

SECTION 27 AND OTHERS v MINISTER OF EDUCATION AND ANOTHER 2013 (2) SA 40 (GNP) ^A

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Citation	2013 (2) SA 40 (GNP)
Case No	24565/2012
Court	North Gauteng High Court, Pretoria
Judge	Kollapen J
Heard	May 17, 2012
Judgment	June 18, 2012
Counsel	<i>M Sikakhakhane SC</i> for the applicants. <i>A Granova</i> for the respondents.

Annotations [Link to Case Annotations](#)

^B

Flynote : Sleutelwoorde

Education — Right to education — Duties of state — Provision of textbooks — Failure to do so constituting violation of right to basic education — Court would order provision of textbooks where state failed to deliver textbooks ^Cby middle of academic year — Constitution, s 29.

Headnote : Kopnota

The applicants — a human-rights organisation, a school and a parent — applied for an order (1) declaring the failure of the responsible government departments to provide textbooks to Limpopo schools at the beginning of the year, or at least within a reasonable time thereafter, to be a violation of ^Dthe affected learners' constitutional right to basic education; (2) directing those departments to supply the textbooks in question within a certain time frame; and (3) directing them to formulate a 'catch-up plan' for the affected learners. The respondents attempted to defend their failure by alluding to the problems they faced and the fact that they had at all times acted bona fide.

^E*Held*: The provision of textbooks was an essential component of the constitutional right to basic education, and the respondents' failure to comply with their duty in this regard even by mid-academic year would prima facie constitute a violation of this right. In this the respondents' bona fides were irrelevant since the conduct or omission complained of did not have to be mala fide to

constitute a violation of the right in question. In addition, the steps taken by the respondents to remedy the situation were not reasonable in the circumstances, given the urgency of the situation and the targets that they had set for themselves. Accordingly the respondents would be directed to formulate an appropriate catch-up plan for the affected learners. (Paragraphs [25] – [26], [32] and [39] – [40] at 46H – 47B, 48B – D and 49F – 50B.)

Cases Considered

Annotations:

Case law

AParty and Another v Minister of Home Affairs and Another; Moloko and Others v Minister of Home Affairs and Another 2009 (3) SA 649 (CC) (2009 (6) BCLR 611): considered

Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) (1997 (7) BCLR 851): referred to

Governing Body of the Juma Masjid Primary School and Others v Essay NO and Others 2011 (8) BCLR 761 (CC): dictum in para [37] applied

Rail Commuters Action Group and Others v Transnet Ltd t/a Metro Rail and Others 2005 (2) SA 359 (CC) (2005 (4) BCLR 301): referred to.

Statutes Considered

Statutes

The Constitution, 1996, s 29(1): see *Juta's Statutes of South Africa 2011/12* vol 5 at 1-29.

Case Information

Application for a declaratory order and ancillary relief. Order granted appearing in para [43] of the judgment.

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M Sikakhakhane SC for the applicants. **A**

A Granova for the respondents.

Cur adv vult.

Postea (June 18). **B**

Judgment

Kollapen J:

[1] Most societies, ours included, place a high premium on education. Not only is it the means by which individuals are able to fulfil their potential, but it also provides, in a wider sense, the basis for development and upliftment. Accordingly, in the context of international human- rights law, and increasingly in the context of national legal systems, it is not a privilege but a right, creating with it duties and obligations, and where the right was violated, activating the need to craft appropriate remedies.

[2] In South Africa education is recognised both as an important policy imperative that government has committed itself to, as well as a central and interlocking right in the architecture of the rights framework in the Constitution. The preamble to the Constitution

contains a commitment to 'improve the quality of life of all citizens and free the potential of each person'.^E

[3] Education is critical in both freeing and unlocking the potential of each person. Section 29 of the Constitution provides as follows:

'(1) Everyone has the right –

- (a) to basic education, including adult basic education; and^F
- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.'

