



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

**Case No: 1818/2022**

In the matter between:

**THE SCHOOL GOVERNING BODY OF MARY WATERS  
SECONDARY SCHOOL**

**Applicant**

And

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

**First Respondent**

**THE MEMBER OF EXECUTIVE COUNCIL, EASTERN  
CAPE DEPARTMENT OF BASIC EDUCATION**

**Second Respondent**

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**JUDGMENT**

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**BESHE J:**

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[1] This is an urgent application that served before me yesterday the 21 June 2022. There appears to be an acknowledgement by the parties that the matter requires the court's urgent attention. Rightly so in my view, because the matter concerns the rights of children, whose best interest should be of paramount importance.<sup>1</sup> Also in view of the fact that every matter concerning children should be dealt with, with expediency. Furthermore, the matter is concerned with the right to basic education.<sup>2</sup>

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<sup>1</sup> Section 28 (2).

<sup>2</sup> Section 28 of the Constitution.

[2] The application is two-parts. The parties have sensibly agreed to Part B being postponed *sine die*.

[3] In Part B, the applicant will essentially be seeking an order that first respondent's decision on its final post establishment; communicated on 16 November 2021 to allocate the Mary Waters Secondary School, thirty (30) posts on the 2022 educator post establishment be reviewed and set aside.

[4] The order sought in Part A pending the finalisation of Part B is the following:

“2.1 Within (10) days of the date of the order, appoint Ms Thembakazi Skayi and Ms Bronleigh Vannies, as permanent educators at the school and issue them with letters of appointment dated from 1 January 2022;

2.2 Within ten (10) days of the date of the order, pay Ms Thembakazi Skayi and Ms Bronleigh Vannies their salaries from 1 January 2022;

2.3 Within twenty (20) days of the date of the order, appoint a Head of Department and Deputy Principal to Mary Waters Secondary School either temporarily or permanently, who are able to teach in both Afrikaans and English and can fill any two of the following posts:

Wiskunde (Maths) Afrikaans, Tegnologie (Technology) Afrikaans, Kreatiewe Kunste (Creative Arts) Afrikaans, Creative Arts – English, Technology – English, Natural Science – English, Lewensorientering (Life Orientation) Afrikaans.

2.4 Within ten (10) days of the date of the order, appoint two (2) additional permanent or temporary teachers to the school who can teach in both Afrikaans and English in order to ensure that instruction can be provided to all the learners in terms of the school curriculum requirements. These teachers must be able to fill any two of the following posts:

Kreatiewe Kunste (Creative Arts) Afrikaans, Creative Arts – English, Technology – English, Creative Arts – English, Natural Science – English, Lewensorientering (Life Orientation) Afrikaans, Kreatiewe Kunste (Creative Arts) Afrikaans, Creative Arts – English.

3. Within ten (10) days of the date of the order, provide the applicant with catch-up plans to allow for the learners in the grades and the subjects in which they have not been taught, to be able to catch up with the work for 2022.

4. The Respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved.”

[5] In view of the urgency of this matter and the reasonable stance taken by the respondents (the department), I am able to make a ruling in the matter without any delay. Both parties have gone to great lengths to enlighten the court about the process involved in the appointment of educators as well as the factors that are taken into account in doing so. They also drew the court’s attention to the statutory phramework in this regard. Even though the granting of orders sought in Part A is opposed, the department was prepared to make certain undertakings in relation to applicant’s complaints. The applicant was however not prepared to accept mere undertakings and prayed that they be converted to court orders in order that applicant has recourse should respondents not make good on their undertakings.

[6] I do not see the reason why if the respondents are prepared to give these undertakings they are averse to same being made court orders. I will have no difficulty making same court orders. The applicant was also not happy that the undertakings given did not have a deadline as to when there will be compliance therewith. The complaint is a valid one in my view. The undertakings relate to prayers 2.1, 2.2, 2.3 and 3. Respondents oppose the granting of prayers 2.4 and 4. Prayer 4 being a costs order.

[7] The granting of a costs order against the respondents is opposed on the basis *inter alia* the haste with which the application was launched and the resultant pressure on the respondents to meet applicant’s time phrames was not justified. Furthermore, the applicant has not attained substantial success in the application. The submission being that the court should order each party to pay its own costs alternatively reserve costs for later determination. Granted that the respondents have made certain undertakings in respect of some of the relief that is sought by the applicant, but this was only after the applicant had instituted these proceedings and literally did so on the court’s

door step, as these were communicated on the day preceding the hearing of the application.

[8] The order sought in prayer 2.4 is that within 10 days of the order, the department appoints two temporary teachers to the school who can teach in both English and Afrikaans in order to ensure that instruction can be provided to all learners in terms of the school curriculum requirements.

[9] I understand the basis for this prayer to be aimed at criticising the criteria used to determine the school's post establishment resulting in a shortage of educators or less being appointed.

[10] The granting of relief sought in this regard is opposed on the basis that the applicant's post provision norm (PNN) for the year 2022 does not allow for the permanent appointment of the two teachers contended for in this prayer. Temporary appointments can only be made in respect of growth posts. I have already alluded to the relief that will be sought in Part B of the application. In my view, Part B is meant to review and set aside the department's decision regarding educator post establishment for the school. And that this is not an issue for determination in these proceedings. The parties have agreed that the determination of Part B of the application be postponed *sine die*. In my view, granting the relief sought in prayer 2.4 will be jumping the gun.

[11] For the reasons stated hereinabove, I am of the view that the applicant has made out a case for the relief it seeks, save for the relief sought in prayer 2.4.

**[12] Accordingly, the following order will issue:**

**That pending the finalisation of Part B which is postponed sine die:**

- 1. The respondents shall confirm the appointment of Ms Thembakazi Skayi and Ms Bronleigh Vannies as temporary educators at the**

**school for the period January 2022 to December 2022 and issue them with confirmation letters of such appointments before the 30 June 2022.**

- 2. On or before the 30 June 2022 the respondents shall pay Ms Skayi and Ms Vannies their salaries in terms of their appointments from January 2022.**
- 3. Within twenty (20) days of this order one post level 1 educator that can teach Maths, Technology, Creative Arts or Life Orientation in both Afrikaans and English be appointed against the vacant post of the Head of Department on temporary basis until the vacant post is filled.**
- 4. Within twenty (20) days of this order a post level 1 educator that can teach Maths, Technology, Creative Arts or Life Orientation in both Afrikaans and English be appointed against the vacant promotional post of Deputy Principal, which appointment will remain until the vacant post is permanently filled.**
- 5. Within ten (10) days of this order the respondents are to avail the departmental curriculum advisors to assist the school to devise a plan for the learners to catch up on the work missed during 2022.**
- 6. Respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved.**

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**N G BESHE  
JUDGE OF THE HIGH COURT**

**APPEARANCES**

For the Applicant : Adv: S Sephton  
Instructed by : LEGAL RESOURCES CENTRE  
116 High Street  
GRAHAMSTOWN  
Ref: C van Schalkwyk  
Tel.: 046 – 622 9230

For the Respondents : Adv: E Crouse  
Instructed by : STATE ATTORNEY  
C/o YOKWANA ATTORNEYS  
10 New Street  
GRAHAMSTOWN  
Ref: N Yokwana  
Tel.: 046 – 622 9928

Date Heard : 21 June 2022  
Date Reserved : 21 June 2022  
Date Delivered : 23 June 2022

**Judgment handed down electronically by circulation to the parties' legal representatives via email and release to SAFLII.**

**The date and time of handing down of the judgment is deemed to be 11h00 on the 23 June 2022.**