



# **NATIONAL SCHOOLS** Moot Court Competition

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**HYPOTHETICAL CASE AND RESOURCE PACK**

**12 FEBRUARY 2018**

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**basic education**

Department:  
Basic Education  
REPUBLIC OF SOUTH AFRICA



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



UNIVERSITEIT VAN PRETORIA  
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## 2018 HYPOTHETICAL CASE TO BE ARGUED

### NATIONAL SCHOOLS MOOT COURT COMPETITION

(Mokgoro v Governing Body, Madiba Combined School, Constitutional Court)

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1. Zama Mokgoro, lives in the township Alexandra and attends Madiba Combined School, which is located on the boarder of Alexandra and Sandton. Because of its position, 40% of the students at Madiba School live in Sandton and 60% live in Alexandra.
2. In January 2018, Zama began grade 8. At the start of the school year, she and her classmates received a letter from the school congratulating them on their graduation from primary school and indicated that as per section 27 of the School Code of Conduct all high school learners were expected to purchase the “high school” uniform. It further instructed the learners to purchase their uniforms from Sandton School Clothing Store.
3. Section 27 of the School Code of Conduct provides that:  
  
*“All high school learners must wear the full high school uniform, which includes the official school Blazer with the school crest on the front pocket.”*
4. When Zama went with her parents to buy her uniform, she was able to purchase everything except the school blazer, which was too expensive. She was also informed by the sales assistant that the blazer was only sold at Sandton School Clothing.
5. On her first day of school, Zama wore the full “high school” uniform except the blazer. As a result, she was sent to the principal’s office to explain why she had failed to wear the correct uniform. Zama informed the principal that she was not trying to be disobedient, however, her parents could not afford the school blazer. The principal informed her that the School Code of Conduct required that he send her home until she complied with the

dress code, and encouraged her to write a letter to the School's Governing Body (SGB) to ask for assistance.

6. After sending her letter to the Governing Body, Zama received the following response:

*"Dear Ms. Mokgoro,*

*We acknowledge your financial difficulties, however, we are unable to provide financial assistance, or allow you to return to school without the appropriate uniform. First, as sixty-percent of the learners attending Madiba Combined School come from impoverished backgrounds, it would not be fair for the school to provide assistance to one learner. Unfortunately, the school does not have the financial resources to provide assistance to every learner in your situation. Second, the purpose of a school uniform is to create uniformity amongst all learners attending Madiba Combined School. As such, the school's governing body cannot allow you to attend school without the "high school" blazer. The School's Code of Conduct is clear as to the dress code requirements for learners attending the high school. In addition, at the start of the school year you were provided with a letter of instruction, which provided you with sufficient time to make the necessary financial arrangements.*

*Until such time as you comply with the stipulated dress code you are not permitted to attend school classes. However, you can arrange with your teachers to send the content of the classes to your home.*

*Kind Regards,*

*Thabo Dube (Chairperson of the School Governing Body)"*

7. Upon receiving the letter, Zama and her parents approach a local Legal Aid office in Alexandra to seek legal advice. After attempts to negotiate with the SGB failed due to their non-responsiveness, the Legal Aid representative challenged the constitutionality of the School's decision at the Gauteng High Court.

8. The Gauteng High Court held that a School's Governing Body has the authority to formulate its own Code of Conduct. Further, the decision of Madiba Combined School's governing body did not violate Zama's right to education because she was informed of the School's dress code requirements at the beginning of the year, and provision was made for Zama to receive the content of her classes at home.
  
9. Zama applied for leave to appeal to the Supreme Court of Appeal, but leave was refused. Thereafter, she asked for leave to appeal the decision of the High Court to the Constitutional Court. Leave was granted and the appeal is set to be heard in October 2018.

For the Applicant (Zama Mokgoro) you must argue that:

1. Section 27 of the School Code of Conduct is unconstitutional, and violates Zama's right to equality in terms of section 9 of the Constitution; and
2. The SGB's decision is unconstitutional as it violates Zama's right to education in terms of section 29 of the Constitution.

For the Respondent (Madiba Combined School) you must argue that:

1. Section 27 of the School Code of Conduct is not unconstitutional, and the school is under no obligation to provide financial assistance to its learners; and
2. The SGB's decision does not violate Zama's right to education as it makes provision for Zama to receive the content of her classes at home.