[4] The right to education, however, is not a stand-alone right, but a means through which other rights are realised. General Comment 13, on the right to education, in respect of article 13 of the International^G Covenant on Economic, Social and Cultural Rights, captures the foundational character of the right as follows:

'Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized^H adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from hazardous labour and social exploitation, promoting human rights and democracy, and protecting the environment and controlling the population growth.'

[5] In the South African context the comment is apposite. If regard be^I had to the history of an unequal and inappropriate educational system foisted on millions of South Africans for so long, and the stark disparities that existed and continue to exist in so many areas and sectors of our society, education takes on an even greater significance. It becomes at the macro-level an indispensable tool in the transformational imperatives^J

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^Athat the Constitution contemplates, and at the micro-level it is almost a sine qua non to the self-determination of each person and his or her ability to live a life of dignity and participate fully in the affairs of society.

[6] This case concerned the right to basic education and in particular the^B issue of the provision of textbooks to learners. The parties to the application are described in the papers. The first applicant is an organisation known as Section 27. It describes itself as a public-interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. It brings this application in its own name as well as in the public interest.

^C[7] The second applicant is Dijannane Tumo Secondary School, a secondary school in the Tumo Village, Mopane District, attended by some 1516 learners in grades 8 to 12.

[8] The third applicant is Tandanie Lydia Msipopetu, a parent of two^D learners at the Lutande Primary School in Thohoyandou. Ms Msipopetu's children are aged 12 and 18 and are in grades 3 and 6, respectively. She brings this application in her capacity as a parent of learners who have not been provided with textbooks for the 2012 academic year.

[9] No serious challenge to the standing of the first applicant was^E launched. I am satisfied, if regard be had to s 38 of the

Constitution, that it acts both in its own interest and in that of the public as there contemplated. The second and third applicants, as educators and parents, respectively, have a direct and material interest in the relief sought. See in this regard *Rail Commuters Action Group and Others v Transnet Ltd t/a Metro Rail and Others* 2005 (2) SA 359 (CC) (2005 (4) BCLR 301), ^F where the Constitutional Court took a position that suggested that one should be generous with regard to the issue of standing in constitutional matters.

[10] The first respondent is the Minister of Basic Education and the second respondent is the MEC of the Limpopo Department of ^G Education.

[11] On 5 December 2011 the Limpopo Department of Education was, together with a number of other Provincial Departments in Limpopo, placed under administration in terms of s 100(1)(b) of the Constitution. ^H The Department of Education accordingly assumed full responsibility for the obligations of the Limpopo Education Department in order to ensure that the minimum standards for the department's obligations were met. Section 100(1) provides in part as follows:

'(1) When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may ^I intervene by taking any appropriate steps to ensure fulfilment of that obligation, including —

- ...
(b) assuming responsibility for the relevant obligation in that province to the extent necessary to —
(i) maintain essential national standards or meet established ^J minimum standards for the rendering of a service;'

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[12] The relief sought by the first applicant in these proceedings was as ^A follows:

[12.1] Firstly it sought an order declaring that the matter was urgent and had to be dealt with as such under rule 6(12)(a). It also sought an order declaring that the failure by the Department of Education in Limpopo and the Department of Basic Education ^B (DBE) to provide textbooks to schools in Limpopo was a violation of the rights to basic education, equality and dignity; of the South African Schools Act 84 of 1996; and of s 195 of the Constitution.

[12.2] It sought an order directing the Limpopo Department of ^C Education, alternatively the Department of Education, to provide textbooks for grades R, 1, 2, 3 and 10, on an urgent basis and by no later than 31 May 2012, to the Dijannane Tumi Secondary School, the Lutande Primary School, and all other schools in Limpopo which had not yet received their textbooks. ^D

[12.3] It also sought relief in the form of a directive that the Limpopo Department of Education, alternatively the national Department of Education, develop what was termed a 'catch-up plan' for at least the affected grade 10 learners in Limpopo, and to lodge such a plan with the court.

[13] The respondents opposed the application in respect of urgency and **E** in respect of the merits. I will deal briefly with the background and facts at the heart of this dispute.

