

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO:

In the matter between:

**IKHALA TECHNICAL AND VOCATIONAL
EDUCATION AND TRAINING COLLEGE
t/a IKHALA TVET COLLEGE**

APPLICANT

And

LWANDO NDAMASE	1ST RESPONDENT
PHELOKAZI NGCINGWANA	2ND RESPONDENT
AVIWE MNGCOTANA	3RD RESPONDENT
SISIPHO NCUME	4TH RESPONDENT
AMAHLE BOQWANA	5TH RESPONDENT
SIWAPHIWE NDEDE	6TH RESPONDENT
ITUMELENG MOSALA	7TH RESPONDENT
ZIKHONA LEVE	8TH RESPONDENT
SINAZO MGOBOZI	9TH RESPONDENT
LIHLE NYUMBEKA	10TH RESPONDENT
LUVO SIMELANE	11TH RESPONDENT
ALL STUDENTS WHO ARE PARTICIPATING IN THE UNLAWFUL STRIKE	12TH RESPONDENT
ALL COMMUNITY MEMBERS WHO ARE PARTICIPATING IN THE UNLAWFUL STRIKE	13TH RESPONDENT

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(URGENT APPLICATION)

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SIGNED AT EAST LOND ON THIS 8th DAY OF APRIL 2024.



PHILIP AND PARTNERS ATTORNEYS INC

Applicant's Attorneys

office No 7 & 8 Orient Mall

No 2 Currie Street

Quigney

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FILE REF: Civ1002/Ikhala/Interdict/24

C/O YOKWANA ATTORNEYS

Office No:10 New Street

MAKHANDA

[Tel: 046-622 9928](tel:046-622-9928)

Email: yokwanaattorneys.co.za

FILE REF: Mr Phillip/ Mr Yokwana

TO: THE REGISTRAR

High Court

MAKHANDA

AND TO:

LWANDO NDAMASE

1ST RESPONDENT

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NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the Applicant intends to make an application before this Honourable Court on **9TH April 2024 at 15H30**, or so soon thereafter, virtually for an Order in the following terms:

1. That Applicant's non-compliance with rules of this Honourable Court relating to service and time frames be and is hereby condoned and that leave be granted to the Applicant to bring this application on urgent basis in terms of Rule 6(12) of the Uniform Rules of this Court.

2. That a *Rule Nisi* do hereby issue calling upon the Respondents to show cause if any, on Tuesday the **16th** day of **April 2024 at 10h00** or so soon thereafter as the matter may be heard why the order should not be made final.

3. That the Respondents' protest at or near Applicant's premises at Ezibeleni Campus Zone D, Gwadana Drive, Ezibeleni, Eastern Cape (the Campus) be and is hereby declared unlawful.

4. That the parties are hereby directed to use electronic mail and affix the papers on the notice boards and on all access points of applicant's

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premises for purposes of service of papers relating to the hearing of this matter.

5. That the Respondents are directed to stop protesting at or near Applicants premises mentioned in paragraph 3 above.
6. That the Respondents are interdicted and restrained from threatening students, employees and preventing same from continuing with learning and Applicant's duties and activities at the campus.
7. Respondents to pay costs of the application on a scale as between attorney and client in the event they oppose the application.

PLEASE TAKE NOTICE FURTHER THAT the Applicant has appointed the offices of **PHILIP AND PARTNERS ATTORNEYS INC. C/O MGCOTYELWA KREWU ATTORNEYS** with the address as fully set out herein below at which it will accept service of all notices and documents in this matter.

PLEASE TAKE NOTICE FURTHER THAT, if you intend opposing this application you are required:

- (a) To notify the Applicant's attorneys in writing on or before the **9th April 2024** together with filing of their Answering Affidavit by no later than **9th April 2024 @ 14H00.**

- (b) To appoint in such notification an address referred to within 25 km (twenty five kilometers) from this Honourable Court at which service of all notices and documents will be accepted in respect of these proceedings.

- (c) That the Applicant will file his **Replying Affidavit**, if any, by not later than the **9th April 2024 at 14H30.**

TAKE NOTICE FURTHER THAT the attached affidavit of the **TEMBELIHLE NTLANGANO** together with its annexures and the Confirmatory Affidavit of **SABATA PHILIP** will be used in support of this application

SIGNED AT EAST LONDON ON THIS 8th DAY OF APRIL 2024.



PHILLIP AND PARTNERS ATTORNEYS INC

Applicant's Attorneys
office No 7 & 8 Orient Mall
No 2 Currie Street

Quigney

East London

Tel: (043) 722 1213

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pat@pandmattorneys.co.za

FILE REF: Civ1002/lkhala/Interdict/24

C/O YOKWANA ATTORNEYS

Office Number 10 New Street

MAKHANDA

Tell: (046) 622 9928

Email: yokwanaattorneys.co.za

File Ref: Mr Yokwana / Mr Phillip

TO: THE REGISTRAR

High Court

MAKHANDA

AND TO:

- | | |
|---|-----------------------------|
| LWANDO NDAMASE | 1 ST RESPONDENT |
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FOUNDING AFFIDAVIT

I the undersigned,

TEMBELIHLE NTLANGANO

Do hereby under oath say that:

1. I am an adult male person currently appointed as the College Principal by IKHALA TVET College ("the applicant") under the auspices of the National Department of Higher Education and Training with my *domicilium citandi et executandi* and/or offices being Zone D, Gwadana Drive, Ezibeleni, Eastern Cape. (the campus)
2. I possess authority to depose to this affidavit on behalf of the applicant due to the fact that I carry duties of an accounting officer and college principal by virtue of my employment. I annex hereto a copy of my appointment letter from the Minister of Higher Education, Science and Innovation of the Republic of South Africa, dated 14 December 2023 marked Annexure "TN 1". This Honourable Court is requested to have regard to the entire contents of Annexure "TN 1" as specifically incorporated into this affidavit.
3. By virtue of my position, I have access to all the relevant records pertaining to this matter. The facts contained to herein, are within my

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personal knowledge and belief, save where the contrary indicates from the context, and are both true and correct.

4. Where in this affidavit, I rely on evidence gleaned from other persons I verily believe such evidence to be correct and where possible, I will endeavor to obtain confirmatory affidavits from such persons. However, in the event that, due to the urgency of this matter, I am unable to obtain such confirmatory affidavits, I respectfully request this Honourable Court to admit such evidence in terms of the provisions of section 3 of the Law of Evidence Amendment Act, 45 of 1998.
5. Where I make submissions of a legal nature, I do so on the strength of legal advice obtained from my legal representatives, which advice I believe to be true and correct and on which I so rely.

THE PARTIES

6. The Applicant is **IKHALA TVET COLLEGE**, Educational Institution and College under the National Department of Higher Education and Training and duly established in terms of the Continuing Education and Training Act, 2006 (Act No. 16 of 2006) and any other relevant laws of the Republic of South Africa, with its principal place of business situated at Zone D, Gwadana Drive Ezibeleni, Eastern Cape.

7. The First Respondent to the 12th Respondent are registered students of the Applicant and are cited herein because they are the ones who are inciting a protest at the Applicant's premises. The protest constitutes of all students who are duly registered as students of the applicant and who are enrolled in various campuses of the applicant including, Queenstown Campus - Queenstown; Queen Nonenesi Campus – Lady Frere; Aliwal North Campus – Aliwal North; Sterkspruit Campus – Campus.
8. The Thirteenth Respondent constitutes all individual and/or collective identities whose full and further particulars are unknown to the Applicant.

JURISDICTION

9. It is submitted that the above Honourable Court has the necessary jurisdiction to adjudicate this matter based upon, *inter alia*, the whole cause of action arising within its jurisdiction.
- 10.. The respondents are embarking on a strike and have resorted to unlawful conduct while striking. The conduct complained of is dealt with fully hereunder.

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PURPOSE OF THIS AFFIDAVIT

11. I depose to this affidavit in support of this urgent application for interdictory and other ancillary relief arising from the circumstances more fully set out hereunder.

BACKGROUND

12. On Thursday 7 March 2024, a protest action was initiated at the Applicants premises, which was led by the respondents. The respondents while protesting started to burn *inter alia* tyres and blocked access into the Applicant's premises. The Applicant's operations including preparation for the second semester exams for all students particularly engineering students were disrupted by the protest action. I annex hereto colour photos depicting the protest at the Queenstown Campus hereto marked as annexure "TN 1.1".
13. During the ongoing protest the members of the South African Police Services from Queenstown, came to the scene and managed to calm

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the situation down and the respondents left the Applicants premises, however when the said members left, they regrouped and continued to cause chaos, and mobilized other students through voice notes and messages circulating on WhatsApp. I annex hereto a copy of all the WhatsApp messages containing voice notes hereto marked as annexure “**TN 2**”. This Honourable Court is requested to have regard to the entire contents of Annexure “**TN 2**” as specifically incorporated into this affidavit.

14. The applicant’s campus had to be closed down based on the reasonable apprehension of harm that the students will end up causing physical harm to the Applicant and its employees as their grievances pertaining to their student accommodation allowances have not been dealt with as provided for by the National Student Financial Aid Scheme (“herein after referred to as NFSAS”).

15. The campus referred to above was closed down for a period of about (21) twenty one days due to the ongoing protest with all the learners being informed to say away from attendance, except the engineering students who were writing exams had to be in attendance for their exams.

16. On Tuesday 19 March 2024 only the college staff returned to the campus in order to do administrative work and to prepare for the Engineering students who are going to be writing exams during the second term.

17. Some engineering students are still writing their first semester Engineering exams till today through the assistance of the security personnel deployed at the campus. However, that does not seem to be enough as the protesting students continue to prevent the other students from sitting for exams and are disrupting assessments which are underway at the campus.

18. The respondents' grievances include *inter alia*:
 - 18.1 Full accommodation allowances to be paid by NSFAS to all students;

 - 18.2 No deductions are to be made by NSFAS on the accommodation allowances of all students for the year 2024, even if circumstances require that the deductions must be made.

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19. The grievances of all the affected students have been addressed to the applicant. The applicant has no direct or indirect interest in the contracts that exists between the students and their respective landlords and the NSFAS. Moreover, the applicant does not stipulate how much the students should get as allowances for the student accommodation only SFAS does that. That contractual relationship exists between NFSAS, the Land Lord and the students and not the applicant, the Applicant only has to release the amount of money agreed to between the student and the Landlord. I annex hereto a copy of the NFSAS Policy for student housing at public universities for the 2024 academic period marked as annexure “**TN 3**”. This Honourable Court is requested to have regard to the entire contents of Annexure “TN 3” as specifically incorporated into this affidavit.

20. The respondents’ grievances fall outside the scope of the Applicants competence. That the respondents continue to protest at the premises of the applicant is unreasonable under the circumstances. It is impossible for the applicant to resolve the dispute that exists between the students, NFSAS and the respective landlords as the applicant does not pay for the respondents’ accommodation fees including the tuition fees. The prerogative of paying for the respondents’ accommodation falls squarely in the hands of NFSAS and not the applicant. I annex hereto copies of a

few NSFAS application forms from students that applied for the housing allowances together with their Lease agreements with their respective landlords hereto marked as annexures “**TN4, TN5, TN6**”. This Honourable Court is requested to have regard to the entire contents of Annexure “**TN 4, TN 5, and TN 6**” as specifically incorporated into this affidavit.

21. On Monday 8 April 2024, the respondents again gathered collectively and unlawfully and embarked on a protest outside the campus causing chaos thereto.

23. The respondents again disrupted operations, removed office staff from their offices, disrupted ongoing learning activities, carried traditional weapons such as, *inter alia*, knob kieres and sticks, singing revolutionary songs, hurling insults at the applicant’s employees, principal included. I attach hereto various email communications from the staff at Ikhala depicting the fear for the threat of violence against them by the student marked as annexure “**TN 7**”. This Honourable Court is requested to have regard to the entire contents of Annexure “**TN 7**” as specifically incorporated into this affidavit.

24. The protest escalated to the blockage of the applicant's premises, burning of tyres, and locking of all gates at the applicant's premises. I attach hereto the student picketing and parading notice that was circulated to me on Thursday 4 April 2024 marked as annexure "TN 8". This Honourable Court is requested to have regard to the entire contents of Annexure "TN 8" as specifically incorporated into this affidavit.

25. Furthermore, the respondents forcefully removed the security personnel at the applicant's premises and threatened to physically harm them if they continue to guard the applicant's premises. Although the security personnel have not vacated their posts, but the respondents' threats to physical harm is ongoing.

26. The applicant decided to release all its staff members due to concerns surrounding their safety, and called the members of the South African Police Services again.

27. The members of the South African Police Services arrived at the applicant's premises at the Queenstown Campus and dispersed all the protesting students.

28. Although the protesting students including the respondents have been dispersed by members of the South African Police Service, it is evident that the cause of concern relating to the respondent's accommodation allowances remain unresolved, and the protest action will continue again today.

29. It is against this background that the applicant hereby prays for an interim interdict pending the finalization of this application, and to halt any further protest from taking place at the applicant's premises.

