REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

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

Signature .....

Date 27/11/2017

CASE NO: 4582/2016

In the matter between:

MERIDIAN OPERATIONS COMPANY NPC	**FIRST APPLICANT**
MERIDIAN COLLEGE POLOKWANE	**SECOND APPLICANT**
NORTHERN ACADEMY PRIMARY SCHOOL	**THIRD APPLICANT**
NORTHERN ACADEMY SECONDARY SCHOOL	**FOURTH APPLICANT**

and

THE MEC FOR LIMPOPO DEPARTMENT OF EDUCATION	**FIRST RESPONDENT**
THE HEAD OF THE LIMPOPO DEPARTMENT OF EDUCATION	**SECOND RESPONDENT**

JUDGMENT

MAKGOBA JP

[1] This is a review application in terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). The application concerns two reliefs sought by the Applicants.

[2] First, the review and setting aside of the decision that was taken by the First Respondent on or about 6 April 2016 to dismiss the appeal that had been made to him by the Second, Third and Fourth Applicants in terms of section 48(5) of the South African Schools Act 84 of 1996 and the substitution thereof with a decision that the appeal is upheld.

[3] Second, and consequent upon a demand for payment being made by the Limpopo Department of Education, the issue of a declaratory order that the second, third and fourth Applicants are not liable to repay the subsidies that were paid to them by the Limpopo Department of Education in terms of section 48 of the South African Schools Act 84 of 1996 in respect of the period 15 July 2013 to 14 February 2014 in the

amounts of R 543 028.74, R 973 440.00 and R 1 311 840.00 respectively.

[4] The First Applicant, Meridian Operations Company NPC, is a non-profit company incorporated in terms of the Companies Act 71 of 2008 ("the Companies Act"). The First Applicant is also a non-profit organization duly registered with the Department of Social Development in terms of the Non-Profit Organisations Act 71 of 1997 ("the NPO Act") with registration number 116-433NPO. The First Applicant owns the Second, Third and Fourth Applicants, the three being independent schools duly registered as such with the Second Respondent in terms of section 46 of the South African Schools Act 84 of 1996 ("the Schools Act").

[5] The Second, Third and Fourth Applicants were recipients of subsidies from the Limpopo Department of Education ("the Department") in terms of section 48 of the Schools Act including the period 15 July 2013 to 14 February 2014. The three Applicants were the Appellants in an appeal that was made to the First Respondent in terms of section 48(5) of the Schools Act. Their unsuccessful appeal is the subject matter of the present review application.

[6] According to the Norms and Standards for School Funding published in GN 869 of 31 August 2006 ("the Norms and Standards") the conditions for eligibility for an independent school to be considered for subsidy are that the independent school concerned

(a) is registered by the Provincial Education Department (PED);

(b) has made an application to the PED in the prescribed manner;

(c) has been operational for one full school year;

(d) is a registered non-profit organisation in terms of the Non-Profit Organisations Act 71 of 1997;

(e) is managed successfully according to a management checklist determined by the PED;

(f) agrees to unannounced inspection visits by officials of the PED or person duly authorised by the PED and

(g) has not been established in direct competition with a nearby uncrowded public school of equivalent quality.

Factual Matrix

[7] The only condition that is presently of moment in the present review application is condition (d), which concerns the NPO Act.

[8] On 22 November 2012 the First Applicant (Meridian Operations Company NPC) purchased the school business comprising of the Third

It is mentioned that the funding of the schools consists of the school fees paid by learners and the subsidy which should be received from the Department. The agreement provided that school fees income was split so that 40% of the fees were apportioned to Capmac in respect of the provision of its services and the making available of movable and immovable assets in order to conduct the schooling activities, and 60% of the fees were apportioned to the school. The income received by the school was utilized for payment of the teachers' remuneration, operational expenses and to pay management fees to Curro. It is mentioned that 80% of the total management fees charged by Curro are paid by Capmac and the balance of 20% by the schools in question.