[14] The schools in Limpopo that are the subject of this application, and that may be affected by any relief that may be granted, rely on the first **F** and second respondents for the procurement and delivery of textbooks. They complete requisition forms for the textbooks they require, which are then submitted to the offices of the second respondent for processing. The second applicant completed and submitted the necessary requisition forms to the offices of the Limpopo Department of Education during or about 17 November 2011. **G**

[15] During or about 11 January 2012 *City Press*, a national newspaper with wide circulation, published an article regarding concerns that textbooks in Limpopo had not yet been delivered to schools one week **H** before they were due to open. The article quoted a departmental spokesperson as saying that the DBE expected a 'minimum of disruption' in supplying textbooks relevant to the department's implementation of its curriculum and assessment policy statements, known also as CAPS, and appeared to have identified the problem as 'cashflow'. **I**

[16] The *Mail & Guardian* on 20 January 2012 published an article setting out similar concerns with regard to the delivery of textbooks to Limpopo schools. On 2 February 2012, and prompted by the media reports referred to above, staff of the first applicant visited several schools in Limpopo, and in particular in the Mopane District, and were advised at each school visited that textbooks were not delivered. **J**

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A[17] A follow-up visit on 16 and 17 February 2012 met with the same response, namely that no textbooks had been delivered. On 28 February 2012 the first applicant despatched a letter to the Department of Basic Education regarding its concerns about the failure of the delivery of textbooks, in which it requested information regarding the expected time **B** frame for delivery of the textbooks. In response to this letter a meeting was convened between staff of the first applicant and Dr Karodia, the head of the Limpopo Education Intervention Team. The meeting dealt with — among other things — delivery of textbooks, and the first applicant was advised that because of problems with what was described as 'an **C** unscrupulous tender award', there would be delays in the delivery of textbooks, but that delivery would be effected, at the very latest, by mid-April 2012.

[18] It was common cause that by mid-April 2012 the textbooks had still not been delivered, which resulted in further correspondence between the first applicant and Dr Karodia, and that on 2 May 2012 a letter **D** advised as follows:

'The supply of textbooks will now take place through the months of May and definitely be completed by 15 June 2012.'

This was unacceptable to the applicants, who launched the present proceedings on 4 May 2012.

[19] The stance of the applicants can be summarised as follows:

- [19.1] The nature of the relief sought and the steps taken by the respondents since the early part of the year (when they became aware of the textbook problem), and their continued failure to deliver the textbooks, rendered the matter urgent.
- [19.2] The respondents have a constitutional obligation to fulfil the right to basic education, which duty includes, among other things, the provision of textbooks, and the respondents' failure to provide textbooks to Limpopo schools at the beginning of the school year, or within a reasonable period thereafter, constituted a violation of the rights to basic education, equality and dignity, as well as of the Schools Act and s 195 of the Constitution.
- [19.3] They accordingly, in addition to seeking a declarator, sought relief both in respect of an order to compel the respondents to effect delivery of the textbooks in question as well as an order that would, in the applicants' view, ensure that the prejudice suffered by the learners on account of the respondents' failure to deliver textbooks would be ameliorated by a catch-up plan, at least in respect of grade 10 learners in Limpopo.

[20] The issue for determination is accordingly, firstly, that of urgency. Given the centrality of education in the constitutional framework set out above, and the fact that schools in Limpopo lacked textbooks as they approached the halfway mark of the academic year, in my view rendered the matter urgent. A week or even a day is material under these circumstances. The nature of the relief sought accordingly renders the matter sufficiently urgent. In addition, the applicants had, once they had

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become aware of the problem, acted reasonably in engaging the respondents, and in accepting earlier undertakings that were not made good. In my view there was no undue delay on their part, and I am accordingly satisfied that the matter was urgent for the purposes of rule 6(12).

