

**IN THE NORTH GAUTENG HIGH COURT
(REPUBLIC OF SOUTH AFRICA)**

CASE NUMBER:

In the matter between:

SECTION27

First Applicant

HANYANI THOMO SECONDARY SCHOOL

Second Applicant

CONDANI LYDIA MASIPHEPHETHU

Third Applicant

and

MINISTER OF BASIC EDUCATION

First Respondent

MEMBER OF THE EXECUTIVE COUNCIL:

Second Respondent

LIMPOPO DEPARTMENT OF EDUCATION

SUPPORTING AFFIDAVIT

I, the undersigned

BRIAN WAFAWAROWA

hereby state under oath:

1. I am the Executive Director of the Publishers Association of South Africa (“PASA”), a publishing industry body with offices at Unit 104, 1st floor, House Vincent, Wynberg Mews, Wynberg, Cape Town. I am duly authorised to depose to this affidavit.
2. The facts contained in this affidavit are both true and correct and, unless the context indicates otherwise, within my personal knowledge. Where I make legal submissions, I do so on the advice of my legal advisors.
3. PASA is an industry body which, *inter alia*, represents the interests of its member publishers. PASA has been communicating with the National Department of Basic Education (“DBE”) and the Limpopo Department of Education (“Department”) on behalf of its members in relation to the failure by the Department and the DBE to place orders for textbooks in Limpopo.
4. PASA’s members supply textbooks to the Department and to other provincial departments of education on receipt of orders for each academic year. The process for the procurement and delivery of textbooks is the following:
 - 4.1. The DBE produces a central catalogue of recommended textbooks. Provincial departments of education collect requisition forms from schools in their province and place consolidated orders for textbooks from this national catalogue.
 - 4.2. Provincial education departments commence ordering their textbooks from publishers in August or September each year for the following academic year. Those departments which place their orders by September receive their books prior to their schools closing in December for school holidays each year.
 - 4.3. Some provincial departments order their textbooks much later, as late as December or January. Those schools usually receive their textbooks early in the academic year.

- 4.4. If the publishers of textbooks have those books in stock, the textbooks will be delivered within two weeks of the orders being placed. If it is necessary to print the textbooks ordered, delivery may take up to eight weeks.
- 4.5. Ordinarily, publishers deliver textbooks to a central warehouse, and the relevant provincial department will ensure that the textbooks are delivered to each school. On some occasions, publishers will negotiate with provincial departments to deliver textbooks directly to schools. In these circumstances, it takes an additional one to two weeks for the textbooks to be delivered. Such an arrangement may also attract an additional fee charged to the provincial department.
- 4.6. As far as I am aware, the current situation in Limpopo is unprecedented: I have never known of a provincial department or the DBE to fail entirely to order textbooks for its schools four months into the academic year.
5. On 5 December 2011, when no orders had been placed by the Department for textbooks, PASA contacted the Director-General in the DBE to ascertain why there was a delay in ordering textbooks and to offer help where necessary to avoid the situation reaching “crisis level”. A copy of this correspondence is attached as **“BW1”**. No response to this letter was received.
6. A follow-up e-mail on 14 December 2011, a copy of which is attached as **“BW2”**, indicates that orders for textbooks in Limpopo had still not been placed. PASA warned that in respect of the provinces which had not yet placed orders for textbooks, learners would be without books for the start of the academic year.
7. I followed up again on 15 December 2011, requesting details as to who PASA should liaise with to ensure that textbooks were ordered and delivered as soon as possible. A copy of this e-mail is attached as **“BW3”**.

8. No written response to this correspondence was received from the Department or the DBE. I communicated telephonically with the Deputy Director-General at the DBE. He indicated that the DBE was experiencing problems with the data on enrolments and book needs and that they were dealing with the problem.
9. The Department has not yet placed any orders for textbooks for the 2012 academic year. Towards the end of March 2012, the Head of the Intervention Team, Dr Anis Karodia, started to engage publishers and to place tentative orders. He indicated that final orders would be placed after a meeting with the DBE on 16 April 2012. However, on 16 April 2012, Dr Karodia indicated that the DBE had taken over the procurement of textbooks and that he could therefore not place any final orders. On that basis, publishers have assumed that the tentative orders placed by Dr Karodia have been withdrawn.
10. Publishers have still not received orders for textbooks and many of them do not have stock. As soon as form orders for textbooks are placed, they can take steps to ensure that sufficient textbooks are printed. However, until these form orders are placed, no such steps can be taken.
11. On 20 April 2012 PASA received communication from the Director-General at the DBE, informing them that the procurement process to be followed in respect of textbooks would be communicated to us shortly. A copy of this communication is attached as **"BW4"**.
12. On 26 April 2012, Dr Karodia addressed a letter to the publishers, indicating that the Department has finalised its plans for the procurement of textbooks. A copy of this letter is attached as **"BW5"**. The letter indicates that information as to quantities of textbooks required is contained on a compact disc, available for collection from Polokwane. This is impractical as most of the publishers are based in Cape Town. It is not clear to me why a more expedited method such as e-mail or facsimile could not be used.

13. The letter also indicates that the Department will negotiate with publishers based on the price of textbooks quoted to them, the cost of delivery to a central venue and the availability of stock.
14. The fact that the Department is initiating a bidding process suggests that the procurement of textbooks is not being treated with the requisite urgency. This bidding process is unprecedented and unnecessary, as the products and prices were decided on in compilation of the national catalogue of textbooks. The Department's intention appears to be to negotiate with publishers, despite the fact that textbooks have still not been ordered four months into the academic year, and despite the fact that negotiations have already been conducted. I submit that this negotiation process will only further delay the procurement of textbooks.
15. The fact that textbooks will be delivered to a central venue in the province also creates further unnecessary delays: this means that arrangements will still have to be made for the textbooks to be delivered to the districts in Limpopo, and from there to each school within the districts. As far as I know, the Department and the DBE have not made any arrangements for the distribution of textbooks.
16. Finally, there is no indication in Dr Karodia's letter that the speed with which books can be printed and delivered will play any role in the bidding process. Given the urgency of this matter and the severe impact of the delay by the Department and the DBE in ordering textbooks, I submit that the speed at which orders can be processed should be a central criterion for the Department and the DBE.
17. Although on the face of it the letter dated 26 April 2012 indicates some movement on the part of the DBE, it appears to me that the procurement of textbooks is not being prioritised and afforded the required degree of urgency. On this approach, and without any steps to expedite the procurement and delivery of textbooks, I do not believe that it is likely that textbooks will be delivered to Limpopo schools by the end of May, as suggested by Dr Karodia and expanded upon in the founding affidavit.

18. I have read the founding affidavit deposed to by Nikki Stein and confirm its contents insofar as they relate to me.

DEPONENT

SIGNED AND SWORN BEFORE ME AT _____ ON THIS THE ___ DAY OF _____ 2012, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT HE HAS NO OBJECTION TO TAKING THE OATH AND THAT HE CONSIDERS THE SAME AS BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS