



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION: MTHATHA]**

CASE NO. 846/2023

In the matter between:

MILELA HLUMELO MBANA

Applicant

and

WALTER SISULU UNIVERSITY

1st Respondent

**WALTER SISULU UNIVERSITY:
REGISTRAR DR L. NTONZIMA**

2nd Respondent

**MINISTER OF HIGHER EDUCATION,
SCIENCE AND TECHNOLOGY**

3rd Respondent

JUDGMENT

JOLWANA J:

[1] The applicant approached this Court by way of urgency, in the main, seeking a declarator that the first and second respondents' conduct of allocating his space in the Bachelor of Laws degree for the 2023 academic year to the next deserving student in circumstances where he had timeously fulfilled and met all the conditions

for his registration is a violation of his right to further education. He therefore seeks the intervention of this Court to vindicate this right. He further seeks a declaratory order that his premature exclusion from the Bachelor of Laws degree programme for the 2023 academic year is in breach of contract. The issue of urgency does not arise as it was conceded, correctly so, by the first and second respondents. The third respondent did not participate in these proceedings. Only the first and second respondents oppose the relief sought. For convenience and brevity, I shall henceforth refer to the first and second respondents as the respondents. I will, at times, refer to the second respondent as the registrar and the first respondent as the University.

[2] The applicant was 17 years old on 11 July 2022 doing grade 12 at St Johns College in Mthatha. On that day he completed and submitted an online application to Walter Sisulu University (WSU) for his admission to study towards a Bachelor of Laws degree. After successfully completing his grade 12 with an endorsement for a Bachelor's degree, he received acceptance offers from various Universities including WSU as he had also applied to other Universities. He rejected the offers from the other Universities and accepted the one from WSU.

[3] The admission letter addressed by WSU to the applicant is dated 7 February 2023. In part, it reads:

"It gives us pleasure to inform you that you have been **admitted** to the undermentioned qualification at Walter Sisulu University (WSU).

Bachelor of Laws 1ST – Mthatha Campus

Admission Status: ADMITTED

Faculty: Humanities, Social Sciences and Law

Please note that this offer is subject to the following conditions:

1. Acceptance or rejection of firm offer of admission.

As only a limited number of admissions can be made for this program, it is imperative that the University receives your response of accepting or rejecting the firm offer within three (03) days of receiving this letter from the date of issue. Failure to do so will result in your space being given to the next deserving student.

Please note that registration is done **online** subject to availability of space and first come first served. Registration guidelines and procedures are available on the University website www.wsu.ac.za.

First time entering/new students must register from Monday, 23 January 2023 until Friday, 27 January 2023. Failure to do so will result in your space being given to the next deserving student.”

[4] He submits that on the same day that he received the offer, he accepted it by phoning the University on 047 502 2844. During that call he requested to talk with the registrar. His call was transferred to the office of the registrar. This is when he indicated his acceptance of the offer of admission to the University. He then took all the necessary steps to comply with the salient terms and conditions of the offer. In this regard he made a payment of the registration fee in the sum of R4 600.00 into the bank account indicated in the admission letter. He emailed his proof of payment to mganyile@wsu.ac.za and requested registration clearance.

[5] The proof of payment attached to the founding affidavit indicates that payment was made on the 7 February 2023 at 13:34 and it was emailed to the above email address at 13:58. With regard to the minimum initial payment which the applicant paid, the admission letter reads:

“2. Registration Fees.

Students **without** financial assistance or funding, will be required to pay the minimum initial payment (MIP) as approved by Council to register. The University’s banking details are as follows: **account at FNB, account name: WSU student fees account; account type: Current, account number: 52640012812, branch code: 210521.** Please deposit the MIP two days before your scheduled registration date to

allow for clearance. Please use your student number which appears at the top of this page as your reference on the deposit slip. Students who are funded by NFSAS shall be cleared to register after the University has verified funding directly with NFSAS provided they are enrolled for a funded qualification. Students who have bursary funding should request their sponsors to send the letter confirming funding directly to bursaries@wsu.ac.za and shall be cleared to register after the University has completed the necessary verifications.”

