

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 1471/2025

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED.

DATE: 14/07/2025

SIGNATURE...

A handwritten signature in black ink, appearing to be "R. D.", is written over a black rectangular redaction box.

In the matter between:

BBKS HIGH SCHOOL**Applicant**

And

DEPARTMENT OF EDUCATION – LIMPOPO**First Respondent****MEC FOR EDUCATION – LIMPOPO****Second Respondent****UMALUSI****Third Respondent**

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **14 July 2025**.

JUDGMENT

Makoti AJ

Introduction

- [1] This opposed application invokes the right to basic education, of particularly grade 12 learners. It concerns an application for registration of the Applicant, BBKS High School (the school) as an examination centre. To put in in the right context, the case is about the Limpopo Department of Education's refusal to register the school as an examination centre. As Applicant the School wants the Court to declare that the school has met the requirements for registration as grade 12 NSC examination centre.
- [2] The battle between the school and the Department has been ongoing since early 2022, after an application for it to be registered as a grade 12 NSC registration centre was lodged. Over three years later the school is still not allowed to operate as an examination centre. I will explore the reasons later in this judgment.

Relief sought by the school

- [3] There are three substantive orders that the school is asking the Court to grant. They are:
- "3. An order declaring that the applicant, BBKS High School has met the requirements for registration as a grade 12 NSC examination and for the issuing of the examination number to the applicant, BBKS High**

School by the respondents Department of Education and MEC for Education Limpopo.

- 4. An order interdicting the 1st and 2nd respondents Department of Education and MEC of Education Limpopo from discounting the provision of service to the applicant, BBKS High School.**
- 5. An order directing the 1st and 2nd respondents, Department of Education and MEC of Education Limpopo to issue a grade 12 NSC examination number to the applicant, BBKS High School.”**

[4] I may just mention that this matter was first launched as an urgent application that was scheduled for hearing on 25 February 2025. It was not heard on that day as it was struck off for lack of urgency. Subsequently, with the Judge President’s directive the case was set down for hearing on the special allocation roll of 28 May 2025.

The facts giving rise to the dispute

- [8] The school is registered as a non-profit organisation which was incorporated in terms of the provisions of the Non-Profit Organisation Act.¹ It operates as a school or learning centre offering basic education to learners doing grades 8 to 12 at Ga-Phala Village, D4134 RD, at or near Burgersfort.
- [9] Ordinarily, and as asserted by the school, the school is catering for the educational needs of minor children. The basic rights of minor children, including in respect to education, are constitutionally safeguarded. I will revert to this in due course.

¹ Act No. 71 of 1997.

[10] The school applied for allocation of grade 12 examination centre on 31 March 2022. This letter was duly delivered to the Department in its circuit on 19 September 2022. On 12 April 2023 the Department granted the school a provisional registration as a private school. It has been operating in that capacity since its registration. In the Department's letter the following is stated:

“1.12. The school is approved to offer from grade 8-12.

1.13. In terms of introduction of grade 10-12, the management of the school authority must apply for examination centre status with the Provincial Examination Directorate at this number 015 290 7827.”

[11] The school was in the same letter advised to heed the provisions of sections 17A(2)(a) and 23(1) of the General and Further Education and Training Quality Assurance Act, 2001² by ensuring that it applies for accreditation as private assessment body within twelve (12) months. Section 17A reads:

“(2)(a) The Council must develop policy for the accreditation of assessment bodies other than departments of education and must submit it to the Minister for approval.”

[12] Section 23(1) enjoins Council to develop policy and criteria for quality assurance of private education institutions. I assume that by making reference to these legislative provisions the Department intended to convey a message for the school to take into consideration the relevant provisions of the applicable policy and criteria.

[13] The school has registered learners, in grades 8 and 11, a list of which was sent to the Department on 06 December 2023. The learners who were in grade 11 have progressed to grade 12. It does not have accreditation or

² Act No. 58 of 2001.

registration as NSC examination centre. A response to the school's application for accreditation dated 11 December 2023 stated the following:

“3. Kindly be advised that to qualify to be an NSC examination centre you are required to consistently comply with among others the following:

3.1 Accreditation by Umalusi which is current/active [see Gazette 35830 of 29 October 2013]

3.2 A suitable venue to accommodate candidates, i.e. sufficient space and appropriate furniture to be used by candidates for examinations and assessment.

