Isalathiso: 20180219-9515
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Imibuzo: DD Louw

ISetyhula: 0012/2018
Umhla wokuphelelwa: Awukho

Iya: KumaSekela Balawuli-Jikelele, kuBalawuli abaziiNtloko, kuBalawuli (kwaNdlunkulu nakwii-ofisi zezithili), kuBaphathi beeSekethe, kwiiNqununu zezikolo zikarhulumente nakooSihlalo bamabhunga olawulo

Isishwankathelo esifutshane: Izicelo *zokuxolelwa ekuhlawuleni iifizi zesikolo ngabazali abangabagcini (custodial parents) abangenako ukunika iinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka (total annual gross income) womnye umzali womfundi ochaphazelekayo.*

Isihloko: Ukuxolelwa phantsi kwemiqathango ethile ekuhlawuleni iifizi zesikolo

1. Nge-13 Disemba 2017, iNkundla ePhezulu yeziBheno yawisa isigwebo kunye nomyalelo wayo osihloko sawo sithi, *Head of Department Western Cape Education and Others* vs. *Saffer* (1209/2016) [2017] *ZASCA 187*.

2. Imihlathi 4 no-5 yomyalelo weNkundla ePhezulu yeziBheno ufundeka ngokulandelayo:

   "'4. kubhengezwa ukuba uMenzi-sicelo [o.k.t. uNks Saffer] wayenelungelo lokuba izicelo zakhe zokuxolelwa ekuhlawuleni iifizi kunye nezibheno ezinxulumene nazo zisingathwe ngendlela eye yacaciswa emva koko ngokumalunga neMimiselo enxulumene noKuxolelwa kwaBazali eKuhlawulweni kweeFizi zeSikolo kwiZikolo zikaRhulumente (iSaziso sikaRhulumente R. 1052, kwiGazethi kaRhulumente 29311, yange-18 Oktobha 2006) njengoko ifakelwe izilungiso ("iMimiselo"). Zonke izikolo zikarhulumente, amabhunga olawulo namaSebe emfundo makahambelane mbo nokumalunga noMenzi-sicelo kunye nabo bonke abanye abazali abakwimeko enye okanye efanayo naleyo yoMenzi-sicelo:

   (a) Ibhunga lolawulo lesikolo sikarhulumente liya kuvuma ukuxolelwa phantsi kwemiqathango ethile kokuhlawuliswa iifizi zesikolo, ekubhekiswe kuko kuMmiselo, kumzali lowo:

(i) kwisicelo sakhe sokufuna ukuxolelwa:

(aa) onika iinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka (total annual gross income); kwaye

(bb) Akaniki zinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka womnye umzali womfundi ochaphazelekayo kuba omnye umzali engavumanga okanye esilele ukunika ezo nkcukacha kumzali owenza isicelo sokuxolelwa; kwaye

(ii) xa kuqatshelwa kuphela itotali yomvuzo ongekaxhuzulwa wonyaka, ebeya kukufanela ukuxolelwa ngokupheleleyo okanye ngokuyinxalenye ngokwale Mimiselo ukuba ibinguye kuphela ongumzali womfundi ochaphazelekayo.

(b) Ukuxolelwa phantsi kwemiqathango ethile kuya kuba kukuxolelwa ngokupheleleyo okanye ukuxolelwa ngokuyinxalenye apho umenzi-sicelo ebeya kuba nelungelo ukuba ebekukuphela komzali womfundi ochaphazelekayo.

