

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 38800/20

In the matter between:

HOLA BON RENAISSANCE FOUNDATION

Applicant

and

**PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

Respondent

RESPONDENT'S CONCISE HEADS OF ARGUMENT ON URGENCY

A. INTRODUCTION

1 This is an application launched on an urgent basis by the Hola Bon Renaissance Foundation against the President of the Republic of South Africa.

2 The Applicant seeks *inter alia*:

2.1 The review and setting aside of:

2.1.1 The declaration and classification of the National State of Disaster of concerning the Covid-19 pandemic;

2.1.2 The Disaster Management Regulations promulgated since 17 March

2020 in terms of section 27(2) of the Disaster Management Act, 57 of 2002 pertaining to the National State of Disaster; and

2.2 Further and various ancillary and extensive relief and structural remedies involving Parliament, the Auditor-General, and the establishment of investigatory expert panels to be overseen by this Court.

3 The application was launched on Wednesday 19 August 2020, and the Respondent was afforded until close of business on Friday 21 August 2020 to file an answering affidavit. The Respondent filed a Notice of Intention to Oppose on 21 August 2020.

4 Given the nature, substance and length of the application,¹ as well as the extensive and far-reaching relief sought, it was simply not reasonable nor possible to file an answering affidavit within the timeframes dictated by the Applicant, or before the hearing of this matter on 25 August 2020.

5 The Applicant has further not made out any case for urgency. The Applicant has not complied with the with the Uniform Rules of Court and the Practice Directives for this division concerning urgent applications. The application ought to be struck for lack of urgency.

B. THE APPLICANT HAS FAILED TO MAKE OUT A CASE FOR URGENCY

6 The Applicant purports to deal with urgency at paragraphs 143 to 157 of the founding affidavit. It does so by way of vague, sweeping and unsubstantiated allegations that

¹ The Founding Affidavit runs to 75 pages. The Annexures to the Founding Affidavit run to 983 pages.

constrain meaningful engagement. The Applicant has not set out the circumstances which render this matter urgent, whether explicitly as required, or at all.

- 7 The Applicant seeks substantial and far-reaching relief pertaining to the Constitutionality, legality and validity of the declaration of the National State of Disaster relating to the Covid-10 pandemic, the National Lockdown, and the Disaster Regulations promulgated in terms of section 27(2) of the Disaster Management Act 57 of 2002.²

- 8 The Applicant further seeks extensive ancillary and wide-ranging relief pertaining variously to the removal of Covid-19 compulsory statements and communications; structural relief and oversight from this Court and the establishment of an independent committee of enquiry to investigate death and testing reporting and databases; reporting requirements to this Court from across governmental departments; the establishment of an independent panel of auditors lead by the Auditor-General to audit all relief packages, funds and processes; declaratory relief on the nature of Covid-19 as a limited health risk; the setting up a Commission of Enquiry into Covid-19 funds; Parliament to report to Court on findings and updates on Covid-19; the Court to reallocate funds and / or loans dedicated to Covid-19; the clearing of all criminal records for infringements of the Lockdown "Disaster Management" regulations; the upliftment on the ban of alcohol and cigarette sales; the exemption of rates and taxes

² Variously at prayers 3 to 9 of the Notice of Motion 0006-1 to 006-2. This Court has already dealt with the aspects of the relief sought by the Applicant in this application at prayers 3,4,5,6,8 and 9 of the Notice of Motion in the matter of Reyno Dawid de Beer and Others v the Minister of Cooperative Governance and Traditional Affairs (21542/2020) (2 June 2020) under case number 21542/20 concerning the validity of the declaration of a National State of Disaster, and the regulations promulgated pursuant thereto, which are now *res judicata*. The Applicant participated in *De Beer* as an *amicus curiae*. Leave to appeal was granted on 30 June 2020, and an application in terms of section 18(3) of the Superior Courts Act to enforce the order pending the appeal is enrolled for hearing in this Court on 26 August 2020.

incurred during the lockdown period on commercial, industrial and residential [presumably properties]; to initiation of a process to assess whether the President is fit to hold office or neglected his constitutional obligations or abused his executive powers and whether the President should be removed from office; and the reopening of international borders.³

- 9 The Applicant does not make out a case for urgency in relation to any of the prayers for relief it seeks in its Notice of Motion.

The Applicant's previous approaches to Court

- 10 The Applicant has alleged that "*the existing lockdown is [sic] warrants an exceptional circumstance hence we seek the court to grant urgency.*"⁴ On 26 March 2020 the Applicant approached the Constitutional Court in an application for direct access to interdict the President from announcing the national lockdown.⁵ The Constitutional Court dismissed this application on 30 March 2020.⁶ The Applicant has made no attempt to explain the delay since March 2020 to seek to review and set aside the national lockdown, which is one of the prayers for relief it seeks (prayer 9) in the Notice of Motion.⁷

- 11 On 3 August 2020 the Applicant again approached the Constitutional Court in an application for direct access. In that application it sought substantively the same relief against the President and on substantively the same papers as it does in this

³ Various at prayers 10 to 30 of the Notice of Motion 006-2 to 006-5.