3.3 ...”

[14] Then, the Department advised the school that it is not in a position to be registered as an accreditation centre on account of the contents of paragraph 3.1, ostensibly due not having Umalusi accreditation. It was then directed to shed or move its learners in the relevant grades [10-12] to other schools.

[15] Prior to sending the letter to the school the Department had conducted a feasibility study. On 31 October 2023 the following was recommended as part of the feasibility study report:

“In light of the findings recorded above, the school meets the minimum requirements as stipulated. It is therefore recommended, that the application for registration as examination centre be considered for processing.”

[16] While the school is told that it cannot be registered because of the Umalusi issue, on 23 January 2025 one Mr Dawie Oberholster on behalf of the said Umalusi wrote to the school and advised it that:

“We have spoken to the Department of Education on your Accreditation Status. You need now to go to the Department and register an exam centre.

[17] Still, the Department would not budge to register the school as an examination centre. One does not know the exact details of the conversation between Umalusi and the Department, but the tone of the message from Mr Oberholster gives an impression that between those two authorities matters had been resolved which paved the way for the school to be registered as an examination centre.

[18] In a supplementary affidavit filed on 23 May 2025 the school highlighted a further challenge that it was facing. I quote the relevant paragraph which states the following:

“11. On 21 May 2025 the school received an email from Umalusi requesting the school for the NSC examination centre number because Umalusi cannot finalise the accreditation process without the NSC examination centre number.”

[19] Despite that the Department was advised of the Umalusi requirement, it still refused to provide the school with the NSC examination centre number. In the email from Ms Mariette Ebersohn dated 21 May 2025 Umalusi indicated to the school that it was ‘... *finalizing the accreditation report and in need of this information.*’ What this implies is that Umalusi is unable to attend to the accreditation of the school and the Department can’t provide the examination number as it awaits the schools’ accreditation by Umalusi.

[20] With what is going on the school and most importantly the learners are left in an invidious position. The learners’ rights to receive or access basic education are trampled by the ongoing issues. The challenges are within the

remit of the Department and / or Umalusi to resolve, yet the school is sent from *'pillar to post'* about the situation.

- [21] The school was forced to take litigation steps as it does not seem like there will be a solution soon. On 30 April 2025 the Court granted an order in favour of the school in which Mangena AJ disapproved of the Department's related conduct and directed it to restore possession of the SASAMS system to the school. To show the Court's displeasure the Department was mulcted with punitive costs on attorney and client scale.

Consideration of the applicable legislative and legal authorities

- [22] It is axiomatic that the Department relies on, amongst others, regulation 27 of the National Senior Certificate Regulations in its refusal to register the school as an examination centre. I do not usually quote large extract from legislation. However, for this specific application and given the nature of the orders that are sought, it is important that I do so. The regulation setting out qualification criteria reads as follows:

“(1) Examination centres must be registered by the assessment body in accordance with the following criteria-

- (a) a suitable venue to accommodate candidates, i.e. sufficient space and appropriate furniture to be used by candidates;**
- (b) security of the venue. See Annexure G;**
- (c) provision of proper lighting;**
- (d) availability of water and toilet facilities;**
- (e) suitably qualified teaching staff or members of the community who can be trained as invigilators;**
- (f) availability of a strong room or safe for the safekeeping of assessment material;**

- (g) the capacity to assess learners experiencing barriers to learning;
- (h) capacity to complete the School-Based Assessment requirements, Practical Assessment Tasks, and Language Oral Assessment. In the case of repeaters enrolled at registered institutions, such repeaters must comply with the requirements as contemplated in *Regulation 7(3), 7(4) and 7(5)*; and
- (i) report on previous irregularities at the centre with specific reference to the nature and outcome of the irregularities.”

[23] As I understand the case for the Department, it is not allowed to register an examination centre that has not been accredited by Umalusi. Nothing in the above regulation 27 suggests the procedure for registration which the Department relies upon, that the school must first be accredited by Umalusi before it is registered as an examination centre. There is no suggestion that the school does not meet any of the requirements listed above.

