

**IN THE HIGH COURT OF SOUTH AFRICA
(KWA-ZULU NATAL DIVISION, PIETERMARITZBURG)**

Case No: _____

In the matter of:

EQUAL EDUCATION

Applicant

and

MEC FOR EDUCATION: KWA-ZULU NATAL

First Respondent

POLICE COMMISSIONER OF KWA-ZULU NATAL

Second Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

DEMICHELE PETHERBRIDGE

do hereby make oath and state:

1. I am an adult female attorney, employed by the Equal Education Law Centre (“**EELC**”), the applicant’s attorneys in this matter.

2. The facts contained in this affidavit are both true and correct. Unless the context indicates otherwise, they fall within my personal knowledge.
3. I depose to this affidavit in support of Equal Education's ("**EE**") application to this Honourable Court for an appropriate remedy flowing from the unlawful prevention of their gathering on 11 July 2017, for which I understand that Ntshadi Mafokeng (the Chief Operations Officer of EE, the applicant in this matter) will attest to a Founding Affidavit which this affidavit will support/be annexed to.

EQUAL EDUCATION'S SCHOLAR TRANSPORT CAMPAIGN

4. Since 2014, the applicant has been campaigning for the adequate provision of scholar transport at schools located in Nquthu, KwaZulu-Natal ("**Nquthu**"). As part of this campaign, the applicant created a short film titled 'Long Walk to School' in which it documents some of the hardships that learners face as a result of inadequate scholar transport provisioning in KwaZulu-Natal.
5. On 11 July 2017, the applicant attempted to use the film as part of a peaceful, silent protest against the KwaZulu-Natal Department of Education ("**the first respondent**") by screening the film on the outside wall of the first respondent's office building located in Pietermaritzburg.

6. The disturbing events that took place on 11 July 2017 between the members of the applicant and the first respondent's officials and the Kwa-Zulu-Natal South African Police Services ("**the second respondent**"), which ultimately resulted in the dispersion of the applicant's members and the cessation of the film screening, has been detailed in the applicant's founding affidavit.
7. After learning about the unlawful dispersion of the gathering on 11 July 2017 by the first and second respondents ("**the respondents**"), I was requested by the applicant to take statements of some of its members who attended the gathering. These members included Equalizers (an Equalizer is a primary school or secondary school learner who is a member of EE), EE facilitators, and EE Community Leaders.
8. In the section that follows, I set out excerpts from statements that I took on 15 and 16 August 2017. These statements detail the experiences of some of the applicant's members on the day of the gathering on 11 July 2017. In order to protect the identities of the Equalizers that were involved in the protest and to ensure that they are not subjected to undue scrutiny and/ or victimisation for their involvement in the protest, I will file a confidential and non-confidential version of this affidavit with the annexures. In the non-confidential version, I have redacted the names and personal information of EE members. The confidential version will be made available to this Court prior to the hearing. The confidential version

can be made available to the respondents, upon furnishing the necessary undertaking that the personal details of the Equalizers will be kept confidential. EE believes that it is necessary to take these precautions in order not to expose its members to any further trauma or victimisation as a result of this litigation pertaining to its protest.

EXPERIENCES OF PROTESTERS TAKEN FROM THEIR STATEMENTS

9. An EE Community Leader, who was 22 years old at the time of the protest reported that she was present when a Mr Ngubane, who claimed to be the first respondents' Head of Security, ordered the applicant to desist from screening the film, failing which, the applicant's members (inclusive of minors at the time) would "get hurt". She reported that the second respondent's members had been instructed by Mr Ngubane to use teargas to disperse everyone present at the protest. In her statement, she expressed herself as follows:

- 9.1. *"I felt threatened when a lot of police came because I don't know what tear gas do[es] to people. When police arrive, I should feel safe, but I didn't because they were angry and threatened me and EE members. I felt really scared and imagined myself at a police station or prison."*

- 9.2. Her statement is annexed hereto and marked "**DP1**".

10. An Equalizer who was also part of the EE Leadership Committee, and who was 16 years old and in Grade 10 at Ngwane High School in Nquthu at the time of the protest, attended the protest when it was unlawfully dispersed by the respondents. The Equalizer recounts how members of the second respondent ordered the EE members to disperse, without giving any reasons as to why. The Equalizer expressed herself as follows:

10.1. *“When other police officials arrived in a [Q]uantum I got scared and felt threatened. When there’s angry police in a protest, protestors get shot or beaten up and I was worried that could happen.”*

10.2. *“Once the film was stopped, we kept on singing struggle songs. They stopped the film that shows our struggles, so we thought we sing struggle songs to show them how we feel about our situations at school.”*

10.3. *“I did not like the fact that there were police there. We had a right to be there and we followed every legal action according to the Regulations [A]ct. Our protest was non-violent and I felt that our right to protest was violated by the police. One police official said there’s nothing we are standing here for, and we should leave now. We only left when the [Q]uantum arrived.”*

10.4. *“I think that the Department of Education should provide what we need to get a good education. If they are embarrassed by our*

actions it means they know what we want and need. So they should provide this need and stop hiding behind the police.”

