IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION JOHANNESBURG)

CASE NO: 38670/2016

AB	First Applicant
CB	Second Applicant
and	
PRIDWIN PREPARATORY SCHOOL	First Respondent
SELWYN MARX	Second Respondent
THE BOARD OF PRIDWIN PREPARATORY SCHOOL	Third Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION, GAUTENG	Fourth Respondent

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HEADS OF ARGUMENT ON BEHALF OF EQUAL EDUCATION

AS *AMICUS CURIAE*

INTRODUCTION

1. These heads of argument serve two interrelated purposes. Firstly, they are filed as part of Equal Education ("EE")'s application for admission as *amicus curiae*, and secondly, they draw the court's attention to, and make submissions on further considerations given rise to by the main dispute between the applicants and the respondents.

2. At the heart of that dispute lies the interplay between privity of contract on the one hand, and the right to basic education, on the other. This gives rise to the following considerations:[1]

2.1. The growth of low-fee independent schools and the impact of broad termination clauses in parent contracts on learners at these schools; and

2.2. The right to basic education and the best interests of children.

3. We deal first with EE's application for admission as *amicus curiae*.

EE'S APPLICATION FOR ADMISSION AS *AMICUS CURIAE*

4. The procedure for admission as *amicus curiae* is set out in rule 16(A) of the Uniform Rules of Court. Sub-rule 16A(2) permits "*any interested party in a constitutional issue raised in proceedings before a court*" to be admitted as *amicus curiae*, "*with the written consent of all the parties to the proceedings*". Where a party seeking admission as an *amicus curiae* is not able to obtain the written consent contemplated in sub-rule 16A(2), then such a party may, in terms of sub-rule 16A(5), "*apply to the court to be admitted as an amicus curiae in the proceedings*".

5. It is clear from the scheme of the rule 16A that an application for admission as *amicus curiae* will only be necessary if one of the parties to the proceedings is

[1] EE's founding affidavit for admission as *amicus*, para 8, page 706 - 707.

opposed to a request for admission as *amicus curiae*.

6. Although EE was not able to obtain the respondents' written consent to be admitted as *amicus curiae*, its application for admission is not opposed. That the application is not opposed is borne out by:

   6.1. The First to Third Respondents ("Pridwin")'s response to EE's application for admission as an *amicus curiae;*[2]

   6.2. Letter from EE to Pridwin dated 6 March 2017;[3] and

   6.3. Email from Pridwin to EE dated 6 March 2017.[4]

7. Nevertheless, rule 16A(6)[5] requires an applicant in an application for admission as *amicus curiae* to:

   7.1. briefly describe its interest in the proceedings; and

   7.2. "*clearly and succinctly set out the submissions which will be advanced by the amicus curiae, the relevance thereof to the proceedings and [its] reasons for believing that the submissions will assist the court and are different from those of the other parties*."

[2] Pridwin's response to the application for admission of Equal Education as *Amicus Curiae* (Pridwin's response), para 32 – 33, vol 9, page 893 – 894.
[3] EE's supplementary affidavit, annexure DJL1.
[4] EE's supplementary affidavit, annexure DJL2.
[5] Rule 16A(6)(a) and (b) of the Uniform Rules of Court.

8. While that is, this court has a discretion to admit a party as an *amicus amicus* in the interests of justice.

9. In their response affidavit, Pridwin alleges that that the concerns raised by Equal Education regarding the effect that these clauses might have on marginalised learners from low income families are not relevant to the main application because:

> *"Pridwin is not a low fee independent school serving a previously disadvantaged community. It is in fact everything but that."*[6]
>
> *….*
>
> *"Pridwin is, without putting too fine a point on it, an expensive independent school…they pay a considerable amount of money for their children to be schooled at Pridwin . . ."*[7]
>
> *"Pridwin is situated in an enclave of old Johannesburg and is not readily identifiable as an area which attracts middle to low income earning parents."*[8]
>
> *. . .*
>
> *". . . Thus, considerations of economic disparity are not relevant to this matter at all."*[9] [Underlining added].

[6] Pridwin's response, para 15, vol 9, page 885.
[7] Pridwin's response, para 20, vol 9, page 889.
[8] Pridwin's response, para 21, vol 9, page 889.
[9] Pridwin's response, para 22, vol 9, page 890.

