

IN THE HIGH COURT OF SOUTH AFRICA

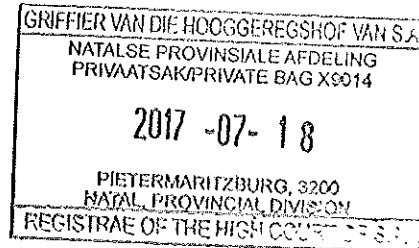
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 3662/2017

In the matter between:

EQUAL EDUCATION

and



APPLICANT

MEC FOR EDUCATION: KWAZULU NATAL

FIRST RESPONDENT

HEAD OF DEPARTMENT: KWAZULU NATAL

EDUCATION

SECOND RESPONDENT

MEC FOR TRANSPORT, COMMUNITY
SAFETY & LIASON: KWAZULU NATAL

THIRD RESPONDENT

HEAD OF DEPARTMENT: KWAZULU NATAL
TRANSPORT, COMMUNITY SAFETY & LIAISON

FOURTH RESPONDENT

DISTRICT DIRECTOR: UMZINYATHI DISTRICT

FIFTH RESPONDENT

MEC FOR FINANCE: KWAZULU-NATAL

SIXTH RESPONDENT

MINISTER OF BASIC EDUCATION

SEVENTH RESPONDENT

MINISTER OF TRANSPORT

EIGHT RESPONDENT

MINISTER OF FINANCE

NINTH RESPONDENT

THE SCHOOL GOVERNING BODY OF LANGAZELA
SENIOR SECONDARY SCHOOL

10TH RESPONDENT

THE PRINCIPAL OF LANGAZELA SENIOR
SECONDARY SCHOOL

11TH RESPONDENT

THE SCHOOL GOVERNING BODY OF MACEBA
SECONDARY SCHOOL

12TH RESPONDENT

THE PRINCIPAL OF MACEBA SECONDARY
SCHOOL

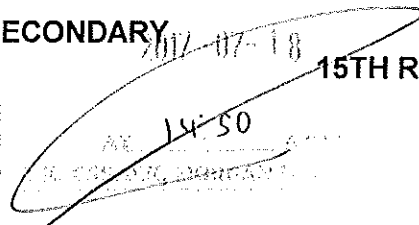
13TH RESPONDENT

THE SCHOOL GOVERNING BODY OF MGAZI
SENIOR SECONDARY SCHOOL

14TH RESPONDENT

THE PRINCIPAL OF MGAZI SENIOR SECONDARY
SCHOOL

15TH RESPONDENT



THE SCHOOL GOVERNING BODY OF UMBONGUMENZI HIGH SCHOOL	16 TH RESPONDENT
THE PRINCIPAL OF UBONGUMENZI HIGH SCHOOL	17 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLINZEKA PRIMARY SCHOOL	18 TH RESPONDENT
THE PRINCIPAL OF HLINZEKA PRIMARY SCHOOL	19 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLUBI HIGH SCHOOL	20 TH RESPONDENT
THE PRINCIPAL OF HLUBI HIGH SCHOOL	21 ST RESPONDENT
THE SCHOOL GOVERNING BODY OF MAGOGO PRIMARY SCHOOL	22 ND RESPONDENT
THE PRINCIPAL OF MAGOGO PRIMARY SCHOOL	23 RD RESPONDENT
THE SCHOOL GOVERNING BODY OF MANZOLWANDLE PRIMARY SCHOOL	24 TH RESPONDENT
THE PRINCIPAL OF MANZOLWANDLE PRIMARY SCHOOL	25 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF NGWANE HIGH SCHOOL	26 TH RESONDENT
THE PRINCIPAL OF NGWANE HIGH SCHOOL	27 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLALELE PRIMARY SCHOOL	28 TH RESPONDENT
THE PRINCIPAL OF HLALELE PRIMARY SCHOOL	29 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF NKUNYANA PRIMARY SCHOOL	30 TH RESPONDENT
THE PRINCIPAL OF NKUNYANA PRIMARY SCHOOL	31 ST RESPONDENT
THE SCHOOL GOVERNING BODY OF UKUPHUMULA SECONDARY SCHOOL	32 ND RESPOONDENT
THE PRINCIPAL OF UKUPHUMULA SECONDARY SCHOOL	33 RD RESPONDENT