30. The applicant has to establish a case for an interim interdict, save to mention that it is trite that there remains no need to address the balance of convenience requirement when the strike of the respondents is outright and apparent to be unlawful.

31. the following are traditionally trite requirements for a interdict:

31.1 A prima facie right even though open to some doubt;

31.2A Well-grounded apprehension of harm if the interim relief is not granted;

31.3 That the balance of convenience favouring the granting of an interim interdict;

31.4 The lack of any other satisfactory or adequate remedy in the circumstances.

PRIMA FACIE RIGHT

32. The applicant has a *prima facie* right to be protected against the unlawful protest wedged by the respondents.

33. As such, the applicant has a clear right not to have its learning activities disrupted by the unlawful conduct of the Respondents, which includes the threatening of its employees and the disruption of its activities in the circumstances as more fully set above.

- 34. As such, the applicant has a clear right which has been infringed upon. Accordingly, the applicant has a clear right to launch the present proceedings.

- 35. The staff and other learners who are not taking part in the protest are being threatened by the respondents who are actively participating in the protest.

- 36. If the respondents were to be allowed to continue with the illegal protest, this would be tantamount to simply allowing the respondents to take the law into their own hands and to act with the utmost disrespect for the rights of the staff, the learners, and the property belonging to the applicant.

- 37. In the circumstances, I respectfully submit that the applicant has a *prima facie* right which right is being infringed upon by the respondents.

WELL-GROUNDED APPREHENSION OF IRREPARABLE HARM

- 38. The learning activities at the applicant's premises have been disrupted and continue to be disrupted by the ongoing protest of the respondent.

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The applicant and other learners continue to suffer substantial harm as classes are being disrupted and the staff is threatened.

39. If the respondents are not interdicted, irreparable harm will be caused to the applicant. The applicant's infrastructure remains at risk of being destroyed by the respondents, the staff members and other learners attending at the applicant's premises are being threatened with physical violence by the respondents and classes are being disrupted.
40. As evidenced by the events of Thursday 7 March 2024 and Monday 8 April 2024, the respondents have every intention to continue acting unlawfully and to disrupt learning activities, blocked access into the applicant's premises, threatened the staff and other learners with physical harm.
41. The conduct of the respondents' unlawful actions, left the applicant with no other alternative but to approach this honourable court in the manner it has done.
42. It is further submitted that the apprehension and continuation of harm is exacerbated by the fact that, the respondents had embarked on a protest on Thursday 7 March 2024 and on Monday 8 April 2024 and

subsequently thereafter all learner were advised to stay at home and after the school holidays on 8 April 2024 the protest resumed.

NO OTHER REMEDY

43. I respectfully submit that the applicant has no alternative remedy but to approach this Honourable court to interdict the protesting respondents and for an order as per the prefixed notice of motion.

44. The respondents had the opportunity to cease their unlawful conduct, and enter into meaningful engagements with NFSAS, but the respondents have chosen to act unlawfully and disrupt learning activities and threaten staff and other learners who are not participating in the protest.

BALANCE OF CONVINIENCE

45. It is my respectful submission that the balance of convenience favours the granting of the interdict.

46. If the interdict is not granted and if the respondents were to continue with their unlawful conduct we will be forced to permanently stop all learning activities to the detriment of other innocent learners. We would have to leave permanently because we fear for our personal safety and that of other learners and staff members.
47. This would be grossly prejudicial to other learners who have a right to education.

URGENCY

48. I respectfully submit that I have no reasonable alternative but to launch this present application. There are substantive grounds for the application to be heard as a matter of urgency.
49. The respondents continue disrupting operations, remove office staff from their offices, disrupted ongoing learning activities, carry traditional weapons such as, *inter alia*, knob kierries, signing revolutionary songs, hurling insults at the applicant's employees and threaten physical harm.

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50. The respondents have opted to take the law into their own hands.

51. I accordingly pray for an Order that the relief claimed in the prefixed Notice of Motion be granted.

WHEREFORE, I pray that the above Honourable Court Grants the relief sought against the respondents as per the prefixed Notice of Motion with cost in the event this application is opposed.

TEMBELIHLE NTLANGANO

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I certify that the Deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to before me at _____ on this _____ day of _____ 2023 and that the provisions of the Regulations contained in Government Notice R3619 of 21st July 1972, as amended by Government Notice No. 1648 dated 19th August 1977, have been complied with.

COMMISSIONER OF OATHS