[11] Accordingly, by way of the aforesaid agreements, the First Applicant became the owner of the schools business comprising of the Second, Third and Fourth Applicants and Capmac became the owner of the immovable properties together with the buildings thereon at which the schools are operated. The aforesaid agreements make it apparent that Curro's relation to the school business comprising of the Second, Third and Fourth Applicants is limited to the provision of management services to the schools in question, for which it is paid a management fee by the First Applicant, and that Curro does not own the schools in question.

[12] On 7 June 2013 and after the First Applicant purchased the Second, Third and Fourth Applicants, Curro informed the Department in writing that Curro had purchased same. The Applicants contend that such information communicated to the Department was incorrect and that the error occurred because the author of the aforesaid letter did not properly understand the correct relationship between Curro, Capmac and the First Applicant, as well as the other three Applicants.

[13] On 15 April 2014 the Department sent a copy of an internal memorandum to the Applicants recording that the schools in question had been bought by Curro in 2012; that Curro was a profit making organisation which was listed on the Johannesburg Stock Exchange ("JSE") and that a query was raised regarding the payment of subsidies in terms of section 48 of the Schools Act to unqualified schools. The memorandum recommended that the payment of the subsidies be placed on hold.

[14] The aforesaid memorandum was followed by a letter dated 17 April 2014 from the Department. In this letter the Department recorded that the schools in question had been purchased by Curro; that Curro was listed on the JSE "as an education company" and that the schools in

question did not qualify for subsidies in terms of section 48 of the Schools Act and / or section 176 of the Norms and Standards for subsidies in respect of the years 2013 and 2014. The Department accordingly demanded repayment of the subsidies that were paid to the Second, Third and Fourth Applicants during 2013 and 2014 in the amounts of R 543 028.74, R 973 440.00 and R 1 311 840.00 respectively.

[15] In subsequent correspondence to the Department Curro made an attempt to correct the said error and informed the Department that the First Applicant had in fact purchased the schools in question. Representatives of Curro also met with representatives of the Department on 30 July 2014 and 9 October 2014 in an effort to explain the true facts to the Department. Notwithstanding the efforts by Curro the Applicants received a letter from the Department dated 11 May 2015 conveying to the Applicants that consequent upon finding that the schools in question did not qualify for subsidies, the subsidies were terminated.

[16] The Applicants were dissatisfied with the finding that the schools in question did not qualify for subsidies and the termination of the subsidies, and on 8 June 2015 the Second, Third and Fourth Applicants lodged an appeal with the First Respondent in terms of section 48 (5) of the Schools Act.

[17] On or about 6 April 2016 the Applicants' attorneys received a letter from the First Respondent advising that the Second, Third and Fourth Respondents' appeal had been dismissed. The First Respondent gave the following reasons for the dismissal of the appeal:

"*3. The reason for the dismissal of the appeal is that Curro Holdings, a company listed on the JSE owns Meridian College Polokwane, Northern Academy Primary and Northern Academy Secondary Schools.*

4. The three (3) schools mentioned herein were bought by Meridian Company and Curro Holdings is the holding company of the Meridian Company, Curro Holdings is listed on the JSE, therefore it does not qualify for government subsidy"

[18] The effect of the dismissal of the appeal by the First Respondent was that the Second, Third and Fourth Applicants would no longer receive subsidies from the Department in terms of section 48 of the Schools Act.

In this review application the Applicants seek an order that the impugned decision be reviewed and set aside, and be substituted with a decision that the appeal be upheld.