FILING NOTICE

TO: REGISTRAR
HIGH COURT
PIETERMARITZBURG

AND
TO: EQUAL EDUCATION LAW CENTRE
DEMICHELE PETHERBRIDGE
APPLICANT'S ATTORNEYS
C/O A.K. ESSACK, MORGAN NAIDOO & COMPANY
311 PIETERMARITZ STREET
PIETERMARITZBURG
REF: Unknown

S I R S

TAKE NOTICE that the Third Respondent hereby files its Answering Affidavits of Sibusiso Blessing Gumdi and the Confirmatory affidavit by Nomthandazo Nomthi Mjuza evenly herewith.

DATED at DURBAN this 7th day of JUNE 2017



1ST RESPONDENTS' ATTORNEYS
STATE ATTORNEY, KZN
6TH FLOOR, METROPOLITAN LIFE
BUILDING
391 ANTON LEMBEDE (SMITH)
STREET, DURBAN
DX 153

REF.: 35/001962/17/E/P9
V.NGQASA/cet

E-mail: VNggasa@justice.gov.za

TEL NO.: 031 – 365 2544
FAX NO.: 031 – 306 2448

C/O CAJEE SETSUBI, CHETTY
195 BOSHOFF STREET
PIETERMARITZBURG

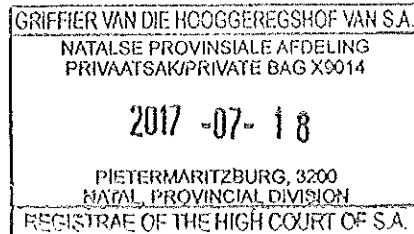
**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 3662/17P

In the matter between:

EQUAL EDUCATION

and



APPLICANT

MEC FOR EDUCATION: KWAZULU-NATAL

1ST RESPONDENT

**HEAD OF DEPARTMENT: KWAZULU-NATAL
EDUCATION DEPARTMENT**

2ND RESPONDENT

**MEC FOR TRANSPORT, COMMUNITY SAFETY
& LIASON: KWAZULU-NATAL**

3RD RESPONDENT

**HEAD OF DEPARTMENT: KWAZULU-NATAL
TRANSPORT, COMMUNITY SAFETY & LIAISON**

4TH RESPONDENT

DISTRICT DIRECTOR: UMZINYATHI DISTRICT

5TH RESPONDENT

MEC FOR FINANCE: KWAZULU-NATAL

6TH RESPONDENT

MINISTER OF BASIC EDUCATION

7TH RESPONDENT

MINISTER OF TRANSPORT

8TH RESPONDENT

MINISTER OF FINANCE

9TH RESPONDENT

**THE SCHOOL GOVERNING BODY OF
LANGAZELA SENIOR SECONDARY SCHOOL**

10TH RESPONDENT

**THE PRINCIPAL OF LANGAZELA SENIOR
SECONDARY SCHOOL**

11TH RESPONDENT

**THE SCHOOL GOVERNING BODY OF
MACEBA SECONDARY SCHOOL**

12TH RESPONDENT

**THE PRINCIPAL OF MACEBA SECONDARY
SCHOOL**

13TH RESPONDENT

PMB.S.