(c) Xa livuma phantsi kwemiqathango ethile, ibhunga lolawulo liya kunyanzelisa imiqathango ekhokelela ekubeni umenzi-sicelo sokuxolelwa:

(i) makanike ingxelo ngoko nangoko ngako nakuphi na ukunyuka komvuzo ongekaxhuzulwa wonyaka kunyaka wesikolo ochaphazelekayo, nekuya kuthi, ukuba ibingumvuzo wakhe lowo ngethuba lokwenza isicelo sokuxolelwa, ebengasayi kuba nalungelo lakufumana kuxolelwa ngokupheleleyo okunikwa yena okanye ukufumana nakuphi na ukuxolelwa ngokuyinxalenye okunikwa yena;

(ii) kufuneka athi, ngenxa yokunyanzeliswa libhunga lolawulo, ahlawule ngezavange ezifanelekileyo eziya kugqitywa libhunga lolawulo emva kokuba limnike ithuba lokwenza ezo ngcaciso zokubhaliweyo, iifizi zesikolo okanye inxalenye yeefizi zesikolo ebeya kuba netyala lazo ngokwale Mimiselo esekelwe kumvuzo ongekaxhuzulwa wonyaka wakhe;

(iii) akasayi kuba naxanduva lakwenza loo ntlawulo, ngaphandle kokuba, ngethuba lonyaka wesikolo ochaphazelekayo, umvuzo ongekaxhuzulwa wonyaka wakhe unyuka kangangokuba, ukuba ibingumvuzo wakhe ngethuba lokwenza isicelo sokuxolelwa, ebeya kuba uzivimbe ilungelo lokufumana ukuxolelwa ngokupheleleyo okanye ukufumana nakuphi na ukuxolelwa okuyinxalenye okanye ebeya kuba nelungelo kuphela ekuxolelweni okuyinxalenye okuncinane kunoko akunikiweyo.

5. Kubhengezwa ukuba imvume yoko kuxolelwa phantsi kwemiqathango ethile ayisayi kusithintela sikolo sikarhulumente ekuthatheni amanyathelo ezomthetho ukunyanzelisa intlawulo, ngomnye umzali womfundi ochaphazelekayo, yeefizi zesikolo okanye yebhalansi yeefizi zesikolo, njengoko kunokuba njalo, ngokwesiqendu 41(1) soMthetho [*o.k.t. uMthetho weZikolo zaseMzantsi Afrika, ka-84 ka-1996*].'"

3. Le setyhula icacisa malunga nendlela iSebe leMfundo leNtshona Koloni (i*WCED*) elikuqonda ngayo okuthethwa kwanokwenziwa ngokuqaphelekayo kwalo myalelo.

4. Okuthethwa yimihlathi u-4(a) no-(b) walo myalelo kukuba:

4.1 ukuba umfundi wesikolo sikarhulumente esihlawulisa iifizi unabazali ababini abasaphilayo;

4.2 ukuba omnye wabo wenza isicelo kwisikolo esithile sokuxolelwa ngokuyinxalenye okanye ngokupheleleyo kuxanduva lokuhlawula iifizi zesikolo;

4.3 ukuba kweso sicelo umzali owenza isicelo unika iinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka wakhe;

4.4 ukuba kweso sicelo umzali owenza isicelo akaniki zinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka womnye umzali kuba omnye umzali engavumanga okanye esilele ukunika iinkcukacha zomzali owenza isicelo; kwaye

4.5 Ukuba, xa sele kuqatshelwa kuphela itotali yomvuzo ongekaxhuzulwa wonyaka womzali owenza isicelo, ebeya kukufanela ukuxolelwa ngokupheleleyo okanye ngokuyinxalenye ngokweMimiselo ukuba ibinguye kuphela ongumzali womfundi,

emva koko isikolo sinyanzelekile ukuba sivume isicelo somzali sokuxolelwa phantsi kwemiqathango ethile ekuhlawuleni iifizi zezikolo okulingana nokuxolelwa ngokupheleleyo okanye ngokuyinxalenye apho umzali owenza isicelo ebeya kuba nelungelo lokwenjenjalo ukuba ibinguye kuphela umzali womfundi.