[21] The second issue is whether the respondents' failure to provide textbooks to Limpopo schools constituted a violation of the rights to basic education, equality and dignity, as well as of the Schools Act and s 195 of the Constitution. The right to basic education enshrined in s 29(1)(a) is distinguishable from other social and economic rights. In this regard the Constitutional Court held, in *Governing Body of the Juma Masjid Primary School and Others v Essay NO and Others* 2011 (8) BCLR 761 (CC), as follows (para 37):

'It is important, for the purpose of this judgment, to understand the nature of the right to a basic education under s 29(1)(a). Unlike some of the other socio-economic rights, this right is immediately

realisable. There is no internal limitation requiring that the right be progressively realised within available resources subject to **D** reasonable legislative measures. The right to basic education in s 29(1)(a) may be limited only in terms of the law of general application which is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. This right is therefore distinct from the right to further education provided for in **E**s 29(1)(b). The state is, in terms of that right, obliged, through reasonable measures, to make further education progressively available and accessible.'

Accordingly, there was an obligation for the immediate realisation of this right on the respondents. See also, in this regard, an article by Mandla Seloane entitled 'The Right to Education: Lessons from *Grootboom*' in **F**(2003) 7(1) *Law, Democracy and Development* at 200, where it was contended in this regard that the state had to ensure that the components of a basic education were realised.

[22] In the context of this application one of those components was the provision of textbooks, and while it could be said that no broad **G** consensus existed in the South African context on the content of the right to basic education, there were compelling arguments that it should, in order to be meaningful, include such issues as infrastructure, learner transport, security at schools, nutrition and such related matters. However, for the purposes of this application it is not necessary to determine these broader issues — or indeed to express a view on them — except to say **H** that the argument that the right must be broad and encompassing appears to be compelling.

[23] What is relevant in the context of the right is, however, the narrow question in this application, namely whether the provision of textbooks **I** is a component of the right to basic education. The answer to this question can, in my view, be found quite easily in the policy statements of the state in respect of textbooks and their relationship to giving effect to the right to basic education.

[23.1] In his State of the Nation Address of 10 February 2011 President Zuma said the following: **J**

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A 'The Administration must ensure that every child has a textbook on time.'

[23.2] The Department of Education in Limpopo in its Annual Performance Plan for the 2011/2012 year articulated as one of its goals the following:

B 'To ensure that every learner has access to a minimum set of textbooks and work books required according to National Policy.'

The corresponding indicator in respect of this goal was described as follows:

C 'The percentage of learners having access to the required textbooks and work books for the entire school year.'

The department in this regard set the target at 100%.

[23.3] Finally, the curriculum strategy to improve education in Limpopo, **D** issued by the Limpopo Department of Education, dated March 2011, made the following observations:

The availability and retention of learning support materials is a vital ingredient in the delivery of quality learning and teaching. When resources such as learner and teacher support **E** materials are insufficient, teachers experience great difficulty in planning and conducting lessons, even where there were enough of other resources. If one takes seriously the observation that in developing countries,

the availability of textbooks is associated with student performance and pass rates than lack of learning materials in school, [it] clearly points to our learners not performing well in their learning.' Clearly, the above provides — correctly in my view — evidence of the government's unambiguous view that textbooks are an essential and vital component in delivering quality learning and teaching.

[24] The stance of Mr Mavuso, who deposed to an affidavit on behalf of the respondents, that 'with heavy reliance on work books in 2012, curriculum for grades R through to 9, textbooks have become simply complimentary to the teaching process', is hardly consistent with the policy goals and indicators referred to, and the attempt by the deponent to relegate the importance of textbooks to being complementary is hardly sustainable, and contradicted by the respondents' own assertions in this regard.

[25] Accordingly I conclude on this aspect that the provision of learner support material in the form of such textbooks as may be prescribed is an essential component of the right to basic education, inextricably linked to the fulfilment of that right. In fact it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect to in the absence of textbooks. On that basis it accordingly has to follow — given the respondents' own goals and indicators in their Annual Performance Plan, and their target of 100% in respect of delivery of workbooks and textbooks for the entire school year — that the failure to

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provide textbooks by about midway through the academic year would prima facie constitute a violation of the right to basic education.