10. Pridwin's views as quoted above are unfortunate and misplaced in South Africa's constitutional order that values equality amongst all human beings and the ability of all people, irrespective of class[10], to be heard on matters that may affect them.

11. Be that as it may, Courts have recognised that *amici* play a vital role in matters concerning constitutional rights, or matters in which constitutional issues are raised, more broadly. In *Children's Institute v Presiding Officer, Children's Court, Krugersdorp*[11], the Constitutional Court observed that: -

> *"In these cases, amici play an important role, first, by ensuring that courts consider a wide range of options and are well informed; and, second, by increasing access to the courts by creating space for interested non-parties to provide input on important public interest matters, particularly those relating to constitutional issues."*[12]

12. In *Rates Action Group v City of Cape Town*, the court recognised the reality that "*constitutional cases often have consequences which go far beyond the parties concerned*."[13] This sentiment was echoed by the Constitutional Court in *Koyabe and Others v Minister for Home Affairs and Others*, where it noted that:[14]

> *"Constitutional litigation by its very nature requires the determination of issues squarely in the public interest, and insofar as amici introduce*

[10] It should be without contestation that in presently in South Africa, there remains a strong link between issues of class and race.
[11] *Children's Institute v Presiding Officer, Children's Court, Krugersdorp* 2013 (2) SA 620 (CC).
[12] *Children's Institute* at para 26.
[13] *Rates Action Group v City of Cape Town* 2004 (5) SA 545 (C) at para 21.
[14] *Koyabe and Others v Minister for Home Affairs and Others* 2010 (4) SA 327 (CC) at 80.

additional, new and relevant perspectives, leading to more nuanced judicial decisions, <u>their participation in litigation is to be welcomed and encouraged</u>". [Underlining added].[15]

13. Therefore, by participating in proceedings such as the instant, *amici* promote and protect the public interest.[16]

14. One of the most significant roles that an *amicus* plays is to advocate for vulnerable and marginalised people.[17] Courts have also taken cognisance of the fact that due to the specialist work of some *amici* that might approach courts, they may be best placed to "*presents factual material along the lines of placing the issues before the Court in their social context and suggesting their likely consequences*".[18]

<u>EE's interest in the proceedings</u>

15. EE currently has members from across the Eastern Cape, KwaZulu-Natal, Gauteng, Limpopo, and the Western Cape, and it is engaged in every sphere that pertains to the provision of education in South Africa[19]. Through conducting its work from the grassroots level, EE is knowledgeable about the realities of, in the words of Pridwin, "*middle to low income earning parents*".

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[15] On the facts of *Koyabe* the Constitutional Court found that the *amicus* application raised a separate issues that was not pertinent to the main question that the Court was invited to determine. This the Court does at paragraph 81. EE's case clearly distinguishable from *Koyabe* in that the main question that the Court is invited to determine while have an impact on the people that EE represents.
[16] *Children's Institute* at para 26.
[17] *Children's Institute* at para 15.
[18] *S v Engelbrecht* 2004 (2) SACR 391 (W) at para 37.
[19] EE founding affidavit, para 31, footnote 14, vol 8, page 715.

16. EE's interest in these proceedings is informed by its vision and its work. As an organisation, EE works towards the attainment of quality and equality in South African education[20]. This includes access to education, and the determination of the issues in these proceedings will have a direct impact on access to education.

17. EE's objectives include:

    17.1. "*developing the capacity of learners, parents, teachers and community members to drive improvement in their schools and educational institutions*"[21];

    17.2. "campaigning for a curriculum that is academically rigorous and that promotes dignity, creativity and social justice"[22]; and

    17.3. "*where necessary, using the courts and legal processes to advance the values of, and to contribute to, a strong civil society that holds private interests, government, individuals, and itself accountable*"[23].

18. In the furtherance of these and other objectives, EE has taken part in various cases before court. Among them are:[24]

    18.1. *FEDSAS v MEC for Education Gauteng* [2016] ZACC 14; 2016 (4) SA 546 (CC) in order to address the issue of discriminatory admissions to

[20] EE founding affidavit, para 30, vol 8, page 715.
[21] EE founding affidavit, para 30.1, vol 8, page 715.
[22] EE founding affidavit, para 30.4, vol 8, page 716.
[23] EE founding affidavit, para 30.6, vol 8, page 716.
[24] EE founding affidavit, para 31, footnote 15, vol 8, page 716.

schools; and

18.2. *Rivonia Primary School v MEC for Education Gauteng* [2013] ZACC 34; 2013 (6) SA 582 (CC) to similarly address issues of poor learners being denied admissions to certain schools, and intervened in similar circumstances in the 2015 matter of FEDSAS v MEC for Education Gauteng.

19. EE is currently intervening in matters relating to the issue of expropriation where public schools are on private land.[25]

EE'S SUBMISSIONS ARE RELEVANT TO THE DISPUTE BEFORE COURT

20. EE's submissions bring to the fore the social context and social consequences of this court's decision in this matter – in particular, in the context of low-fee independent schools.[26]

21. This court's determination of the issues before it will not only be of consequence to the applicants, Pridwin and the Independent Schools Association of South Africa ("ISASA"). It will also have an impact on low-fee independent schools that use similarly worded parent contracts. Contrary to Pridwin's assertions[27], therefore, this case does not only concern the interests of *"expensive independent school[s]"*[28] and people living in *"affluent area[s] in*

[25] EE founding affidavit, para 31, footnote 15, vol 8, page 716.
[26] EE's Founding affidavit para 9 - 17, vol 8, page 707 – 709.
[27] Pridwin's response, paras 20 – 23, vol 9, page 889 – 890.
[28] Pridwin's response, para 20, vol 9, page 889.

Johannesburg."[29]

22. The social context that EE brings to the fore has been recognised by ISASA itself. In its application to intervene as a respondent in main application, ISASA notes that the standard contract used by its member schools includes contracts similar to the Parent Contract between the applicants and the first respondent. [30] These member schools include low-fee independent schools. ISASA's own documents attached to the replying affidavit state that ISASA: -

> *"serves over 760 schools representing* a broad spectrum of socio-economic *cultural communities, religious affiliations, philosophies and education level from pre-school to post-matric. Our low, mid and high fee schools educate more than 167 000 pupils.*[31] [Underlining added].

Low-income independent schools are on the rise

23. There has been a rapid increase of low-fee independent schools in South Africa.[32]

24. As can be discerned from a Stellenbosch University report (annexure TM3[33] to EE's application), the South African independent school sector has grown rapidly from a low base in the last 15 years. The report specifically notes a major

[29] Pridwin's response, para 22, vol 9, page 890.
[30] Record page 826 para 6.
[31] Replying affidavit**,** annexure RAB3, page 681.
[32] EE's founding affidavit, para 9 – 17, vol 9, page 707 – 709.
[33] EE's founding affidavit, annexure TM3, vol 8, page 729.

demographic shift "*in the composition of the independent school sector, from being mainly white and serving the rich to being mainly black and the majority of schools now serving low- and middle-income learners*".[34]

25. While there is no fixed definition of the term low-fee independent schools, the Centre for Development Enterprise ("CDE") has defined these as those schools charging less than R12 000 annually.[35]

26. In the Gauteng Province at present, one in four schools is a low-fee independent schools.[36] Some low-fee independent schools are reported to charge parents as little around R40 per month.[37] Some characteristics of low-fee independent schools include smaller classes than public schools, but also fewer facilities. They were located in a wide range of buildings, from abandoned factories and shacks to shopping centres.[38]

27. The growth in low fee independent schools is a national and international phenomenon, particularly in the developing world. In its report titled "*Protecting the right to education against commercialisation*", the United Nations Special Rapporteur observed that the past decade has seen a rapid increase in the number of private providers of education to low-income households.[39] This, as the Special Rapporteur has noted, calls for tighter control and regulation of relationships between the private for-profit schools on the one hand, and the

[34] EE's founding affidavit, annexure TM3, vol 8, page 738 .
[35] EE's founding affidavit, annexure TM3, vol 8, page 738.
[36] EE's founding affidavit, para 11, vol 8, page 708.
[37] EE's founding affidavit, para 11, vol 8, page 708.
[38] EE's founding affidavit, annexure TM3, vol 8, page 738 - 739.
[39] EE's founding affidavit, annexure TM4, vol 8, page 759 - 782.

parents on the other. [40] This would be for the best interests of the children.

28. According to ISASA, this court's decision in this matter will have far-reaching consequences because ISASA's other member schools use contracts similar to the Parent Contract.[41] EE's founding affidavit also points out similar provisions in the contracts of other low-fee independent schools like Spark Schools and Riverside College. [42] This is significant because this court's decision on these contracts will reverberate to all independent school seeking to regulate their relationship by contracts similar to the Parent Contract. In fact, it was because there was legal precedent that other schools had successfully terminated relationships with parents and learners using the Parent Contract that Pridwin decided rely on the Parent Contract.[43]

29. Contracts between independent schools and parents are not ordinary commercial agreement. They facilitate the provision of the right to basic education, which is enshrined in section 29 of the Constitution. Therefore, other considerations must be taken into account when determining the enforceability of certain clauses in these contacts.

Broad termination clauses impact low income parents negatively

30. The problem with these broad termination clauses is that they arise in standard form contracts and empower the schools to terminate the relationship *"at any*

[40] EE's founding affidavit, annexure TM4, vol 8, para 70, page 772.
[41] ISASA founding affidavit para 6, vol 9, page 826.
[42]EE's founding affidavit, para 21 – 21, page 711 – 712; annexure TM5, vol 9, page 783 - 800.
[43] Respondents answering affidavit, AA37, vol 4, page 395.

time, for any reason." [44]

31. In respect of low fee independent schools, the broad termination clauses are not alive to the circumstances of parents and learners who attend these schools for various reasons. For example, parents may send their children to low fee independent schools because they are the nearest and most accessible to learners who would otherwise not be able to attend school; or where they are unable to find places in public/government schools.[45]

The right to basic education and obligation to act in the best interest of children

32. Section 29(1)(a) of the Constitution bestows on everyone the right to basic education.

33. While that is, section 28(2) pointedly provides that "*a child's best interests are of paramount importance in every matter concerning the child*." This provision was central to the discussion in *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Others*[46]. There, the Constitutional Court held that section 28(2) serves two purposes. First, it serves as a guiding principle in each case that deals with children, and (secondly), it sets "*a standard against which to test provisions or conduct which affect children in general."* [47]

[44] Respondents answering affidavit, para 23.2, page 152; founding affidavit, annexure Q, para 9.3, p 133.
[45] EE founding affidavit, para 13, vol 8, page 708.
[46] *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Others* 2014(2) SA 168.
[47] *Teddy Bear Clinic* at para 69.

34. The court went on to note that in matters dealing with children, the question to ask is how a particular provision (or a rule of law) will impact children generally, and not just a particular child. This, the court held, is because "[a]*s a matter of logic what is bad for all children will be bad for one child in a particular case*"[48]

35. Although the issue in *Teddy Bear Clinic* concerned the approach to be adopted in relation to a statutory provision, the requirement expressed in the judgment, that that the best interests of a child be taken into account in <u>all matters</u>, was without qualification and is therefore applicable to matters such as the instant, which turns of contractual provisions in private school contracts.

36. The paramountcy principle, as it interlinks with the right to education, was more central in *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others*[49], where the Court Constitutional Court considered the role of private actors in the provision of basic education. On the interface between the two rights, the court held that:

> "*. . . basic education is an important socio-economic right directed, among other things, at promoting and developing a child's personality, talents and mental and physical abilities to his or her fullest potential. Basic education also provides a foundation for a child's lifetime learning and work opportunities. <u>To this end, access to school – an important component of</u>*

[48] *Teddy Bear Clinic* at para 71.
[49] *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC).

the right to a basic education guaranteed to everyone by section 29(1)(a) of the Constitution – is a necessary condition for the achievement of this right.[50] [Underlining added].

37. It accepted that the primary obligation to provide or facilitate the provision of the right to education rests on the state,[51] however, the Constitution also places a negative obligation on private actors (such as Pridwin). The obligation requires private actors to not detract from the actualisation of the right to basic education.

38. In *Juma Musjid the* Court held that:

"*. . . socio-economic rights may be negatively protected from improper invasion. Breach of this obligation occurs directly when there is a failure to respect the right, or indirectly, when there is a failure to prevent the direct infringement of the right by another or a failure to respect the existing protection of the right by taking measures that diminish that protection. It needs to be stressed however that the purpose of section 8(2) of the Constitution is not to obstruct private autonomy or to impose on a private party the duties of the state in protecting the Bill of Rights. It is rather to require private parties not to interfere with or diminish the enjoyment of a right. Its application also depends on the "intensity of the constitutional right in question, coupled with the potential invasion of that right which could be occasioned by persons other than the State or organs of State".*[52]

[50] Ibid at para 44.
[51] *Juma Musjid* at para 57.
[52] *Juma Musjid* at para 58.

[Underlining added].

39. The obligation on private actors in respect of socio-economic rights is for them not to interfere or diminish the enjoyment of the right. In *Juma Musjid*, the Constitutional Court found that a Trust that had made its private property available for the establishment of a school, and then sought to evict the school from the use of its private property, had at least a negative constitutional obligation not to impair the learners' right to basic education.

40. In order to determine whether the Trust acted in accordance with the negative obligation not to impair the learners' right to a basic education, the court in *Juma Musjid* considered the reasonableness of the actions taken by the Trust. It recognised that the Trust in *Juma Musjid* went to extensive lengths to try and negotiate with the Department of Education prior to taking the decision to evict the school. The Trust's act was informed by the realisation that evicting the school would result in the impairment of the learners' right to education. On the facts of *Juma Musjid* and in light of the extensive attempts taken by the Trust the Constitutional Court found that the Trust did not act unreasonably.[53]

41. In respect of the circumstances of this case, Pridwin had an obligation not to diminish the enjoyment of the right to education of AB and CB. There is nothing placed before court that indicates that: (a) Pridwin was alive to the fact that its termination of the Parent Contract would amount to a detraction of AB and CB's right to basic education, or (b) it took reasonable steps to ensure as minimal an

[53] *Juma Musjid* at para 61 – 65.

impact on those rights as possible.

42. An assertion that scrutiny by the court on reasonableness is limited to considerations of whether the decision was made in bad faith[54] is plainly out of step with the Constitutional Court's decision in *Juma Musjid.* That case does not place any such constraints on what can be considered to be reasonable.

43. On the score of reasonableness, and as applied to wide-termination clauses such as clause 9.3, which have the effect of detracting from the right to basic education, we submit that:

    43.1. Such clauses are on their face unreasonable, in that they grant independent schools that rely on them wide wielding powers to interfere and diminish a child's constitutionally protected right to education without any guidance as to how that power should be exercised to ensure that it is only employed in a reasonable manner; and

    43.2. Acting in a reasonable manner requires that the independent schools to act in a manner that promotes the best interest of children. These <u>may include</u> pursuing less restrictive measures.

<u>Constitutional standard and public policy considerations in contracts</u>

44. The current legal position with regard to public policy and contract is as stated

[54] Respondents answering affidavit para 30, vol 2, page 156.

by Ncgobo J in *Barkuizen v Napier*[55]:-

> *". . . Since the advent of our constitutional democracy, public policy is now deeply rooted in our Constitution and the values which underlie it… What public policy is and whether a term in a contract is contrary to public policy must now be determined by reference to the values that underlie our constitutional democracy as given expression by the provisions of the Bill of Rights. Thus, a term in a contract that is inimical to the values enshrined in our Constitution is contrary to public policy and is, therefore, unenforceable."*[56] [Underlining added].

45. ISASA contends that the principle of *pacta sunt servanda* "*remains a fundamental principle of our contract law, and moreover that the Constitutional Court has held that the principle constitutes a component of the right to dignity under section 10 of the Constitution*." [57]

46. It may be that the principle of *pacta sunt servanda* constitutes a component of the right to human dignity, but (as Sachs J pointed out in *Barkhuizen*), *"the evolution of contract law suggests that the notion of sanctity of contract has been used to undermine rather than reinforce true volition"*.[58]

47. It is for this reason that the Constitutional Court in *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers* held that it is *"highly desirable and in fact necessary to*

[55] *Barkhuizen v Napier* 2007 (5) SA 323 (CC).
[56] *Barkhuizen* at para 28 – 29.
[57] ISASA founding affidavit para 20.1, vol 9, page 831.
[58] *Barkhuizen* at para 150.

infuse the law of contract with constitutional values, including values of ubuntu, which inspire much of our constitutional compact."[59] Contracts that impact on constitutional rights, like the right to education, are especially those contracts in which the spirit of Ubuntu should be infused.

48. In any event, the proper approach is that which seeks to balance the right to freedom of contract on the one hand, and the values that underlie the Constitution on the other. This approach, as Ngcobo J explained:-

> *"leaves space for the doctrine of pacta sunt servanda but . . . allows courts to decline to enforce contractual terms that are in conflict with constitutional values, even though the parties may have consented to them."* [60] [Underling added].

49. In this case, the right to education and the obligation to elevate children's best interests in all matters are key constitutional imperatives that weigh against freedom of contract.

50. There are other public policy consideration that must be borne in mind and these come into sharp focus with regard to children from low income families attending low fee independent schools. The first is the unequal bargaining position of the parties. Contractual provisions such as clause 9.3 arise in standard form contracts on a take-it-or-leave-it basis. In *Barkhuizen*, Sachs J noted that these

[59] *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd* 2012 (1) SA 256 (CC) at para 71.
[60] *Barkhuzien* at para 30

take-it-or-leave-it contracts come about as a result of an imposition of will by the party that drafted the contract rather than mutual consent.[61] It is for this reason that they are referred to as contracts of adhesion. [62]

51. Parents who are party to these Parent Contracts (or contracts of adhesion), especially those from low income families, do not have the ability to resist them or are unaware of their real import.

52. As explained in EE's founding affidavit, some parents end up sending their children to low fee independent schools because this is the only option available to them.[63] This is mostly the case in areas such as the Gauteng Province and the Western Cape, where public schools get filled to capacity. Low-fee independent schools in those areas fill the gap, and parents are often forced to send their children to these schools.

53. Taking into account these issues, EE submits that public policy considerations weight against allowing Independent Schools to rely on clauses like clause 9.3 to terminate parent contracts and thereby expel children from schools.

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[61] *Barkhuzien* at para 135, Sachs J described standard form contracts as follows:
"*Standard form contracts are contracts that are drafted in advance by the supplier of goods or services and presented to the consumer on a "take-it-or-leave-it" basis, thus eliminating opportunity for arm's length negotiations. They contain a common stock of contract terms that tend to be weighted heavily in favour of the supplier and to operate to limit or exclude the consumer's normal contractual rights and the supplier's normal contractual obligations and liabilities. Not only is the consumer frequently unable to resist the terms in a standard form contract, but he or she is often unaware of their existence or unable to appreciate their import. Onerous terms are often couched in obscure legalese and incorporated as part of the "fine print" of the contract."*

[62] *Barkhuzien* at para 138.

[63] EE founding affidavit, para 13, vol 8, page 708.

CONCLUSION

54. It is not enough for Pridwin to assert that EE has no role to play in these proceedings, because the main dispute before court is between wealthy parents who exist in the upper enclaves of Johannesburg. To the contrary, courts have recognised that decisions in matters such as the one before court also have an impact on the broader public, which includes EE's members – the poor.

55. EE has, both in its affidavits and it these heads of argument, demonstrated that it has an interest in these proceedings and has relevant considerations to bring to the court's attention.

NYOKO MUVANGUA

LERATO ZIKALALA

EE's Counsel

Sandton Chambers
17 March 2017

List of Authorities

1. *Barkhuizen v Napier* 2007 (5) SA 323 (CC).
2. *Children's Institute v Presiding Officer, Children's Court, Krugersdorp* 2013 (2) SA 620 (CC).
3. *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd* 2012 (1) SA 256 (CC)
4. *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC).
5. *Koyabe and Others v Minister for Home Affairs and Others* 2010 (4) SA 327 (CC).
6. *Rates Action Group v City of Cape Town* 2004 (5) SA 545 (C).
7. *S v Engelbrecht* 2004 (2) SACR 391 (W).
8. *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Others* 2014(2) SA 168.