

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE HIGH COURT, BHISHO)**

Case number:

In the matter between:

**PALESA FAITH MANYOKOLE**

First Applicant

**EQUAL EDUCATION**

Second Applicant

**MADIMO EMILIA MOUTHLOALI**

Third Applicant

and

**DISTRICT DIRECTOR: MALUTI DISTRICT  
EASTERN CAPE DEPARTMENT OF BASIC EDUCATION**

First Respondent

**THE HEAD OF DEPARTMENT OF BASIC EDUCATION:  
EASTERN CAPE**

Second Respondent

**MEC FOR EDUCATION: EASTERN CAPE**

Third Respondent

**THE DIRECTOR GENERAL: DEPARTMENT OF  
BASIC EDUCATION**

Fourth Respondent

**THE INTERVENTION TEAM**

Fifth Respondent

**MR. LEEU**

Sixth Respondent

**MINISTER OF BASIC EDUCATION**

Seventh Respondent

**THE SCHOOL GOVERNING BODY:  
MOSHESH SENIOR SECONDARY SCHOOL**

Eighth Respondent

---

**FOUNDING AFFIDAVIT**

---

I, the undersigned,

**PALESA FAITH MANYOKOLE,**

declare the following under oath:

1. I am an adult female currently in Grade 11 at Moshesh Senior Secondary School (*Moshesh SSS*). I am the First Applicant in this matter.
2. The facts contained in this affidavit are within my own personal knowledge, except where the context indicates otherwise. I believe the statements set out in this affidavit to be true and correct. Where I rely on information given to me by others, I state the source and believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the Applicants' legal representatives, and I believe such legal advice to be true and correct.

#### **AN INTRODUCTION TO MY SCHOOL AND MY OWN EXPERIENCE**

3. Below I give a brief introduction to my school, my own experiences in it and I summarise what this application is about. Later on in this affidavit I will give a brief description of how many of my fellow learners experience our school, using their supporting affidavits that will be filed together with my affidavit.
4. The crux of this application is that many Grade 10 and 11 learners at Moshesh SSS have likely failed the end of year exams because we did not have sufficient teachers for all of our subjects for several months in the 2012 academic year. Also, some teachers come to

school intoxicated and often teachers do not arrive at all to teach us, with the result that no effective teaching and learning is taking place. We do not want this situation to recur in 2013. In addition many Grade 10 and 11 learners at Moshesh SSS do not have access to all the textbooks that we need for our subjects. We do not want this to recur in 2013. Grade 12 learners are compelled to live and learn in dilapidated and under-resourced hostel dwellings without any supervision or monitoring.

5. At the same time the school principal himself, Mr. Leeu, was away from the school from August 2011 until he returned in May 2012. I do not think that he manages the school very well and that is why he was not at the school all those months.
6. Although these issues have been placed before the Respondents, they have not resolved them. Given these failures and the fact that the 2013 academic year is imminent, the Applicants are compelled to bring this application as a matter of urgency.
7. There are 48 learners in my class. As I stated previously I am in Grade 11. My subjects are Mathematics, English, SeSotho, Economics, Business Studies, Life Orientation and Accounting.
8. I started attending school at Moshesh SSS in 2011, mainly because although the school is far it is the closest school to my village and is a non-fee paying school.
9. I ride the bus to school even though strictly speaking I should not be doing so because the bus is meant for children who live in Mpharane. The reason I take the bus is that

even though Moshesh SSS is the closest school to my village it is still far from it and if I did not ride the bus I would have to leave my home at 06h30 and walk for an hour or so to school and I would get there late. Also I do not feel safe walking to school at that time.

10. There are many different problems at Moshesh SSS but the one that has upset me the most has to do with teachers at the school.
11. When the 2012 academic year began I did not have teachers for some of my subjects. I had teachers only for English, Economics, Business Studies and SeSotho.
12. The school's only Mathematics teacher did not teach our class because he is the only Mathematics teacher in the whole school, for all the grade 10, 11 and 12 classes. He sometimes taught us during free periods.
13. For the first six months of the year we were not taught any Life Orientation. The teacher for Life Orientation only arrived in June 2012 but only started teaching Life Orientation in August this year.
14. I also did not receive any teaching in Accounting for the first six months of the year as the Accounting teacher also arrived in June 2012.
15. Even though we did not have a teacher for Life Orientation and Accounting we still wrote tests but I do not know who set those tests.

16. Sometimes even when we have teachers for a subject they do not turn up to teach us. Some, especially our Business Studies and English teachers, arrive at school but do not teach and when I have asked them why, they sometimes respond that they are busy with other grades or they are too busy with other work.
17. During the year and out of frustration at this I created my own register in which I recorded whether or not teachers arrived to teach. A copy of my register is attached marked "**PFM1**". It records teacher attendance from 20 August 2012 until 21 September 2012. "P" stands for present; "A" stands for absent and "P/A" stands for when a teacher was present at the school but did not teach us. In some subjects such as SeSotho (which I have marked as 'HL' meaning home language) no teaching whatsoever happened in the week of 27 to 31 August.
18. Since we have not had teachers for three subjects we are quite behind in the curriculum for those subjects. I try and catch up with Mathematics using my mother's old maths textbook but some pages are missing.
19. We have covered the curriculum properly in Economics only. Our teacher is very good and always turns up to teach us.
20. During the September break the school arranged catch-up classes. We attended the classes but most of the teachers did not turn up to teach us.
21. Sometimes learners do not get reports and sometimes we get more than one report for the same term, which contains different results for the same subjects. This has happened

to me before. I attached my reports marked "PFM2(a)" and "PFM2(b)" for the third term which show me different marks for mathematics even though they cover the same period.