THE SCHOOL GOVERNING BODY OF MGAZI SENIOR SECONDARY SCHOOL	14TH RESPONDENT
THE PRINCIPAL OF MGAZI SENIOR SECONDARY SCHOOL	15TH RESPONDENT
THE SCHOOL GOVERNING BODY OF UBONGUMENZI HIGH SCHOOL	16TH RESPONDENT
THE PRINCIPAL OF UBONGUMENZI HIGH SCHOOL	17TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLINZEKA PRIMARY SCHOOL	18TH RESPONDENT
THE PRINCIPAL OF HLINZEKA PRIMARY SCHOOL	19TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLUBI HIGH SCHOOL	20TH RESPONDENT
THE PRINCIPAL OF HLUBI HIGH SCHOOL	21ST RESPONDENT
THE SCHOOL GOVERNING BODY OF MAGOGO PRIMARY SCHOOL	22ND RESPONDENT
THE PRINCIPAL OF MAGOGO PRIMARY SCHOOL	23RD RESPONDENT
THE SCHOOL GOVERNING BODY OF MANZOLWANDLE PRIMARY SCHOOL	24TH RESPONDENT
THE PRINCIPAL OF MANZOLWANDLE PRIMARY SCHOOL	25TH RESPONDENT
THE SCHOOL GOVERNING BODY OF NGWANE HIGH SCHOOL	26TH RESPONDENT
THE PRINCIPAL OF NGWANE HIGH SCHOOL	27TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLALELE PRIMARY SCHOOL	28TH RESPONDENT
THE PRINCIPAL OF HLALELE PRIMARY SCHOOL	29TH RESPONDENT

AN B.S.

THE SCHOOL GOVERNING BODY OF
NKUNYANA PRIMARY SCHOOL

30TH RESPONDENT

THE PRINCIPAL OF NKUNYANA PRIMARY
SCHOOL

31ST RESPONDENT

THE SCHOOL GOVERNING BODY OF
UKUPHUMULA SECONDARY SCHOOL

32ND RESPONDENT

THE PRINCIPAL OF UKUPHUMULA
SECONDARY SCHOOL

33RD RESPONDENT

AFFIDAVIT

I, the undersigned,

SIBUSISO BLESSING GUMBI

hereby make oath and say:

1.

I am the Fourth Respondent. I make this affidavit in the capacity in which I am cited as well as on behalf of the Third Respondent, being duly authorized to do so.

2.

I have read the application papers together with the annexures thereto as well as the Third Respondent's answering affidavit.

AN BS.

3.

In deposing to this affidavit I rely on:

- 3.1 my personal knowledge;
- 3.2 discussions relevant to the matters raised in this application with the Second and Third Respondents, and officials of my Department;
- 3.3 information gleaned from various documents, records and correspondence relevant to the issues herein; and
- 3.4 advice of legal officials and representatives, which advice the Third Respondent and I accept as being correct.

4.

At the outset I wish to point out that there is no evidence in the papers that the KZN Department of Transport (hereinafter referred to as the "KZN DOT") took the decisions refusing the 12 schools learners transport.

5.

On this point alone the application against the Third and Fourth Respondents stands to be dismissed.

RN BS.

6.

In any event I deny that the KZN DOT took the decisions complained of.

7.

As in the case of the First and Second Respondents I also propose to deal with matters relevant to the application generally as opposed to answering each allegation *seriatim*. I am advised that this approach is not only appropriate but salutary in the circumstances of this case.

8.

I make common cause with the First and Second Respondents on the point taken by them in connection with the issue of non-joinder.

9.

Furthermore if any decision complained of can be attributed to the KZN DOT, such decision can only be in connection with the implementation of the KZN Policy. Consequently the matters raised by the First and Second Respondents on the question of the reviewability of any such decision applies to the KZN DOT *mutatis mutandis*.

RW BS.

10.

I further make common cause with the First and Second Respondents concerning the failure of the Applicant to bring the application for review within the time prescribed by the Promotion of Administrative Justice Act, No 3 of 2000.

11.

By way of background I confirm that the KwaZulu-Natal Executive Council approved the transfer of the function for the provision and management of learner transport from the Department of Education (hereinafter referred to as the "KZN DOE") to the KZN DOT during 2011.

12.

The two departments shared responsibility for learner transport in accordance with an agreement between them.

13.

The main objectives and principles of the agreement were to:

- 13.1 Record and outline the institutional and administrative arrangements for the implementation of transfer of the provision of the learner transport function from KZN DOE to KZN DOT with the necessary care and diligence;

Nov B-S.

