IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE HIGH COURT: MTHATHA

CASE NO: 1474/12

Heard on: 31/05/13

Delivered on: 31/05/13

In the matter between:

SILENCE MATTA t/a IDUTYWA
SCHOOL OF EXCELLENCE Applicant

and

THE MEMBER OF THE EXECUTIVE
COMMITTEE, DEPARTMENT OF
EDUCATION 1st Respondent

THE HEAD OF DEPARTMENT,
DEPARTMENT OF EDUCATION,
EASTERN CAPE 2nd Respondent

JUDGMENT

NHLANGULELA J:

[1] The applicant seeks, in the main, a relief that the first respondent be directed to consider and decide an appeal against the decision which had been made by the second respondent in the following terms: " The approval awarded to Idutywa School of Excellence to be an Examination Centre for full time NSC [National Senior Certificate] Grade 11 and 12 shall be Revoked from 2012."

[2] The background facts, which are common cause, are these: The applicant is an independent school duly registered as such in terms of s 46 of the South African Schools Act 84 of 1996. As it was registered to do business in Idutywa, Eastern Cape it qualified for and it was granted by the first respondent, in terms of a provincial legislation, a privilege of being an Examination Centre for Grade 11 and 12 learners who are registered for tuition in the school. The underlying policy governing the privilege is

regulated in terms of Chapter 6 (29)(3) of National Policy on the conduct, administration and management of the National Senior Certificate referred to as: A qualification at Level 4 on the National Qualification's Framework (NQF), which was published by means of Government Notice No. 564 in Government Gazette No. 30048 of 06 July 2007 aa. The policy reads as follows:

> "An examination centre may be deregistered if there is evidence that the integrity of the examination is being undermined at the centre. Examination centres will be deregistered if: there is fabrication of School-Based Assessment marks; if there is any other serious irregularity that warrants deregistration."

[3] The genesis of the dispute which led to these proceedings is the alleged breach by the applicant of the policy as aforementioned. The first respondent, duly represented by the second respondent, had complained in 2009 that the registration by the applicant of Grade 12 learners in excess of the agreed maximum of 500 learners to sit for examinations in one session was tantamount to conduct compromising the integrity of examinations within the purview of the national policy. Although the applicant undertook that it will not repeat its offending conduct it circumvented the policy by

registering 500 learners for tuition but registered 291 of those learners in another examination centre (a school) situated in East London for the purposes of writing examinations there. This it did in 2010 and 2011. It would appear that a permission of the department was not sought by the applicant to register the 291 learners in East London. As a result a decision was taken by the department to withdraw the privilege earlier granted to the applicant to offer National Senior Certificate examinations to grade 11 and 12 learners.

[4] Much has been debated by both parties in affidavits and during arguments with regards to *locus standi* of Matta, who is the founder/owner of Idutywa School of Excellence, to note an appeal against the decision to down-grade/de-register the School as well as the merits and de-merits of the decision. With respect to the parties I do not believe that the occasion has arrived for this Court to decide these disputes, which I consider to be pending a decision of the appeal tribunal of the first respondent. The relief sought by the applicant relates only to the failure by the first respondent to consider and decide the appeal that was placed before it on 25 January 2012. It is to this issue that I must now turn.

[5] Certain submissions made on behalf of both parties have to be dealt with in *limine.* *Mr Vutula*, counsel who appeared on behalf of the applicant, submitted that Mr Mzimhle Elvin Mabona, the deponent in the answering affidavit, has no authority to file an affidavit on behalf of the first respondent because the latter is prohibited in terms of the provisions of s 47(2) of the Act, read with Regulation 6(2)(f) made in terms of the Eastern Cape Schools Education Act 1 of 1999, from delegating his power to entertain an appeal based on the decision of the Head of the Department (the second respondent being such a Head). This submission is ill-conceived because the issue before this Court is whether the first respondent should be compelled to consider and decide the appeal. It does not pertain to the appeal itself. For this reason alone the point in *limine* must be dismissed.

[6] Similarly, the point in *limine* raised on behalf of the respondents that the applicant has no *locus standi* to prosecute this application has no merit. In so far as the submission undermines the direct and substantial interest Mr Matta has in the relief sought and the final order to be made in these proceedings the point in *limine* may safely be dismissed.

[7] The merits of the matter turn only on the facts. It being common cause that the decision affecting the interest of the applicant was made on 08 January 2012, appeal against it was noted on 25 January 2012, the first respondent was enjoined to consider the appeal in terms of Regulation 6(2)(f) but failed to do so within 30 days time provided for in the Regulation as aforesaid, the relief sought falls to be granted. The ancillary relief will be granted as well.

[8] In the result the following order shall issue:

1. **The points in *limine* raised be and are hereby dismissed.**

2. **Paragraphs 1, 2, and 3 of the Notice of Motion be and are hereby granted.**

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Z.M. NHLANGULELA

JUDGE OF THE HIGH COURT

Counsel for the applicant	:	Mr S.C. Vutula of Vutula & Co MTHATHA.
Counsel for the respondents	:	Adv M. Bodlani
Instructed by	:	The State Attorney MTHATHA.