22. I only have textbooks for two out of the seven subjects that I study, i.e., Economics and Business Studies. I have to share these two textbooks with another learner who lives in another village in Mpharane which is far away. I must admit that sometimes I run straight home from school with the textbooks so that I can keep them and do my homework.
23. When we have homework I either make two sets of answers: one for him and one for me or I let him copy my homework in the morning. When we know that we have a test the next day he sometimes takes the textbooks out of my bag during break time. I sometimes end up failing tests because I did not have the textbooks to study and prepare for them.
24. I will return to the conditions in our school later in this affidavit.

#### **PURPOSE AND OVERVIEW OF THE APPLICATION**

25. I bring this application because of the circumstances at my school which is located in Queen's Mercy Village near the town of Matatiele in the Eastern Cape.
26. Moshesh SSS is a public ordinary school and these are the circumstances under which

we learners are expected to realise our right to a basic education there:

- 26.1. Grade 10 and 11 learners did not have teachers whatsoever for some subjects, like agriculture, accounting, life orientation and tourism during the 2012 academic year until August; there are insufficient teachers in the school for other subjects, especially maths, with the result that in these subjects we have not completed the syllabi for 2012.
  - 26.2. There is a prevalence of poor or no discipline among the teaching staff resulting in there being no effective teaching and learning taking place.
  - 26.3. There are no textbooks for mainly Grade 10 and 11 learners in some subjects and an insufficient number of textbooks provided in other subjects such as Sesotho, accounting, English and mathematics.
  - 26.4. Grade 12 learners are accommodated in derelict hostel facilities that are not fit for habitation.
  - 26.5. Moshesh SSS is clearly an underperforming school and has been that way for many years and yet no corrective action is taken by the relevant education officials to address the situation.
  - 26.6. There is no effective and functioning school governing body in Moshesh SSS.
27. As a learner at the school I and the other learners who support me in this application have come to this Court to ask for an order declaring that these conditions and circumstances constitute a breach of our constitutional rights by the Respondents, and further ask for orders which seek to remedy the breaches identified.

28. We contend as the Applicants that the problems in Moshesh SSS, about which I say more below, demonstrate the absence of functional governance in the school. Firstly, they emanate from a total lack of accountability at the school and in the education district. Secondly they emanate from a general neglect of the school by the national Department of Basic Education ("*the DBE*") and the Eastern Cape Department of Basic Education ("*the Department*"). We contend that this neglect constitutes a breach of the following:
- 28.1. The learners' right to a basic education as guaranteed by section 29 of the Constitution of the Republic of South Africa, 1996 ("*the Constitution*").
  - 28.2. The right to an environment that is not harmful to the learners' health or well-being guaranteed by section 24 (a) of the Constitution.
  - 28.3. The learners' right to family care or parental care, or to appropriate alternative care when removed from the family environment guaranteed by section 28 (1) of the Constitution.
  - 28.4. The right to equality as guaranteed by section 9 of the Constitution.
  - 28.5. The right to dignity as guaranteed by section 10 of the Constitution.
  - 28.6. The DBE and Department's obligations in terms of the Schools Act; and
  - 28.7. Section 195 of the Constitution, which prescribes the basic values and principles that must govern public administration.
29. The Applicants accordingly bring this application on an urgent basis seeking orders -

- 29.1. directing the HOD to comply with his obligations in terms of section 58B(4) of the Schools Act and requiring him to furnish specific details, in the report required to be delivered to this Court below, of what steps have been, or are being or will be taken to implement the incapacity code and procedures for poor work performance referred to in s 16 of the Employment of Educators Act in relation to the teachers and the principal at Moshesh SSS.
- 29.2. directing the Department, alternatively the DBE, to implement measures in terms of section 58B of the South African Schools Act 84 of 1996 ('the Schools Act') to ensure that effective teaching takes place in time for the 2013 academic year.
- 29.3. directing the Department, alternatively the DBE, to make proper financial and other relevant provisioning for teaching staff, and to employ teaching staff sufficient for all grades in the school in time for the 2013 academic year.
- 29.4. directing the Department, alternatively the DBE, to deliver sufficient numbers of textbooks in all subjects to all learners at Moshesh SSS in time for the 2013 academic year.
- 29.5. directing the Department, alternatively the DBE, to cause the school's hostel building to be renovated to a standard that accords with the DBE's Guidelines for the Provision of Boarding Facilities in Public Ordinary Boarding Schools.
- 29.6. declaring that the School Governing Body of Moshesh SSS (*"the SGB"*), has failed to perform its functions in terms of section 20 and 21 of the Schools Act and directing the HOD to appoint the persons contemplated in section 25 (1) of the Schools Act to build the necessary capacity in the SGB to ensure that it performs its functions.

- 29.7. directing the Department, alternatively the DBE, to immediately develop a 'catch-up' plan for the affected Grade 10 and 11 learners in Moshesh SSS who as a result of the shortage of textbooks and teachers, did not receive teaching that enabled them to complete the 2012 curricula.
- 29.8. directing the Department, alternatively, the DBE within three months of the date of this order to deliver a report or reports under oath to this court stating what steps it has taken to comply with its constitutional and statutory obligations as declared in this order, what future steps it will take in that regard, and when such future steps will be taken.
30. In addition to this founding affidavit, this application is supported by the affidavit Ms Yoliswa Dwane from Equal Education, the Second Applicant in these proceedings. I refer to mine and Ms Dwane's affidavits as the main affidavits. In my affidavit I describe mainly the conditions that prevail at Moshesh SSS which have necessitated the bringing of this application and the negative impact this has had and is continuing to have on our ability as learners to realise our constitutional right to a basic education. In her affidavit, Ms Dwane describes the relevant regulatory, statutory and policy instruments against which the conditions at Moshesh SSS and their impact on us as learners should be adjudicated by this court.
31. The main affidavits are supported by the affidavit of Mrs Emelia Madimo Mouthloali who is cited as the Third Applicant. She has two children who are learners at the school, namely myself and my bother Zamuxolo Moutlouli.