[6] The email referred to by the applicant has as its subject a request for registration clearance and attaches the proof of payment. The applicant says that he was then cleared on the same day, and was able to access the online registration portal. He then attempted to register on the same day the 7 February 2023 after being cleared and given access to the registration portal. His numerous attempts to submit his registration all failed as the registration portal indicated that the intake for the Bachelor of Laws degree programme was full. He contends that having been offered space as one of the University’s students for the 2023 academic year and having duly and promptly accepted the offer and complied with all the terms and conditions of acceptance contained therein, it was unconstitutional and in breach of contract for him to be prevented from registering.

[7] The applicant contends that the respondents have a constitutional duty to ensure that his right to further education is not undermined or violated. They have failed to ensure the realization and protection of his constitutional right of access to further education. He advances his case both on his constitutional right to further education and on the contractual agreement in terms of which he was given 3 (three) days within which to indicate his acceptance or rejection of the offer made to him by the University. In a nutshell, his contention is that the respondents had no right in law to offer his space to another deserving student except if he had failed to meet the

conditions on which he was assured of registration if he promptly accepted the firm offer within the specified 3 (three) day period.

[8] The second respondent (the registrar) has deposed to an answering affidavit on behalf of both respondents. In the first instance, the registrar contends that in terms of section 37 (4) of the Higher Education Act¹ the University Council determines the University's admission policy including entrance requirements in respect of any particular higher education programme as well as the number of students who may be admitted for any particular higher education programme and the manner of their selection.

[9] He further submits that in terms of the rules of the University published in its annual prospectus, the University reserves the right to admit or refuse admission to specific qualification programmes taking into consideration the University's targets and capacity to offer the qualifications and programmes concerned. Therefore, only a limited number of students may be considered for admission. Admission depends on the availability of space and the student's overall performance. In my view, nothing turns on the provisions of this Act or the admission policy of the University to the extent that the University complies with the admission policy and a prospective student also complies with it.

¹ 1. Section 37 of the Higher Education Act 101 of 1997 reads: (1) Subject to this Act, the Council of a public higher education institution, after consulting the senate of the public higher education institution, determines the admission policy of the public higher education institution.

2. The council must publish the admission policy and make it available on request.

3. The admission policy of a public higher education institution must provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way.

4. Subject to this Act, the council may, with the approval of the senate -

(a) determine entrance requirements in respect of particular higher education programmes;

(b) determine the number of students who may be admitted for a particular higher education programme and the manner of their selection;

(c) determine the minimum requirements for readmission to study at the public higher education institution concerned; and

(d) refuse readmission to a student who fails to satisfy such minimum requirements for readmission.

[10] The registrar submits that for the 2023 academic year, the University received 509 000 applications for admission to study various first year courses. The University had 7175 spaces available for admission of first year students. In particular, the law faculty may only register 75 first year students for the 2023 academic year. However, to increase the number of admissions, a number of initiatives were taken including increasing the number of admission letters issued to prospective students for the LLB course from 103 to 276. The 75 first year students the University was allowed to admit was determined by the Department of Higher Education and Training which provides funding for the LLB programme. The University is therefore not allowed to over-subscribe for any course and therefore may not register students above the determined number regardless of the fact that they may have been issued with admission letters. Should the University over-subscribe it gets penalised by the Department of Higher Education and Training. The University will not receive subsidies from the Department of Higher Education and Training for over-subscribed students in circumstances in which the University will not be able to provide funding in respect of the over-subscribed students for food and residence costs, tuition and the required textbooks.

[11] On the basis of, inter alia, all of the above, the respondents contend that they have not acted in violation of the applicant's right to further education. They also have not acted in breach of contract in barring the applicant from registering. However, the respondents admit that the applicant met the admission criteria for admission as a first year student in the faculty of law. They further admit the admission letter issued to him and the terms and conditions contained therein. Their contention is that that letter is being misconstrued to mean registered as against admitted or an entitlement to registration for a particular course of study.

[12] The registrar submits that the admission letter merely confirmed that the applicant met the admission requirements for the Bachelor of Laws degree and offered him an opportunity to register. In this regard reliance is placed on the conditions contained in the letter. These are, first, that only a limited number of admissions can be made for the LLB programme. For this reason, only a limited number can be allocated to register on the online registration platform. The admission letter records that it is imperative that the University receives the applicant's response of accepting or rejecting the firm offer within 3 (three) days of receipt of the letter from the date of issue because failure to do so would result in the space allocated to him being allocated to the next deserving student.

[13] Second, the University contends that the letter further records that formal registration is done online, subject to the availability of space on a first come first served basis and further that failure to do so would result in the allocated space being given to the next deserving student. On these bases, the University submits that admission to the degree of choice does not guarantee registration because of the limited number of spaces available. The University further contends that the applicant was required to register on the online registration portal for the degree without delay. Any delay would result in the course becoming fully subscribed and the registration portal would then not allow him to register once the course becomes fully subscribed.

[14] It will be noted from the University's submissions that the University does not explain what it expected an ordinary reader or recipient of the admission letter to understand where it says that he had 3 (three) days within which he was required to indicate his acceptance of the space allocated and offered to him. It gets worse, in its answering affidavit, the University explains that the applicant was required to

indicate his acceptance by registering for the degree on the online portal. The deponent adds that “[t]his is formal acceptance of the offer.” Nowhere in its affidavit does the University explain what first come first served means in relation to the explicit indication in the admission letter that the applicant had 3 (three) days within which to accept the offer.

[15] The University makes its case about the letter in its answering affidavit as follows:

“35.5 The letter records that the offer was subject to the following conditions:

35.5.1 It records that only a limited number of admissions can be made for this programme. What the letter actually refers to is registration via the applicant’s online registration platform limits the number of students that can be admitted for the degree for the reasons that I have already stated. The letter records that it is imperative that the University receives the applicant’s response accepting or rejecting the firm offer within 3 (three) days of receipt of the letter from the date of issue because failure to do so would result in the allocated space being allocated to the next deserving student.

35.5.2 What the first respondent requires by way of acceptance is that the applicant registers for the degree on the online portal. That is formal acceptance.

35.5.3 The letter further records that formal registration is done online, subject to availability of space on a first come first come first served basis and further that failure to do so would result in the allocated space being given to the next deserving student. It is thus so that admission to the degree of choice conveyed by the letter, does not guarantee registration because of the limited number of spaces available.

35.5.4 The applicant does not appear to appreciate that even though he had met the requirements of the degree and being presented with a letter of admission he was required, without delay to register via the applicant’s online registration portal for the degree because a delay in doing so would result in the course becoming fully subscribed. The online platform would then, once the course is fully subscribed, not allow him to register.”

[16] On the respondents' version it can be accepted that, first, there was a space allocated to the applicant. Second, the applicant had 3 (three) days from the date of issue of the letter to indicate his acceptance or rejection of his space. Third, if he did not do so within 3 (three) days, that would result in the space allocated to him being allocated to the next deserving student. These are the three main terms and conditions communicated to the applicant subject to which registration would be processed. Sub paragraph 2 of paragraph 1 merely explains the registration procedures which in this case is an online registration process. It further explains where registration guidelines and procedures are to be found which is in the University's website. It goes on to explain that the online registration is subject to availability of space and on a first come first served basis. The first part of paragraph 1 of the letter does not indicate how the offer is to be accepted or even rejected. What it does convey is that an indication of acceptance or rejection of the offer must be made within 3 (three) days.

[17] The applicant's case in this regard is that after receiving the firm offer, he did not walk to the University to accept the offer or send an email accepting the offer. What he did do was to call the University on 047-502 2844. When the call got through, his call was transferred to the office of the registrar in which he indicated in that telephone call his acceptance of the offer. The registrar does not say that such a call to that number could not have been made. What he does say is that they have no record of any telephone call from the applicant accepting the offer. He further says that that would not have been the correct method of acceptance of the offer. The correct method would have been registration on the online registration portal. It seems to me that on the respondents' version therefore, nothing turns on whether the call was or was not made.

