URhulumente weNtshona Koloni
EzeMfundo

ICandelo loCwangciso loKwakhiwa kweZikolo noLawulo lwePropathi

Isalathiso: 20181115-8730
Inombolo yefayili: 6/1/5
Imibuzo: T Diketane

ISetyhula: 0008/2019
Umhla wokuphelelwa: Awukho

Iya: KumaSekela Balawuli-Jikelele, kuBalawuli abaziiNtloko, kuBalawuli, kumaSekela Balawuli beeNkonzo zeZiko kwiZithili, kuBaphathi beeSekethe, kwiiNtloko zoLawulo noKuphathwa kwaMaziko, kwiiNqununu nakooSihlalo bamabhunga olawulo azo zonke izikolo zikarhulumente

Isishwankathelo esifutshane: *Izilungiso kuMthetho weZikolo zaseMzantsi Afrika, ezithi zinike amabhunga olawulo ezikolo amalungelo osetyenziso (usage rights) ngokumalunga nepropathi engenakushenxiseka yesikolo (school's immovable property)*

Isihloko: Izilungiso kuMthetho weZikolo zaseMzantsi Afrika, ezithi zinike amabhunga olawulo ezikolo amalungelo osetyenziso (*usage rights*) ngokumalunga nepropathi engenakushenxiseka yesikolo (*school's immovable property)*

1. Le setyhula ihlaziyiwe yaye iyitshitshisa ngokupheleleyo iSetyhula 0032/2012.

2. Injongo yale setyhula kukucebisa izikolo zeSebe leMfundo leNtshona Koloni *(WCED)* ezimi kumhlaba karhulumente nezikwizakhiwo zikarhulumente ngeembopheleleko zamabhunga olawulo ngokumalunga nesiqendu 36 soMthetho weZikolo zaseMzantsi Afrika, 1996, (uMthetho 84 ka-1996).

3. UMthetho oFakela iZilungiso kwiMithetho yeMfundo esiSiseko, 2011, (uMthetho 15 ka-2011) ((*The Basic Education Laws Amendment Act, 2011 (Act 15 of 2011)*), njengoko upapashiwe kwiGazethi kaRhulumente No. 34620 ye-19 Septemba 2011, wafakela phakathi kwezinye izinto, isiqendu 36 se*SASA* ngokufakela ezi qendwana zilandelayo:

   "(4) (*a*) Ibhunga lolawulo linokuthi, ngemvume yeLungu leBhunga leSigqeba—

      (i) liqeshise, lisebenzise, liguqule okanye litshintshe ipropathi engenakushenxiseka yesikolo ukwenzela ukulungiselela imisebenzi yesikolo okanye ukongeza kwingxowa-mali; yaye

(ii) iivumele nabani na ukuba aqhube naliphi na ishishini kwipropathi yesikolo ukongeza kwingxowa-mali.

(b) Ibhunga lolawulo alinakuvumela nawuphi na umsebenzi (*activity)* kwipropathi yesikolo ongaba yingozi kubafundi okanye sisiphazamiso kubafundi okanye othintelweyo ngulo Mthetho.

(5) Ukulungiselela iinjongo zesiqendwana (4), ukuthi 'ipropathi yesikolo' kuthetha ipropathi engenakushenxiseka kaRhulumente kubandakanywa nepropathi echatshazelwe kwiziqendu 13 no-55 kunye nayiphi na ipropathi engenakushenxiseka ethengwe sisikolo ngemali yesikolo okanye ngezipho-mali eziyiminikelo yesikolo."

4. ISebe i*WCED* liyalivuma ilungelo lezikolo zalo, ngokungqinelana namacandelo 13(2) no-36(1) eSASA, lokuma kumhlaba yaye zisebenzise ipropathi engenakushenxiseka karhulumente ukuze kuzuze isikolo ukulungiselela iinjongo zemfundo, kwakunye nomsebenzi oluxanduva webhunga lolawulo wokuthatha onke amanyathelo afanelekileyo, ukongezelela izibonelelo ezibonelelwa ngurhulumente ukwenzela ukuphucula umgangatho wemfundo ebonelelwa sisikolo kubo bonke abafundi baso.

5. Nakuba kunjalo, iSebe i*WCED* linqwenela ukuba onke amabhunga olawulo neenqununu zezikolo zikarhulumente eziqhelekileyo nezezikolo zemfundo eneemfuno ezizodwa zikarhulumente ezikwipropathi karhulumente, zikuthathele ingqalelo oku kulandelayo:

5.1 **Igunya loMphathiswa weMfundo wePhondo**

NguMphathiswa wezeMfundo wePhondo onegunya lokuvuma oku ukulungiselela iinjongo zokuphumeza isiqendu 36(4) seSASA. Amagunya anikwe uMphathiswa wezeMfundo wePhondo sisiqendu 36(4), abekela imida igunya lebhunga lolawulo lokuqeshisa, ukusebenzisa, ukuguqula okanye ukutshintsha ipropathi engenakushenxiseka yesikolo.

5.2 **Imisebenzi eluxanduva yebhunga lolawulo**

5.2.1 Ngokwesiqendu 16(2) seSASA, *"ibhunga lolawulo limi kwindawo yentembeko esikolweni"*. Kulindeleke ukuba onke amabhunga olawulo athathe inxaxheba ngokwemigaqo yokuphathwa kweziko eyamkelekileyo xa esenza imisebenzi yawo. Ibhunga lolawulo malenze ngenyameko elindelekileyo nawuphi na umsebenzi oneziphumo ezichaphazela ulawulo nokuphathwa kweemali zesikolo.

5.2.2 Ibhunga lolawulo maliqinisekise ukuba amalungu angabafundi akabotshelelwanga zizo naziphi na iimvumelwano (*contracts*) ezinokusayinwa libhunga lolawulo.

5.2.3 Isiqendu 20(1) seSASA sicacisa sithi "*maliphathe yaye lilawule ipropathi yesikolo nezakhiwo nemihlaba (grounds) esimi kuyo isikolo, kubandakanywa neehostele zezikolo, kodwa ukusetyenziswa kweli gunya makungaze kuphazamisane okanye kuthintele ukuphunyezwa kwesigqibo esenziwe liLungu seSigqeba soLawulo okanye yiNtloko yeSebe ngokwawo nawuphi na umthetho okanye umgaqo-nkqubo nokuba ngowuphi na.*"

5.2.4 Zonke izigqibo ezithathwe libhunga lolawulo mazibe zilungiselela abafundi ngeyona ndlela ibhetele.

5.2.5 Apho ibhunga lolawulo linenjongo yokuvumela ukusetyenziswa kwesikolo ngeenjongo zoshishino.

(a) maliqeshe abo baziingcali zomthetho nezemali abayimfuneko ukuncedisa kwiimfuno zeemvumelwano;
(b) maliqiniseksie ukuba imvumelwano ethi isayinwe ayisimisi kakubi isikolo kwixa elizayo (oku kunokuchaphazela ukuvumelana ngoqikelelo lwengeniso esusela kwizigqibo ngezemali ezivokothekileyo *(sound financial considerations*);
(c) malithethane nomasipala wengingqi okanye nebhunga lesixeko ukuqinisekisa ukuba liyayithobela imithetho kamasipala okanye yebhunga ngakumbi emalunga nokucandwa kwakhona;
(d) malithathele ingqalelo imiba eneziphumo ezichaphazela ukhuseleko lwabafundi nabo bonke abaqeshwa esikolweni ngokuthathela ingqalelo isiqendu 36(4)(*b*) salo Mthetho;
(e) maliqinisekise ukuba izizathu zesicelo ekubhekiswa kuso kumhlathi 4.4.1 apha ngezantsi zicaciswa ngokuthe gca ukwenzela ukuba uMphathiswa wePhondo abe nako ukwenza izigqibo enolwazi; yaye
(f) apho ibhunga lolawulo lenza isicelo sokutshintshwa okanye sokuguqulwa kwepropathi karhulumente, malingenise iiplani ezineenkcukacha zesakhiwo, neendleko zaso, kunye nesicelo eso.

5.2.6 Ibhunga lolawulo malithathe onke amanyathelo afanelekileyo ukuqinisekisa ukuba kuya kugcinwa ucwangco phakathi kwabahlali abangamelwane abangqonge isikolo kangangoko oku kunokwenzeka.

5.3 **Indima yeSebe WCED nokucandwa kwakhona komhlaba**

5.3.1 ISebe lezoThutho neMisebenzi kaRhulumente (*Department of Transport and Public Works*) lingumgcini wayo yonke ipropathi karhulumente kwiphondo, yaye iSebe iWCED alinawo amagunya asemthethweni *(legal power*) okushenxa kumalungiselelo

akhoyo ngoku okucandwa kwakhona komhlaba, nongumsebenzi oluxanduva lweBhunga leSixeko okanye lomnye umasipala wengingqi ochaphazelekayo.

5.3.2 Kuhlala kungumsebenzi wesikolo esichaphazelekayo ukuqinisekisa ukuba akukho kushishina okanye kurhweba kwenziwayo ngokuchasene nemimiselo nemithetho yoomasipala yokucandwa kwesiza.

5.3.3 Ukuba isicelo esikhankanywe kumhlathi 5.4.1 apha ngezantsi, sinokuba yimbangi yesicelo sokucandwa kwakhona kwesiza, uMphathiswa wePhondo naye uya kufuna imvume yoMphathiswa weSebe lezoThutho neMisebenzi kaRhulumente (*Department of Transport and Public Works*) ngokumalunga noku.