32. This application is also supported by the affidavits of Grade 10 and 11 learners and Grade 12 learners who like me have experienced the teaching, learning and living conditions which I describe more fully below at Moshesh SSS, and which have led to this application. These supporting affidavits were deposed to during September and October 2012, at a time when it was uncertain what legal action if any would be taken arising from the conditions at the school, and if so who exactly would be involved in these proceedings. This is the reason why in the headings of these supporting affidavits the names of the applicants and respondents are arranged differently to how they are arranged in the main affidavits. It has been very challenging for us learners to consult with our legal representatives and the members of Second Applicant's staff who have been assisting us in bringing our plight before this court. This is because our legal representatives and the Second Applicant have to come all the way from Cape Town every time they want to consult with us. Our village and our school are situated some 20 hours by car from Cape Town; we attend school during the week and live in far-flung villages around Queen's Mercy. Due to the logistical difficulties of getting to Matatiele and then finding all of us at the same time, it has not been possible to correct the headings in the supporting affidavits in the limited amount of time available to finalise the founding papers and launch this application. I ask the Court to condone this discrepancy, which I am advised is one of form only rather than one of substance. I am also advised that by the time that this application is heard our legal representatives will have endeavoured to place before this Court corrected supporting affidavits reflecting in their headings all the parties in the same way as in the main affidavits.

33. The structure of this founding affidavit is as follows:
- 33.1. First, I describe the parties to this application.
  - 33.2. Second, I set out the Applicants' contentions as to why this matter should be heard on an urgent basis.
  - 33.3. Third, I deal with the Applicants' standing to bring this application.
  - 33.4. Fourth, building on the brief description of my own personal background and experiences in Moshesh SSS, I summarise the evidence given by my school mates in supporting affidavits about the problems at the school.
  - 33.5. Fifth, I set out the violation of our constitutional rights.
  - 33.6. Sixth, I set out the relief that we seek. The legal considerations applicable to the orders requested in the notice of motion are found in the affidavit of Ms Dwane.
  - 33.7. Seventh and finally, I address the manner in which this Court should approach the costs of this application.
34. The conditions at the school demonstrate that the two main problems at the school can be classified under these headings: (a) the breakdown of the governance in the school and (b) a complete failure by the district and provincial authorities to monitor the performance of the school and to take the actions they are required to take by law to turn the school around. I am advised that the various roles and responsibilities of the district and provincial players are described in the Schools Act, whose object is mainly to provide for a uniform system for the organisation, governance and funding of schools

and also in the Eastern Cape Schools Education Act 1 of 1999 (*the Eastern Cape Act*) which provides for the control of education in schools in the Eastern Cape specifically.

35. From my experience as a learner at Moshesh it is clear that none of the officials have any time for our school. They have turned a blind eye to the learners' complaints and the conditions under which we are forced to realise our constitutional right to basic education. If we do nothing ourselves as learners, the officials will do nothing for us and we pay the price for this neglect, not only now by failing but permanently into the future. That is why we have brought this application.

## **THE PARTIES**

36. I am the First Applicant in this matter. I am 18 years old, in Grade 11 at Moshesh SSS and I live in the village of Khubetsoana near Matatiele with my mother (the third applicant), my brother and two sisters. My brother Zamuxolo Wesley Moutloali is also in Grade 11 in Moshesh SSS.
37. The Second Applicant is **EQUAL EDUCATION**, a non-profit membership-based community organisation whose objective is to work for and campaign to achieve quality and equality in South African education. For the purpose of service of all process in this matter, the Second Applicant will accept service at the King Williamstown Justice Centre, 1st Floor Old Mutual Building, Cnr. Cathcart and MacLean Street, King Williamstown.

38. The Third Applicant is **MADIMO MOUTHLOALI** an adult female living in Khubetsoane area in Queen's Mercy Village. Third Applicant brings this application in her capacity as a parent of learners who have not been provided with textbooks for some of their subjects, and are negatively affected by this and other conditions that prevail at the school. Her supporting affidavit will be filed with this application.
39. The First Respondent is the **DISTRICT DIRECTOR** in the Department for the Maluti District (*"the District Director"*), whose address for service is the same as that of the HOD. The First Respondent is cited as the official mainly responsible for education management in the District of Maluti in accordance with sections 13 and 14 of the Eastern Cape Act; and as the main provider of direct services such as advice, coordination of curriculum, institutional management and governance.
40. The Second Respondent is the **HEAD OF DEPARTMENT** (*"the HOD"*) in the Department, whose address for service is care of the State Attorney, Shared Legal Service, Office of the Premier, 32 Alexandra Road, King William's Town. The Second Respondent is cited as the bearer of the constitutional and statutory powers and duties of the HOD; as bearer of the executive authority over Moshesh SSS through the principal, Mr. Leeu, in accordance with section 16(3) of the Schools Act; and as the employer of all educators employed by the Department.
41. The Third Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL** responsible for Basic Education in the Eastern Cape (*"the MEC"*), whose address for service is care

of the State Attorney, Shared Legal Service, Office of the Premier, 32 Alexandra Road, King William's Town. The provision of textbooks and other learner teacher support materials in the Eastern Cape is the primary responsibility of the Department.

42. The Fourth Respondent is the **DIRECTOR GENERAL** (*the DG*) in DBE, at Sol Plaatjie House, 222 Struben Street, Pretoria. I understand that the Fourth Respondent, working together with the Fifth Respondent, is responsible for the execution of the administration referred to in section 100(1) (b). Service on the DG is effected care of State Attorney, Pretoria alternatively the State Attorney at 32 Alexandria Road, King Williams Town.
43. The Fifth Respondent is **THE INTERVENTION TEAM**, a structure comprising dedicated intervention teams from the national and provincial sphere of government, and constituted for the purpose of executing the administration of education in the Eastern Cape as referred to in terms of section 100(1) (b) of the Constitution. I have been advised that for the purposes of service of this application the Applicants legal representatives will inquire from the offices of the State Attorney regarding where the Fifth Respondent's offices are located. I submit however that given that Fifth Respondent was appointed by the Minister to execute cabinet's administration decision in terms of section 100(1) (b) of the Constitution, service of this application on the State Attorney, Pretoria should suffice.
44. The Sixth Respondent is the **SCHOOL GOVERNING BODY** for Moshesh SSS vested

in terms of section 16 (1) of the Schools Act with the governance of the school and the obligations to perform the functions and obligations and exercise the rights prescribed in the Act.