## RESOURCE PACK

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### I. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

#### **Preamble**

*We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity.*

*... Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations...*

#### **Section 9: Equality**

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) ....
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) ....
- (5)

#### **Section 10: Human dignity**

Everyone has inherent dignity and the right to have their dignity respected and protected.

#### **Section 28: Children**

- (2) A child's best interests are of paramount importance in every matter concerning the child.

#### **Section 29: Education**

- (l) Everyone has the right

(a) to a basic education, including adult basic education;

### **Section 36: Limitation of rights**

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
- (a) the nature of the right;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and
  - (e) the least restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

## **II. SOUTH AFRICAN SCHOOLS ACT 84 OF 1996**

### **Section 5: Admission to public schools**

- (1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

### **Section 8: Code of conduct**

- (2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.
- (3) ....
- (4) Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner.

## **III. CASE LAW**

**MEC for Education, KwaZulu---Natal and Others v Pillay 2008 (1) SA 474 (CC) at Para 98**

*“Both discipline and education are legitimate goals. However, care must be taken not to state the School’s interest too broadly.”*

**MEC for Education, KwaZulu---Natal and Others v Pillay 2008 (1) SA 474 (CC) at Para 100**

*“Rules are important to education. Not only do they promote an important sense of discipline in children, they prepare them for the real world which contains even more rules than the schoolyard. Schools belong to the communities they serve and that ownership implies a responsibility not only to make rules that fit the community, but also to abide by those rules. Nothing in this judgment should be interpreted as encouraging or condoning the breaking of school rules.”*

**MEC for Education, KwaZulu---Natal and Others v Pillay 2008 (1) SA 474 (CC) at Para 180**

*“The benefit of school uniforms is also affirmed in the National Guidelines on School Uniforms issued by the Minister of Education.<sup>56</sup> These guidelines state that school uniforms serve important “social and educational purposes”.”*

**Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another 2016 (4) SA 546 (CC) at Para 3**

*“Despite these obvious ancient virtues, access to teaching and learning has not been freely and widely accessible to all people at all times. All forms of human oppression and exclusion are premised, in varying degrees, on a denial of access to education and training. The uneven power relations that marked slavery, colonialism, the industrial age and the information economy are girded, in great part, by inadequate access to quality teaching and learning. At the end of a long and glorious struggle against all forms of oppression and the beginning of a democratic and inclusive society, we, filled with rightful optimism, guaranteed universal access to basic education. We collectively said: “[e]veryone has the right to basic education, including adult basic education”.”*

**Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another 2016 (4) SA 546 (CC) at Para 44**

*“But public schools are not rarefied spaces only for the bright, well-mannered and financially well-heeled learners. They are public assets which must advance not only the parochial interest of its*

*immediate learners but may, by law, also be required to help achieve universal and non-discriminatory access to education.”*

**Organisasie vir Godsdienste-Onderrig en Demokrasie v Laerskool Randhart and Others 2017 (6) SA 129 (GJ) also referred to as “OGOD Case” at Para 89**

*“At the level of principle then, the overarching constitutional theme is that our society is diverse, that that diversity is to be celebrated, and that specific rights are conferred and dealt with in pursuance of that principle. Within this context, public schools are public assets which serve the interests of society as a whole.”*

**Antonie v Governing Body, Settlers High School 2002 (4) SA 738 (C) at Para 17**

*“The question should be asked, in this regard, whether or not the prohibition is aimed at promoting positive discipline and whether or not noncompliance therewith justifies punishment or some other form of sanction. This requires a spirit of mutual respect, reconciliation and tolerance.”*

**Minister of Home Affairs and Another v Fourie and Another [2005] ZACC 19 at Para 60**

*“Equality means equal concern and respect across difference. It does not presuppose the elimination or suppression of difference. Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgment and acceptance of difference. At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best, it celebrates the vitality that difference brings to any society. . . . At issue is a need to affirm the very character of our society as one based on tolerance and mutual respect. The test of tolerance is not how one finds space for people with whom, and practices with which, one feels comfortable, but how one accommodates the expression of what is discomfiting.”*

#### **IV. OTHER**

**In the media**

<http://ewn.co.za/2017/08/28/pretoria-school-pupils-boycott-classes-demanding-to-wear-skinny-pants>



<http://ewn.co.za/2017/09/01/parents-vote-against-skinny-jeans-at-hoerskool-pretoria-wes>