Grounds of Review

[19] The grounds of review upon which the Applicants rely regarding the impugned decision are one, more or all of the following:

19.1. The impugned decision was taken upon one, more or all of the following errors of fact, alternatively, errors of mixed fact and law, namely

19.1.1. That the Second Respondent has determined that the Applicants, or any one of them, are not registered non-profit organisations in terms of the NPO Act, and withdrew subsidies to them on the strength of that finding;

19.1.2. That Curro owns the Second, Third and Fourth Applicants and

19.1.3. That Curro is the holding company of the First Applicant.

19.2. That the decision was materially influenced by these errors as per section 6(2)(d) of PAJA.

Points *in limine*

[20] The Respondents raised the following points *in limine* and argued that the review application should be dismissed on these grounds alone:

20.1. That the founding affidavit as well as its confirmatory affidavit are are irregular in that they have not been properly sworn to and attested as required in terms of the Regulations promulgated in terms of the Justice of the Peace and Commissioners of Oaths Act 16 of 1963.

20.2. That the Second, Third and Fourth Applicants did not have *locus standi* to lodge an appeal in terms of section 48(5) of the Schools Act; that the First Applicant should have lodged the appeal and therefore the appeal did not comply with section 48(5) of the Schools Act and was defective.

[21] For the sake of convenience I shall deal with and decide on the points *in lime* towards the end of my judgment in this matter.

Legal Framework

[22] The First Applicant is a non-profit company duly incorporated in terms of the Companies Act 71 of 2008. Over and above that the First Applicant is a non-profit organisation duly registered in terms of section 13 of the Non-Profit Organisations Act 71 of 1997.

[23] The provisions concerning non-profit companies are set out in Schedule 1 of the Companies Act which provides the following:

1. **Objects and policies –**

"(1) The Memorandum of Incorporation of a non-profit company must -

(a) Set out at least one object of the company, and each such object must be either -

(i) a public benefit object, or

(ii) an object relating to one or more cultural or social activities, or communal or group interests;

(2) A non-profit company –

(a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in its Memorandum of Incorporation and

(b) Subject to paragraph (a) may –

(i) acquire and hold securities issued by a profit company; or

(ii) directly or indirectly, alone or with any other person, carry any business, trade or undertaking consistent with or ancillary to its stated objects.

(3) A non-profit company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a member or director, or person appointing a director of the company, except –

(a) as reasonable

(i) remuneration of goods delivered or services rendered to or at the direction of, the company; or

(ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the company.

(b) as a payment of an amount due and payable by the company in terms of a bona fide agreement between the company and that person or another;

(c) as payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or

(d) in respect of any legal obligation binding the company.

[24] 2. **Fundamental transactions -**

"*(1) A non-profit company may not –*

(a) amalgamate or merge with, or convert to, a profit company; or

(b) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company.

[25] A non-profit company is not required to have members but if its Memorandum of Incorporation provides for the company to have

members, the company may allow for membership to be held by juristic persons, including profit companies. In *casu* it is common cause that the First Applicant is a subsidiary of Curro in terms of section 3(1)(a)(ii) of the Companies Act.

[26] The Respondents (ie the Department) stated in their correspondence to the Applicants that the latter did not comply with the requirement of section 176(d) of the National Norms and Standards for School Funding which state that " an independent school may be considered for a subsidy if it ..... is a registered non-profit organisation in terms of the Non-Profit Organisations Act 71 of 1997." Section 1 of the NPO Act defines "non-profit organisation" as meaning "a trust, company or other association of persons –

(a) established for a public purpose and

(b) the income and property of which are not distributed to its members or office-bearers except as reasonable compensation for services rendered."

[27] The NPO Act defines a "Registered non-profit organisation" as "a non-profit organisation registered in terms of section 13" and section 13 makes provision for the application for registration of a non-profit organisation. Section 13(2) obliges the Director of non-profit

organisation to register an applicant as a non-profit organisation "if satisfied that the applicant complies with the requirements for registration."

Section 16(1) of the NPO Act provides that a certificate of registration of a non-profit organisation is sufficient proof that the organisation, *inter alia,* has met all the requirements for registration and has been registered in terms of the Act.