[24] In circular 110 of 2019 published by the Department there is an additional requirement. It provides that:

“(i) **All examination centres must be evaluated by an official of the assessment body, to verify that all the necessary facilities required for conducting examination are available at the centre. Furthermore, the Department as a “deemed” Umalusi Accredited (Public) Assessment Body”, must ensure strict security with regard to the storage of examination question papers at all times.”**

[25] This differs from the provisions of regulation 27 which I saw fit to quote in this judgment. Apart from regulation 27 the circular makes reference to regulation 26A of the same Regulations. The latter regulation deals with requirements

for registration of independent schools as examination centres. In sub-regulation (1) the following is stipulated:

“In order for an independent school to be registered as an examination centre by either an accredited private assessment body or the state, such a school, besides being registered as a school, must also be accredited by Umalusi.”

[26] Once again, there is no suggestion that an independent school must first be accredited by Umalusi to be registered as an examination centre. In any case, Umalusi itself has indicated that it requires the school to be provided with an examination centre number before it may accredit it. I add that section 27(3) only requires that an independent school that has

[27] The current applicable National Policy on the Conduct, Administration and Management of the Assessment of Senior Certificate³ provides in clause 33 that:

“33. Establishment and registration of assessment centres: Norms and Standards

(1) All independent providers, which request the Department of Education to conduct the Senior Certificate examination for the first time, must register with the Department of Education in terms of the agreed procedures. ... Every centre should be registered under its own name with the provincial department of education. ...”

[28] From what is contained in the policy, the Department is still the authority that should register the school as an examination centre. At the very least, where it may be required for Umalusi to be involved, the Department is still required

³ National policy on the conduct, administration and management of the assessment of the Senior Certificate, published by means of Government Notice No. 1081 in Government Gazette No. 26789 of 17 September 2004 (as amended).

to provide an examination centre number which will enable Umalusi to perform its tasks. Umalusi has said so in no uncertain terms and the Department had no answer for that. Instead, in its attempt to hold on to its position, the Department still suggests that the school must be accredited by Umalusi before it may register it as an examination centre.

- [29] The Department also referred to a policy that was published in terms of General Notice 31337. At clause 26A(1) the policy states that an independent school that wants to be registered as an examination centre must also be accredited by Umalusi. I do not see as requiring that the accreditation must happen before an independent school can be registered as an examination centre. That requirement appears to be only a construct of the Department. It is not in accordance with any legislative provision. If anything, it appears to me that a qualifying independent school (which has satisfied the requirements for accreditation and registration) is required to must apply to the relevant assessment body for registration in its own names. The policy has not made it clear as to which institution is considered to be the assessment body. That is not the point to detain us in this case.
- [30] So far I have not come across a single legislative provision that confirms the position that has been adopted by the Department. It seems to me irrational that the Department has sought to rely on a procedure that is not existent in law to refuse the application to register the school as an examination centre. In our law a decision a decision is considered irrational when it is so unreasonable that no reasonable person could have arrived at it. Where a measure is not rationally connected to a permissible objective, then that lack

of rationality would result in such a measure not constituting a permissible limitation of a Constitutional right.⁴ This is that kind of a situation.

- [31] I add that a decision that is irrational is unlawful. Further, it is well settled in our constitutional jurisprudence that that administrative bodies or organs of the state perform only those powers and functions that have been conferred or delegated.⁵ What the Department is doing in this application is to impose on the school obligations that are not in terms of legislation. When doing this it omits to take into account the fact that the school has satisfied the requirements as stipulated in legislation.
- [32] The Department's actions bely the principle in *Pharmaceutical Manufacturers Association of South Africa and Another: In Re Ex Parte President of the Republic of South Africa and Others*⁶ in which the Court held that the principle of legality demanded that the exercise of public power should not be arbitrary or irrational.
- [33] There is another consideration here, which is that the Department's officials conducted an investigation at the school and returned a report that the school meets all the minimum requirements for accreditation and registration as an examination centre. The school is put in a position where, upon doing all that was necessary from its side, it suffers because of the contradicting positions adopted by the Department and Umalusi.
- [34] One would have expected the Department, upon being satisfied, to assist the school with the remaining processes to have it registered. Instead, it raised procedural issues that do not exist in its refusal to register the school as an

⁴ De Beer and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2020] ZAGPPHC 184; 2020 (11) BCLR 1349 (GP) (2 June 2020) at para 6.6.