- 13.2 Outline the agreed roles, responsibilities, duties and functions of the respective parties in implementing and managing the provision of learner transport;
- 13.3 Prepare detailed service designs by KZN DOT which would ensure that coverage of the service areas is adequately addressed based on the data provided by KZN DOE;
- 13.4 Give effect to the mutual cooperation contemplated in the agreement concluded between the parties; and
- 13.5 Promote access to schooling through provision of subsidized, efficient, safe and reliable learner transport services.

14.

The programme for the provision of learner transport was guided by the following basic criteria:

- 14.1 The learner has to travel more than 3 kilometres;
- 14.2 The learner must attend the nearest appropriate school; and
- 14.3 The learner must attend a school of need and not one of choice.

RW B.S.

15.

The KZN DOT initially received a list of schools identified by the KZN DOE which required learner transport. This list was revised annually.

16.

The KZN DOT has been involved in essentially in the planning of the routes to the schools which were entitled to receive learner transport as well as the procurement of service providers and monitoring of services.

17.

In 2011 when the KZN DOT initially took over the responsibility of providing learner transport the budget was transferred from the KZN DOE to the KZN DOT. Thereafter the learner transport budget was allocated directly to the KZN DOT by the Province save for a portion thereof annually which the KZN DOE used for administrative purposes.

18.

Over the years the demand for learner transport has grown significantly. The demand has always exceeded the available budget. This has resulted in the KZN DOT sometimes overspending its allocations. The KZN DOT has regularly engaged the Treasury for additional funds without any success.

RN B-S.

19.

The KZN DOT often found itself in difficult circumstances as the allocated budget was insufficient not only to meet planned targets, but also to accommodate urgent needs identified by the KZN DOE from time to time.

20.

The budget allocated for learner transport to the KZN DOT for the period 2012 to 2017 is set out hereunder.

2012/2013	106 081 000.00
2013/2014	124 815 000.00
2014/2015	168 430 000.00
2015/2016	175 976 000.00
2016/2017	186 000 000.00
2017/2018	195 300 000.00

21.

In the 2014/2015 financial year the KZN DOT underspent an amount of R15 437 000.00. This occurred when the KZN DOE transferred an amount of R37 million from its budget to the KZN DOT budget in January 2015. As the procurement processes had already taken place for that financial year, KZN DOT was unable to spend the full amount during that period with only three months remaining in the financial year.



22.

During that financial year the KZN DOT had requested the Provincial Treasury to provide an additional amount of R98 051 000.00 for the forthcoming year to assist with learner transport. That request was refused due to budgetary constraints.

23.

The following year the KZN DOT requested an additional amount of R103 905 000.00 over and above its allocated budget. The Provincial Treasury was again unable to fulfil this request due to budgetary constraints. During this period the KZN DOT was forced to exceed its budget by R7 210 000.00.

24.

In the 2016/2017 financial year the KZN DOT was forced to overspend an amount of R111 million on learner transport. This occurred as a result of the KZN DOT having to provide urgent learner transport for an additional 7 837 learners as requested by the KZN DOE.

25.

In order to accommodate the R111 million the KZN DOT utilized R58 million from a conditional grant which related to public transport operations (and not specifically learner transport) and a further R53 million from its own equitable share of the budget.

RN B.S.

26.

As would be apparent from the above the KZN DOT did not adopt a supine position. It constantly grappled with the financial challenges facing learner transport. There is currently a looming financial crisis with regard to the amount required by the KZN DOT to meet its additional commitments. If regard is had to the 2017/2018 budget of R195 300 000.00 there will be a serious shortfall to sustain transport for the additional schools that were included in the previous year. This shortfall is estimated as follows:

Budget allocated		R 195 3000.00
Projected expenditure based on the previous year's budget	R175 976 000.00	
Additional overspending	R 7 210 000.00	
Excess spent from conditional grant and equitable share	<u>R111 000 000.00</u>	
	R294 186 000.00	
Estimated shortfall		R 98 886 000.00

27.

The KZN DOT is endeavoring to obtain this additional funding from the Provincial Treasury and at this stage it is unknown whether that funding will be provided or not.