[28] In *casu* the First Applicant (Meridian Operations Company NPC) who owns the Second, Third and Fourth Applicants, has been issued with a certificate of registration as a non-profit organisation in terms of the NPO Act. A copy of the registration certificate is attached to the Applicants' founding affidavit and marked annexure MOC 3. This certificate is sufficient proof that the Applicants have met all the requirements for registration as non-profit organisations. It is therefore wrong for the Respondents to second guess the Applicants with regard to their status as non-profit organisations. Consequently any decision taken by the Department to terminate or withdraw the subsidies on the stated basis that the Applicants are not NPOs is on a material error of fact and law and would be susceptible to being set aside on this narrow issue alone.

[29] The ownership structure and the contractual relationships of the Applicants and the various entities which had a bearing on the functioning of the schools have been set out in the factual background above. Various agreements were entered into to regulate the relationships between Curro, the Applicants and Capmac. Capmac is a property holding and investment company. It is the owner of the assets (both immovable and movable) upon which the Applicants (schools) operate. Curro is not the owner of the Applicants. Curro provides management services as an expert in management and operations of schools and its facilities to the Applicants is in terms of written agreements and is therefore paid management fees by the Applicants and Capmac. The First Applicant (Meridian Operations Company NPC) is a registered NPO that does not derive a profit for distribution to its owners / members. It is the registered owner and operator of the Second, Third and Fourth Applicants (the schools).

Issues to be determined

[30] The main issues to be determined in this application are:

30.1. Whether or not the decision that was taken by the First Respondent on or about 6 April 2016 to dismiss the appeal that had been made to him by the Second, Third and Fourth Applicants in terms of section 48(5) of the Schools Act falls to be

reviewed in terms of PAJA and / or the principle of legality, set aside, and substituted with a decision that the appeal is upheld.

30.2. Whether or not a declaratory order falls to be made that the Second, Third and Fourth Applicants are not liable to repay the subsidies that were paid to them by the Second Respondent in terms of section 48 of the Schools Act in respect of the period 15 July 2013 to 14 February 2014 in the amounts of R 543 028.74, R 973 440.00 and R 1 311 840.00 respectively.

Submissions and findings

[31] As a reason for termination of the subsidies and the subsequent dismissal of the appeal made to it, the First Respondent had concluded that Curro owned the Second, Third and Fourth Applicant. Such a conclusion was based on the letter from Curro to the Department dated 6 June 2013. The relevant portion of the said letter states:

"**RE: Registering of change of Ownership of an independent school in Limpopo Department of Education, Capricorn District – Nothern Academy Primary (EMIS NO: 2010009) and Northern Academy Secondary (EMIS NO: 2010046**)

"*Meridian Polokwane was bought by Curro Holdings in 2012 from the previous owner, Mr Martin Christo Van Breda and Ms Maria Elizabeth Grobler. Meridian Polokwane is already registered with the Department of Education in Limpopo Province and is currently providing education to learners from Gr R – Gr 12.*"

[32] The Applicants contend that the aforesaid letter contained incorrect information. They stated that the error occurred because the author of the said letter did not properly understand the correct relationship between Curro, Capmac and the First Applicant as well as the Second, Third and Fourth Applicants. The First Applicant's response is contained in its letter dated 29 April 2014 in which it stated the following:

"**Recovery of 2013/2014 Subsidy Paid**

Your letter dated 17 April 2014 regarding subsidy payments to the Northern Academy Schools and former Meridian College Polokwane refers.

It appears as if there has been a misunderstanding regarding the ownership of the Northern Academy. Curro Holdings does not own Northern Academy. The operational side of the school is owned by the Meridian Operations Company NPO (registration number 116 – 433 NPO). This NPO is also a registered Public Benefit Organisation registered with SARS. The land and buildings and other capital assets are owned by Capmac and Property Management Company which is a registered company which employs funds, invested in it

by the Public Investment Corporation (PIC) to fund affordable, independent quality education.

Curro Holdings provides certain management functions to the Meridian Operations Company to ensure good financial governance and to make sure that the most up to date and effective curriculum management practices are being administered (e.g the use of tablets and other methodologies in the classroom)."