⁵ City of Tshwane Metropolitan Municipality v Afriform and Others 2016] ZACC 19 (21 July 2016).

⁶ 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC).

examination centre. Also, even if accreditation with Umalusi was a requirement, I am of the view that the Department ought to have provided the school with an examination centre number that is needed by Umalusi to finalise the accreditation process. Its refusal to provide the number is unfathomable. It ignores the fact that it, and not any other institution, granted the school approval to start operating.

[35] I am minded that there are minor children who are already attending at the school whose educational progress might be adversely affected by the decision taken by the Department. Their futures are at stake. This calls for the Court to intervene.

[36] Additionally, I have carefully considered the minimum requirements for registration and accreditation as an examination centre. The school has indeed satisfied the minimum requirements, and that is so even on the version of the Department.

Whether the school has satisfied the requirements for interdict

[37] The school wants the Department and the MEC interdicted and restrained from discontinuing the provision of service to the applicant. Final interdict is sought. The requirements for final interdict are well-known in our law. Failure to satisfy any one of them will lead to the application failing. Thus, it is an absolute requirement for such applicant to make out a case to the satisfaction of the court to grant the interdictory relief sought.

[38] The applicable test is long existing and was set out in *Setlogelo v Setlogelo*,⁷ and is that an applicant who is approaching Court for a final interdict must establish (i) a clear right; (ii) reasonable apprehension of harm; and (iii) that

⁷ 1914 AD 221.

the applicant has no other suitable remedy.⁸ The requirements were revisited in *Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another*⁹ in which it was emphasised that an interdict is not there merely for the taking.

[39] In its oral and written arguments the school did not deal with the requirements at all. Perhaps the school took the view that it was no longer necessary to pursue the interdictory relief in light of the order granted by Mangena AJ, to which I have referred earlier.

[40] Though the school did not address the interdict aspect of the case before me, I have nonetheless considered the cases pleaded by the parties in their respective affidavits. I am not persuaded with the case for the school. If I were to grant the interdict, the order would have the effect of tying the Department's hands from making the decision where circumstances may warrant such decision to be made.

[41] Courts are cautioned to not be tempted do so and in *National Treasury*¹⁰ where it was held amongst others that:

“A court must also be alive to and carefully consider whether the temporary restraining order would unduly trespass upon the sole terrain of other branches of Government even before the final determination of the review grounds. A court must be astute not to stop dead the exercise of executive or legislative power before the exercise has been successfully and finally impugned on review. This approach accords well with the comity the courts owe to other

⁸ *Pilane and Another v Pilane and Another* (CCT 46/12) [2013] ZACC 3; 2013 (4) BCLR 431 (CC) (28 February 2013).

⁹ *Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another* 2022 ZACC 7.

¹⁰ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012).

branches of Government, provided they act lawfully. Yet another important consideration is whether in deciding an appeal against an interim order, the appellate court would in effect usurp the role of the review court. Ordinarily the appellate court should avoid anticipating the outcome of the review except perhaps where the review has no prospects of success whatsoever.”

- [42] This is such a case where this Court would offend separation of powers by granting the interdict prayed for. The question of when and how the Department provides service to the school is a matter that falls entirely within its decision-making. The Court can only get involved when it is alleged that such decision, if and when taken, falls short of legality or fairness. Consequently, I am disinclined to grant the interdict sought by the school at this stage.

Court's order

- [43] The following order is made:
- [a] It is hereby declared that the applicant, BBKS High School has met the requirements for registration as a grade 12 NSC examination and for the issuing of the examination number to the applicant, BBKS High School by the respondents Department of Education and MEC for Education Limpopo.
 - [b] The first and second respondents are directed, as the Department of Education and MEC of Education Limpopo, to issue a grade 12 NSC examination number to the applicant, BBKS High School.
 - [c] The first and second respondents shall pay the costs of this application on party and party scale B.



M. Z. MAKOTI
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

JUDGMENT RESERVED : 28 MAY 2025
JUDGEMENT DELIVERD : 14 JULY 2025

APPEARANCES:

FOR APPLICANT : PJ DE NECKER
BOTHA MASSYN THOBEJANE ATT
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