45. The Seventh Respondent is the **MINISTER OF BASIC EDUCATION** (*"the Minister"*), in her capacity as the head of the DBE. The Minister bears obligations in terms of determining education policies and administering funds appropriated for education. The Minister is also cited by virtue of the decision of the national executive during 2011 to intervene in the Eastern Cape Education Department in terms of section 100(1) (b) of the Constitution. The Minister's principal place of business is at Sol Plaatjie House, 222 Struben Street, Pretoria. Service on the Minister is effected care of State Attorney, Pretoria, alternatively the State Attorney at 32 Alexandria Road, King Williams Town.
46. The Eighth Respondent is **MR. LEEU**, the principal of Moshesh SS who in terms of section 16 (3) of the Schools Act, must undertake the professional management of the school under the authority of the HOD.

## **URGENCY**

47. This application has been brought on an urgent basis. We contend that the failure by the Respondents to ensure that that there is effective teaching and learning at the school, and that learners in Moshesh SSS have teachers and sufficient textbooks constitutes a

continuing violation of learners' rights to basic education, equality and dignity. As I set out in more detail below, teachers as well as textbooks are essential and no teaching and learning, or no proper teaching and learning, can take place without either one or both of them. No teaching whatsoever can happen without teachers and no effective teaching can happen without sufficient teachers for all classes, and without a disciplined and committed teaching staff.

48. Without adequate textbooks we learners are not able to prepare for our lessons, do our homework or study for examinations. We do not have access to the necessary materials to clarify and consolidate what we learn in class. Without textbooks, teachers are unable to prepare for their lessons and ensure that the curriculum is adequately covered.
49. The breach by the Department and the DBE of their obligation to provide sufficient teachers for all grades and, all the textbooks that learners need for all the subjects that we are taught is manifestly serious. The effects of this breach are felt by learners every day, as I shall demonstrate more fully below. Learners who do not have access to textbooks do not develop the skills necessary to grasp the content of the prescribed curriculum for each of our subjects. In particular, learners who do not have access to textbooks perform poorly on reading tests, and therefore do not acquire the reading skills necessary to learn the subject matter in our other subjects.
50. For each day that we learners go without adequate and disciplined teachers to teach us and, for each day that goes by without access to textbooks for each of our school

subjects in the year there are gaps in our prescribed curricula which cannot be closed. The 2012 academic year has all but passed without teachers in some subjects and without access to learning materials. This application seeks to ensure that, at the beginning of the 2013 academic year, there is no perpetuation of this violation of our right to a basic education in terms of the Constitution. We should not have to endure another academic year and a future in this predicament.

51. If the breach by the DBE and the Department is allowed to continue unabated, the resulting impact on our right to a basic education will be severe and irreversible.

## **STANDING**

52. We as the Applicants bring this application in several capacities.
53. First, in our own interest. I am a learner at Moshesh SSS who is directly and negatively impacted by the conditions at the school, as I set out more fully below. The Second Applicant is a non profit organisation which seeks to promote the right to a basic education. One of the Second Applicant's core activities is to ensure that learners are provided with the materials and support they require in order to learn. The Third Applicant is a parent of learners at the school who are also affected.
54. Second, in terms of section 38 (b) and (c) of the Constitution, the application is brought in the interests of all learners, educators and parents in the school. Learners have a right

to a basic education, which includes the provision of textbooks and sufficient teachers by the Department and the DBE. The Department and the DBE are in breach of their corresponding obligations. It is not possible for each individual learner affected at Moshesh SSS to bring these proceedings against the Department and the DBE. We are young and do not have access to legal services. This application is brought in the interest of all learners.

55. Finally, the provision effective teaching to learners in the school, and the provision of textbooks, in the school and across the Eastern Cape Province in general, and the enforcement of the right to a basic education is a matter that falls in the public interest. The state of education in the Eastern Cape is a grave concern to the public, and has a serious impact on the public. The extent to which learners receive an adequate basic education affects their abilities to participate meaningfully in their societies on a political, economic, social and cultural level. It is therefore in the public interest that the right to a basic education be realised that we have adequate teaching staff, that there is accountability for teaching, that there is fully functional school governance, which is intended to ensure among other things that teaching occurs at the school, and that textbooks be delivered to learners.
56. I submit that on these grounds the Applicants have standing to bring this application.

## **BACKGROUND AND PROBLEMS AT MOSHESH SSS**

57. Moshesh SSS is an ordinary public school offering grades 10 to 12. It is located in Queen's Mercy Village, a rural village located 32km west of the town of Matatiele in the Eastern Cape. Like many villages in the Eastern Cape, Queen's Mercy Village is characterised by a high rate of unemployment and great poverty.
58. Moshesh SSS is the only senior secondary school providing free schooling to grade 10 to 12 learners in Queen's Mercy Village. The next closest school is Mariazelle Senior Secondary School which has stringent entry requirements and charges school fees, which the majority of families in Queen's Mercy Village cannot afford.
59. Moshesh SSS falls under the educational district of Maluti.
60. Earlier I described my own experience at Moshesh SSS. Now I summarise what some of my fellow schoolmate have stated in their supporting affidavits. These are the problems that we learners experience at our school.