5. Ngokunokwenzeka, ke ngoko, okwenziwa yimihlathi u-4 (a) no-(b) yomyalelo kunganyanzelisa zonke izikolo zikarhulumente ezihlawulisa iifizi zesikolo zinike ukuxolelwa okuphantsi kwemiqathango ethile kubazali, ukuba, kodwa kuphela nje ukuba, zontlanu iikhrayitheriya ezishwankathelwe kwimihlathi u-4.1 ukuya ku-4.5 apha ngentla ziphunyeziwe.

6. Nangona zonke ezo khrayitheriya zicace gca, i*WCED* igxininisa okulandelayo ngokunxulumene nekhrayitheriyoni yesine (eshwankathelwe kumhlathi u-4.4 ngentla):

6.1 Ikhrayitheriyoni yesine ineempawu ezimbini zokuyinene, zombini maziphunyezwe, oko kukuthi:

6.1.1 umzali owenza isicelo makanganiki zinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka womzali kwisicelo sakhe asenzayo sokuba axolelwe kwiifizi; kwaye

6.1.2 ukusilela komzali okufaka isicelo sokwenjenjalo, makwenze oko ngenxa yokuba ("kuba") omnye umzali engavumanga okanye esilele ukunika ezo nkcukacha kumzali owenza isicelo.

7. Ikhrayitheriyoni yesine ithetha ukuba, phambi kokuba kuvunywe igranti enikwa phantsi kwemiqathango ethile umzali ekuthe isicelo sakhe, xa kusijongwa nje ngokwenkangeleko yezinto, kwafumaniseka ukuba sihambelana mbo nazo zontlanu iikhrayitheriya, isikolo sinelungelo lokuqinisekisa ukuba isizathu somzali owenza isicelo

asinikanga zinkcukacha zetotali yomvuzo ongekaxhuzulwa wonyaka (*total annual gross income*) womnye umzali, kuba omnye umzali eneneni engavumanga okanye esilele ukunika ezo nkcukacha. Ngamanye amazwi, isikolo asinyanzelekile ukuba samkele oko kuvunywe ngumzali owenza isicelo malunga nesizathu sokuba kutheni engakhange azinikeze ezo nkcukacha.

8. Kwelinye icala, isikolo singayibuza imibuzo yaso ukuqinisekisa, ngeyona ndlela iphucuke gqitha kangangoko kunako, ukuba ngaba kunyanisiwe ukuba omnye umzali akavumanga okanye usilele ukunika iinkcukacha zomvuzo ongekaxhuzulwa wonyaka wakhe. Loo mibuzo inako, kwaye kumathuba amaninzi mayiquke iinzame zokuba kuqhagamshelwane nomnye umzali ukuqinisekisa ukuba ngaba ngenene akavumanga okanye usilele na ukunika iinkcukacha zomvuzo ongekaxhuzulwa wakhe kumzali owenza isicelo.

9. Ukuba isikolo siyakwazi ukuqhagamshelana nomnye umzali, kwaye ukuba omnye umzali uyaqinisekisa ukuba eneneni akavumanga okanye usilele ukunika iinkcukacha zomvuzo ongekaxhuzulwa wakhe kumzali lowo wenza isicelo, isikolo masisebenzise eli thuba ukwenjenje:

9.1 ukukhuthaza omnye umzali ekubeni anike iinkcukacha zomvuzo ongekaxhuzulwa wonyaka wakhe, nokuba oko kwenzeka ngoko nangoko, okanye kwixesha elizayo (ukuze sibe nako ukunceda umzali owenza isicelo ekuzaliseni ifom, njengoko kubonisiweyo kuMmiselo 9(4) weMimiselo) okanye kumzali owenza isicelo kwixesha elizayo (ukuze umzali owenza isicelo abe nokuzalisa kakuhle umhlathi 3.1 wefom ekwisiHlomelo B seMimiselo); kwaye

9.2 sazise omnye umzali ukuba akaziniki iinkcukacha zomvuzo ongekaxhuzulwa wonyaka wakhe, isikolo siya kuthatha amanyathelo asemthethweni ngakuye okanye sinyanzelise ukuhlawulwa kwesixa esipheleleyo seefizi zesikolo ngokwesiqendu 41(1) soMthetho weZikolo zaseMzantsi Afrika (i*SASA*), ka-1996 (uMthetho 84 ka-1996).