[18] One of the difficulties with the respondents' submissions in this regard is that it was not pointed out to the court where the method of accepting or rejecting the offer within 3 (three) days is to be found in its regulatory instruments including the prospectus. I do not know how for instance one would go to the registration portal to indicate a rejection of the firm offer. The respondents do not explain this in their answering affidavit beyond pointing to the online registration as the only method of accepting the offer. The applicant, on the very day that he received the admission letter with the conditions already referred to above, paid the R4600.00 minimum initial payment at 13:34 according to the deposit slip. At 13:58 he emailed proof of payment to an official email address of the respondents after which he was cleared for registration. The respondents do not dispute that proof of payment was emailed to a correct email address and also do not deny that he was thereafter cleared for registration.

[18] The proof of payment as well as proof of the email having been sent at 13:58 to the mail address referred to by the applicant are attached to his founding affidavit as annexures MH3 and MH4. These documents are not disputed by the respondents. Besides, the respondents themselves accept that payment was in fact made hence they tender a refund of the amount paid in their papers. The applicant submits that he thereafter attempted to register for the LLB degree programme on the same day, the 07 February 2023. He tried to register a number of times and all his attempts were not successful. The online registration portal indicated to him that the intake for the LLB programme was filled to maximum capacity. The respondents admit this averment and go on to say that this was the case because the course was already fully subscribed.

[19] It is difficult to understand the respondent's case on how it got to be that the course was fully subscribed in light of the fact that on their own showing the applicant had 3 (three) days within which to register. It is not in dispute that he attempted to do so on the very first day he received the admission letter containing guidance on what was expected of him. It is not explained by the respondents how and on what basis they allowed the course to become fully subscribed after telling the applicant that he had 3 (three) days to accept the offer by registering. This brings me to the interpretation of paragraph 1 of the respondents' letter dated 07 February 2023. The parties are poles apart on the interpretation of that paragraph.

[20] In *Endumeni*² the Supreme Court of Appeal explained the process of interpretation as follows:

“The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of

² Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) at 603 F-G to 604 A-C.

the provision and the background to the preparation and production of the document.”

[21] As counsel for the applicant pointed out, on the reading of the letter, there are no conditions imposed subject to which the applicant’s space may be offered to the next deserving student before the expiry of the 3 (three) day period. Furthermore, and assuming that the registrar could offer the applicant’s space to another deserving student before the expiry of the 3 (three) day period on the basis of first come first served, one would have expected that to be made absolutely clear in the admission letter itself. The registrar appears to have understood the importance of not creating confusion about the meaning to be attributed to the application of the first come first served principle. In the same letter, dealing with the issue of accommodation the registrar couched the relevant paragraph as follows:

“5. Accommodation

Please note that Walter Sisulu University has limited space available for on-campus residence. Therefore, admission to on-campus residence will be on a first come first served basis as the University does not guarantee a place on on-campus residences. However, WSU has numerous off-campus student accommodation [to] which, you may apply should you not be admitted in [an] on-campus accommodation.”

[22] Clearly, the registrar could have couched paragraph 1 of the letter in similarly clear terms if indeed the letter was not intended to mean that the applicant had 3 (three) days within which to claim the space allocated to him failing which his space would be allocated to another deserving student. I can conceive of no other meaning to paragraph 1 of the letter other than that which flows naturally from the words used in it. The environment in which the registrar operated was very well known to himself and the University. The limited space in light of the huge number of the applications received was already known to him when he couched the letter in

the terms in which he did. The offer was extended to the applicant in very clear terms.