[26] In this regard, however, the respondents urged the court to consider the measures taken by them and the special challenges they faced. It was argued, firstly, that the respondents had at all times acted bona fide; and, secondly, that they had under the circumstances taken reasonable measures to effect delivery, and that their failure to do so timeously was as a result of circumstances beyond their control.

[27] I deal firstly with the question of bona fides. In my view that is hardly decisive of the issue. Conduct that would constitute a violation of a right does not have to be mala fide, and, equally, the existence of bona fides does not have the effect of rendering conduct that would ordinarily constitute a violation of a right somehow immune from attack simply because it was accompanied by bona fides. In my view the issue of bona fides is not a relevant consideration in this application.

[28] I proceed to deal with the second issue, namely whether the measures taken by the respondents were reasonable in these circumstances. The s 100(1)(b) decision referred to above was taken on 5 December 2011. The respondents had attached a time line to their affidavit in terms of which they sought to explain the

sequence of events that led to the delay. They indicated that in January 2012 evidence of fraud and corruption was uncovered and investigated. There was an **E** audit of the actual number of textbooks required, that was completed in April 2012, and the procurement process in respect of textbooks began on 26 April 2012.

[29] While one is not unsympathetic to the position of the respondents, **F** I am at the same time not convinced that it required all of five months to effect an audit of actual needs. I pause to mention that in the course of hearing this application the respondents made available a directive issued on 14 May 2012 to all schools in Limpopo, asking them to deal with gaps in the curriculum. Those schools were given until 31 May 2012 to respond. So, in respect of a substantial issue such as this, the respondents **G** were able to set a timetable of two weeks, which must mean that the contemplated audit in respect of books required could have been completed within a period of two weeks.

[30] In my view the situation with regard to textbooks warranted an **H** intervention characterised by urgency and recognition of both the need to provide textbooks without delay and an appreciation of the adverse consequences that would follow for learners if this were not done. It appears that this was lacking.

[31] I pause to add that the issue of textbooks was brought to the department's attention as early as December 2011, when the Publishers **I** Association of South Africa forwarded no less than three communications to the department alerting them both to the need to place orders timeously and of the fact that orders in respect of the Limpopo schools had not been placed. There was no response to these communications. I am not satisfied that the necessary urgency accompanied the respondents' efforts in this regard. In passing, and if one has regard to the time **J**

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A lines, it is difficult to understand how the respondents made an earlier commitment for delivery by mid-April. One can only assume that such a commitment, which was not disputed, would only have been made if it was practically possible, suggesting in my view that an earlier resolution with regard to the textbook issue was not only necessary, but also **B** possible.

[32] Accordingly, I conclude that the failure by the respondents to provide textbooks constituted a violation of the right to basic education. In this regard I wish to point out that I do not characterise the respondents' conduct as mala fide. On the contrary, they may have acted **C** in good faith, but that was hardly decisive, for the reasons I have already given. The fact of the matter was that the measures they took were not reasonable, having regard to the urgency of the situation to the targets and indicators they had set for themselves in respect of the delivery of

textbooks. The applicants would accordingly be entitled to the relief they sought in respect of this prayer.

[33] With regard to prayer 3, which was an order in respect of delivery, there appears to be little dispute. The applicants sought an order that delivery be effected by 31 May 2012. However, during argument counsel for the applicants took the stance — which was in my view reasonable — that all things being equal, delivery would only begin on 31 May 2012 and be completed by 15 June 2012. There appears to be no problem, then, in issuing an order along those lines.

[34] I now proceed to deal with prayer 4, which is the prayer dealing with what became known as the 'catch-up plan', or a remedial plan. The applicants' stance in this regard was that while the delivery of textbooks during the period 31 May 2012 to 15 June 2012 would contribute significantly to creating an environment in which proper learning and teaching could take place, there was little doubt that the absence of textbooks for the better part of the first half of the academic year had an adverse effect on learners' rights, which had to be remedied. They contended that the respondents had an obligation to ensure that the consequences of the delay in the delivery of textbooks had to be addressed adequately and appropriately. To this end they contended that the court, if it concluded that there had been a violation of fundamental rights on the part of the respondents, was obliged — in terms of its powers granted to it under s 172(1)(b) of the Constitution — to make an order that is just and equitable to remedy the rights violation, and in this regard to fashion new remedies where existing traditional remedies do not provide sufficient redress. They relied on *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC)(1997 (7) BCLR 851).