10. Ukuba isikolo asikwazi kuqhagamshelana nomnye umzali emva kokwenza iinzame ezifanelekileyo zokwenjenjalo, emva koko, ngaphandle kokuba kukho into ekwimeyitriksi yeenkcukacha okanye iimeko ezingqongileyo ezibonisa ukuba isikolo masithathe amanye amanyathelo (umz. ukutyumba iarhente yokulandelela apho uhlala khona (*tracing agent*) okanye siqhagamshelane negqwetha ukuzama ukuqhagamshelana nomnye umzali), isikolo masiyamkele njengechanekileyo inkcazelo yomzali owenza isicelo yokuba omnye umzali akavumanga okanye usilele ukunika iinkcukacha zomvuzo ongekaxhuzulwa wakhe.

11. Xa sisiya kumhlathi u-4(c) womyalelo, wona ufuna ukuba isikolo, xa sikuvuma ukuxolela ukuhlawulwa kweefizi phantsi kwemiqathango ethile ngokwemihlathi u-4(a) no-(b) wawo, oko kuxhomekeke kwimiqathango emithathu, emayicacisiwe kwileta enika imvume yokuxolelwa.

12. Umqathango wokuqala ngowokuba, ngethuba lonyaka wesikolo ochaphazelekayo, umzali owayexolelwe ekuhlawuleni iifizi phantsi kwemiqathango ethile makanike ingxelo kwisikolo ngoko nangoko emalunga nako nakuphi na ukunyuka komvuzo ongekaxhuzulwa wonyaka wakhe, nobekunokuthi kwenzeke ukuba xa ibingumvuzo wakhe ngexesha lokwenza kwakhe isicelo sokuxolelwa, ubunokumenza ukuba angakufaneli ukufumana ukuxolelwa ngokupheleleyo okanye nayo nayiphi na inxalenye yokuxolelwa. Njengoko abazali abanjalo bengasayi kwazi ukuba ukunyuka okunjalo kumvuzo ongekaxhuzulwa wabo bekuganesiphumo esinjalo, eyona ndlela ilula kukuwuqingqa lo mqathango ngendlela eya kufuna ukuba umzali makanike ingxelo esikolweni ngoko nangoko malunga nako nakuphi na ukunyuka kumvuzo ongekaxhuzulwa wonyaka wakhe ngethuba lonyaka wesikolo ochaphazelekayo.

13. Ukuba isikolo sifumana ingxelo enjalo, masithathele ingqalelo ukunyuka kumvuzo ongekaxhuzulwa wonyaka womzali kwaye, ngokumalunga nefomyula kunye netheyibhile ekuMmiselo 6 weMimiselo, sigqibe ukuba ingaba ukunyuka kube nasiphi na isiphumo kwisixa soxolelo esinikwe umzali.

14. Ukuba ukunyuka kumvuzo ongekaxhuzulwa wonyaka womzali eneneni kunesiphumo esinjalo, isikolo masazise umzali ngokucuthwa kwenkqubo yokuxolelwa kwaye ngokulandelayo, isixa esongezelelweyo sihlawulwe kwisikolo ngumzali, kucelwe umzali ukuba enze iingcaciso zokubhaliweyo (*representations*) ngokumalunga nemimiselo yentlawulo, ukuba ikhona, naleyo ayithatha umzali njengefanelekileyo.