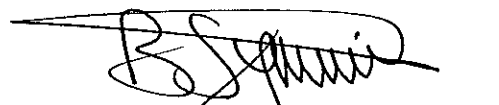


28.

I note that the First and Second Respondents have dealt extensively with the issue of the budget and the challenges faced by the Province with regard thereto. I agree completely with all the views and sentiments expressed therein.

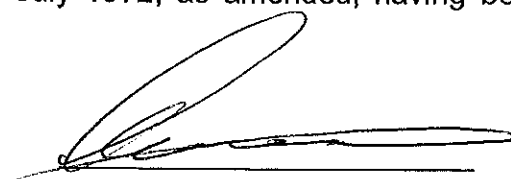
29.

In the circumstances I pray that the application be dismissed with costs.



DEPONENT

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this Affidavit, which was signed and sworn to before me at Pietermaritzburg this 4th day of July 2017 and that the provisions of the regulations contained in Government Notice R 1258 of 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS
RAYMOND NDLOVU
 COMMISSIONER OF OATHS
 EX-OFFICIO OFFICER
 190A EAST STREET
 PIETERMARITZBURG
 Ref 0/1/0/2 Pmb - 16 Oct 2007

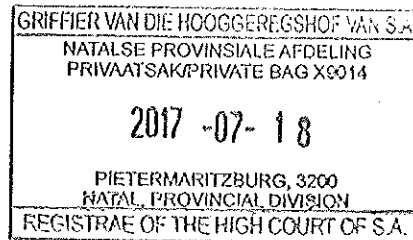
**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 3662/17P

In the matter between:

EQUAL EDUCATION

and



APPLICANT

MEC FOR EDUCATION: KWAZULU-NATAL

1ST RESPONDENT

**HEAD OF DEPARTMENT: KWAZULU-NATAL
EDUCATION DEPARTMENT**

2ND RESPONDENT

**MEC FOR TRANSPORT, COMMUNITY SAFETY
& LIASON: KWAZULU-NATAL**

3RD RESPONDENT

**HEAD OF DEPARTMENT: KWAZULU-NATAL
TRANSPORT, COMMUNITY SAFETY & LIAISON**

4TH RESPONDENT

DISTRICT DIRECTOR: UMZINYATHI DISTRICT

5TH RESPONDENT

MEC FOR FINANCE: KWAZULU-NATAL

6TH RESPONDENT

MINISTER OF BASIC EDUCATION

7TH RESPONDENT

MINISTER OF TRANSPORT

8TH RESPONDENT

MINISTER OF FINANCE

9TH RESPONDENT

**THE SCHOOL GOVERNING BODY OF
LANGAZELA SENIOR SECONDARY SCHOOL**

10TH RESPONDENT

**THE PRINCIPAL OF LANGAZELA SENIOR
SECONDARY SCHOOL**

11TH RESPONDENT

**THE SCHOOL GOVERNING BODY OF
MACEBA SECONDARY SCHOOL**

12TH RESPONDENT

**THE PRINCIPAL OF MACEBA SECONDARY
SCHOOL**

13TH RESPONDENT

THE SCHOOL GOVERNING BODY OF MGAZI SENIOR SECONDARY SCHOOL	14 TH RESPONDENT
THE PRINCIPAL OF MGAZI SENIOR SECONDARY SCHOOL	15 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF UBONGUMENZI HIGH SCHOOL	16 TH RESPONDENT
THE PRINCIPAL OF UBONGUMENZI HIGH SCHOOL	17 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLINZEKA PRIMARY SCHOOL	18 TH RESPONDENT
THE PRINCIPAL OF HLINZEKA PRIMARY SCHOOL	19 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLUBI HIGH SCHOOL	20 TH RESPONDENT
THE PRINCIPAL OF HLUBI HIGH SCHOOL	21 ST RESPONDENT
THE SCHOOL GOVERNING BODY OF MAGOGO PRIMARY SCHOOL	22 ND RESPONDENT
THE PRINCIPAL OF MAGOGO PRIMARY SCHOOL	23 RD RESPONDENT
THE SCHOOL GOVERNING BODY OF MANZOLWANDLE PRIMARY SCHOOL	24 TH RESPONDENT
THE PRINCIPAL OF MANZOLWANDLE PRIMARY SCHOOL	25 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF NGWANE HIGH SCHOOL	26 TH RESPONDENT
THE PRINCIPAL OF NGWANE HIGH SCHOOL	27 TH RESPONDENT
THE SCHOOL GOVERNING BODY OF HLALELE PRIMARY SCHOOL	28 TH RESPONDENT
THE PRINCIPAL OF HLALELE PRIMARY SCHOOL	29 TH RESPONDENT



