was the state that had control over its conduct"*.

145. In the circumstances of this case, it is respectfully contended that the Department and the MEC's intractable stance in this matter demonstrates a need for appropriate Court supervision.

146. The School and the Governing Body accept that the Trust cannot indefinitely be deprived of its property rights, however, the learners entrenched rights must also be protected.

147. As such, it is submitted that a just and equitable remedy in this matter would entail the following orders being made by this Court:

147.1. That the application be postponed for a period of six months;

147.2. During that time the MEC is to be directed to consider expropriation of the Property in terms of section 58 of SASA for the purposes of securing the tenure of the School;

147.3. The parties be provided with an opportunity to make written representations to the MEC within 30 days of the date of any order made as to:

147.3.1. The appropriateness of the expropriation of the Property;

147.3.2. The payment of compensation to the Trust in the event that the MEC determines that Property ought to be expropriated; and

147.3.3. Any other factors relevant to the exercise of the MEC's powers in terms of section 58 of SASA;

147.4. That the MEC be directed to consider the written representations of the parties and to make a decision on whether to expropriate the Property no later than 90 days after the date on which the written representations of the parties were to have been submitted;

147.5. That the MEC be directed to file a report, on affidavit, with the Court:

147.5.1. setting out the decision which she has made in respect of the expropriation and the reasons for such decision within 30 days after having made the decision;

147.5.2. in the event that the MEC decides not to expropriate the Property, and she decides that the closure or merger the School is appropriate, to state

147.5.2.1. whether the appropriate statutory notices have been published;

147.5.2.2. the manner in which the Governing Body and the parents of the learners at the School were granted a reasonable opportunity to make representations to the MEC in relation to the proposed closure/merger of the School;

147.5.2.3. 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;

147.5.2.4. the manner in which the MEC gave due consideration to any representations received;

147.5.2.5. the reasons for any decision made by the MEC;

147.5.2.6. the specific arrangements made 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;

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

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

147.6. That the parties may file further written submissions dealing solely with the appropriate relief to be granted within 30 days of the date of receipt of the MEC's report.

148. It is submitted 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. Consequently, it is submitted that this would be an appropriate matter for the Court to exercise its discretion to issue an appropriate supervisory order which would ensure proper judicial oversight over the ejectment of minor children from a primary school at which they are receiving their education in order to ensure that their constitutional right to basic education enshrined in section 29(1)(a) of the Constitution is safeguarded and protected.

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Chambers, Cape Town
20 March 2017

SECOND AND THIRD RESPONDENTS' AUTHORITIES

1. *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC)
2. *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC)
3. *Commissioner for the South African Revenue Service v NWK Ltd* 2011 (2) SA 67 (SCA)
4. *Erf 3183/1 Ladysmith (Pty) Ltd v CIR* 1996 (3) SA 942 (A)
5. *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC)
6. *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA)
7. *Government of the Republic of South Africa & others v Grootboom & others* 2001 (1) SA 46 (CC)
8. *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC)
9. *Khosa & Others v Minister of Social Development & Others: Mahlaule v Minister of Social Development & Others* 2004 (6) SA 505 (CC)
10. *Levy v Levy* 1991 (3) SA 614 (AD)
11. *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC)
12. *MEC for Agriculture, Conservation, Environment and Land Affairs, Gauteng v Sasol Oil and Another* [2006] 2 All SA 17 (SCA)
13. *MEC for Education: KwaZulu Natal v Pillay* 2008 (1) SA 474 (CC)
14. *Minister of Basic Education and Others v Basic Education For All and Others* 2016 (4) SA 63 (SCA)
15. *Noble & Barbour Appellants v South African Railways and Harbours Respondent* 1922 AD 527
16. *R. v. Tithe Commissioners* 14 C.B. 474
17. *South African Railways And Harbours v Transvaal Consolidated Land And Exploration Co Ltd* [1961] 2 All SA 576 (A)
18. *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 4 SA 234 (C)
19. *Traut v Fiorine and Another* [2007] 4 All SA 1317 (C)