

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

Case No: 1416/2015

In the matter between:

ROSINA MANKONE KOMAPE	1 ST Plaintiff
MALOTI JAMES KOMAPE	2 ND Plaintiff
MOKIBELO LYDIA KOMAPE	3 RD Plaintiff
LUCAS KHOMOTSO KOMAPE	4 TH Plaintiff

And

MINISTER OF BASIC EDUCATION	1 ST Defendant
MEMBER OF THE EXECUTIVE COUNCIL, LIMPOPO DEPARTMENT OF EDUCATION	2 ND Defendant
PRINCIPAL OF MAHLODUMELA LOWER PRIMARY SCHOOL	3 RD Defendant
SCHOOL GOVERNING BODY, MAHLODUMELA LOWER PRIMARY SCHOOL	4 TH Defendant

**DEFENDANTS' AFFIDAVIT EXPLAINING THE REVISED ERADICATION OF THE
BASIC PIT TOILETS IMPLEMENTATION PLAN**

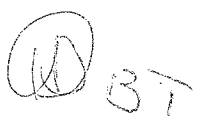
DBT

I, the undersigned,

KHATHUTSHELO ONICA DEDEREN

Do hereby declare under oath as follows

1. I am an adult female, employed by the Limpopo Department of Education (“LDoE”) as the Head of Department, with address situated at 113 corner of Biccard and 24 Excelsior Streets, Polokwane, Limpopo Province.
2. I am authorised to depose to this affidavit on behalf of the first and second defendant and the facts contained herein fall within my personal knowledge, unless indicated otherwise by the context, and are furthermore to the best of my belief both true and correct.
3. Elsewhere in this affidavit where I rely on the information given to me by other officials of the LDoE and or other state organs, I accept the information to be true and correct.
4. At the end of this affidavit, I attach the confirmatory affidavits of Mr David Van Der Westhuijzen (“*Mr Van Der Westhuijzen*”) who is the Head of Infrastructure

 BT

at the national Department of Basic Education (“DBE”) and Isaac Malatji (“*Mr Malatji*”), the Chief Director Infrastructure, Limpopo, as they are the officials in charge of infrastructure within the respective state departments and thus, they have personal knowledge of most of the facts deposed to in this affidavit.

5. I also attach the confirmatory affidavit of Mr Mveli, the Director-General (“DG”) of DBE, as he has been part of the delegation of senior officials attending meetings leading up to the development and compilation of this implementation plan and has given the DBE’s full support (human and financial resources) to the realisation of the implementation plan. Mr Mveli as the administrative head and accounting officer of the DBE has the necessary authority to give such support.
6. I attach the confirmatory affidavits of Mr Mveli marked “CA1”, Mr Van Der Westhuijzen marked “CA2” and that of Mr Malatji marked “CA3”.

A. BRIEF BACKGROUND AND CONTEXT

7. On 17 September 2021, the Court delivered a judgment pertaining to the reasonableness of the plan that the defendants had filed in compliance with the structural order granted by the court on 24 April 2018. In the judgement the court found that the plan that was filed did not meet constitutional muster and was thus declared to be unreasonable.

8. In order to cure the deficiency of the plan that was filed, the Court ordered that the defendant file a revised plan which plan should address the detailed information set out in paragraphs 2 of the order. Paragraph 2 of the order is divided into several sub-paragraphs and this affidavit briefly sets out the information required in those paragraphs.

9. This brief outline of the information is augmented by the comprehensive implementation plan and several other documents and annexures which in their totality set out the plan on how the defendants intend to eradicate the sanitation backlog and thereby comply with the Court's structural order. I attach the implementation plan and mark it annexure "**AA**" and the Executive Summary of the implementation plan marked "**AAA**".

10. The Head of Infrastructure in the DBE, Mr Van Der Westhuijzen, and Mr Malatji the Chief Director Infrastructure in the LDoE, with the assistance of other officials of the DBE, LDoE and a service provider ("SML Projects") appointed by the LDoE have worked together to compile the implementation plan and worked out its modalities. These officials have briefed me and the Director General of the DBE, Mr Mveli, and other senior managers in both the LDoE and the DBE. We as the senior officials of the LDoE and the DBE are thus satisfied that the defendants have to the best of our abilities complied with the structural order of this court and file herewith the report as so directed by the court.