10.5. The Equalizer’s statement is annexed hereto and marked “**DP2**”.

11. An Equalizer who was 17 years old and in Grade 11 at Mhayise Secondary School in Nquthu at the time of the gathering, was also at the protest when it was unlawfully dispersed. The Equalizer recounts how members of the second respondent arrived at the protest and told the EE members to disperse. The Equalizer expressed herself as follows:

11.1. *“The police kept on telling us to go away but I started singing with all the other learners. I was singing ‘Asiyindawo’, which means ‘We are not going away’. I sang because I wanted to show that I was not afraid of what I was standing up for, and I wanted them to see that we are really serious about what we were doing and that we really needed scholar transport.”*

11.2. *“I wanted to protest that day to show people that here in KZN, people are suffering and that they should unite with us. When I saw Police, I felt as if we had no right to say something, because they didn’t hear us out, they just chased us away and didn’t want to listen to our problems. I felt bad that they stopped the film. But I will not give up, I will take part in another protest because what’s happening to us will continue with other generations of learners.”*

- 11.3. *“I think that the [D]epartment of [E]ducation should hear us out.”*
- 11.4. The Equalizer’s statement is annexed hereto and marked “**DP3**”.
12. An Equalizer and member of EE’s Learner Committee, who was 17 years old and in Grade 11 at Mhayise Secondary School in Nquthu at the time of the protest, was at the protest when it was unlawfully dispersed. The Equalizer recounts how members of the second respondent arrived at the protest and told the learners to disperse. The Equalizer expressed herself as follows:
- 12.1. *“I and other learners were just watching the film when these police arrived. I didn’t feel scared when I saw the police, but angry, disappointed and frustrated.”*
- 12.2. *“The film was eventually stopped, and Equalizers began singing Equal Education songs. I sang with because I wanted to express my feelings about how I felt about the protest being stopped.”*
- 12.3. *“The protest meant something to me. If the police didn’t come, I could express my feelings about the scholar transport problem and the pain I felt about it.”*
- 12.4. *“I feel frustrated that police were called, we all needed to be treated equally. There was no need to call the Police. I was angry because I wanted to express my feelings about the transport problem.”*

12.5. The Equalizer's statement is annexed hereto and marked "DP4".

13. An Equalizer, who was 16 years old and a Grade 10 learner at Maceba Secondary School in Nquthu at the time of the protest, was also at the protest when it was unlawfully dispersed. The Equalizer recounts how members from the second respondent arrived at the protest and ordered the learners to disperse. She expressed herself as follows:

13.1. *"Myself and other learners did not leave immediately. We stayed there and sang Equal Education struggle songs. I felt that maybe this singing would make a change to the situation."*

13.2. *"I felt bad when the police arrived because myself and other learners did not do anything wrong. I don't think it was necessary to call police because it was a peaceful protest and Equal Education had permission to be there. It showed that the Department [of Education] doesn't really care about our rights as learners and what is happening with the learners in schools that need scholar transport."*

13.3. *"I think that the Department [of Education] should just give us what we want. I think steps should be taken against the Department [of Education] like taking them to court because my right to protest was violated that day and it gave me a bad picture of the Department of Education."*

- 13.4. The Equalizer's statement is annexed hereto and marked "DP5".
14. An Equalizer who was 17 years old and in Grade 10 at Maceba Secondary School in Nquthu at the time of the protest, was at the protest when it was unlawfully dispersed. The Equalizer recounts how members of the second respondent arrived at the protest and ordered the learners to disperse. She expressed herself as follows:
- 14.1. *"When I saw police officers, the first thought[t] that came to my mind was that we were going to be arrested for something we have permission for."*
- 14.2. *"Police were talking to Equal Education organisers in this time [while learners were singing outside the KZNDOE offices] and there was a police van with officers just watching the group of Equalizers I was in."*
- 14.3. *"I felt that it was not necessary to call police because we had permission to protest, and for the police to use their power over us was not nice for me. I cannot talk back and shout at police to stop, because I could get arrested or shouted at."*
- 14.4. *"It is actually shocking that no one saw the need for what I was protesting for. I am a learner who walks 25 to 30 minutes to school,*

and what happened makes me feel that people do not care about what I am facing living in a rural area.”

14.5. *“I think the police should be held responsible for what happened as they violated my right to protest that day.”*

14.6. The Equalizer’s statement is annexed hereto and marked “**DP6**”.

15. An Equalizer and member of the EE Leadership Committee who was 16 years old and in Grade 10 at Mgazi Secondary School in Nquthu at the time of the protest, was at the protest when it was unlawfully dispersed. The Equalizer recounts how members of the second respondent arrived at the protest and told the learners to disperse. He expressed himself as follows:

15.1. *“One police officer came and told equalisers that they should leave before bad things happen.”*

15.2. *“When more police arrived I felt threatened and stopped singing. Those policemen were angry at the learners and the only thing learners did is to sing and watch a film silently.”*

15.3. *“One EE facilitator told learners to continue watching the film silently. The two men in suits got angry and told the police to disperse learners with teargas.”*

- 15.4. *“At this point [when the police came to disperse the gathering] I was really scared and thought of the massacres that the police have been responsible for.”*
- 15.5. *“The KZN [E]ducation [D]epartment was embarrassed by the film and called police to disperse learners watching peacefully.”*
- 15.6. The Equalizer’s statement is annexed hereto and marked **“DP7”**.
16. An EE facilitator who was 24 years old and living in Nquthu at the time of the protest, was at the protest when it was unlawfully dispersed. The EE facilitator recounts how members of the second respondent arrived at the protest and told the learners to disperse. She expressed herself as follows:
- 16.1. *“I think the message they [the respondents] send is that learners’ lives are not important and they take our right to protest away from me and others by kicking us out.”*
- 16.2. The EE facilitator’s statement is annexed hereto and marked **“DP8”**.
17. An Equalizer who was 19 years old and in Grade 11 at Langazela Secondary School in Nquthu at the time of the protest, was at the protest when it was unlawfully dispersed. The Equalizer recounts how members

of the second respondent arrived at the protest and warned learners to disperse. She expressed herself as follows:

17.1. *“I don’t think it was necessary to call the police because it is not good that when people are voicing their issues to use police. It shows that they undermine us and the learners in Nquthu, and we are being discriminated against.”*

17.2. *“It is discouraging that myself and the others are trying to voice our issues and the Department of Education acts out like this. This made me feel like I should not continue to protest because it is useless. You have police used against you even though you have a right to protest.”*

17.3. The Equalizer’s statement is annexed hereto and marked **“DP9”**.

18. What is made clear by the above statements is that the applicant’s members felt threatened and unsafe. The statements showed that the members feared that the police might use force against them, or that they might be arrested simply for gathering and watching a film about a cause close to their hearts. They expressed feelings of their right to protest having been violated, questioning why they were told to disperse if EE had complied with the RGA. They also spoke of how they were unable to express themselves about issues affecting them and their access to education, which is what the film sought to do. These learners and youths

had something to say, and not only did the respondents refuse to listen to them, but actively silenced them. This left the applicant's members understandably frustrated and angry.

19. These accounts show how the applicant's members' right to dignity was violated when they were silenced and dismissed – they were told “*there's nothing [you] are standing here [protesting] for*”, that they “*felt as if we had no right to say something*”. That they “*all needed to be treated equally*” but were not; that “*learners' lives are not important*”, that “*they undermine us and the learners in Nquthu, and we are being discriminated against*”. One EE member spoke of their feelings of powerlessness saying, “*the police to use their power over us was not nice for me. I cannot talk back and shout at police to stop, because I could get arrested or shouted at*”. These statements clearly show how the applicant's members' right to dignity was infringed and violated by the respondents.
20. The applicant's members' statements also clearly show how their right to protest and express themselves was violated. These learners and youths spoke powerfully when they said, “*The protest meant something to me*”, that they care deeply about the applicant's scholar transport campaign but that the unlawful dispersal of the protest “*makes me feel that people do not care about what I am facing living in a rural area*”. This led to some of the applicant's members feeling despondent and hopeless about protest action: “[the unlawful dispersal of the protest] *made me feel like I*

should not continue to protest because it is useless. You have police used against you even though you have a right to protest.” That these statements come from our youth is disheartening, especially considering the limited tools they have at their disposal to voice their political ideas and concerns.

21. Lastly, the statements show how the respondents’ actions have made young and vulnerable learners and youths fearful for their safety and bodily integrity. The use of intimidating language and threats of teargas by members of the second respondents against the protesters not only violated their right to safety and security, but also violated the respondents’ duty to protect children and ensure that their actions place children’s interests at the centre. Clearly this did not happen. One EE member stated how members of the second respondent “*told equalisers that they should leave before bad things happen*”. Another of the applicant’s members told of an impression that had been created by members of the second respondent, in that they were “*really scared and thought of the massacres that the police have been responsible for*”. It is clear that the applicant’s members were left feeling scared and threatened by an institution that is meant to serve and protect them, and which is meant to help them realise their rights, such as the right to protest.

22. What can be seen by these statements is that the respondents' actions created a sense of fear in the learners at the protest, leaving them feeling threatened, despondent, unheard, dismissed and disregarded. These statements clearly show that there was no need to call the police and threaten bodily harm on a group made up of mainly children.
23. I am therefore in support of the applicant's application and the relief prayed for therein.

DEMICHELE PETHERBRIDGE

I hereby certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at on this the day of **2018** the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS