

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

CASE NO.: 1178/2009

In the matter between:

MASIZENZELE PRIMARY CO-OPERATIVE LTD	1st Applicant
UNCEDO PRIMARY CO-OPERATIVE LTD	2nd Applicant
LAPHUMIKHWEZI PRIMARY CO-OPERATIVE LTD	3rd Applicant
NCEDULUNTU PRIMARY CO-OPERATIVE LTD	4th Applicant
ITHEMBA PRIMARY CO-OPERATIVE LTD	5th Applicant
SIYABULELA PRIMARY CO-OPERATIVE LTD	6th Applicant
UKUKHANYA PRIMARY CO-OPERATIVE LTD	7th Applicant
KUYALUNGA PRIMARY CO-OPERATIVE LTD	8th Applicant
ZOLILE PRIMARY CO-OPERATIVE LTD	9th Applicant
XOLANI PRIMARY CO-OPERATIVE LTD	10th Applicant
MKATE TRADING ENTERPRISE CC	11th Applicant
IRIS NONKOSINATHI MBODLELA	12th Applicant
BENNETT PUMELELE BANZANA	13th Applicant
QANGULE SIKHOLIWE	14th Applicant
NOTHEMBA THEODORA SEPTEMBER	15th Applicant
ANDILE MANYIFOLO	16th Applicant
MBANA LIVI	17th Applicant
NOKWALI THULANI	18th Applicant

And

KING SABATA DALINDYEBO LOCAL SECONDARY CO-OPERATIVE LTD	1st Respondent
CROSS BAR BORDER AGENCIES t/a AMANDLA FOODS COMMODITY SUPPLIERS	2nd Respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BESHE, J:

[1] This is an application for leave to appeal to appeal my judgment wherein I dismissed applicants' application with costs. The factual background of the matter is encapsulated in paragraph [3] of my judgment wherein I point out that:

The dispute between the parties appears to be a long standing one. At the centre of the dispute is what the deponent to the founding and replying affidavits describes as "a dispute or feud and infighting between sections of the first respondent hence there is this application". This is as a result of a belief held by the applicants that the moneys paid by the third respondent (Department of Education, Eastern Cape) to first respondent, a local secondary co-operative, for services rendered and goods supplied towards the implementation of a school nutrition program operating with the King Sabata Dalindyebo Region are being mismanaged and embezzled by the Board of Directors of first respondent.

[2] During the course of the on-going dispute between the parties, and prior to this application the matter served before *Miller J* who upon hearing the matter issued an order which set aside the election of seven of the eight respondents in that matter on 31 January 2007 as directors of the applicant in that matter, being King Sabatha Dalindyebo Local Secondary Co-operative Ltd. The first respondent in the present matter.

[3] My decision is sought to be appealed on the basis that it renders *Miller J's* pronouncement meaningless. I am not convinced that this is the case, or is the result of my judgment. Apart from the fact that the respondents in the matter that served before *Miller J* are not the same as the respondents in this matter, the “old board” which seemingly was validated by *Miller J's* order, held fresh elections to elect a new board. As indicated in my judgment, this appears to have been the catalyst for the amendment of the notice of motion to include a prayer that “the meeting and results thereof which was held on 23 July 2009 (sic) (meeting held in 2008) in which a purported new Board of Directors was appointed be set aside as null and void and of no consequences”. This was on the basis that the applicant disputed that a meeting was held according to the relevant statute. To this end, stated that until the original attendance register and agenda is produced for copies and inspection the meeting remains in dispute, hence my finding that this does not amount to a genuine dispute. I am unable to find that there are reasonable prospects of applicants succeeding on appeal.

[4] The application for leave to appeal is dismissed with costs.

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

APPEARANCES

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