

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 18/2020

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST TO THE JUDGES: <u>YES/NO</u>
(3)	REVISED.
DATE 25 MARCH 2025 SIGNATURE: 	

In the matter between:

SCHOOL GOVERNING BODY: PHASWANA
SECONDARY SCHOOL

1ST APPLICANT

WATTSON D. MATSHINGE: ACTING PRINCIPAL

2ND APPLICANT

SCHOOL GOVERNING BODY: RALSON TSHINANNE
SCHOOL

3RD APPLICANT

ALEX T. MALIAVUSA: ACTING PRINCIPAL

4TH APPLICANT

SCHOOL GOVERNING BODY: MBALENI PRIMARY
SCHOOL

5TH APPLICANT

**RONALD T. TSHILONGAMULENZHE: ACTING
PRINCIPAL**

6TH APPLICANT

**NATIONAL ASSOCIATION OF SCHOOL GOVERNING
BODIES, LIMPOPO PROVINCE**

7TH APPLICANT

-and-

**THE HEAD OF THE DEPARTMENT, DEPARTMENT OF
EDUCATION, LIMPOPO PROVINCE**

1ST RESPONDENT

THE CIRCUIT MANAGER, TA TSHIVHASE

2ND RESPONDENT

DISTRICT DIRECTOR: NG RAMBYANA

3RD RESPONDENT

**THE MEC, DEPARTMENT OF EDUCATION, LIMPOPO
PROVINCE**

4TH RESPONDENT

LUVHIMBI MURAVHA IVY

5TH RESPONDENT

TSHIPULISO NALEDZANI ENGELINAH

6TH RESPONDENT

TSHIVHASE TSHIFHIWA GRACE

7TH RESPONDENT

Delivered : 25 March 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **25 March 2025** at **10:00 am**.

Date heard : 4 November 2024

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

- [1] The Applicants launched an application for *inter alia* review (the 'Main Application'). Subsequent hereto, and on the 11th of June 2024, an order was granted joining the 5th, 6th and 7th Respondents to the proceedings.
- [2] The Applicants now apply for an order allowing them to file a Supplementary affidavit to the Founding affidavit. It is the Applicants submission that because of the joinder of these Respondents, there is a change in the facts that needs to be presented to Court for purposes of a just adjudication of the matter.
- [3] It is furthermore submitted that there is no need to file a substantial application with a separate Founding affidavit, as the order relating to the Joinder proceedings, already authorised and contemplated the supplementing of the existing documents before court.
- [4] The First to Fourth Respondents (hereinafter the 'Respondents') opposes the request to file a supplementary affidavit. The Respondents submit that the application suffers from a fatal flaw being that the Notice of Motion seeking to file

the supplementary affidavit, is not supported by a Founding affidavit. The discretion of the Court to allow the Supplementary affidavit is therefore not triggered.

Issues that require determination:

- [5] This Court is only called upon to determine if the filing of the Supplementary affidavit should be allowed.

The Applicable Legal Principles:

- [6] Rule 6(5) of the **Uniform Rules of Court** provides that:

'Within 10 days of the service upon the respondent of the affidavit and documents referred to in sub-paragraph (ii) of paragraph (d) of subrule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.'

- [7] This discretion must be exercised judicially with due regard to the prevailing circumstances of the specific case. The court will exercise its discretion in permitting the filing of further affidavits against the framework of the fundamental consideration that a matter should be adjudicated upon all the facts relevant to the issues in dispute.¹

¹ *Bader v Weston* 1967 (1) SA 134 (C) at 138D; *Dickinson v South African General Electric Co (Pty) Ltd* 1973 (2) SA 620 (A) at 628F; *Cohen NO v Nel* 1975 (3) SA 963 (W) at 970B

[8] Special circumstances may exist where something unexpected or new emerged from, for instance, the applicant's replying affidavit.² The Court must however be satisfied that no prejudice will result in allowing the filing of the supplementary affidavit which cannot be remedied by the appropriate cost order.

[9] Counsel for the Respondent referred to the matter of **Hano Trading CC v JR 209 Investments (Pty) Ltd and Another**³ where the Supreme Court of Appeal quoted with approval the following remarks in **James Brown & Hamer (Pty) Ltd (Previously named Gilbert Hamer & Co Ltd) v Simmons NO**⁴:

'It is in the interests of the administration of justice that the well known and well established general rules regarding the number of sets and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted.'

(Own underlining)

[10] In this Court's view, the intended Supplementary affidavit is not the epitome of drafting excellence. This does not deter from the fact that the joinder of the 5th of

² **Afric Oil (Pty) Ltd v Ramadaan Investments** CC 2004 (1) SA 35 (N) at 38J–39A

³ 2013 (1) SA 161 (SCA) at [12]

⁴ 1963 (4) SA 656 (A) at 660D – H

7th Respondents is common cause and that such joinder inadvertently results in a need to amend and / or supplement the Founding affidavit.

[11] It is apposite to note that the Respondents only object to the application on the highly technical ground that the said application is not accompanied by a Founding affidavit. It is trite law that a High Court has the right to regulate its own proceedings to ensure that justice prevails. Judges should be careful of being too pedantic at the price of sacrificing an equitable result. Under the circumstances, overly technical objections to proceedings must be disregarded in favour of an expedited and just finalisation of the matter.

[12] Having regard to the submissions made by the parties' counsels during the hearing of the matter and thereafter in their supplementary Heads of Argument, this Court is of the view that it is in the interest of justice that the filing of the Supplementary affidavit should be allowed.

Costs:

[13] The Applicants are substantially successful in the relief as prayed for in the Notice of Motion. They are however asking an indulgence which normally presupposes that the Applicant should be held responsible for the costs. The Respondents however failed to file opposing affidavits and, in effect, ambushed the Applicants without setting out the prejudice that they will suffer should the supplementary

affidavit be allowed into the record. Having regard to the circumstances, none can in any event be perceived by this Court.

- [14] On this basis, this Court is of the view that it would be just and equitable if the costs pertaining to these proceedings follow the outcome of the main application.

Order:

- [15] **In the result the following order is made:**

- 15.1 Applicants are granted leave to file their Supplementary Founding affidavit to the Main Application, dated the 18th of December 2020 within 10 (ten) days from the date of this order;**
- 15.2 The Respondents in the Main Application are granted leave to file a Supplementary Answering affidavit and / or an Answering affidavit(s), whatever the case may be, (if any), by no later than 20 (twenty) days from the date of receipt of the Applicant's papers referred to in paragraph 15.1 above;**
- 15.3 The Applicants are entitled to file a Replying affidavit(s), if any, within 15 (fifteen) days from the date of receipt of the Respondents' Answering and / or Supplementary Answering affidavit referred to in paragraph 15.2 above.**

15.4 The parties are directed to adhere to the Practice Directives of this Division pertaining to the filing of Heads of Argument, Practice Notes and the enrolment of the Main Application on the Opposed roll in due course.

15.5 The costs of this application shall follow the outcome of the Main Application in due course.



M BRESLER AJ

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES:

FOR THE APPLICANTS : **Adv S Sikhwari SC**

INSTRUCTED BY : **Ligege & Associates**
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**FOR THE FIRST TO FOURTH
RESPONDENTS**

: Adv. EN Gaisa

INSTRUCTED BY

: The State Attorney

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POLOKWANE HIGH COURT