### **(1) Shortage of teachers and teacher absenteeism**

61. My brother Zamuxolo Moutlouli ('Zamuxolo') who is 22 years old and is in Grade 11, states in his supporting affidavit that from January to June 2012 the following subjects were not taught in his class - Grade 11 (a) - because there were no teachers appointed to teach them: English, Life Orientation and Agriculture. Life Science and SeSotho are

taught irregularly, and sometimes teachers of these two subjects come to class once a week.

62. After the mid-term vacation in July 2012, the school received 5 temporary teachers, two of which were allocated for Mathematics, one for Accounting and another for Agriculture and another teacher was allocated for Life Orientation.
63. Masekhoane Mahlapha, a Grade 11 (c) learner, states in her supporting affidavit, that her class had a teacher for Tourism from January until March of 2012. This teacher then left the school in March and for three months from March until June 2012, she and her classmates did not have a teacher for Tourism. A teacher was provided after the June-July holidays.
64. There was no teacher for Life Orientation from January until June 2012. From August 2012, the same teacher who taught the class Tourism started to teach them Life Orientation. Her class has not covered the syllabus for most of the subjects that they are studying. The only subject she is confident of having completed the syllabus in is Economics.
65. Nosifungo Magadla, a 19 year old Grade 11(c) learner at the school, states in her supporting affidavit, that she did not have a teacher for Accounting or a teacher for Life Orientation at the beginning of 2012. An Accounting teacher began to teach in April 2012. He is often absent from class. She confirmed that the Grade 11 (c) teacher for Life Orientation started teaching only in June 2012.

66. As a result of these shortages in teachers the Grade 11 class has not covered the full curriculum for the 2012 academic year in Life Orientation and Accounting.
67. According to Nosifungo, there are some dedicated teachers at the school who are committed to teaching learners. Her favourite teachers are those for Maths, Business Studies and Economics.
68. Dillo Pharoë is a 20 year old grade 10 learner. He states in his supporting affidavit that there was no accounting teacher at the beginning of the year. The teacher only started teaching Accounting in April 2012. The result is that they, his grade 10 class, have not covered the full curriculum in Accounting. He states that teachers do not arrive on time to start teaching, and that they leave the school early before school breaks up at 3pm. His grade 10 (c) class does not have a Mathematics teacher. The Mathematics teacher quit after the June holidays, because he was not being paid. The teacher had been employed as a temporary teacher and learners' parents were requested to contribute R200 per month for his salary.
69. Telile Manyokole is an 18 year old grade 11 learner who states in her supporting affidavit that some teachers, especially those who teach English and SeSotho, sometimes do not come to school to teach her class. She states that there have been occasions when learners have had to fetch teachers from their homes and urged them to come to school to teach.
70. Matheo Manyokole a 21 year old grade 11 learner states in his supporting affidavit that his class's Geography teacher went on maternity leave after the June examinations and

there was no replacement teacher for her. The result is that his class is behind in the Geography syllabus because no Geography teaching has been taking place since before the June examinations.

71. Mokgethi Peane a grade 10 learner states in his supporting affidavit that learners in his class were not taught Agricultural Science, Agricultural Management Practice and Mathematics in the first seven months of 2012 because the teachers for these subjects only arrived in August this year.
72. I refer this court to the supporting affidavits of Matheo Manyokole, Mokgethi Peane, Telile Manyokole, Dillo Pharo, Nosifungo Magadla and Masekhoane Mahlapha filed herewith.

**(2) No textbooks in some subjects and insufficient textbooks in others**

73. The other problem at our school is that of textbooks.
74. This problem of a lack of textbooks affects mostly the Grade 10 and 11 learners at the school. According to Masekhoane Mahlapha, a 19 year old Grade 11 learner, she does not have textbooks for life orientation, maths, English and SeSotho. She and her classmates have a textbook for tourism which she has to share. The sharing of text books between two or more students is common at the school due to the shortage of textbooks. For many of us learners this is impractical as we do not live near each other, and studying for examinations and tests becomes impossible.

75. According to Nosifungo Magadla, a 19 year old Grade 11, learner she does not have a text book for mathematics and life orientation. The accounting, English and SeSotho textbooks must be shared between the 48 learners in her class. She too finds it difficult to share textbooks between three learners as they live far apart. As a result she is often not able to do homework when she needs the textbooks for homework.
76. Dillo Pharo, a 20 year old grade 10 learner at the school, says that the textbook for SeSotho is shared with 10 other learners. There are 59 learners in his class. It is difficult to share this textbook with other learners because, according to him, he is a slow learner who struggles to keep up and so he often gets left behind. The learners are not allowed to take this textbook home with them.
77. Mokgethi Peane, an 18 year old grade 10 learner, says that he struggles with SeSotho and life science because he does not have textbooks for these subjects. Learners in his class were advised by their life science teacher to ask the Grade 11 learners to lend them their life science textbook. However, the grade 11 learners themselves say they are already sharing textbooks and therefore they cannot let the grade 10 learners use their already scarce textbooks.
78. Telile Manyokole, an 18 year old grade 11 learner reported that she does not have a single textbook for any subject, and has photocopies of textbooks for English and SeSotho which she must share with other learners. Some learners in her class do have textbooks for some subjects.

79. Matheo Manyokole is a 21 year old grade 11 learner who also complained of the shortages in textbooks in some subjects and the absence of textbooks in other subjects. According to him for some subjects there are no textbooks at all and for others he has to share with two other learners. He says the sharing of textbooks is difficult and stressful when learners live so far apart, especially when there are tests and examinations to prepare for. He has no textbooks for life orientation and English.
80. Tshidiso Moraba is a 24 year old Grade 11 learner who says she does not have textbooks for maths, English and life orientation. There are 64 learners in her class. They have to share the textbooks available for other subjects and they are not allowed to take these textbooks home.
81. I refer this court to the supporting affidavits of Tshidiso Moraba, Matheo Manyokole, Telile Manyokole, Dillo Pharoee, Nosifungo Magadla and Masekhoane Mahlapa filed herewith.
82. As learners at Moshesh SSS, we cannot afford to go through yet another year without having sufficient textbooks for all the learners at the school. Given our experiences with no or insufficient textbooks over a number of years at Moshesh SSS, we consider it virtually inevitable that textbooks will not be there in January 2013 unless this court orders that this be done by the Respondents by that date.