[23] It was not open to the offeror, the registrar, to change the clear terms of the offer before the expiry of the 3 (three) day period specified in the letter by taking the space that the registrar said was available to the applicant and prematurely give it to the next deserving student. That clearly cannot be so as doing so would render the letter itself meaningless in that regard. That letter and its contents are binding on both parties. The space of the applicant could only be offered to the next deserving student on the expiry of the 3 (three) day period if the simple language of the letter itself is to be heeded as it must be. The 3 (three) day period must surely have been intended to make it absolutely clear to the recipient that the offer was not open ended. Furthermore, space limitations and first come first served would apply after the expiry of the 3 (three) day period if the applicant did not register within the prescribed 3 (three) day period. This is because after the expiry of the 3 (three) day period he would have lost the space allocated to him as he would have failed to act within the timelines expressly communicated to him.

[24] At paragraph 23.9 of the answering affidavit the registrar says that historically once registration opens and because of the big number of students seeking registration, courses in the past would become fully subscribed within 30 minutes. While this information is enlightening, there is no information or submission about when this course in which the applicant was interested became fully subscribed in the 2023 academic year. There is no indication of how many students, if any, had already registered on the 7 February 2023 when the letter was written. Clearly, the registrar is able to time the registration process. In this case, if the registrar's case is that the applicant delayed as it seems to be, he should also have pointed out any

lack of promptitude on the part of the applicant. All that information would have helped to dispel any suspicion that any employee of the University could have bumped off the applicant from his space unfairly to create space, at the expense of the applicant, for a person who might have been allowed to register even later than the applicant. While the applicant might still have insisted on being registered on the same basis that the 3 (three) day period had not expired, there would, at the very least, be transparency in how the so called first come first served principle was applied.

[25] It was never disclosed in the admission letter addressed to the applicant that there were only 75 spaces that prospective students would be competing for and that each one of those spaces would be allocated on a first come first served basis. The letter does not say so. What the applicant was told was that he had 3 (three) days within which to accept his space. It surely cannot be that the 3 (three) day period and the respondents' interpretation of space availability and first come first served co-exist harmoniously. The respondents make no attempt to clarify this and in fact ignore the 3 (three) day period completely as if it is not there. The first respondent is an academic institution and the registrar, the author of the letter, is a highly educated individual who must be assumed to know what he says in the context of the circumstances in which he operates.

[26] It is public knowledge that there is a huge demand for education space in public institutions all the way up to the tertiary education institutions such as the first respondent. This is more so that the University itself serves some of the very poor communities in this country most of whom are trapped in poverty in the townships and rural areas. Their only hope of escaping the shackles of poverty is the further education that institutions such as the first respondent offer. It is public knowledge

that government has made great strides in its attempt to make further education accessible to ordinary people who cannot afford on their own, to send their children to school or to access higher education. I do not think that the registrar is oblivious to this reality as he goes about doing his work. I cannot express what I am saying here any better than Khampepe J did in *Moko*³ not so long ago in the first three paragraphs of the unanimous judgment of the Constitutional Court. She said:

“There are a few things as important for the flourishing of the society and its people as education. Through education, doors are opened to opportunities that were only before ever dreamt of. I am not exaggerating when I say that education changes lives. It enriches and develops our children so that they may reach the height of their potential. And, as our citizens are empowered through education to improve their future and achieve their dreams, our nation will undoubtedly prosper too.

The fundamental importance of education is recognised by our Constitution, which entrenches the right to education in the Bill of Rights. Section 29 (1) of the Constitution provides:

“Everyone has the right –

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

The case before us concerns a young man who asks this Court to assist him as a matter of urgency, in protecting and vindicating this right to education.”

[27] It was argued on behalf of the respondents that the right to further education in terms of section 29 (1) (b) of the Constitution is not a right to a tertiary education at a University. It is a right that provides an obligation upon the State to make further education progressively available and accessible by taking reasonable measures to do so. I think that the respondents’ submissions in this regard misconstrue both the applicant’s case and also, the ambit of the right itself. The applicant’s case is not

³ *Moko v Acting Principal of Malusi Secondary School & Others* 2021 (3) SA 323 (CC); 2021 (4) BCLR 420 (CC); (2022) 43 1LJ 2269 (CC).

that the third respondent has failed to do anything to make it possible for him to have access to further education provided for in section 29 (1) (b) of the Constitution. As I have already pointed out, government has made commendable progress to enable thousands of young people from very poor backgrounds to have real access to further education if they meet the admission criteria set by the further education institutions and register with those institutions. I understand the applicant's case to be that he was prevented from registering when his space was taken away from him unfairly and therefore in violation of his right of access to further education. He is before this Court to seek the protection and vindication of his right to further education which is being negated by the respondents in preventing him from registering.

[28] The conduct of the respondents, who, having allocated a space to the applicant and having given him 3 (three) days within which to claim it - the allocation of his space to somebody else contrary to the terms communicated to him for accepting it cannot be countenanced. That conduct stands in the way of the applicant exercising his right to further education and in fact impermissibly and therefore unconstitutionally denies him his right to further education.

[29] In *Moko*⁴ the ambit of the right contained in section 29 (1) (b) was explained as follows by the Constitutional Court:

“Section 29 (1) (b) gives learners like Mr Moko a right to study beyond Grade 12, if so minded. Mr Moko has made it abundantly clear that he intends to exercise this right, circumstances permitting. Hence this litigation. It is evident that the right to further education is adversely affected when a learner is unjustifiably prevented from completing the Grade 12 examinations in time to apply to tertiary institutions for further studies. As a result of the first respondent's conduct, the applicant almost lost the opportunity to pursue further education at a tertiary institution starting in February

⁴ Note 3 supra at para 37.

2021. It would not have broken his school career, as it did for those pregnant girls under the pregnancy policy in the *Welkom High School* case, but it would have broken his educational path by a year, which could unduly have resulted in an irretrievable alteration of his future.”

[30] The applicant is not seeking admission to the University. He was admitted and told what he needed to do to register. He was also given time frames within which to register. The unconstitutional conduct is not that of not admitting the applicant when in fact he qualifies to be admitted in terms of the applicable admission criteria. It is that of unlawfully preventing him from registering within the timelines that the University itself gave to him. He clearly acted with commendable promptitude, only to be told that the University has reached its target. He was never told of any target subject to which he would be prevented from registering even before the expiry of the 3 (three) day period if that target is reached. The letter vaguely refers to space limitations and first come first served both of which are in complete dissonance and are misaligned with the 3 (three) day period within which he was required to claim his space.

[31] The respondents’ case, as I understand it, is not that the applicant was dilatory in trying to register, nor could it cogently be. If it is, then they have failed to establish his dilatoriness by giving facts on which such a conclusion is reached. They do not even indicate the event that could precipitate his space being given to somebody else before the expiry of the 3 (three) day period. I cannot conceive of any situation of an offer being made to a person with a period within which it must be accepted, with no reservation of any right to withdraw the offer before its expiry or make it available to another person, not being binding on the offeror.

[32] The case of *Manna*⁵ on which the respondents' proposition on the right of the offeror to reject a late acceptance of the offer is based does not assist the respondents either. In *Manna* Griesel J said:

"I now turn to deal with the main defence relied on by the seller, namely that she had 'accepted' the offer some four days after it had lapsed, with the consequence that her purported 'acceptance' was a nullity. The argument on behalf of the seller is based on the proposition that 'an offer lapses if it is not accepted within the prescribed time.'

In my respectful opinion, however, this proposition is stated too widely and is potentially misleading. It correctly summarises the position where the offeror elects to reject the late 'acceptance' of an offer. The cases relied on by *Kerr* as well as by *De Wet & Van Wyk* for the above proposition all fall into this category. Clearly the late acceptance of an offer cannot bind the offeror: it is a trite principle of our law that, in order to bind the offeror, the acceptance must be made before the expiry of the offer⁶. The present case, however, is different: here, the offeror has elected to accept the late 'acceptance' and seeks to bind the offeree. The issue for determination is thus whether the offeree can avoid the agreement by relying on her own late 'acceptance' of the offer."