15. Imfuneko yethuba lokuba kwenziwe ezo ngcaciso zokubhaliweyo kunye netyala lokugqibela (elinokwenzeka) lokuhlawula iifizi zesikolo ezinyukileyo, isusela kowesibini kwimiqathango efunwa ngumhlathi u-4(c) womyalelo ukuba isikolo sisebenzise igunya xa sivuma ukuxolelwa phantsi kwemiqathango ethile. Ngokungqalileyo gqitha, njengoko kuchaziweyo ngaphambili, umqathango wesibini ngowokuba umzali oxolelwe ngokuyinxalenye okanye okupheleleyo kufuneka, kusetyenziswe isigunyaziso esisuka kwibhunga lolawulo, ahlawule ngokwemimiselo efanelekileyo eya kugqitywa libhunga lolawulo emva kokumnika ithuba lokuba enze iingcaciso zokubhaliweyo, iifizi zesikolo okanye inxalenye yeefizi zesikolo ezo ebeya kuba netyala lazo ngokweMimiselo kusekelwe ekunyukeni komvuzo ongekaxhuzulwa wonyaka wakhe.

16. I*WCED* igxininisa ukuba kuqukiwe kowokuqala nakowesibini wemimiselo apho umhlathi u-4(c) womyalelo ufuna ukuba isikolo sinyanzelise xa sikuvuma ukuxolelwa kokuhlawulwa kweefizi phantsi kwemiqathango ethile, ethi:

17.1 ukuba, ngethuba lonyaka wesikolo, umvuzo ongekaxhuzulwa wonyaka womzali owayefumene ukuxolelwa phantsi kwemiqathango ethile wafumana ukunyuselwa ukuya kutsho kwinqanaba apho, ukuba ibingumvuzo wakhe lowo ngexesha lokwenziwa kwesicelo sokuxolelwa, ubungayi kumvumela afumane ukuxolelwa ngokupheleleyo okanye ngokuyinxalenye;

17.2 ukuba umzali akasazisi isikolo ngokunyuka ngoko nangoko; kwaye

17.3 ukuba isikolo sifumene ulwazi malunga nokunyuka oko,

emva koko, isikolo sinelungelo lokubala umlinganiselo wokucuthwa kwinkqubo yokuxolelwa okuchaphazelekayo (kwaye, okulandelayo, kunyuswa iifizi zesikolo ezihlawulwa ngumzali) kuze, emva kokunikwa komzali ithuba elifanelekileyo lokwenza iingcaciso zokubhaliweyo zemimiselo yokuhlawula iifizi, ukuba ikhona, umzali ayithatha njengefanelekileyo, isikolo ngaphezulu sinelungelo lokwenza ibango leefizi ezinyukileyo emazihlawulwe ngumzali.

18. Eyesithathu yale miqathango yalaa mhlathi u-4(c) yomyalelo ufuna ukuba isikolo sinyanzelise ukuba xa sivuma ukuxolela ukuhlawulwa kweefizi phantsi kwemiqathango ethile, yileyo, ngenene, iya kucima ubutyala bomzali ekuhlawuleni iifizi zesikolo (kwimeko yokuxolelwa ngokupheleleyo phantsi kwemiqathango ethile) okanye okuyinxalenye yeefizi zezikolo (kwimeko yokuxolelwa ngokuyinxalenye phantsi kwemiqathango ethile) ngawo onke amathuba apho unyaka omalunga nokuxolelwa ugqithayo ngaphandle komvuzo ongekaxhuzulwa wonyaka womzali ochaphazelekayo onyuke kangangokuba oko kwaye kwafuneka ukuba makulungelelaniswe inkqubo yoxolelo. Lo mqathango unika, ngenene, ukuba umzali lowo uxolelwe phantsi kwemiqathango ethile akasayi kuba natyala lakuhlawula zifizi zesikolo okanye nasiphi na isixa seefizi zesikolo ukuba, ngethuba lonyaka wesikolo ochaphazelekayo, umvuzo ongekaxhuzulwa wonyaka awunyukanga kangangokuba, ukuba ibingumvuzo wakhe lowo ngethuba lokwenziwa kwesicelo sokuxolelwa, ebengasayi kuvunywa ekufumaneni ukuxolelwa ngokupheleleyo kwakhe ekufumaneni naluphi na uxolelo oluyinxalenye okanye ebeya kuba nelungelo lokufumana uxolelo oluncinane oluyinxalenye kunoko aluvunyelweyo.