**(3) The derelict hostel buildings for Grade 12 learners**

83. Another issue which arises in this application is the poor state of the hostel buildings in which Grade 12 learners are required to stay.
84. In the past Moshesh SSS offered boarding facilities for learners. The buildings that were previously used as hostels are still standing on the premises, as is evident from the photographs taken during September 2012 by Popo Mfubu, a staff member of the Fifth Applicant's attorneys. The photographs are attached hereto marked "**PFM3**". In this regard I refer this court to Mr. Mfubu's confirmatory affidavit filed herewith.
85. It is evident that although the school no longer officially refers to itself as a boarding school, in effect the hostel buildings on the property are used as such for Grade 12 learners. It has become a rule in the school that in order to have more time to study and avoid travelling long distances to and from their homes, grade 12 learners should stay in the disused hostel buildings. This was also intended to make it easier for the grade 12 learners to attend the extra classes offered at the school in preparation for their final examinations.
86. The condition of the hostel buildings in which the Grade 12 learners are forced to stay are such that they are derelict and are not safe for the learners. If I pass Grade 11, I too will be required to stay in these hostels next year to prepare for my Grade 12 final examinations.

87. All the girls sleep in one big hall and the boys sleep in another. The school does not supply the learners with bedding, food, cooking facilities or ablution facilities as the buildings on the property are disused. The school has made no effort to refurbish the buildings, or otherwise bring them to a state that is fit for habitation before requiring the learners to stay in them.
88. The Grade 12 learners have to bring their own mattresses as there are only empty bases for their beds. They have to bring their own blankets and linen. Because cooking facilities are not provided in the hostel, they have to bring their own cooking and eating utensils. To this end, learners use small paraffin primer stoves to cook for themselves.
89. It is evident with the naked eye, from photographs taken of the hostel buildings that the structures are in an advanced state of disuse and disrepair and are not fit for habitation. They are certainly not an environment that is conducive to habitation by learners for the purposes of pursuing academic activities. As the pictures demonstrate, doors to some of the rooms learners sleep in do not have handles; some windows are broken and a section of the roof is significantly damaged. There is no provision for learners to dry their laundry and so they make use of makeshift objects they find on the property for this purpose. There is no perimeter fence surrounding the hostel building and animals roam freely, grazing about. The absence of a perimeter fence and doors with locks also means that the learners, in particular the female learners, are easily accessible to criminal elements from the school or surrounding areas.

90. Reatile Leoatle is a Grade 12 learner who lived in the hotel until she was summarily asked by the principal, Mr. Leeu, to stop attending school in August 2012. She reported that she did not feel safe living at the hostel. According to her there is no security and she feels afraid because anyone can access the hostel. Sometimes drunk people knock on their doors at night. Because the windows are broken it is very cold in winter. There is no electricity so learners must use candles at night. The environment at the hostel was loud and noisy and was not conducive to allowing the learners to study.
91. Because there are no running water and ablution facilities, learners have to bath in basins. There is no privacy so ablutions are performed in full view of the other female learners in the hall. There are pit latrines outside, but she and other learners were afraid to walk outside to the toilet at night, and so they use a basin to go to the toilet.
92. There are no teachers or parents supervising the learners in the hostels. According to Reatile, some learners are conducting romantic relationships with each other and, because there is no supervision, male learners would often come to the girls' hostel at night to have sex with their girlfriends in the presence of the other female learners.
93. In this regard I refer this court to the supporting affidavits of the Reatile Leoatle and Nosifungo Magadla filed herewith.

**(4) The absence of functional governance at Moshesh SSS**

94. The learners of Moshesh SSS complain of the following at the school, among other things:

- 94.1. Some of the teachers coming to school drunk, and arriving at school at 11am or as late as noon, and leaving before school breaks up at 3pm. According to Zamuxolo, teachers stopped coming to school drunk and their attendance at school improved after these issues were exposed by the Mail & Guardian newspaper in an article published on 13 July 2012 about conditions at the school. This article was published after the learners brought their plight to the attention of the Second Applicant. A copy of the article is attached hereto marked **"PFM4"**.
- 94.2. Although teachers in Zamuxolo's view have improved in terms of attendance at school and their drunkenness, teachers and the principal are still abusing learners by threatening them, suspending and expelling them without giving them an opportunity to explain.
- 94.3. Masekhoane Mahlapha reports that the principal *'is often swearing at us'*, a claim which is confirmed by Nosifungo Magadla who says that the principal summarily punishes learners for minor things like making noise, and will tell learners to stay away from classes.
- 94.4. According to Dillo Pharoë, the teachers at the school hit the learners with sticks and dusters; they hit them until their hands bleed.
- 94.5. Mokgethi Peane says that *'the principal does not treat us well. He is always sending learners home for small things and telling them to bring their parents.'*

95. The school principal Mr. Leeu frequently swears at learners and does not treat or parents with respect and does not listen to their opinions. I have also recorded some of the complaints I have about Mr. Leeu and the educators. For example on 27 August 2012 Mr. Leeu came into my class whilst the mathematics teacher was teaching. We were doing mathematis corrections and Mr. Leeu said that if there are learners in the class who did not come here to learn they can take their bags and *'fuck off.'* A copy of my record of this and other incidents is attached hereto marked "**PFM5**".
96. In this regard I refer this court to the supporting affidavits of Zamuxolo, Nosifungo Magadla, Dillo Pharoee, Mokgethi Peane, Maskhoane Mahlapha filed herewith.
97. The learners complained about Mr. Leeu to the district officials in or about August 2011. After that the principal was absent from the school until he returned in May 2012. The deputy principal assumed the duties of principal in Mr. Leeu's absence. We the learners at Moshesh have complained about the principal; the teachers who do not teach us; teachers who come to school drunk and about being treated by the teachers generally in a way that shows total disregard for our rights to basic education. Most of the teachers at Moshesh SSS are simply not committed to giving us a quality education.
98. As far as I am aware no disciplinary steps have been taken against any of the teachers as a result of our complaints. I am aware that the District Director has indicated to Second Applicant that *'a disciplinary action is underway against the principal.'* This statement is made in the District Director's report attached to Ms Dwane's affidavit marked "**YD7**".