[33] It seems to me that the University was required to prove that the applicant's acceptance of the offer was out of the time prescribed in the admission letter. Vague epithets like availability of space and first come first served would indeed bind the applicant but only after the expiry of the 3 (three) day period. This is so because the University would not be bound to accept a late acceptance if the applicant had only attempted to register after 3 (three) days. Put differently, the University would be entitled to reject a late acceptance and the constitutional right to further education contained in section 29 (1) (b) would, in those circumstances, not avail the applicant. This means that the respondents are required to prove that the acceptance was late. They have failed to do so. That failure to prove that the acceptance was late cannot co-exist with prematurely giving applicant's space to another deserving student.

⁵ *Manna v Lotter and Another* 2007 (4) SA 3 & 5 (CPD) at 320 H to 321 A-B.

⁶ My underlining.

[34] Furthermore, the respondents were not entitled to appropriate for themselves the right to resile from or change the clear terms of the offer by actively preventing the applicant from registering. It appears from the respondents' papers that the registrar was more concerned with ensuring that there was no undersubscription for the LLB course. In other words, the registrar was less concerned about the possibility of the course becoming over-subscribed as he seemed to believe that he could simply and willy-nilly prevent the excess students from registering. It is even difficult to understand how issuing 276 admission letters with no conditions other than the 3 (three) days within which to register for 75 spaces made sense for a University that is in a country where there is literally a huge number of applications than can be allowed to register. Unless, and I hope that that is not the case, the University was prepared to play Russia roulette with the career aspirations and the evident huge thirst and hunger for access to higher education by many young people who are trying to break the generational backbone of poverty especially amongst black communities.

[35] In all these circumstances, the applicant succeeds and the conduct of the respondents falls to be declared to be in violation of section 29(1)(b) of the Constitution. The respondents must therefore be ordered to immediately allow the applicant to register for the Bachelor of Laws degree in the 2023 academic year for which he was admitted. I do need to emphasize that the first respondent, as a public institution, is obliged to promote and respect the rights of ordinary people as contained in the constitutional framework. It is also subject to constitutional scrutiny like all public institutions and is bound by the constitutional norms such as transparency and accountability and the respect for the constitutional rights and aspirations of the people of this country. This applies more especially to the young

people from our townships and rural areas most of whom weather many storms with resilience and tenacity and have to overcome many challenges just to reach and pass grade 12 with a decent percentage. There is no reason why costs should not follow the result.

[36] In the results the following order is made:

1. That this application be and is hereby enrolled, treated, heard and determined as an urgent application as envisaged in 6 (12) of the Uniform Rules of this Honourable Court and that the usual forms and time limits and requirements for service as provided for in terms of the Uniform Rules of Court and Practice Directives be dispensed with and/or that any non-compliance with such rules, and Practice Directives be and is hereby condoned;
2. The conduct of the first and second respondents, which resulted in the applicant's inability to register and enrol for the Bachelor Laws (LLB) degree at Walter Sisulu University, Mthatha, for the 2023 academic year be and is hereby declared to be a violation of the applicant's right to further education provided for in section 29 (1) (b) of the Constitution.
3. The first and second respondents' conduct of excluding and/or barring the applicant from registering and enrolling for the Bachelor of Laws (LLB) degree at the Walter Sisulu University, Mthatha for the 2023 academic year is declared to be unlawful and in breach of the respondents' constitutional obligation provided for in section 29 (1) (b) of the Constitution, not to prevent the applicant from exercising his right of access to further education.
4. The first and second respondents' conduct of excluding and/or barring the applicant from registering and enrolling for the Bachelor of Laws (LLB) degree at

the Walter Sisulu University for the 2023 academic year is declared to be in breach of contract.

5. The first and second respondents are directed and compelled to remedy the breach of contract, by allowing and assisting the applicant to register and enrol for the Bachelor of Laws (LLB) degree at the Walter Sisulu University, Mthatha within 2 (two) days from the date of this order.

6. The first and second respondents are ordered to pay the costs of this application.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant : S I VOBI

Instructed by : S. MBALANE ATTORNEYS INC.

MTHATHA

Counsel for the Respondent: D.C. BOTMA

Instructed by : DRAKE FLEMMER & ORSMOND (EL) INC

MTHATHA

Date heard : 28 February 2023

Delivered on : 07 March 2023

