



Judge Nathan Erasmus

nathanerasmus@me.com
nerasmus@justice.gov.za
nerasmus1234@telkomsa.net

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Dear Judge Erasmus

EW Pease and Another v The Government of RSA and Others

1. Introduction

We refer to the matter of Evelyn Pease and Another v Government of the Republic of South Africa and Others under case number 18904/13 heard before the Western Cape High Court. Pursuant to the Court's invitation to the parties issued at the end of the legal arguments in Court on 21 May 2014, please accept our submission as the Auditor-General of South Africa (AGSA) to consider before the Court makes its final conclusion.

2. Factual background

Having perused the Court papers, our attention was drawn to paragraph 4 of the Notice of Motion which reads:

Ordering First Respondent, within four months from the date of the Court's order, to deliver a report or reports, under oath, regarding the implementation of the steps referred to in paragraph 3 above, such report, or reports, to be delivered to the Public Protector, alternatively the South African Human Rights Commission, further alternatively the Auditor-General, or to such of them as this Honourable Court may deem appropriate to assist with the supervision of compliance in respect of all and any of the various matters referred to in 2.1 to 2.6 above, and thereafter to deliver such further and updated reports at such intervals as may be determined by the relevant supervisory authority, or by this Honourable Court should the Court deem it meet to supervise such orders as it may grant.

The reports referred to in relation to monitoring compliance by the First Respondent have to look into: enrolment of learners; the enhancement of teacher skills and competence; lack of accountability and

professionalism amongst teachers; the promotion and development of the indigenous African languages of South Africa; the provision, and the promotion and encouragement of the use of the mother-tongue; the provision of comprehensive early child development services for children under the age of five years; the identification of all school learners experiencing hunger and malnutrition and such measures taken to make basic nutrition available to them.

3. Lack of representation in court

A myriad of reasons led to us not having legal representation in court. The notice of motion was served on the State Attorney's Office. The State Attorney does not work on AGSA matters and did not inform us of the matter either. When the notice was served again, it was not served on our Head Office in Pretoria (domicilium). Due to ignorance on the part of our staff receiving the notice in our regional office in Cape Town, the matter was never brought to the attention of the legal advisers who are based in Head Office in Pretoria. We apologise for this oversight and express our appreciation for this opportunity to make submissions directly to the presiding judge.

4. Mandate of the AGSA

The AGSA is the Supreme Audit Institution in South Africa. It is a Chapter 9 Institution, as envisaged by the Constitution of South Africa, 1996 (Constitution). The core constitutional mandate as envisaged in section 188 of the Constitution is auditing financial management of government departments, municipalities and other public entities. It is further regulated by the Public Audit Act, 2004 (Act No. 25 of 2004)(PAA), which mandates the AGSA to perform prescribed constitutional and other functions. The AGSA is a body that holds its independence in high stead, as guaranteed by the Constitution. This relates to technical independence in relation to the audits it performs and the financial independence in relation to the funding model it has.

It is on that basis that the PAA was promulgated to emphasise its mandate and the powers therein. These are augmented by the periodic directives given by the Auditor-General (AG) in line with the PAA. The powers of the AGSA to audit are based on section 4 of the PAA which differentiates between mandatory and discretionary functions for audits. AGSA audits financial statements, compliance with key legislation and reporting on pre-determined objectives. There is also discretion on other audits that the AG can perform as envisaged in section 5(1)(d) of the PAA.

5. Standards, scope and processes applicable to audits

The AG has the freedom to select the standards applicable to all audits in the public domain. The AG further determines the nature and scope of these audits. We have selected the International Standards

on Auditing, which standards are supplemented by nature and scope determinations of the AG in an annual audit directive.

AGSA decides at the beginning of each year as an organisation on the audit risks and formulates an audit approach. This process looks into the audit strategy, risk assessment, evaluation of internal controls and the reporting methodology. This process is in accordance with the PAA, the general notice issued in terms of the PAA and International Standards on Auditing.

6. Funding model

Unlike the other Chapter 9 institutions, the funding model of the AGSA is unique in the sense that the AGSA's operation is not funded through an appropriation from Parliament or National Treasury. Our only source of income is through charging fees for the work that we do. This is done at a rate per hour, where we charge for every hour that we spend on the service that we deliver. The AGSA generates funds through the invoicing for audit services rendered. For the audits we perform, section 23 of the PAA looks into how we charge audit fees and how we collect them. This applies to all the work we do, which is regularity audits, performance audits or investigations. Secondly, the auditee is obliged to pay for these services.

7. Current work related to the relief sought

As the AGSA we have priority sectors that we look into during audits and as such we have audit procedures that are performed specifically at these sector departments. Currently, these priority sectors are Education, Health, Public Works, Social Development and Human Settlements. Our current focus on Education, based on our risk assessments, expertise and resources, looks into learner transport, learner-teacher material, nutrition programmes and infrastructure. The findings on these areas are included in management reports issued to the accounting officers of the respective Education departments for management comments. Any unresolved material findings are included in the AGSA's audit report which is included in the department's annual report. The annual report becomes a public document once it has been tabled in Parliament. In this respect the Applicant can view the reports and can be satisfied that the AGSA monitors the management of respective Education departments based on the focus areas highlighted.

In addition to the management and audit reports, we also publish general reports annually, which are consolidated reports on all the PFMA audits performed on national and provincial level. A decision was also recently taken to publish a separate report on the sectors in future, which will highlight the outcomes in the respective sectors. The first sector report will be published for the 2013-14 sector audits.

8. Implications should an order be granted against the AGSA


In the event that the honourable court grants an order against the AGSA, such order may limit the freedom of the AGSA to determine the nature and scope of its audits. Such order will inevitably also cause a financial burden on auditees who will have to fund the additional work done by the AGSA. This is in line with the funding model. The risk of duplicating efforts also exists, since the same outcome can be achieved through existing efforts of the AGSA.

9. Conclusion

For reasons listed in paragraph 8 the AGSA may not be a viable option and we humbly request the Court to consider other organs of state, such as:

- 9.1 The Public Protector that has a constitutional mandate to investigate the affairs of government and as such can look into the complaints raised in the current court papers.
- 9.2 The South African Human Rights Commission that promotes, investigates and takes appropriate steps to protect human rights and the basis of the relief sought is based on the right to education, human dignity, children, food, cultural and linguistic freedoms to name a few.
- 9.3 The Commission for the Promotion and Protection of the Rights of Linguistic and Cultural Communities that promotes the rights of linguistic communities amongst other related issue. It could play a key role in the relief sought in relation to the promotion of the mother tongue and the aspect relating to the neglect of indigenous languages.
- 9.4 The Public Service Commission that is tasked and empowered to, amongst others, investigate, monitor, and evaluate the organisation and administration of the Public Service. This is evidenced by their current investigation into the textbook saga in Limpopo.
- 9.5 Parliament and the Western Cape legislature, the Office of the Presidency and the Office of the Premier who play a critical oversight role and will be useful in monitoring the relief sought.

Yours sincerely


P.R. Marissa Bezuidenhout
Senior Manager: Legal Services

Enquiries: Walter Bhengu
Telephone: (012) 426 8414
Email: WalterB@agsa.co.za