99. I am advised that a law called the Employment of Educators Act has a provision in it which says that if it is alleged that an educator is unfit for his/her duties, or is incapable of carrying out those duties efficiently, the employer must assess the capacity of the educator and may take disciplinary action against the educator in accordance with the incapacity code and procedures or poor work performance. Ms Dwane says more about this law and related provisions in paragraphs 72 and 73 of her affidavit in her discussion of the law applicable to underperforming schools.
100. The Applicants believe that no turn-around plan will succeed in Moshesh SSS unless that plan also addresses what steps have been taken by the relevant officials to implement the incapacity code applicable to teachers as well as the procedures for poor work performance stated in the Employment of Educators Act. I believe that the relevant official in this regard is the HOD. That is why it is important that the report which the Applicants ask that the HOD be ordered to submit to this Court regarding the school's underperformance must specifically address the steps taken by the HOD to implement the incapacity code and procedures for poor work performance with regard to the teachers at Moshesh SSS.
101. Another example of the manner in which the principal's irrational actions negatively impact on learners can be seen in the way in which he treated two Grade 12 learners Reatile Leoatle and Reabetswe Ranqabang when he expelled them from the school in July and August 2012, respectively. The reason for their expulsion was that they were not registered as Grade 12 learners. No process of any sort was followed by the principal before expelling these learners.

102. It was only after the intervention of the district officials that Mr. Leeu informed Reatile and Reabetswe on Saturday 13 October 2012 that they could return to school on Monday 15 October 2012, which they both did. This was just in time to sit for the Grade 12 final examinations which started nationally on Monday 22 October 2012.
103. Reatile and Reabetswe both received no teaching for the last two and/or three months of their matric year. As a direct result of their summary expulsions by Mr. Leeu they did not write the trial examinations in September, which are critical component of their school based assessment, which I believe makes up 25% towards their final marks.
104. I refer in this regard to the supporting affidavits of Reatile, Reabetswe, Mr. Poloko Leoatle and Mr. Moshoeshoe filed herewith. Mr. Leoatle and Mr. Moshoeshoe tried to talk Mr. Leeu into uplifting the expulsions immediately after Reatile and Reabetswe were expelled, but these interventions did not help.
105. I mention the experiences of Reatile and Reabetswe to show the complete lack of any regard for the rights of learners at the school. The Applicants do not seek any relief in these proceedings in relation to Reatile and Reabetswe but reserve the right to do so at a later stage should it be become necessary to do so.
106. On or about 1 November 2012, Applicants' attorneys of record addressed two letters to the MEC, the HOD and the District Directors, copies of which are attached hereto marked "**PFM6**" and "**PFM7**". In "**PFM6**", our attorney asked the Department's officials to advise regarding the development of a catch-up plan for the Grade 10 and 11 learners at the school who have gaps in their knowledge because of the absence of

teachers for part of the year and insufficient textbooks. In the second letter, "PFM7", our attorney asked the Department about what provision would be made for Reatile and Reabetswe to improve their chances of succeeding in the final examinations, especially given the fact that they had, through no fault of their own, missed the September trial examinations which counted 25% of their final mark.

107. To date no response has been received from these letters.

### **THE VIOLATION OF OUR CONSTITUTIONAL RIGHTS**

108. I believe that I am not getting a quality education at Moshesh SSS. I believe that a quality education is when teachers teach and arrive on time, when learners have textbooks, schools have libraries and when learners take responsibility for their learning. I sometimes do not feel motivated to go to school because of the situation at my school.

109. My sentiments in this are shared by Mokgethi Peane, and I refer this court to his supporting affidavit.

110. Zamuxolo Moutlouli says that he would like Moshesh SSS to be like other schools and focus on teaching and learning. He wants all the learners to have more textbooks and for us not to be behind in the syllabus. The learners in Moshesh cannot afford to go to other school as it is the only no-fee paying school near their villages. Like all of us Zamuxolo would like the learners to have a better future than we have now. I refer to his supporting affidavit filed herewith.

111. Section 29 of the Constitution guarantees the right of access to basic education. I am advised that unlike the socio-economic rights contained in sections 26 and 27 of the Constitution, the education right is not subject to the state's available resources. It is

also not intended to be progressively realised. The right to a basic education is to be realised immediately, in order to enable learners to grow up to be informed and responsible citizens. The provision of textbooks and sufficient teaching capacity are key components of the right of basic education.

