



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 19/19

In the matter between:

CENTRE FOR CHILD LAW

First Applicant

37 CHILDREN

2nd to 25th Applicants

and

MINISTER OF BASIC EDUCATION

First Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR EDUCATION, EASTERN CAPE**

Second Respondent

**SUPERINTENDENT GENERAL OF THE
EASTERN CAPE DEPARTMENT OF EDUCATION**

Third Respondent

ORDER DATED 15 FEBRUARY 2019

CORAM: Mogoeng CJ, Cameron J, Froneman J, Jafta J, Khampepe J, Ledwaba AJ, Madlanga J, Mhlantla J, Nicholls AJ and Theron J.

The Constitutional Court has considered (a) the urgent application for direct leave to appeal against paragraphs 2 and 4 of the order of the High Court of South Africa, Eastern Cape Division, Grahamstown (High Court) under case number 3317/18, lodged on 29 January 2019; (b) the answering affidavit of the respondents lodged on Monday 4 February 2019; (c) the parties' draft order dated 11 February 2019; and (d) the parties' disagreement regarding costs, and has determined that the following order be made:

1. The rules, time limits, forms and procedures provided for in the Constitutional Court Rules are dispensed with, to the extent that this application is dealt with as a matter of urgency.
2. The urgent application for direct leave to appeal in terms of rule 19 against paragraphs 2 and 4 of the order of the High Court is granted.
3. The order granted by Mtshabe AJ in the High Court dated 10 December 2018, is set aside.
4. The respondents are directed to admit and enrol the learners listed in annexure "A" to this order into appropriate adult basic education and training centres (ABET centres), pending the final determination of the litigation instituted in the High Court under case number 2480/17.
5. The respondents are directed to admit and enrol the learners listed in annexure "B" to this order into ordinary public schools, pending the final determination of the litigation instituted in the High Court under case number 2480/17.
6. The admission and enrolment referred to in paragraphs 4 and 5 above will not be conditional upon the learners complying with the admission criteria set out in sections 15, 20 or 21 of the Admission Policy for Ordinary Public Schools (GN 2432 of 1998).
7. The respondents are directed to ensure that the learners have been admitted and/or enrolled into appropriate ABET centres and ordinary public schools by no later than Friday, 1 March 2019 for the learners to begin schooling on that day.
8. The applicants shall provide, through their attorneys of record, to the State Attorney representing the respondents, within 5 (five) days of the date of this order, the information and documents, insofar as these are available and may be obtained, set out in paragraphs 37.1 and 37.2 of the affidavit of Granville Christiaan Whittle, dated 4 February 2019.
9. The following process will be followed as far as the conducting of paternity tests is concerned in respect of applicants whose paternity by a South African father requires to be established:
 - a) The learners and their parent/s shall co-operate to have the paternity tests conducted at the laboratory, hospital or clinic as may be indicated by the respondents;

- b) The Department of Basic Education shall pay the costs of the paternity tests that may be payable in this regard; and
- c) If the learners and their parent/s are unable to afford to travel to the relevant laboratory, hospital or clinic indicated by the respondents, the respondents shall assist them to meet the costs of doing so.
10. The costs of the application for leave to appeal and the appeal in this Court are to be paid, jointly and severally, by the respondents.
11. The costs of the High Court proceedings are reserved for determination by the court deciding the application instituted in the High Court under case number 2480/17.



PP
Mr. M. M. M. M. M.
MR KGWADI MAKGAKGA
REGISTRAR
CONSTITUTIONAL COURT

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