⁴ Para 146 Founding Affidavit.

⁵ Para 57 Founding Affidavit, 006-27; Annexure 13 from 006-431.

⁶ Para 57 Founding Affidavit, 006-27; Annexure 14 006-456

⁷ 006-2.

application.⁸ The Constitutional Court dismissed that application on 12 August 2020.⁹

- 12 The Applicant does not address its delay in approaching this Court, nor has it indicated or established that it will not be afforded substantial redress at a hearing in the normal course.

Non-compliance with the Uniform Rules of Court and Practice Directives

- 13 The Applicant has not set out any basis for approaching this Court on an urgent basis outside of the ordinary timeframes provided for motion proceedings in Uniform Rule 6, nor why the matter must be dealt with as one of urgency in accordance with Rule 6(12).
- 14 The Applicant does not provide any justification for the extremely truncated timeframes afforded to the Respondent to file an answering affidavit.
- 15 The Applicant further provides no justification for enrolment of this application on 25 August 2020, notwithstanding that the matter was not ripe for hearing before the closure of the urgent roll at midday on 20 August 2020.
- 16 The time afforded to the Respondent, the President of the Republic of South Africa, is neither reasonable nor justified. This is particularly so given the extensive and far reaching relief sought against the President (and implicating a number of further state bodies and agencies), the national importance of the issues raised, and that the application with annexures runs to almost 1000 pages. It is patently unreasonable to require the President to file answering papers on two day's notice as required by the

⁸ Para 88 Founding Affidavit 006-31. This application is not attached to the Founding Affidavit.

⁹ Para 88 Founding Affidavit, Annexure 54 at 006-248.

Notice of Motion. It was simply further not possible to file a comprehensive answering affidavit on or before the date of hearing of this matter (notwithstanding that this is contrary to the Practice Directives of this Division) given the extensive consultations and considerations required to answer the voluminous record and extensive relief sought.

17 The matter is accordingly not ripe for hearing and the Applicant has not complied with the Practice Directives of this Division:

17.1 The Applicant was constrained to anticipate that the application would be opposed.

17.2 It was accordingly incumbent on the Applicant to have allowed reasonable times for the filing of answering and replying affidavits, before the close of the roll at 12h00 on Thursday 20 August 2020.

17.3 As this was not done, the court procedure was abused.¹⁰

17.4 Nothing in the Applicant's papers indicate that this is an application as envisaged by any of the degrees of urgency referred to in ***Luna Meubel Vervaardigers***¹¹ that justify deviation from ensuring that the application was ripe for hearing before the close of the roll on Thursday 20 August 2020.¹²

17.5 The Applicant has not complied with the requirements of ***Republikeinse***

¹⁰ Para 3(9), Memorandum to Practitioners re: Procedure in the Pretoria Urgent motion Court dated 12 February 2007, Annexure A 13.24 to the Practice Manual of the Gauteng Division, Pretoria.

¹¹ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W).

¹² Para 4(1), Memorandum to Practitioners.

Publikasies¹³ which oblige it to afford the Respondent a reasonable amount of time to file an answering affidavit.¹⁴

17.6 The application is opposed, and Respondent ought to have been given a reasonable opportunity to file an answering affidavit. The matter is not ready to be adjudicated upon on 25 August 2020.

18 Subject to this Honourable Court's discretion and the application of the degrees of urgency referred to in **Luna Meubel Vervaardigers**, which it is submitted do not find application here, the Practice Directives of this division do not permit the application to stand down so that further affidavits can be filed,¹⁵ or, for the matter to be postponed to a later week, barring in exceptional circumstances.¹⁶ No exceptional circumstances are present, nor are any alleged.

19 It is therefore submitted that the matter is not urgent; and in any event, does not merit a hearing on the extremely short timeframes the Applicant has sought to impose.

20 Should this Honourable Court determine that this application is urgent, and given the nature, extent and far reaching impact of the relief sought, it is respectfully submitted that the Respondent ought to be permitted a reasonable (albeit truncated) opportunity to file an answering affidavit.

¹³ Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A).

¹⁴ Para 4(6), Memorandum to Practitioners.

¹⁵ Para 4(6), Memorandum to Practitioners.

¹⁶ Para 4(6), Memorandum to Practitioners.

C. CONCLUSION

- 21 It is submitted that the application ought to be struck from the roll for lack of urgency.
- 22 The Respondent does not seek an order as to costs.

GINA SNYMAN

Chambers, Johannesburg

24 August 2020