

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 38800/2020

IN THE MATTER BETWEEN:

HOLA BON RENAISSANCE FOUNDATION

APPLICANT

AND

PRESIDENT

1st RESPONDED

AMICUS CURIAE HEADS OF ARGUMENT

TO: THE REGISTRAR OF THE ABOVE MENTIONED HONOURABLE COURT,
PRETORIA

AND TO: THE PRESIDING OFFICERS OF THE ABOVE MENTIONED HONOURABLE
COURT, PRETORIA

AND TO: COUNSEL FOR THE RESPONDENT, APPLICANT

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A) BACKGROUND

1. On the 15 March 2020 in the government Gazette Vol 657 No: 43096, the Head of National Disaster management. Dr Mmaphaka Tau stated that after assessing the potential magnitude and severity of the COVID -19 pandemic in the country, hereby give notice that on 15 March 2020, in terms of section 23(1)(b) of the Disaster Management Act, 2002 (Act No. 57 of 2002) (the Act), classified the COVID -19 pandemic as a national disaster. ON the 15 March 2020 the Minister of Cooperative Governance and Traditional Affairs declared a national state of disaster and she state “ Considering the magnitude and severity of the COVID -19 outbreak which has been declared a global pandemic by the World Health Organization (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre, and taking into account the need to augment the existing measures undertaken by organs of state to deal with the pandemic in the government Gazette Vol 657 No: 43096
2. On the 17 March 2020 the Minister declares on government Gazette No: 43107 regulations issued in terms of section 27(2) of the Disaster Management Act, 2002

3. On the 19 March 2020, there was a statement of the Inter Ministers Committee on the Gazetted Regulations on the state of disaster Hon. Dr Nkosazana Dlamini Zuma Minister of Cooperative Governance and Traditional Affairs
4. The State declared the national disaster - On the 23 March 2020, The President Cyril Ramaphosa: Escalation of measures to combat Coronavirus COVID-19 pandemic and called for a lock down
5. Thereafter respondent hereby referred to as the State, The State declared some Social Relief as an intervention on country challenges during lockdown
6. On the 26 March 2020 HBR Foundation approach the Constitutional court to interdict
7. On the 30 March 2020 the Constitutional Court dismissed the application on grounds that it had no prospect of success
8. There after the State proceeded with unconstitutional regulations in a form of disaster management regulation and lock down
9. The regulations violated the rights of South Africans, in terms all forms that includes work, education, Jobs, Security, health and movement, religion etc...
10. The application was successful in a court a quo, as a result the State lodged an application for Leave to Appeal
11. The HBRF acts in the interests of those without resources and means to litigate in their own names, and are people who are typically marginalized and disproportionately affected by unconstitutional lockdown regulation

12. In *Campus Law Clinic, University of Kwa-Zulu Natal v Standard Bank of South Africa Ltd* 2006 (6) 103 (CC), the Constitutional Court held that granting an *amicus* standing depends on various factors. Included in those factors are:

- a) The nature of the relief sought and extent to which it is of general and prospective application.
- b) The range of persons or groups who may be directly or indirectly affected by any order made by the Court and the opportunity that those persons or groups have had to present evidence and argument to the Court.
- c) The degree of vulnerability of the people affected, the nature of the right said to be infringed; and
- d) The consequences of the infringement.

13. We have perused the judgment of the Court a quo as well as the founding papers we are of the view that the submissions we intend to make advance will focus on pertinent issues that have not been fully canvassed by the parties.

14. We are mindful of the duty of *amicus curiae* not to repeat any submissions made by the parties. We are of the respectful view that our submissions of substance which would be helpful to this Court in dealing with this matter focuses on the inception which is classification of Covid 19 on whether or not is a disaster, and our argument clearly indicate it is not a disaster. Then the relief and promises of the state not fulfilled and State that architected a disaster against its own people.

B) CLASSIFICATION OF THE NATIONAL DISASTER

15. It is apposite to state that, an Epidemic is a disease that affects a large number of people within a community. A pandemic is an Epidemic that's spread over multiple countries or Continent. An outbreak is a greater than anticipated

increase in the number of endemic cases. It can be also single case in a new area. If it's not quickly controlled; an outbreak can become an epidemic.