[33] The Applicant's explanation of the error as outlined above has not been challenged by the Respondents in their papers before this Court. The explanation is therefore accepted and the Respondents' conclusion that Curro owns the Second, Third and Fourth Applicants does not stand.

[34] Counsel for the Applicants submitted that whilst it is correct that Curro is listed on the JSE and that Curro did not qualify for the subsidy, the issue in the appeal before the First Respondent was whether Second, Third and Fourth Applicants qualified for the subsidy and not whether Curro qualified for same. Accordingly, the finding by the First Respondent that Curro did not qualify for the subsidy bore no relation to the issue in the appeal that served before the First Respondent, and the finding did not answer that issue. I agree.

[35] Whilst it is correct that in law the First Applicant is a subsidiary of Curro, the finding by the First Respondent that Curro therefore owned the Second, Third and Fourth Applicant is legally and factually incorrect.

It is trite law that a company is a legal persona and that property vests in the company itself, and not, for example, in its shareholders or in its holding company. Accordingly in *casu,* it is the First Applicant, which has bought the Second, Third, and Fourth Applicants, and not Curro.

In **Dadoo Ltd and Others v Krugersdorp Municipal Council 1920 AD 530 at 550** the Court held that:

"*A registered company is a legal persona distinct from the members who compose it, the company is at law a different person altogether from the subscribers to its Memorandum, and though it may be that, after incorporation, the business is precisely the same as it was before, and the same persons are managers, and the same hands receive profits, the company is not in law the agent of the subscribers or a trustee for them. That result follows from the separate legal existence with which such corporations are by statute endowed, and the principle has been accepted in our practice. Nor is the position affected by the circumstances that a controlling interest in the concern may be held by a single member. This conception of the existence of a company as a separate entity distinct from its shareholders is no merely artificial and technical thing. It is a matter of substances;*

property vested in the company is not, and cannot be, regarded as vested in all or any of its members."

[36] Section 29 of the Constitution is relevant in this case. The appropriate provisions are as follows:

29. **Education** (1) Everyone has a 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.

(1) .....

(2) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -

(a) do not discriminate on the basis of race;

(b) are registered with the State; and

(c) maintain standards that are not inferior to standards at comparable public educational institutions.

(3) Subsection (3) does not preclude state subsidies for independent educational institutions.

[37] The Respondents' conduct in terminating the subsidies in respect of the Applicants herein was in breach of the right of Applicants, in terms of section 29(3) and (4) of the Constitution read with section 48 of the Schools Act regarding subsidies and to just administrative action in

terms of section 33 of the Constitution read with PAJA. The Respondents are also in breach of the rights of the schools' learners to basic education in terms of section 29(1)(a) of the Constitution.

These breaches, in my view cannot be saved by the exceptions and / or limitations set out in section 36(1) of the Constitution.

See: **KwaZulu-Natal Joint Liason Committee v MEC Department of Education KwaZulu-Natal and Others 2013 (4) SA 262 (CC)**

[38] In the answering affidavit the Respondents seek to introduce what appears to be a new ground for termination of the subsidies. They seek to introduce an argument in defence of the impugned decision to the effect that either the Department has some form of a discretion regarding subsidies, or that the law permits some form of exception regarding subsidies, based upon considerations such as "the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination"

[39] In my view it is impermissible and not open to the Respondents to raise and place reliance on the aforesaid arguments in the answering affidavit in this review application, so as to bolster the decision, in circumstances where same did not form part of the reasons advanced by the First

Respondent when dismissing the appeal. The aforesaid arguments constitute new grounds and do not qualify for consideration.

In **Jicama 17 (Pty) Ltd v West Coast District Municipality 2006 (1) SA 116 (C)** the Court found that new reasons which are put forward for the first time in answering papers cannot answer a review application. The principle in **Jicama** *supra* was reiterated, accepted and approved by the Supreme Court of Appeal in **National Lotteries Board v South African Education and Environment Project 2012 (4) SA 504 (SCA) at par [24]**.