Handwritten signature and initials in the bottom right corner of the page.

11. I am advised that in order to take the court in the defendants' confidence, it is necessary that I take the court through the implementation plan and succinctly set out how the implementation plan provides the information required in terms of the structural order. To do so, I deal with each paragraph of the order, separately and or as a group depending on the circumstances, by giving a brief description of the answer to the relevant paragraph and thereafter refer the court to the relevant annexure as well as the portion of the implementation plan which is also attached to this affidavit.

B. DISCUSSION OF THE IMPLEMENTATION PLAN

i. Paragraphs 2.1, 2.1.1 to 2.1.4 of the structural order

12. Paragraph 2.1 of the structural order required the defendants to provide an accurate, consolidated and verified list of schools with basic pit toilets in the Limpopo Province.
13. As at the date this affidavit was prepared, the actual number of ordinary public schools in the Limpopo Province is 3666. In addition to the 3666, there are 35 Special Needs Schools ("SNS"). As such, the total number of public schools in Limpopo Province is 3701. However, there are 60 combined schools having Primary as well as Secondary learners. The LDoE has added these 60 combined schools in the computation of the ordinary number of public schools

because the Norms and Standards for Primary school sanitation differs from those applicable to Secondary schools. Therefore, the total number of public schools in Limpopo Province is indicated as 3761 for purposes of determining the sanitation backlog.

14. In October 2021, the LDoE appointed SML Projects as the Infrastructure Technical Resource Unit ("*ITRU*"). The ITRU was given the task to compile the accurate, consolidated and verified list of schools and to conduct a field assessment of the sanitation at the public schools in Limpopo Province.
15. As stated above, Limpopo Province has 3761 schools which have different types of pit toilets. The one type of pit toilets is generally referred to as the basic pit toilets. These basic pit toilets are prohibited by the Norms and Standards and must be eradicated.
16. The other type of pit toilets is referred to as, the Ventilate Improved Pit ("*VIP*") toilets. The LDoE has taken a decision to adopt the VIP toilets as standard toilets to be used where it is not viable to provide waterborne sanitation. The VIP toilets are internationally accepted as appropriate sanitation and comply with the requirements of SANS 10400Q. They are considered appropriate form of sanitation in terms of the Norms and Standards for school infrastructure.

17. I attach hereto 4 excel spreadsheet which the defendants consider to be a "Master Bundle". In the Master Bundle there are two thousand four hundred and twenty-one (2 421), Primary schools, and one thousand three hundred and forty (1 340), Secondary schools. The spreadsheets set out details of the Primary and Secondary School as follows:

17.1 A list of Primary schools marked "**A1**", and a list of Secondary schools marked "**A2**". "A1" and "A2" set out the following information:

17.1.1 The school's name;

17.1.2 The School EIMS number;

17.1.3 Education District;

17.1.4 The current learner enrolment number for the 2021 academic year;

17.1.5 Number of educators at the school;

- 17.1.6 The source from where the number of the current enrolled numbers is derived;
- 17.1.7 Source of the existing number of toilets (for example, the physical assessment SML, the CSIR report, LP PC, ASIDI or SAFE);
- 17.1.8 Source of pit toilets numbers (for example CSIR and physical assessment, SML)
- 17.1.9 Number of toilets as required by the Norms and Standards in line with the enrolment of learners at the relevant schools;
- 17.1.10 Determination of the backlog of toilets that must be constructed at each school.
- 17.2 A list of Primary schools marked "**B1**", and a list of Secondary schools marked "**B2**". "B1" and "B2" set out the following information:

17.2.1 The breakdown of the costs of construction are also subdivided into various categories for the construction process, namely:

17.2.1.1 Number of units (toilets) required, the rate per unit and the total for the units required;

17.2.1.2 Refurbishment, number of units to be refurbished, rate per unit and the total units to be refurbished;

17.2.1.3 Desludging, number of units to be desludged, rate per unit to be desludged, and total amount of the units to be desludged;

17.2.1.4 Demolition, number of units to be demolished at each school, number of units to be demolished, the rate for demolishing a unit and the total amount for the units to be demolished;

- 17.2.1.5 Rainwater harvesting, the number of rainwater tanks, the rate per tank, and the total amount for the tanks;
- 17.2.1.6 Fencing required, quantity/ size, the rate and the amount required;
- 17.2.1.7 Walkway required, quantity/ size, rate and amount required;
- 17.2.2 Subtotal for the contractor work to be undertaken;
- 17.2.3 20% allowance for Preliminary and General ("P&G");
- 17.2.4 15% contingency allowance;
- 17.2.5 Sub-total for construction costs excluding VAT;

17.2.6 Total for Professional Service Provider fees, made up of the following:

17.2.6.1 Architectural fees;

17.2.6.2 Engineering fees;

17.2.6.3 Quantity Surveyor fees;

17.2.6.4 Geotechnical survey;

17.2.6.5 Topographical survey;

17.2.6.6 Occupational Health & Safety; and

17.2.6.7 Social Facilitation.

17.2.7 Estimated project costs, excluding VAT;



BT

17.2.8 Estimated project costs, including VAT;

17.2.9 Three categories of sanitation need, categorised into:

17.2.9.1 Priority 1 (inappropriate), those school with only pit latrines;

17.2.9.2 Priority 2 (inadequate), those schools with sanitation but the number of toilets is inadequate and do not match the ration required in the norms and Standards; and

17.2.9.3 Priority 3 (adequate), those schools with the required number of toilets as per the norms and standards but require refurbishment and also have plain pit toilets that have not been demolished.

18. The structural order also required the defendants to further categorise the schools with pit toilets as follows:

- 18.1 First, those with pits only;
- 18.2 Second, those with pit toilets alongside other forms of sanitation;
- 18.3 Third, those with pit toilets which are not in use but have not yet been demolished, and
- 18.4 Lastly, those with sanitation facilities which are otherwise non-compliance with sanitation requirements of the Regulations Relating to Minimum Norms and Standards for Public Infrastructure (*"School Infrastructure Norms"*).
19. Although this information is already contained in the Master Bundle attached as "A1" and "A2" above, for ease of reference and for the Honourable Court's convenience, the defendants have extracted the list of those schools which fall under these three categories and attach each list separately. Each of these lists can be verified against the Master Bundle.
20. From the physical assessment and desktop analysis referred to above, as at the date of this affidavit, the three categories of the state of sanitation are as follows:

- 20.1 Priority 1 is a list of schools that only have basic pit toilets. As of 14 December 2021, there are 286 schools which only have basic pit toilets. I attach a list of Primary schools with only basic pit toilets, and mark it annexure “C1”, and a list of Secondary schools with only basic pit toilets and mark it annexure “C2”. The names of these schools can also be found in the Master Bundle (A1 and A2) where the information pertaining to the number of toilets and the backlog of same is indicated. The names of these schools also appear in the Master Bundle B1 and B2, where the construction costs are calculated, and their priority is also indicated.
- 20.2 Priority 2 is a list of 1 629 schools with pit toilets in use alongside other forms of sanitation (for example VIP). I attach a list of Primary schools with basic pit toilets in use alongside other forms of sanitation, and mark it annexure “D1”, and a list of Secondary schools with basic pit toilets in use alongside other forms of sanitation and mark it annexure “D2”. Like priority 1, these schools can also be found in the Master Bundle “A1” and “A2” as well as “B1” and “B2” with the same information as indicated in the paragraph above.
- 20.3 Priority 3 is a list of schools with basic pit toilets which are not in use but have not yet been demolished. I attach a list of Primary schools with basic pit toilets which are not in use but have not yet been demolished, and mark it annexure “E1”, and a list of Secondary

schools with basic pit toilets which are not in use but have not yet been demolished and mark it annexure “E2”. Again, these schools can be found in the Master Bundle, A1, A2, B1 and B2.

20.4 Priority 3 also has a list of schools with sanitation facilities which are otherwise non-complaint with the sanitation requirements of the Regulations Relating to Minimum Norms and Standards for Public Infrastructure (“*Norms and Standards*”). The names and details of the Primary school which are otherwise non-compliant with the Norms and Standards are apparent in annexure A1. Whilst the name of the Secondary schools which are non-compliant with the Norms and Standards is apparent in annexure A2.

ii. Paragraph 2.1.5, 2.2 and 2.5 and 2.9 of the structural order

21. In compliance with the structural order and to enable the appointed service provider to conduct a physical assessment of schools, the LDoE compiled a “Condition Rating System” that is used in the LESIMS to identify which schools should be prioritised.
22. The Condition Rating System, categorises the condition of sanitation (toilets) into three (3) categories, namely where:

- 22.1 50% of the toilets need to be replaced completely, the condition is reflected as 'Poor';
- 22.2 30% of the toilets require refurbishments and thus are partly functional, the condition is reflected as 'Average';
- 22.3 10% of the toilets require refurbishment and thus they are partly functional, the condition is reflected as 'Good'.
23. A further criterion that was used for determining the schools that should be prioritised is the quintile system. The quintile system is utilised for allocation of financial resources and determines which schools are the poorest and thus require more funding than others. There are five (5) quintiles, with quintile 1 being the 'poorest' quantile and quintile 5 being the 'least poor'.
24. In utilising the quintile system, quintile 1 to 3 were prioritised as they are the poorest of all the quintiles and often have infrastructure challenges and have no alternative funds to finance its challenges. Once the schools in quintile 1 to 3, and particularly the schools with category 5 to 3 of the Condition Rating System will be prioritised.
25. The LDoE utilised the following procedure when conducting the assessment:

- 25.1 The Assessor accompanied by a representative of the school from the facilities management conduct the assessment;
- 25.2 Once the assessment is completed, a school representative (preferably the principal) signs off on the document to evidence that the assessment was conducted and therefore serves as verification that the school was assessed;
- 25.3 After the principal and or a school representative has signed the assessment form, the Assessor submits the form on the LESIMS App that has been developed for conducting the physical assessment of sanitation needs. Once the information is uploaded on the LESIMS the Project Manager receives a notification of the submission and he or she approves the submission. If the submission is denied, the Assessor receives notification for rectification purposes.
- 25.4 As a last step of the verification process, and as a built-in mechanism to ensure the accuracy of the data, after the approval of the submission by the Project Manager, a data capturer contacts the school to confirm the data that has been collected by the Assessor and captured on the LESIMS.
26. The above procedure is the methodology adopted by the defendants for purposes of auditing the list of schools.

27. As stated above, the audit process has been finalised (as indicated above that a total of 2467 schools have been physically assessed and the remainder of 1 294 was assessed as a desktop analysis which discounted them against the programmes that are already under implementation and are at various stages of construction as evidenced in the relevant excel spread sheet indicating where each has been discounted). I attach hereto the following lists of schools that have reached practical completion:
- 27.1 A list of Primary schools under the ASIDI programme that have reached practical completion “**F1**”;
 - 27.2 A list of Secondary schools under the ASIDI programme that have reached practical completion and mark it “**F2**”;
 - 27.3 A list of Primary schools under the SAFE programme that have reached practical completion “**F3**”;
 - 27.4 A list of Secondary schools under the SAFE programme that have reached practical completion and mark it “**F4**”;
 - 27.5 A list of Primary schools under the LDoE (In-house) programme that have reached practical completion “**F5**”; and
 - 27.6 A list of Secondary schools under the LDoE (In-house) programme that have reached practical completion and mark it “**F6**”.
28. Since the audit process has been completed, going forward, to update the progress of the eradication of the sanitation backlog, the process that will be followed to update the eradication will be as follows:

- 28.1 The implementing Agent will have weekly meetings where progress is reported and the Architect, who is the principal agent overseeing the project will complete the NEIMS assessment form and the information captured on this form will be uploaded on the mobile application by the official responsible for capturing the data;
- 28.2 After the information is uploaded on the mobile application, the Project Manager will update the status of the relevant schools on the school list; and
- 28.3 The Project Manager will also update the summary of the breakdown of the scope and cost of work that is outstanding in each priority list.
29. As stated, elsewhere in this affidavit, the LDoE appointed a service provider to conduct a field assessment of the sanitation conditions of the schools in Limpopo. I attach hereto 2 lists of schools for both Primary and Secondary schools where the service provider has evaluated the conditions at the assessed schools and rated them in accordance with the Condition Rating System. I mark the list of Primary schools' condition assessment as annexure "G1" and the list of Secondary schools' condition assessment as annexure "G2".

iii. Paragraphs 2.3 and 2.4 of the structural order

30. The structural order also directed the defendants to identify the sanitation programmes each of the school on the list will fall under as well as to explain how the different sanitation programmes will be coordinated to implement the revised plan.
31. The implementation plan has not allocated any of the schools to the Implementing Agents for the following reasons:
- 30.1 All Implementing Agents currently managing the projects will continue to manage all the projects that will address the lists of the schools that constitute the backlog as set out in annexure "H1" (which is a list of Primary schools' backlog) and annexure "H2" (which is a list of the Secondary schools' backlog).
- 30.2 The defendants have decided that work packages of 200 schools will be allocated to the Implementing Agents which in turn will allocate work pages of 100 schools to different contractors.
- 30.3 Once the work packages which were allocated to the Implementing Agents are nearing completion, further packages of 200 schools will be allocated to those implementing Agents who are nearing the initial work package.
- 30.4 This decision was taken to encourage competition and efficiency in the execution of work so that the different Implementing Agents and

the contractors will only be given further work packages when there is efficiency.

30.5 Otherwise, if all the schools are allocated immediately and divided amongst the Implementing Agents, should there be any delays on any of the Implementing Agents, the processes of re-allocation would have to be conducted and that later there may be contracts that may need to be set aside and therefore cause unnecessary delays.

iv. Paragraphs 2.6 of the structural order

32. The structural order requires that the defendants identify the relevant departments, officials and implementing agents that will be tasked with ensuring the implementation of the plan.
33. The defendants have decided to have three levels at which the plan will be monitored and implemented. The three levels are; Executive, Tactical and Operational levels.
34. Since the plan will be implemented by the national department (DBE) and the provincial department (LDoE) the two state departments will conclude an Implementation Protocol Agreement, in terms of the Intergovernmental Relations Framework Act, Act 13 of 2005. This agreement will be concluded on or before 30 January 2022.

35. The officials responsible for the executive oversight for the implementation of the plan will be overseen by the Director-General of the DBE, Mr Mveli, together with the LDoE Head of Department Ms Dederen. These executives will primarily focus on monitoring and ensuring the progress of the implementation plan as well as providing the strategic direction for the implementation of the plan.
36. The second layer of the management and implementation of the plan will be the Programme Steering Committee under the leadership of Mr Van Der Westhuijzen and Mr Malatji, from the DBE and LDoE respectively.
37. The operational level of the implementation plan will be the responsibilities of the respective Implementing Agents. These Implementing Agents will manage the plan through their Project Managers who will report to the executives of the Implementing Agents.
38. For purposes of accountability, the defendants have decided that the persons at the Implementing Agents who will be accountable for ensuring the implementation of the plan is; Mr Ramphele who is the Group Executive Infrastructure at the Development Bank of South Africa. Ms Malaka, the Chief Executive Officer of the Independent Development Trust and Mr Mbedzi who is the Chief Executive Officer of The Mvula Trust.