[35] In this regard it must be abundantly clear that where a violation of rights had taken place, the remedy that was offered had to be effective and meaningful. If not, it rendered the vindication of rights rather hollow, and a court in this regard had to act in the spirit of the Constitution and ensure that when rights were vindicated, remedies were appropriate to meet the mischief being dealt with.

[36] There is no doubt that an order only for delivery of textbooks will not address the consequences and effects of the failure of delivery for the

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first half of the year. The circumstances of the matter require an intervention to address the gaps as well as the quality in learning and teaching, in particular for grade 10 learners. This is to ensure that the prejudice they would invariably have experienced on account of not having textbooks is ameliorated.

[37] The respondents did not appear to have any principled objection to **B** the need for such an intervention, and did in this regard — on 14 May 2012 (a day before the hearing of this application) — address a communication to all district managers, circuit managers, and principals of public schools in the following terms: They requested by 31 May 2012, from all the recipients of these letters, an indication as to the extent of the **C** curriculum that had been covered for grade 10 learners, as an indication as to which parts of the curriculum would have been covered by then, and which remained uncovered; an indication of the areas of gaps that existed, and if there were none, also an indication thereof; and an indication of the measures that the schools would effect to ensure that the identified gaps would be covered within the 2012 school year. **D**

[38] While this is an important and encouraging step, an effective 'catch-up plan' cannot be the sole responsibility of the schools in question, nor can it be formulated on the basis of only the school's assessment of gaps and issues around quality. The role of the respondents **E** in being proactive in the identification of gaps and quality in teaching, and in providing the support and creating the framework and environment for those gaps to be addressed, is equally important.

[39] That being the case, and having regard to the stance of the respondents in taking the first steps in the development of such a plan, **F** there appears no obstacle to the granting of the relief sought. While the plan must ultimately be of the making of the respondents in consultation with the schools, and a collaborative effort by the respondents, schools, educators, parents and learners, at the very least it should constitute a serious and practical plan to address the gaps in teaching and the compromise in quality that would invariably have occurred in the **G** teaching that did take place. Given that schools had until 31 May 2012 to respond to the respondents' request for data, and measures taken, a suitable time frame for the submission of such a plan to this court would be 8 June 2012, with the additional requirement that reports on the implementation of the 'catch-up-plan' be submitted to the court and to the applicants on a monthly basis. **H**

[40] In my view this would not be unduly onerous. The respondents agree that there is a need for such a plan. The reports would entail approximately five to six months of submissions, which, I imagine, would in any event have been prepared by the respondents, given their **I** own intimation that they wished to address the gaps in the teaching of the curriculum. In my view the plan should (while I do not wish to be prescriptive in this regard) contain features in respect of gaps in the curriculum; gaps in quality; the nature of the remedial measures; the time frames; the roles of the various role

players; be comprehensive; deal with the provision of extra classes; provide indications when it would

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occur; and indicate a focal point within the respondents' structure which would take responsibility for the plan. I will deal with details of this plan later in this judgment.

[41] I deal finally with the question of costs. There is no reason why the ordinary rule that the costs should follow the results should not apply in this case. Ms *Granova*, appearing for the respondents, referred me to the judgment of *AParty and Another v Minister of Home Affairs and Another; Moloko and Others v Minister of Home Affairs and Another* 2009 (3) SA 649 (CC) (2009 (6) BCLR 611), and urged me not to order attorney costs, on the basis that the first applicant was acting on a pro bono basis. I have had sight of the judgment in question and the relevant paragraph is para 85, in which the court said the following:

'In the circumstances it is fair to award the *Moloko* and *AParty* applicants half of the costs incurred in the proceedings in this court, such costs [to] include the costs of two counsel. It appears from the founding affidavit in the *Moloko* matter that the attorneys represent the applicants on a pro bono basis. Accordingly, during argument, counsel for the *Moloko* applicants asked that costs be limited to disbursements only, including the fees of counsel. It will be so ordered.'