[40] I come to the conclusion that the impugned decision, insofar as it constitutes an administrative action in terms of PAJA, falls to be reviewed and set aside. Insofar as the impugned decision did not constitute administrative action in terms of PAJA, it did constitute an exercise of public power by the First Respondent and it is thus subject to review on the basis of the principle of legality.

Relief sought consequent upon the Review

[41] Consequent upon the review of the impugned decision, same falls to be set aside in terms of section 8(1)(c) of PAJA.

The section provides that

"*8(1) The Court or tribunal, in proceedings for judicial review in terms of section 6(1), may grant any order that is just and equitable, including orders –*

(a).....

(b).....

(c) Setting aside the administrative action and –

(i) remitting the matter for reconsideration by the administrator, with or without directions; or

(ii) in exceptional cases -

(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action..."

[42] In *casu* the Applicants pray for an order in terms of section 8(1)(c)(ii)(aa) of PAJA, that is substitution or variation of the administrative action. The Applicants acknowledge that the power of a Court provided in section 8(1)(c)(ii)(aa) is extraordinary and is exercised sparingly. The Applicants submit that the circumstances of this case are exceptional within the ambit of section 8(1)(c)(ii)(aa) of PAJA and that the Court should substitute the First Respondent's decision with a decision that the appeal be upheld rather than remit the matter to the First Respondent for reconsideration.

See: **Gauteng Gambling Board v Silverstar Development Ltd and Others 2005 (4) SA 67 (SCA) at pars [28] – [29]**.

[43] In the more recent and authoritative decision of the Constitutional Court in **Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another 2015 (5) SA 245 (CC)** it was held that the factors to be taken into account in deciding if a case is exceptional are:

(1) whether the Court would be in as good a position as the administrator to make the decision;

(2) whether the decision is a foregone conclusion;

(3) the delay caused by the litigation has to be considered; and

(4) bias or incompetence on the part of the administrator.

[44] In *casu,* I am of the opinion that there are exceptional circumstances to justify substitution of the First Respondent's decision and these are that

(a) the First Respondent was faced with only two outcomes, namely to grant the appeal or dismiss it;

(b) the First Respondent decided the incorrect outcome where the correct outcome was self – evident;

(c) this Court has all the relevant information at its disposal to the extent that the outcome is a foregone conclusion; and

(d) it would serve no purpose to remit the matter to the First Respondent for reconsideration just so that he can decide on the correct outcome.

[45] It is noted that the Department made a demand for repayment of the subsidies in respect of the period 15 July 2013 to 14 February 2014 in the amounts of R 543 028.74, R 973 440.00 and R 1 311 840.00 respectively.

The demand for repayment was premised upon the incorrect basis that Curro had bought and owned the Second, Third and Fourth Applicants and that Curro did not qualify for subsidy. This is contrary to the correct facts as shown in this judgment. I agree with the Applicants' submission that it would be appropriate for this Court to grant a declaratory order that the Applicants are not liable to repay the subsidies to the Department in terms of section 8(1)(d) PAJA.

Technical Arguments by Respondents

[46] The Respondents have raised two technical arguments in the form of points *in limine*. The Respondents contend that the Applicants' founding affidavits are irregular in that they have not been properly sworn to and attested as required in terms of the Regulations promulgated in terms of the Justice of the Peace and Commissioners of Oaths Act 16 of 1963.

That it is not apparent from the attestation clause whether the deponent is a male or female in as much as the words "he / she" appear on the affidavit without indicating whether the deponent is male or female. That either "he" or "she" should have been cancelled to indicate the gender of the deponent. In response the Applicants contend that the argument is overly technical and falls to be dismissed. I agree with the Applicants contention.

[47] The Respondents rely on the authority in **Absa Bank Ltd v Botha NO and Others 2013 (5) SA 563 (GNP)** for the proposition that the failure to differentiate between male and female (or "she / he") in the attestation of an affidavit renders the affidavit irregular. In my view that case is distinguishable from the present matter. The case relied upon by the Respondents concerned a verifying affidavit in a summary judgment application where the Defendants objected to the application by notice in terms of Rule 30, as an irregular proceeding on the grounds that the Plaintiff's affidavit in support of summary judgment did not constitute an affidavit as contemplated in Rule 32(2). The present matter concerns a review and not summary judgment and in the present matter the Respondents have not resorted to the provisions of Rule 30.

In addition, the Respondents have not indicated that they were prejudiced by the purported defect in the aforesaid affidavits but instead chose to accept the validity of the affidavits and answered same.

[48] In any event the Court has a discretion to refuse an affidavit which does not comply with the Regulations. See: **Absa Bank Ltd v Botha NO and Others supra at para [8]**.

In **Standard Bank v Dlamini and Another (42232/2015) [2016] ZAGPPHC 26 (22 January 2016)** it was held that the requirements as contained in the Regulations are not peremptory but merely directory. See also **Lohrman v Vaal Ontwikkelingsmaatskappy (Edms) Bpk 1979 (3) SA 391 (T)**. The point *in limine* is accordingly dismissed.

[49] The second point *in limine* raised by the Respondents is that the Second, Third and Fourth Applicants did not have *locus standi* to lodge an appeal in terms of section 48(5) of the Schools Act; that the First Applicant should have lodged the appeal. That the appeal did not therefore comply with section 48(5) of the Schools Act and was defective. The Respondents' argument in this regard has no merit. The First Respondent, to whom the appeal was lodged, never raised this issue when the Applicants' appeal was adjudicated, but determined the appeal on the basis that they did have *locus standi*.

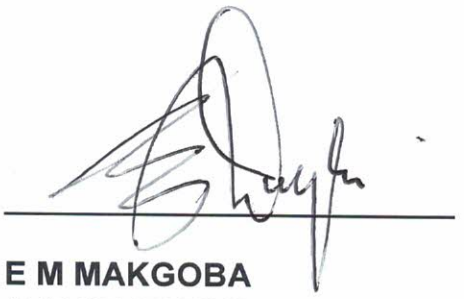
Conclusion

[50] The review application falls to succeed and the following orders are granted:

(a) That the decision that was taken by the First Respondent on or about 6 April 2016 to dismiss the appeal that had been made to him by the Second, Third and Fourth Applicants in terms of section 48(5) of the Schools Act is reviewed and set aside and substituted with a decision that the appeal is upheld.

(b) It is declared that the Second, Third and Fourth Applicants are not liable to repay the subsidies that were paid to them by the Limpopo Department of Education in terms of section 48 of the Schools Act in respect of the period 15 July 2013 to 14 February 2014.

(c) That the Respondents shall pay the costs of this application jointly and severally, the one paying the other to be absolved, such costs to include the costs of two Counsels.



E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

Conclusion

[50] The review application falls to succeed and the following orders are granted:

(a) That the decision that was taken by the First Respondent on or about 6 April 2016 to dismiss the appeal that had been made to him by the Second, Third and Fourth Applicants in terms of section 48(5) of the Schools Act is reviewed and set aside and substituted with a decision that the appeal is upheld.

(b) It is declared that the Second, Third and Fourth Applicants are not liable to repay the subsidies that were paid to them by the Limpopo Department of Education in terms of section 48 of the Schools Act in respect of the period 15 July 2013 to 14 February 2014.

(c) That the Respondents shall pay the costs of this application jointly and severally, the one paying the other to be absolved, such costs to include the costs of two Counsel.

E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on	:	**30 October 2017**
Judgment Delivered	:	**28 November 2017**
For Applicants	:	**Adv. J P Vorster SC** **Adv. C P Wesley**
Instructed by	:	**De Klerk & Van Gend Attorneys** **c/o DDKK Attorneys** **Polokwane**
For Respondents	:	**Adv. E K Tsatsi** **Adv. M Masindi**
Instructed by	:	**State Attorney** **Polokwane**