39. The ITRU will be responsible for monitoring and administering the contract and the responsible person is Mr Mojapelo who is the Chief Executive Officer of SML Projects. The ITRU will offer secretariat services to all the management structures.

v. ***Paragraphs 2.7 and 2.8 of the structural order***

40. The court directed that the period within which the eradication of the sanitation backlog must be eradicated has to be drastically shortened and that a revised deadline be detailed and so too the justification for the proposed deadline.

41. The revised deadline for the complete eradication of sanitation backlog will be a period of approximately 6 years and the eradication is envisaged in order of priority and allocated to the following financial years:

40.1 The construction of sanitation facilities for priority 1, will commence and completed in the 2022/2023 financial year (1 year);

40.2 The construction for priority 2 will commence in the 2024/2025 financial year and completed 2026/2027 financial year (3 years); and

40.3 The construction of priority 3 will commence in 2027/2028 and completed 2028/2029 financial year (2 years).

42. It further bears mention that even though the anticipated commencement for priority 3 will be in 2027/2028, the demolition of the unused basic pit toilets will run parallel to the construction of priority 1 schools.
43. From the Master Bundle each school is indicated whether it falls under priority 1, 2 or 3 and thus the estimated period to address each of the specific sanitation needs of each of the schools identified on the list appears on the Master Bundle that are already attached as annexure "B1" for primary schools and "B2" for secondary schools.
44. The reasons for each of the identified school is categorised as either priority 1, 2 or 3 have been listed in the implementing plan and each category determines the prioritisation of the category. As evident, priority 1 are schools with only basic pit toilets, this is evidently more pressing than schools that have other alternative toilets which require the ratio to be complaint with the Norms and Standards and or require refurbishment. All these categorizations are explained in the implementation plan attached to this affidavit.

vi. Paragraph 2.10 of the structural order

45. The structural order directed the defendants to provide a detailed budget for the implementation of the revised plan, the estimated costs of all inputs, and the funds available to implement the plan.

46. The inputs costs for the implementation of the plan are all set out in annexure B1 and B2 of the Master Bundle.
47. The funds available are set out in slide 42, 43 and 45 of the implementing plan where the defendants demonstrated that there will be a reallocation of funds in the DBE and LDoE's Education Infrastructure Grant ("EIG") and the School Infrastructure Backlog Grant ("SIBG")

vii. Paragraph 2.11 of the structural order

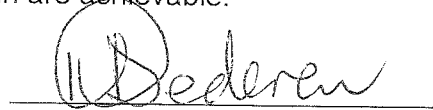
48. The structural order also directed the defendants to explain what interim measures will be put in place for those schools' urgent sanitation needs and safety risks pending the delivery of permanent sanitation measures.
49. The defendants have identified schools listed in priority 1 as the schools whose needs are urgent as they only have basic pit toilets for use by learners. As stated above, there are 286 schools with only basic pit toilets. These 286 schools require a total of 5 516 toilets.
50. A single mobile toilet is rented out at R4, 500.00 per month and thus the monthly costs of procuring the 5 516 toilets will be R25 million per month.

51. Since the priority 1 schools are envisaged to be constructed over a 12-month period, the defendants will procure the 5 516 mobile toilets for a period of 12 months at the total costs of R298 million rand. This money will be taken from the 2022/2023 financial year under the LDoE's Education Infrastructure Grant ("EIG").

52. To ensure that the mobile toilets are available when the academic year commences, the defendants will utilise the emergency deviation procurement processes envisaged in the relevant Treasury Notes.

C. CONCLUSION

53. When regard is had to the revised implementation plan filed together with this affidavit and the supporting documents, the defendants submit that the plan is reasonable, and the objectives set out therein are achievable.



DEPONENT

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at Potlakoane on this 16th day of December 2021, and that the Regulations contained in Government Notice R1648 of 19 August 1977, as amended, have been complied with.

10


COMMISSIONER OF OATHS

COMMISSIONER OF OATHS:

FULL NAMES:

BUBBLY TSHILIDZI TSHIKOVHI

CAPACITY:

Commissioner of Oaths
Practising Attorney

ADDRESS:

Suite 12 JC Limpro
6 Hans Van Rensburg Str
Polokwane