

WESTERN CAPE HIGH COURT
GENERAL OFFICE
2013 -11- 14
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

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

CASE NO: ...../13  
18904/13

In the matter between:

**EVELYN WILHELMINA PEASE**

First Applicant

**PROGRESSIVE PRINCIPALS ASSOCIATION**

Second Applicant

and

**GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

First Respondent

**MINISTER OF BASIC EDUCATION**

Second Respondent

**MEC FOR EDUCATION: EASTERN CAPE**

Third Respondent

**MEC FOR EDUCATION: FREE STATE**

Fourth Respondent

**MEC FOR EDUCATION: GAUTENG**

Fifth Respondent

**MEC FOR EDUCATION: KWAZULU-NATAL**

Sixth Respondent

**MEC FOR EDUCATION: LIMPOPO**

Seventh Respondent

**MEC FOR EDUCATION: MPUMALANGA**

Eighth Respondent

**MEC FOR EDUCATION: NORTHERN CAPE**

Ninth Respondent

**MEC FOR EDUCATION: NORTH WEST**

Tenth Respondent

**MEC FOR EDUCATION: WESTERN CAPE**

Eleventh Respondent

**NATIONAL MINISTER OF FINANCE**

Twelfth Respondent

**NATIONAL MINISTER OF SOCIAL DEVELOPMENT**

Thirteenth Respondent

**PUBLIC PROTECTOR**

Fourteenth Respondent

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

Fifteenth Respondent

**AUDITOR-GENERAL**

Sixteenth Respondent

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE** that the Applicants intend to make application to the above Honourable Court as a matter of semi-urgency on a date to be arranged, for an order in the following terms:

1. Dispensing with the forms and service provided for in the Uniform Rules of Court and directing that this matter be entertained as one of semi-urgency in terms of Uniform Rule 6(12)(a) and by direction of the Honourable Judge President, after consultation with the representatives of the Applicants and of those Respondents who intend to oppose.
  
2. Declaring that the First Respondent is not meeting the obligations imposed on it by sections 29(1)(a) as read with sections 1, 2, 6(2), 7(2), 9, 10, 12(2), 195(1) and 237 of the Constitution of the Republic of South Africa Act 108 of 1996, to respect, protect, promote and fulfil the right of all children in South Africa to a basic education, more particularly in that:
  - 2.1 it has consistently failed to equip the majority of learners in South African public schools with sufficient literacy and numeracy skills to attain functional literacy which is central to basic education;
  
  - 2.2 it has failed to ensure that delivery of text books and teaching materials takes place timeously in all public schools, in the appropriate quantities and in the appropriate languages as used in each individual school, according to the enrollment of learners in each individual school;

- 2.3 it has failed to take reasonable steps to equip all teachers in public schools with adequate skills and with suitable training to perform their tasks at a level that enables them to deliver basic education;
- 2.4 it has failed to take reasonable steps to curb:
- 2.4.1 the high incidence of teacher absenteeism in schools;
  - 2.4.2 the lack of accountability on the part of the teachers; and
  - 2.4.3 the lack of professionalism in the majority of teachers.
- 2.5 it has failed to take reasonable steps to prevent the marginalisation and neglect of the ten official indigenous languages in schools and to ensure that all learners are given an adequate grounding in their mother tongue language as a necessary precondition for their maximal cognitive development and, therefore, delivery to them of their right to basic education;
- 2.6 it has failed to make available comprehensive early childhood development services, including age appropriate education and school readiness programmes, to all children under the age of five years, as a consequence of which delivery of basic education is not enabled and facilitated.

3. Ordering First Respondent to take all such steps, including urgent and interim steps, as may be necessary to address reasonably and responsively each and every failure and/or omission to comply with the constitutional obligations identified in paragraph 2 by taking reasonable and accountable steps to remedy the conditions referred to in paragraphs 2.1 to 2.6 above.
4. Ordering First Respondent, within four months from the date of the Court's order, to deliver a report or reports, under oath, regarding the implementation of the steps referred to in paragraph 3 above, such report, or reports, to be delivered to the Public Protector, alternatively the South African Human Rights Commission, further alternatively the Auditor-General, or to such of them as this Honourable Court may deem appropriate to assist with the supervision of compliance in respect of all and any of the various matters referred to in 2.1 to 2.6 above, and thereafter to deliver such further and updated reports at such intervals as may be determined by the relevant supervisory authority, or by this Honourable Court should the Court deem it meet to supervise such orders as it may grant.
5. Directing that the report(s) referred to in paragraph 4 shall, in addition to any matter which the Respondents wish to raise, include details of the particular steps taken to address:
  - 5.1 the timeous delivery of text books and teaching materials in the appropriate quantities and in the appropriate languages as used in

each individual school according to the enrollment of learners in each individual school, before the start of each school year;

- 5.2 the enhancement of teacher skills and competence, particularly in the fields of literacy and numeracy, to a level that enables teachers to deliver basic education;
- 5.3 the high incidence of teacher absenteeism, and the lack of accountability and professionalism amongst teachers;
- 5.4 the promotion and development of the indigenous African languages of South Africa, including the production of text books, dictionaries and other learning and teacher support materials in those languages;
- 5.5 the provision, and the promotion and encouragement of the use of mother-tongue medium education for learners in grades one to six;
- 5.6 the provision of comprehensive early child development services for children under the age of five years, including the provision of age appropriate education and school readiness programmes for young children and the meeting of the basic nutritional needs of the young children attending at such programmes;

- 5.7 the identification of all school learners experiencing hunger and malnutrition and such measures taken to make basic nutrition available to them.
- 6 Granting leave to the Applicants, in the event of any non- or inadequate compliance by any of the Respondents with any of the Orders referred to in paragraphs 3, 4 and 5 above, to set this application down for hearing on the same papers, supplemented as necessary, on notice to Respondents, and to seek further appropriate relief.
- 7 The First Respondent is ordered to pay the Applicants' costs of this application, such costs to include the qualifying expenses of all experts who deposed to affidavits filed on behalf of the Applicants and the costs attendant on the employment of two counsel.
- 8 Granting Applicants such further or alternative relief as this Honourable Court may deem fit.

**KINDLY TAKE NOTICE THAT** the affidavit of **EVELYN WILHELMINA PEASE** annexed hereto, and the affidavits and annexures annexed thereto, will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the Applicants have appointed **JONATHAN MORT INC.**, situate at 3A Sir George Street, Oranjezicht, Cape Town 8001, as the

address at which they will accept notice and service of all process in these proceedings.

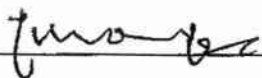
**TAKE NOTICE FURTHER THAT** if you intend opposing this application you are required (a) to notify the Applicants' attorney in writing on or before **6 DECEMBER 2013**; and (b) within 20 days after you have so given notice of your intention to oppose the application to file your answering affidavit, if any; and further that you are required to appoint in such notification an address at which you will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER THAT** if no notice of intention to oppose is given, as set out above, the Applicants will request the Registrar to place this matter on the roll for hearing on 9 DECEMBER 2013, at 10h00, or as soon thereafter as Applicants' counsel may be heard.

DATED on this 14 day of NOVEMBER 2013.

**JONATHAN MORT INC.**

**ATTORNEYS**



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**JONATHAN MORT**

Applicants' Attorneys  
3A Sir George Street  
Oranjezicht  
Cape Town 8001

Ref: JWM/vlo  
Tel: (021) 461-5207  
Fax: (021) 461-9717

**TO: THE REGISTRAR  
HIGH COURT  
CAPE TOWN**

**AND TO: THE STATE ATTORNEY  
ON BEHALF OF FIRST TO THIRTEENTH, AND SIXTEENTH  
RESPONDENTS  
4<sup>th</sup> Floor, 22 Long Street  
CAPE TOWN  
8001**

**AND TO: THE PUBLIC PROTECTOR  
ON BEHALF OF FOURTEENTH RESPONDENT  
Provincial Offices  
4<sup>th</sup> Floor, 51 Wale Street / bree Street  
CAPE TOWN  
8001**

**AND TO: SOUTH AFRICAN HUMAN RIGHTS COMMISSION  
ON BEHALF OF FIFTEENTH RESPONDENT  
Provincial Offices, Western Cape  
7th Floor ABSA building,  
132 Adderley Street,  
Cape Town  
8001**