16. South Africa over past decades has experienced various Endemic, Epidemic and pandemic such as Cholera, Small pox, HIV/Aids, SARS, Listeriosis, Severe Acute Respiratory Syndrome (SARS), Rift Valey fever Turbelance, Epidemic and Malaria.
17. On the above the State has not differentiate between Covid19 and all the above and why it is perceived Covid 19 as a National disaster
18. The State has not provided a rational of any disease or virus including what constitute a disaster, a national disaster and how it categories such disaster in a form of an event and a form of a virus
19. Instead of the state to put measures to control few single cases of the outbreak, it resulted blowing the matter out of proposition by declaring the National disaster, clearly the State has no classification of what constitute a national disaster
20. The State has failed to make it public of its Covid19 assessment, and therefore denying the public the reasons which lead to declaring a state of national disaster ultimately to Lockdown.

C) PARLIAMENT VIRTUAL SITTING

21. Parliament held a virtual sitting on the 18 June 2020 in line with Covid19 regulations:
 - a) A question was asked by the EFF leader Mr Malema to the President of the Republic of South Africa and HBRF quote "Mr President Do you have any Scientific evidence of how many people are going to die out of the pandemic, or we are just going as usual without knowing what are the expected infections and expected death within a particular period of time,

have you be given an advise as to within a particular period we can expect that SA will lose so many lives” unquote .

- b) The President of RSA response HBRF quote: We have been advised by top Scientist in our country and we have benchmarked what we are doing here against what is happening in other parts of the world. Many parts of the world did not do what we did, our lockdown was hard we will concede that, we went on even to restrict things that many other countries did not restrict like alcohol, like cigarettes, buying and selling of a number of items, but we know in time we were not going to be able to keep to the lockdown forever.” unquote

22. The President did not refer to the assessment report of the national disaster center and its classification which should be guiding South Africa.

23. There were no reasons for classification other than other countries are doing we doing lockdown.

24. The state failed to provide the reasonable threshold for its Hazard assessment which is lead to its decision to declare a national disaster. The State further failed to provide the reasonable threshold from its vulnerability assessment which is lead to its decision to declare a national disaster.

25. The Classification of Covid 19 as a the national disaster and all Lockdown regulations proclamation in terms of the Disaster Management Act No. 57 of 2002, had (have) a significant impact, affecting fundamental rights of South African citizens. Particularly;

- a) Infringement of Bill of Rights Chapter 2 , Section 7, Rights
- b) Violation of Bill of Rights Chapter 2, Sections 10, Human Dignity
- c) Violation of Bill of Rights Chapter 2, Sections 21,
- d) Freedom of Movement and Resistance

- e) Infringement of Bill of Rights Chapter 2, Sections 22, Freedom of Trade, Occupation and Profession
- f) Violation Bill of Rights Chapter 2, Sections 27 Health Care, Food Water and Social Security
- g) Violation Bill of Rights Chapter 2, Sections 28 Children, that includes child head household, to basic nutrition, shelter, basic health care services and social services;
- h) Infringement to Bill Of Rights Chapter 2, Section State of emergency
- i) Violation of the Constitution in particular the preamble

26. The State discriminated by forcing South Africans to communicate with it over the internet platform nothing that not every South African has access to the Internet during lockdown, while South African we forced to Stay at home and not every South African has an income to buy data.

27. Lockdown regulations sought to combat the spread of coronavirus amongst South African citizens, but its regulations are not rationally connected to the means taken by the Executive, secondly other regulations infringed the fundamental rights mentioned in paragraph above and they are not justified and reasonable as envisaged in section 36(1) of the Constitution

¹ In terms of Section 36. of the Constitution:

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
 - (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

D) HEALTH AND DEATH ON COVID 19

i) Guidelines of Death by Covid 19 –

28. The State confirmed that at least 1930 death cases due to Covid 19, we would like to bring to the country the guidelines of World Health Organization. The State report has created panic in the country on death related to Covid 19, as if it is only confirmed deaths, while the World Health Organization guidelines recoding medical certificate of cause of Death it states “ COVID-19 should be recorded on the medical certificate of cause of death for ALL decedents where the disease caused, or is **assumed** to have caused, or contributed to death” . (see **Point 3 of Annexure 1 Guidelines Cause of Death COVID-19**) - *International Guidelines For Certification And Classification (Coding) Of Covid-19 As Cause Of Death*) and that only in 5 August 2020 the State will be testing and validating if death is due to COVID19 - <https://www.youtube.com/watch?v=ms2vSMQmQSO>

ii) Lessons learned by the Minister of Health on Covid –

29. The media coverage 30 April 2020, where This is the opinion of Health Minister, Dr Zweli Mkhize, who joined a panel of experts from the World Health Organization (WHO) in reflecting on how countries in Africa are dealing with the worldwide pandemic. On a question of the relative low infection rates against that of the international world, Mkhize said I quote “ several factors could have contributed, including an overall younger population that could probably handle the virus better, and the fact that Africa was among the last continents to have recorded a first case and thus had the opportunity to respond faster”, unquote (**see annexure 2 Dr MNkhize Lesson learned on Covid 19**)

iii) Unexplained Death by National Organization of Rare Disorders –

30 this organization has reported Sudden unexplained death in childhood (SUDC) is the sudden death of a child 12 months of age or older that remains unexplained after a thorough case investigation, including performance of a complete autopsy, examination of the death scene, and review of the clinical history. Amongst other reports and However, due to the lack of standardizations of death investigations, consideration of undiagnosed cases of cardiac to list a few **(See annexure 3 Unexplained Death in Childhood)** and yet State has taken the easier route to assume all death to be due to Covid19. The National Organisation of rare disorder has since 2015 identified multiple of death and still no National Disaster was declared by the State. There has been a public outcry where family are forced to bury their deceased who died on unrelated Covid 19 death, that they are death certificate state Covid 19 death to increase the daily death statistics in the country.

iv) Covid19 vs TB, SARS, HIV/AIDS, Influenza –

31. This Month the WHO has declared this period is an era of another Pandemic which is Influenza, of which the has cost lives during winter seasons, and the State has ignored that Pandemic at the expense of Covid 19 and any other illnesses, which is another pandemic which is a serious virus, and TB, SARS, Malaria, HIV/Aids are serious virus that are of a serious danger to any person irrespective of their medical condition, while Covid 19 is dangerous for people with underline health condition and/or weak immune system, but mild symptoms do not need vaccine but require quarantine of 15 days to selfheal particularly from people who do not suffer any underline health condition

iv) Mortality rate –

32 The State has deferred its constitutional obligation of controlling a national disaster which is experienced everyday as reported by statistic, the infant mortality rate in South Africa from 2008 to 2018. In 2018, the infant mortality rate in South Africa was at about 28.5 deaths per 1,000 live births. **(See Annexure 4 – Infant mortality rate 2008-2018)**

E) DECLARATION OF NATIONAL STATE DISASTER MANAGEMENT

33. The State relied on a classification of a COVID19 that was baseless, unreliable and had no truth in it. Furthermore it opted to even implement Disaster management regulations that were not practiced anywhere in the world, which were hard for South Africans and which were a violation of the constitutional rights of all South Africans, as per the President Statement in the Parliament on the 18 June 2020.

F) STATE FAILURE ON COVID 19 SOCIAL RELIEF

34 The **State failure** to carry its **constitutional obligation** in terms of all Covid 19 SOCIAL RELIEF:

a) Social Relief on SASSA - We have experience where the State would commit and change its mind such as when the State announced the R350 to be paid to unemployed and still today majority have not paid, HBRF on the 17 June 2020 wrote a letter of demand to the Minister of Social Development this is after it identified that 16 million South Africans as per the Stats SA are unemployed , and only 1.3 Million were paid for one monthly. In the letter we request the Department to provide appeals process within 48 Hours See [\(the Annexure 5 Letter of Demand to SASSA\)](#). The Department on the 20 June 2020 issued a media statement SASSA working on appeal system for R350 grant applicants - 85 eight five days into lock down, this is a caring State to save lives from poverty [\(See Annexure 6 SASSA working on appeal system for R350 grant applicant\)](#)

b) Social Relief on UIF – Because there are more than 750000(seven hundred and fifty thousand employees who have not received their salary since lockdown was declared HBRF has intervened [\(see Annexure 7 Letter of](#)

Demand UIF) and see the UIF respond (See [Annexure 8 Letter UIF RESPONSE to HBR](#))

- c) Social Relief on Small business**- with SMME we have yet to see and find an SMME that has been funded, while land lord are everyday evicting SMME due to assistance from the State ([See Annexure 9 Letter of Demand Small Business](#))
- d) Social Relief of Sports, Arts** - majority of actors, film producers and athletes have not receive a cent from the grant since lockdown and this sector is hard hit by the unconstitutional lockdown ([see Annexure 10 Letter of Demand DSAC](#))
- e) Social Relief on Transport Sector** – when Lockdown was declared the Taxi industry worked with the State to transport essential Services and people to hospitals and kept the industry growing. On the 22 June 2020 Taxis who assisted the State during lockdown had to strike in order for the State to get attention of it ([See ockdown taxi strike](#)) while the State gives R200bn (two hundred Billion) to banks without any conditions that are aimed to improve the poor of the poorest including their partners who in this case were the Taxi operators. Noting the regulation state that taxi cannot have 16 passengers (seating together) while in a funeral 50 people can seat together.
- f) Department of Justice role during LockDown** - The department of Justice is the only department that was making an income during the lockdown, with this unconstitutional regulations, due fines paid by South Africans who were trying to their daily basic living survival, while the other people are having criminal records due to this unconstitutional lockdown regulation, which has created a criminal record against obedient and discipline South Africans, with companies retrenching Like Mass Mart, Ecor, Telkom, SABC, Samancor, Sibanye-Stillwater, Glencore, Aspin , 90% of SMME and NGO to list a few the record will make it even more difficult for South Africans to obtain

prospect of employment. (**See the Annexure of Demand HBR vs Department of Justice and SAPS**)

F) STATE ACKNOWLEDGES COVID 19 IS NOT A THREAT

The state acknowledges that Children illnesses more than are dangerous than COVID19 click <https://www.youtube.com/watch?v=hUcVrdwWmjg>

G) RATIONALITY TEST

35. The State decision to create the gazette and classify Covid19 a national disaster one was not rationally connected to the means taken to combat coronavirus.

36. The State lockdown regulations-driven response to the Coronavirus pandemic, including the State choices about how to combat Coronavirus, should have considered reasonable threshold for its Hazard assessment and impact assessment which is lead to its decision to declare a national disaster.

37. The State further failed to provide the reasonable threshold from its vulnerability assessment which is lead to its decision to declare a national disaster.

38. Rationality review asks a narrow question: is there a rational connection between the government's objectives and the means chosen to achieve them. The rationality is not about whether a decision is right or wrong. It follows that this case the question is much narrower: is there a rational connection between the State's objectives. The Court a quo's answer—an emphatic 'NO'—was correct.

39. The State has obligation when making regulations in terms of Disaster Management Act, to ensure that the means taken to combat coronavirus are rationally connected to the purpose it seeks to achieve, secondly the limitation of rights by regulations are reasonable, justifiable and there is no disproportionality between State objective and the limitation of the rights.

40. A good example of the Malawi Government which put a hold on lockdown, - [see the click on the link https://youtu.be/nH8D1yE6Pc8](https://youtu.be/nH8D1yE6Pc8)

H) RATIONALITY TEST EXAMPLE

41. The good example of a State that applied a rationality test is Malawi, when it put on hold its lockdown in the interest of its people and not joining fashion.

(see *Bengwenyama Minerals Pty Ltd v Genorah Resources (Pty) Ltd* 2011(4)SA 133(CC) the Constitutional court Stressed the rule of law underpinnings behind section 172. the rule of law is entrenched in section 1(c) of the constitution which provides that it is a foundational value of our constitution and our society. The rule of law concern behind a declaration of invalidity of law or conduct, was dealt with as follows in the said judgment at paragraph 85 “ *I don’t think that it is wise to attempt to laydown inflexible rules in determining a just and equitable remedy following upon a declaration of unlawful administrative action. The rule must never to relinquished but the circumstance of each case must be examined in order to determine whether the factual certainty requires some amelioration of legality, if so to which extent*”

42. Instead of the State to utilize the alternative relief, the State use that period to continue bringing more harm to South Africa with this appeal to keep the status quo of non-accountability, poverty, increase of illiteracy and retrenchments in the economy, hence we request the court to dismiss the appeal with costs

43. State failed to give measures used to combat COVID19 or any other pandemic that have strike the Republic.

44 the need to argument the existing measures undertaken by organs of to deal with the pandemic. The recognition of special circumstances warranting such declaration. (See In *Hoffman v South Africa Airways* 2001(1) SA the court held that appropriate relief in terms of section 38 must be construed purposely and in the light of Section 172(1)(b) which empowers a court in constitutional matters to make any order that is just and

equitable. Such the court held that, '*appropriate relief must be fair and just in the circumstances of the particular case. 'Appropriateness imports 'the element of justice and fairness'*)

45. The State appeal has no reasonable prospect of success, the relief seek by the State undermined its own constitutional obligation, the bill of rights and the majority of South Africans who are on the urge of death due to poverty and the costs of crime rising because of this lockdown.

I) STATE ACKNOWLEDGES COVID 19 IS NOT A THREAT..... 15

46. Kindly find the attached annexure of Minister of health [Click here :](https://www.youtube.com/watch?v=hUcVrdwWmjg)
<https://www.youtube.com/watch?v=hUcVrdwWmjg>

J) INTERNATIONAL ACKNOWLEDGES INCORRECT REPORTING on COVID19

47. The State has failed to provide how it classifications of any diseases, The State has failed to convince the court of why Covid 19 was classified as a national disaster. The State has not classified correctly covid19 and against TB, Influenza, Malaria, SARS etc...

48. The State has not provide reasonable facts, have not made the assessment publicly or its ground for the declaration of a national disaster and reasons for the Declaration of the National Disaster Management. From inception of the breakout of the Covid19, they did not conduct a scan and assessing the risk.

49. The State took a decision based on hearsay of the Media and opted to violate the bill of Rights of South Africans through an unconstitutional lockdown

50. See the attached acknowledgement of UK – Click on the link
<https://www.facebook.com/sirenety/videos/3922141877812934>

51. on 5 August the minister of health acknowledged that the State has not tested any death was due to Covid 19, see annexure

K) GERMAN APPOINTS AN EXTRA PARLIAMENTARY ENQUIRY

52. Kindly find the attached link on the German Enquiry into Covid 19

Click on the Link : <https://youtu.be/E1wbgrhr2Bw>

L) UPHOLDING THE CONSTITUTION

53 . Our Lovable State has committed that there will not be any load shedding during lockdown and we are experiencing load shedding every day.

54. The State is not reliable, unethical behavior; it is arrogant and careless about the economy, its people, its land and the constitution of the Republic

55. The State exploits this circumstance hence we find the our SOE's reporting to a Presidential State Owned E Council in short our SOE's report to the likes of Sanlam, AngloGold Ashanti, MTN, Thebe investment, MISTRA to list a few

56. The State has engaged in activities that creates a national disaster to South African, Since the country is in lock down it experience a deepening violation of the Bill of Rights

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M) UNCONSTITUTIONAL AND LIMITATION OF THE FUNDAMENTAL RIGHTS

57. I respectfully submit that It is important to states that in the present case, a limitations analysis of national disaster, classification and regulations on the following legal principles:

58. State is (was) required to show that there is a rational connection between classification, national disaster and the limitation of the rights and the analysis requires an inquiry into the proportionality of the limitation in relation to the harm caused.

59. I am of the view that it is tried law that, various forms of the proportionality test have been adopted by courts, and they all are designed to ensure that a limitation does not unduly restrict a fundamental right. The test involves a balancing exercise between the rights of an individual and the rights of a community.¹

60. In order for the State to declare a national disaster to pass the proportionality test it must therefore be the least intrusive way to limit the right, and must be narrowly drawn so as to not enable officials decision making not to infringe the right disproportionately.

61. The requirement that the law limiting the right must nevertheless be “***reasonably justifiable in a democratic society***” in effect limits the limitation

62. Based on the idea that there is an objective understanding of a democratic society and that State Decision either be Disaster management regulations or lockdown in a democratic society must adhere to the principles of proportionality and equality, it is inconceivable that the regulations could be considered to be “reasonably justifiable in a democratic society. Hence state that the State has used the torture on its people Click here <https://www.youtube.com/watch?v=mgEvCgSnZso>

¹ The Zimbabwe Constitutional Court in Chimakure stated that “[t]he purposes of the proportionality test is to strike a balance between the interests of the public and the rights of the individual in the exercise of freedom of expression.”

N) UNFAIR AND DISCRIMINATION OF THE SOUTH AFRICANS

63. The State has not explained or qualify the reasons of why less than 20% of 0,001% of the 57 million South Africans which are present people affected by COVID19 due to underline health conditions and old age, should be the grounds to lockdown all South Africans and declare a national disaster

64. Furthermore that while 80% of 0.001% of the 57 million South Africans which further represent people affected by Covid 19 has self-healed through a stay home self-quarantine, without any vaccine or any medicine and that should be the grounds to lock down South Africa.

65. May the court also apply the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

66. The State has taken a decision which led to Majority of South Africans being declared insolvent and the poor becoming poor of the poorest

67. Refer to Minister of Justice and others vs SA restructuring and insolvency practitioners association and Others 2016 (4) SA 349 as follows:

“Throughout the many, many years of the Struggle for freedom, the greatest dream of South African’s Oppressed majority was attainment of equality. By that I mean remedial restitutionary or substantive equality, not just Formal equality. Promoting itself on the content of this equality, this court held Persons belonging to certain categories have suffered considerable unfair discriminating in the past. It is insufficient for the constitution merely to ensure , through its bill of rights, that statutory provisions which have caused such unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated and unless remedies, may continue for a substantial time and even indefinitely. Like justice equality delayed is equality denied” .

68. The majority of South Africans are on lockdown and their violation of Bill of Rights in the name of national disaster management. Furthermore State used South Africa as attesting ground for vaccine see the <https://www.youtube.com/watch?v=vSDI5qpbBKs>

O) CONCLUSION

69. A proactive State and a caring State that want to save lives would have done a proper national disaster assessment and the State would have opted to identify and focus on the minority of South Africans who are the vulnerable people to Covid 19 and like related viruses, those are people with underlying health conditions and the elderly with weak immune systems.

70. The State would have and can still develop some Covid19 free Zone where the minority who cannot afford to stay home or are living in risky environment which would danger their lives , the State would have been provided safe place and caring in order to save lives from Covid 19 and/or any other virus attack during this period,

71. While saving the majority of South Africans from poverty they experience every day of this lockdown, avoided the declaring all South Africans insolvent and drowning the economy in to recession, liquidating business and the markets, finally preserving and promoting the Bill of rights resulting to building this great nation called South Africa.

72. The State has been selective on approaching the covid19 pandemic from other deadly pandemic whether unknown and/or unknown that South Africa has had to experience in the past century, as for Covid19 there is no need to borrow \$1bn (one billion dollars) for a vaccine from the New Development Bank ([Annexure 13 New Development Bank approves US\\$1BN loan for SA](#)), while Majority of those infected are with mild symptoms which self healing during quarantine

73. There is no prospect of success and no other court in the republic and internationally may grant the state to appeal and there is no urgency on its application but the State has a constitutional obligation of which its urgency of rehabilitating, reviving and transforming the lives of all South Africans that are experiencing a disaster brought by the State:

74. In Mahomed and Another v The republic of South Africa and others 2001(3) SA 893 (CC) paragraph 69 where Chaskalson P Referred to the United State decision in Olmstead et al v United State and Qoutes the words of Justice Brandies as follows: “ *in*

a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously... Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example.... If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy”

P) PRAYERS

75. Accordingly, wherefore the HBRF prays that this Honourable Court grant an order in the following :

1. Declaring the classification of the national disaster is irrational, vague and unconstitutional
2. Declaring the classification of the national disaster as not procedural and misleading
3. Executive decision to declare Covid19 a national disaster being irrational and unconstitutional
4. Declaring the Disaster Management regulation unconstitutional
5. Declaring the COVID19 a health related matter rather than a disaster in its nature
6. Declaring the classification of the national disaster as unconstitutional
7. Nullifying the lockdown as invalid and unconstitutional
8. Order the State to withdraw its COVID19 compulsory, statements and request entities to remove Covid19 on all platform of communication

be it website, including the withdrawal of the State derivative instituted on companies, Institutions and media relating to Covid19

9. To nullify the COVID19 reports declared by the State as baseless, untruth, unethical, untruth and unfounded
10. Instructing the high Court to Setup an independent committee of enquiry on Covid19 related activities:
 - i. Setup with at least 30 Experts within the 15 days
 - ii. With powers to independent to investigate all cause of death associated with Covid19 and obtain any report
 - iii. Report on all deaths associated with Covid19
 - iv. Mandate to verify and qualify any tests and/or database
 - v. To report to this court every month for a period of two year
 - vi. any other mandate the court deems it fit
11. The State to proceed with all the relief for the next 6 six months from date of order cancelling the October 2020 deadline.
12. The Every Department and/or Agency with a Covid19 Social Relief must have an open system and a report presented to the court within the next 15 days of every month
13. Setup an independent panel of auditors, led by the Auditor General of South Africa be assigned to audit every COVID19 Social Relief packages, funds allocated to banks and including the processes and systems, whereby to report to the court by 15 November 2020

14. State to maintain its promises and commitment with relief as initially declared to the nation and any Minister that fails to disperse funds as mandated must be declared delinquent
15. Parliament to review a process of identifying and validating any disaster to be followed that includes restructuring and capacitation of the national disaster management
15. Withdraw and/or revoke any instruction and/or communication that is/was instructed and/or enforced on companies and/or entities to conform to covid19 regulations including media and on any other communication platform
16. The Court to declare that the disease referred to as COVID19 known as Corona Virus possess no serious threat however a health caution to people with underline health condition must be observed
17. Setting up a Commission of Enquiry into COVID 19 funds, and furthermore instructing the State Investigating Unit to investigate any findings of the Audit on the Social Relief Fund and procurement of the Covid19 and the report be given to the Court by 1st December 2020
18. The court to Subpoenaing parliament to report of the findings and updates of the Covic-19 in the country and advice back to the court on quarterly basis
19. The court to order the reallocate of any funds and /or loans dedicated to Covid19 as a priority, be priorities to essential service delivery matters and programmes including payment of SMME and any other suppliers the State owes, this excludes funds and resources allocated to COVID19 Social Relief Package
20. Remove and clear all criminal records obtained by anyone who was arrested and/or fined for infringing Lockdown “Disaster Management” regulations

21. To order that any ban on alcohol and cigarettes be uplifted with immediate effect.
22. Order the State to exempt all rates and taxes incurred during the unlawful lockdown period for all commercial, industrial and residential.
23. To initiate a process to determine whether the President is fit to hold office
24. to provide an order that nullify the President action on proceeding with the lockdown and resulted in him neglecting to carry his constitutional obligation that his actions were unconstitutional and baseless,
25. to declare that President has abused his executive powers and violated the constitution and the people rights
26. in alternative to point 23 and 24, and in addition 25, that may the court outcomes declare that the President actions constitute the removal of the President with relevant sections of the constitution must apply.
27. In addition to point 26 then initiating the process of executing the Constitution Chapter 5, section 89 (a)(b)(c) as he would have abuse his Executive powers and violated the constitution and the people rights
28. Ordering the State to carry out its constitutional obligation including to working with African countries to provide services and goods and/or assistance to the countries in need throughout world
29. The economy be re stimulated, open international and African trades and borders, under health and security guidelines
30. The constitution and application be resorted and restore the aspiration and future building of this Great Nation called South Africa
31. Costs of Suit
32. Further or alternative relief;

- a.
- b. Dismiss the State leave to appeal with costs
- c. Declaring the classification of the national disaster was irrational, vague and unconstitutional
- d. Declaring the Disaster Management regulation unconstitutional
- e. Declaring and nullifying the entire lockdown unconstitutional
- f. Setting up of Lockdown committee to enquiry
- g. Ordering the State to carry out its constitutional obligation including the continuing with the Social relief as initial state commitment
- h. State to report to court on every month progress of Social Relief for 6 months

LIST OF SOURCES

1. Constitution of the Republic of South Africa.

South African Legislation

2. Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

South African Case Law

3. In Campus Law Clinic, University of Kwa-Zulu Natal v Standard Bank of South Africa Ltd 2006 (6) 103 (CC),

4. Bengwenyama Minerals Pty Ltd v Genorah Resources (Pty) Ltd 2011(4)SA 133(CC) the Constitutional court

5. The Zimbabwe Constitutional Court in Chimakure

6. In Hoffman v South Africa Airways 2001(1) SA

7. Minister of Justice and others vs SA restructuring and insolvency practitioners association and Others 2016 (4) SA 349

8. In Mahomed and Another v The republic of South Africa and others 2001(3) SA 893

9. Children debases are dangerous than Covid19

<https://www.youtube.com/watch?v=hUcVrdwWmjg>

10. State agree that Death was never tested up until 5 August 2020

<https://www.youtube.com/watch?v=ms2vSMQmQS0>

11. The Issue Of vaccination and Testing in Africa

<https://www.youtube.com/watch?v=vSDI5qpbBKs>

12. UK admits that it has wrongly reported COVID19 deaths

<https://www.facebook.com/sirenety/videos/3922141877812934>

13. German Extra Parliament enquiry on Covid19 Committee

<https://youtu.be/E1wbgrhr2Bw>

14. Covid19 was used by the State as a means of Torture to its People

<https://www.youtube.com/watch?v=mgEvCgSnZso>

15. Malawi put holds on the Lock down, an comply to the rationality test :

<https://youtu.be/nH8D1yE6Pc8>