[42] I do not see this judgment as providing an insurmountable obstacle to the grant of costs in respect of attorneys' fees. In this regard the relationship between the attorney and client with regard to the issue of pro bono costs is not an issue that involves the respondents, and I cannot imagine that the respondents would seek to obtain benefit from that. In any event, one has to take cognisance of the fact that the role of civil-society organisations in this regard is important in facilitating access to courts in order to vindicate constitutional rights, and to the extent that they are successful, there is no reason why they should not be entitled to costs, even if they act on a pro bono basis, having regard to the issues of sustainability and financial integrity that such organisations face on a daily basis.

[43] In all the circumstances, and for the reasons given, I make the following order:

1. It is declared the matter is urgent and could be considered as urgent in terms of rule 6(12)(b).
2. It is declared the failure by the Limpopo Department of Education and the Department of Basic Education to provide textbooks to schools in Limpopo is a violation of a right to basic education.
3. The Limpopo Department of Education, alternatively the Department of Basic Education, is directed to provide textbooks for grades R, 1, 2, 3 and 10 on an urgent basis, commencing on 31 May 2012, and concluding by no later than 15 June 2012, to the Dijannane Tum Secondary School, Lutande Primary School and all other schools in Limpopo which have not yet received their textbooks.

4. The Limpopo Department of Education, alternatively the Department of Basic Education, is directed to immediately

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develop a 'catch-up/remedial' plan for affected grade 10 learners in Limpopo. Such a plan should include, at the very least, the following.

- (a) Identify the gaps in the curriculum for grade 10 learners in terms of what should have been covered, as opposed to what has been covered.
 - (b) Identify the extent to which the quality of teaching in the areas where it occurred was prejudiced or compromised as a result of the non-availability of textbooks.
 - (c) Identify remedial measures that are contemplated in addressing both the matters identified in (a) and (b) above, and the role of the various role players in this regard, including the respondents, schools, educators, learners and parents, and any other party.
 - (d) Provide a time frame in respect of which the plan is to be implemented as well as the monitoring mechanisms which will be put in place to monitor the implementation of the plan.
 - (e) Ensure that the plan is comprehensive to the extent that it covers all affected grade 10 learners, recognising, of course, that the nature of the interventions may differ from school to school.
 - (f) To the extent that the plan will invariably involve extra classes and lessons, indicate when these will occur.
 - (g) Indicate a focal point for responsibility for the plan at both National and Provincial Departments of Education.
 - (h) Prepare and submit monthly reports on the implementation of the plan indicating both achievements and setbacks and, where setbacks are identified, how it is proposed they be dealt with.
 - (i) The monthly reports referred to should be submitted by no later than the 30th of each month, commencing on 30 July 2012 and thereafter on or before the 30th day of each month until 30 November 2012.
 - (j) The proposed time frame for the implementation should be from 15 June 2012 to 30 December 2012.
 - (k) It is directed that the respondents lodge with this court and the applicants the 'catch-up/remedial' plan referred to above by no later than 8 June 2012. For the sake of completeness and even though it is covered in the plan, the respondents are directed to submit monthly reports to both the court and the applicants, to the latter's attorneys, the first such report by 30 July 2012 and, thereafter, on or before the 30th day of each month until 30 November 2012.
5. Leave is granted to the applicants to approach the above court on the same papers, supplemented, as the circumstances may require, for further relief.

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- A** 6. The respondents are ordered pay the costs of this application jointly and severally, the one paying the other to be absolved. 'Counsel for Applicants Instructed by: *Centre for Applied Legal Studies*, Witwatersrand University.
- B** Respondents' Attorneys: *State Attorney*, Pretoria.