THE SCHOOL GOVERNING BODY OF
NKUNYANA PRIMARY SCHOOL

30TH RESPONDENT

THE PRINCIPAL OF NKUNYANA PRIMARY
SCHOOL

31ST RESPONDENT

THE SCHOOL GOVERNING BODY OF
UKUPHUMULA SECONDARY SCHOOL

32ND RESPONDENT

THE PRINCIPAL OF UKUPHUMULA
SECONDARY SCHOOL

33RD RESPONDENT

AFFIDAVIT

I, the undersigned:

Nomthandazo Nomthi Mjuza

do hereby make and say:

1.

I am an adult female, Director: Provincial Budget Management at the KZN Provincial Treasury.

2.

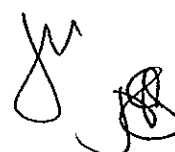
I have read the affidavit of **SIBUSISO BLESSING GUMBI**.

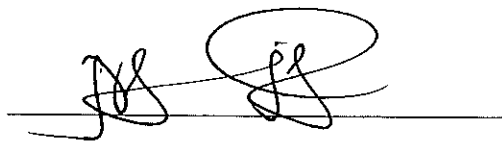


3.

In my capacity as Director: Provincial Budget Management at the KZN Provincial Treasury I am in a position to confirm and do hereby confirm the following matters set out in the Fourth Respondent's affidavit:-


- 3.1 The budget allocated for learner transport to the DOT from 2012 to 2017;
- 3.2 The underspending of the amount of R15 437 000.00 in 2014/15 financial year and the reason for same;
- 3.3 The additional requests for learner transport in the amounts of R98 051 000.00, R103 905 000.00 and R109 410 000.00 requested in 2014/15 MTEF;
- 3.4 Spending that exceeded the learner transport budget in the amount of R7 210 000.00 in 2015/16;
- 3.5 Overspending by the DOT in the sum of R111 million in 2016/17 by making use of the conditional grant and its own equitable share of the budget; and
- 3.6 The potential shortfall of approximately R98 million for the 2017/2018 budget year.





DEPONENT

I hereby certify that the Deponent has acknowledged that she knows and understands, ^{PIETERMARITZBURG} the contents of this Affidavit, which was signed and sworn to before me at on this 18th day of JULY 2017 and that the provisions of the regulations contained in Government Notice R 1258 of 21 July 1972, as amended, having been complied with.


Commissioner of Oaths

I certify that before administering the oath/affirmation I asked the DEPONENT the following questions:


1. Do you know and understand the contents of the declaration? Answer YES

2. Do you have any objections to taking the prescribed oath? Answer NO

3. Do you consider the prescribed oath to be binding on your conscience? Answer YES

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this declaration. The DEPONENT signed the affidavit in my presence and the contents of the declaration are true. The DEPONENT'S (Signature) was placed there in my presence.

AT PLACE AND DATE: 18 JULY 2017 at (time) 10:45

SIGNATURE: 

EX OFFICIO COMMISSIONER OF OATHS (RSA)
 JEREMY WILLA UPFOLD
 DEPUTY DIRECTOR : PROVINCIAL BUDGET MANAGEMENT
 KZN PROVINCIAL TREASURY - TREASURY HOUSE, 145 CHIEF ALBERT LUTHULI STREET, PV8 JRG
 TEL : 033 897 4570 FAX : 033 897 4617
 EMAIL : jeremy.upfold@kzntreasury.gov.za