112. As well as a right in itself, education is a vehicle for the realisation of a host of other constitutional rights, including dignity and equality. This is made clear by the manner in which education was used during the apartheid era to suppress the majority. Black learners like us during the apartheid era were offered a fraction of the resources spent on the education of white learners, and this has resulted in marked disadvantage and inequality of opportunity. It is clear that education is key in closing these gaps, enabling all learners to become active and responsible citizens and to contribute to their society.
113. I am advised that this reality was acknowledged by our Parliament when it passed the Schools Act, because that Act says the following in its preamble:

**Preamble**

*'WHEREAS the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and*

*WHEREAS this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State; and*

*WHEREAS it is necessary to set uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa;'*

114. Schools in the Eastern Cape are situated in predominantly rural areas. Most learners in these rural areas come from backgrounds of low socio-economic status. We are no different in Moshesh SSS and Queen Mercy Village. The poor standard of education in these schools is to a large degree a remnant of apartheid, and for as long as our under-resourced schools are not provided with the resources they require the effects of apartheid and the inequality in education will be perpetuated in us, the learners, and those who come after us.
115. We believe that we as learners from poor communities are still continuing receive a far inferior quality of education to our wealthier counterparts in urban areas, and this perpetuates the divide in our society. In addition, the legacy of apartheid means that, in reality, we as black learners generally receive a far inferior quality of education to our white counterparts. The failure to provide us with what we need in order to address these inequalities constitutes unfair discrimination on the basis of race.
116. I am also advised that education is also one of the recognised social determinants of health; that there are clearly-established links between adequate education and good health, and these two rights are mutually reinforcing. Restricted access to an adequate basic education therefore has implications for our health and our surrounding community.
117. I am advised that legal submissions will address the argument that adequate textbooks, teaching staff and basic infrastructure are essential components of the right to basic education.

118. The failure by the Respondents to respond promptly to the issues we have raised and brought to their attention, and to do so in a manner that addresses all of the issues effectively is a violation of section 195 of the Constitution.

## **RELIEF**

119. The Applicants seek compliance by the Department and the DBE with their obligations under the Constitution and the Schools Act. Specifically, Applicants seek orders:

119.1. Declaring that the failure by the Department and the DBE to provide adequate teaching staff, textbooks and hostel accommodation to Moshesh SSS is a violation of the rights to a basic education, equality, dignity, to an environment that is not harmful to the learners' health or well-being, to appropriate alternative care when the learners are removed from the family environment and their obligations in terms of the Schools Act and section 195 of the Constitution.

119.2. Directing the Department, alternatively the DBE, to make proper financial and other relevant provisioning for teaching staff, and to employ teaching staff sufficient to render effective teaching to all grades in the school.

119.3. Directing the HOD to comply with his obligations in terms of section 58B(4) of the Schools Act and requiring him to furnish specific details, in the report required to be delivered to this Court below, of what steps have been, or are being or will be taken to implement the incapacity code and procedures for poor work performance referred to in s 16 of the Employment of Educators Act in relation to the teachers and the principal at Moshesh SSS.

- 119.4. Directing the Department, alternatively the DBE, to implement measures in terms of section 58B of the South African Schools Act 84 of 1996 ('the Schools Act') to ensure that effective teaching takes place in time for the 2013 academic year.
- 119.5. Directing the Department, alternatively the DBE, to make proper financial and other relevant provisioning for teaching staff, and to employ teaching staff sufficient for all grades in the school in time for the 2013 academic year.
- 119.6. Directing the Department, alternatively the DBE, to deliver sufficient numbers of textbooks in all subjects to all learners at Moshesh SSS in time for the 2013 academic year.
- 119.7. Directing the Department, alternatively the DBE, to immediately develop a 'catch-up' plan for the affected Grade 10 and 11 learners in Moshesh SSS who as a result of the shortage of textbooks and teachers, did not receive teaching that enabled them to complete the 2012 syllabi. Such catch-up plan should provide for additional classes either after school hours during the week or on Saturdays until the learners have caught up with the curriculum they lost during the 2012 academic year.
- 119.8. Directing the Department, alternatively the DBE, to cause the school's hostel buildings to be renovated to a standard that accords with the DBE's Guidelines for the Provision of Boarding Facilities in Public Ordinary Boarding Schools.
- 119.9. Declaring that the School Governing Body of Moshesh SSS (*"the SGB"*), has failed to perform its functions in terms of section 20 and 21 of the Schools Act and directing the HOD to appoint the persons contemplated in section 25 (1) of

the Schools Act to build the necessary capacity in the SGB to ensure that it performs its functions.

119.10. Directing the Department, alternatively, the DBE within one month of the date of this order to deliver a report or reports under oath to this court stating what steps it has taken to comply with its constitutional and statutory obligations as declared in this order, what future steps it will take in that regard, and when such future steps will be taken.

119.11. Granting leave to the Applicants to approach the above Honourable Court on the same papers, supplemented as the circumstances may require, for further relief.

## **COSTS**

120. This matter has been brought by the Applicants in the public interest as a measure to ensure that Moshesh SSS receives sufficient textbooks, and teaching staff and appropriate infrastructure. This will ensure that proper teaching and learning can take place in Moshesh SSS from 2013.

121. As is demonstrated in the affidavit of Ms Dwane, the Second Applicant has made numerous efforts to engage with the Department and DBE to have the matters raised in this application resolved without resorting to litigation. It has however become necessary for the Applicants to approach this Court for an order directing the Respondents to discharge their constitutional and statutory obligations.

122. On this basis, the Applicants submit that the Respondents should be directed to pay the Applicants' costs in bringing this application.

## CONCLUSION

123. I submit that the failure by the Department and the DBE to provide adequate teaching staff, textbooks and proper hostel infrastructure to learners at Moshesh SSS is in breach of their constitutional and statutory obligations. This failure is a continuing violation of the rights to basic education, dignity, equality, to an environment that is not harmful to the learners' health or well-being, to appropriate alternative care when the learners are removed from the family environment as well as section 195 of the Constitution. It is also in breach of the obligations arising from the Schools Act.

124. The Applicants accordingly pray for the relief as set out in the notice of motion.

---

**PALESA FAITH MANYOKOLE**

Signed and sworn to at \_\_\_\_\_ this \_\_\_\_\_ day of  
**NOVEMBER 2012**, the Deponent having acknowledged that she knows and understands the contents of this Declaration, and having uttered the words: 'I swear that the contents of this Declaration are true, so help me God.' I certify further that the provisions of Regulation 1258 of 21 July 1972 (as amended) have been complied with.

---

**COMMISSIONER OF OATHS**