19. Umba wokugqibela uchaphazela ilungelo lesikolo lokuqhubela phambili ngokuthatha amanyathelo ngakomnye umzali, o.k.t. lowo ungazange avume okanye osileleyo ukunika iinkcukacha zomvuzo wakhe kumzali owenza isicelo sokuxolelwa. Oku kulawulwa ngumhlathi 5 womyalelo, ochaza ukuba ukuvunywa kokuxolelwa phantsi kwemiqathango ethile umzali owenza isicelo akasayi kusithintela isikolo sikarhulumente ekuthatheni amanyathelo ezomthetho ukunyanzelisa intlawulo, ngakomnye umzali womfundi ochaphazelekayo, ngeefizi zesikolo okanye ibhalansi yeefizi zesikolo, ngokwemeko leyo, ngokwesiqendu 41(1) ye*SASA*.

20. Xa lo mhlathi ufundwa kunye nesiqendu 41 se*SASA*, njengoko kufuneka kwenziwe njalo, okuthethwa nguwo koku:

20.1 ukuba isikolo singathatha amanyathelo ezomthetho ngakomnye umzali emva kokulinda ithuba leenyanga ezintathu okufunwa sisiqendu 41(5)*(b)* se*SASA* emva kokumnika isilumkiso esifunekayo kwisiqendu 41(5)*(a)* se*SASA* nangethuba elo angazihlawuliyo iifizi ezipheleleyo okanye inxalenye yeefizi zesikolo kwaye engenzi sicelo ngokufanelekileyo sokuxolelwa (nokuba kulungiselelwa ukuxolelwa kweefizi zesikolo ngokupheleleyo okanye inxalenye engahlawulwanga); okanye

20.2 ukuba omnye umzali wenza isicelo ngokufanelekileyo sokuxolelwa ngokupheleleyo okanye ngokuyinxalenye ngokuthi azalise ifom emiselweyo (o.k.t. ifom ekwisiHlomelo B kwiMimiselo) njengoko kufunekayo kwisiqendu 41(4)*(c)* se*SASA*, kuqukwa nomvuzo ongekaxhuzulwa wonyaka wabazali bobabini, kwaye ukuba emva koko isikolo siyaqinisekisa ukuba akakufanelanga ukufumana ukuxolelwa, isikolo eso sinokuthatha amanyathelo asemthethweni ngokuchasene naye.

21. Ngokumalunga nezixa isikolo esinokwenza amabango aso komnye umzali kuloo manyathelo ezomthetho, zezi zilandelayo:

21.1 kwiimeko apho umzali owenza isicelo afumene ukuxolelwa ngokupheleleyo, isikolo sinokwenza ibango leefizi zesikolo ngokupheleleyo komnye umzali ngaphandle kokuba uye wenze isicelo ngokufanelekileyo sokuxolelwa kwaye isicelo sokuxolelwa kwakhe sibonisa ukuba unelungelo lokufumana ukuxolelwa (kwimeko enjalo isikolo asisayi kwenza bango lesixa sokuxolelwa nebango elo omnye umzali anelungelo lalo); kwaye

21.2 kwiimeko apho umzali owenza isicelo avunyiweyo ekuxolelweni ngokupheleleyo, isikolo sinokwenza ibango lebhalansi yeefizi zesikolo komnye umzali.

22. Kucelwa wazise okukule setyhula bonke abasebenzi abachaphazelekayo namalungu amabhunga olawulo ukuze akuthathele ingqalelo.

ISAYINWE: NGU-A LEWIS
INTLOKO EBAMBELEYO: YESEBE LEMFUNDO
UMHLA: 2018-03-14