5.4 **Isicelo esiya kuMphathiswa wePhondo ngokwesiqendu 36(4)**

5.4.1 Ibhunga lolawulo malingenise isicelo kuMphathiswa wePhondo sokuqeshisa, sokusebenzisa, sokuguqula okanye sokutshintsha ipropathi engenakushenxiseka yesikolo okanye sokuvumela nabani na ukuba aqhube naliphi na ishishini kwipropathi yesikolo.

5.4.2 Isicelo esikhankanywe kumhlathi 5.4.1 apha ngentla:

(a) masinike izizathu ezaneleyo zokwenza isicelo eso ukwenzela ukuba uMphathiswa wePhondo abe nako ukwenza isigqibo enolwazi;
(b) masibonise ubungakanani benzuzo enokufunyanwa sisikolo kwingeniso eqikelelwayo okanye kwinzuzo enokufunyanwa kulowo oza kuba ngumqeshiselwa (*potential lessee*);
(c) ukuba oko kuchaphazela ukutshintshwa okanye ukuguqulwa kwayo nayiphi na ipropathi karhulumente, masihambe kunye neeplani ezineenkcukacha zesakhiwo, neendleko zaso;
(d) masibandakanye ikopi yemvumelwano yokuqeshisa okucetywayo, yokusebenzisa okucetywayo kunye neyeshishini lokurhweba/lokuthengisa elicetywayo, nemigqaliselo ecace gca ecacisa, phakathi kwezinye izinto,

    (i) onke amalungelo nezinto ezibubutyala *(liabilities*) zamaqela angena kwimvumelwano;
    (ii) injongo nobude bethuba lemvumelwane; kunye
    (iii) nomgqaliselo wokuba umsebenzi awuyi kuba yingozi okanye sisiphazamiso kubafundi okanye uthintelwe yi*SASA*; nokuba

(e) masibandakanye inkcazo emfutshane yokuba imvumelwano ecetywayo iya kuziqinisekisa njani na iimfuno zesikolo zethuba elizayo okanye zokuzinza kwaso ithuba elide.

6. UMphathiswa wePhondo uya kusingatha izicelo ezo azijonge ngokwemeko yazo.

7. Makuqatshelwe ukuba ukwakhiwa okunxulumene nezicelo makubandakanye oku kulandelayo:

   (a) Ileta yesicelo ehamba nezizathu ezivokothekileyo ezicacisa imfuno yale projekthi
   (b) Imizuzu esayiniweyo yentlanganiso yebhunga lolawulo eyivumayo iprojekthi
   (c) Imizobo *(drawings)* esemgangathweni neyamkekileyo ngokwemigaqo yobume bezakhiwo kuquka neplani yesiza ecacileyo (*clear site plan*) ezibonisa iplani yesiza kuloo ndawo kwakhiwa kuyo equka zonke izakhiwo ezikhoyo *(footprint)*, iindlela ezisondele ngakwipropathi yesikolo nendawo esiza kumiswa kuyo isakhiwo esicetywayo
   (d) Iplani yeprojekthi eneenkcukacha zokuba ngubani na oya kuhlawula iindleko nokuba yimalini ebhajethelwe le projekthi icetywayo
   (e) IMvumelwano yeNtsebenziswano (*Memorandum of Agreement*) ukuba ngamaqela amaninzi aya kusebenzisa iifasilithi

8. Ukuba iprojekthi ixhaswa ngemali elityala, kufuneka isikolo senze isicelo kwi-ofisi yesithili echaphazelekayo ukufumana imvume yemvumelwano yemali-mboleko.

9. Ukufumana imvume yokuqeshisa isakhiwo, ikopi yengqeshiso elindekileyo ekuza kuvunyelwana ngayo mayifumaneke. Le kopi iya kubhalwa nakuxwebhu olungeniselwa ukuvunywa kuMphathiswa wePhondo. Iingqeshiso azimele kuba ngaphezu kweminyaka esithoba neenyanga eziyi-11 yaye kukhethwa amathuba amafutshane ukwenzela ukuba oko kungabi ngumthwalo kwipropathi ithuba elide kakhulu.

10. Uyacelwa uqaphele ukuba akukho msebenzi wokwakha unokuqala kwindawo ekwakhiwa kuyo de uMphathiswa wePhondo abe uyisayinele le projekthi ichaphazelekayo yaye neSebe lezoThutho neMisebenzi kaRhulumente lizivumile iiplani zesakhiwo.

11. Izicelo ezimalunga noku mazithunyelwe kule dilesi ilandelayo:

    Maziqwalaselwe ngulo: Tebogo Diketane
    Western Cape Education Department
    Private Bag X9114
    Cape Town
    8000

12. Kucelwa wazise okuqulethwe yile setyhula bonke abasebenzi namalungu ebhunga lolawulo ukwenzela ukuba bakuthathele ingqalelo.

ISAYINWE: NGU-BK SCHREUDER
INTLOKO: YESEBE LEMFUNDO
UMHLA: 2019-02-20