

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO.: 22847/20

In the matter between:

HOLA BON RENAISSANCE FOUNDATION

Applicant

and

**PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

First Respondent

**MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

Second Respondent

RESPONDENTS' ANSWERING AFFIDAVIT ON URGENCY

I, the undersigned,

NKOSAZANA CLARICE DLAMINI-ZUMA

do hereby state under oath that:

1. I am the Minister responsible for the Department of Cooperative Governance and Traditional Affairs (**CoGTA**).
2. I depose to this affidavit on behalf of the first and second respondents (**the respondents**).

3. The facts contained in this affidavit are true and, save where the contrary appears from the context or is otherwise stated, are within my personal knowledge.
4. Where I deal with questions of law, I do so on the advice given by my legal representatives, which advice I accept to be correct.
5. The applicant seeks various and extensive relief set out in 28 prayers in its notice of motion pertaining to government's response to the COVID-19 pandemic, and seeks *inter alia*:
 - a. the review and setting aside of the declaration and classification of the National State of Disaster of concerning the Covid-19 pandemic;
 - b. the review and setting aside of 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;
 - c. various structural relief involving Parliament, the Auditor-General, and the establishment of investigatory expert panels to be overseen by this Court; and
 - d. relief which concerns other state departments including Treasury and the Department of Justice.
6. I point out that the challenge to the declaration and the National State of Disaster concerning the Covid-10 pandemic, and to Disaster Management Regulations has already been considered by the Court in *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs* [2020] ZAGPPHC 184 (2 June 2020). Cabinet is appealing the judgment which is pending before the Supreme Court of Appeal. There

is a further decision pending following an application brought by those applicants in terms of section 18(3) of the Superior Courts Act.

7. In *De Beer* the High Court, Gauteng Division: Pretoria declared invalid the Disaster Management Regulations, and ordered that I review, amend and republish the Disaster Management Regulations with due consideration to the limitation each regulation has on the rights guaranteed in the Bill of Rights contained in the Constitution.
8. The relief the applicant seeks pertaining to the declaration and the National State of Disaster concerning the Covid-10 pandemic and the Disaster Management Regulations is accordingly *res judicata*. The applicant was admitted as *amicus curiae* and participated in those proceedings.
9. The applicant levels further wide-ranging attacks against the Government's response to the COVID-19 pandemic. The broad sweep of the attacks necessitates a comprehensive and substantial response, and requires consultations with employees and officials not only from the Presidency and CoGTA, but also from the Department of Justice, Treasury, and other organs of state.
10. It has simply not been possible to do so on the timeframes on which the applicant has brought this matter to court.
11. I file this affidavit to address the manner in which the applicant has launched this application notwithstanding its removal by court order from the urgent court roll in Pretoria on 25 August 2020. This is an abuse of process, and I submit that an urgent hearing is not warranted.

12. Should this Honourable Court be minded to hear this application, I respectfully submit that I ought to be afforded a reasonable opportunity to file a comprehensive answering affidavit in response to the substance and merits of the substantial and wide ranging relief sought by the applicant.

THE TIMING OF THIS APPLICATION

13. The applicant initially launched the application in this court under case number 22913/20 on 1 September 2020:

- a. the applicant required respondents to file a notice to oppose by close of business on the same day;
- b. the applicant required the respondents to file a an answering affidavit by close of business on 4 August 2020, a date which had already passed; and
- c. the applicant sought to enrol the matter on the urgent roll on Tuesday 10 September 2020, however this is a date which does not exist, as the 10th of September 2020 was a Thursday.

14. State Attorney addressed correspondence to the applicant, attached as **annexure "AA 1"** calling on the applicant to either clarify the dates it intended in its notice of motion, or to withdraw its application and issue it afresh with dates that exist. Due to difficulties experienced by the State Attorney's office due to load shedding, this letter was sent by email on 3 September 2020. It was resent on 4 September 2020, attached as **annexure "AA 2"**.

15. On 4 September 2020 the applicant addressed correspondence to the respondents and State Attorney indicating that:

- a. the case number 22913/20 was incorrectly allocated by the Registrar, and that this matter has been allocated case number 22847/20.
- b. that this had caused a delay in inviting the respondents to caseline: the State Attorney was invited on to caseline on 3 September 2020;
- c. that due to the delays from court, the applicant intended amending the notice of motion to correct the error of dates and to afford the respondents more time.

This letter is attached as **annexure "AA 3"**.

16. At approximately 16h26 on Friday 4 September 2020 the applicant served an "amended notice of motion" under case number 22847/20 and:

- a. sought to remove the application from the urgent roll of Tuesday 8 September 2020;
- b. set the matter down on the urgent roll for Tuesday 15 September 2020; and
- c. required the respondents to file an answering affidavit by Monday 7 September 2020, being less than a single court day from the date of the amended notice of motion.

17. We briefed counsel as soon as we could, but it was not possible to provide counsel with proper instructions and provide an answer that would be of assistance to the Court on the substance of the application and the relief sought, on the timeframe set by the applicant, or before the set-down of the matter for 15 September 2020.

18. On 9 September 2020 State Attorney addressed correspondence to the applicant recording that it was simply not possible to file a comprehensive answering affidavit in these timeframes, that the relief sought is any event not urgent, that no case was made out for urgency, and that the applicant ought to move the matter to the ordinary court roll. This letter is attached as **annexure "AA 4"**.

19. The applicant responded on 10 September 2020 *inter alia* that "*it is the applicant's constitution[al] right to seek justice and approach any court that can address constitutional matters in the Republic of South Africa, as enshrined in the Constitution Chapter 2 section 34; it is in the interest of justice that the applicant proceed to approach the Court for the matter to be heard on the 15th of September 2020 and for an order to be granted as per the relief sought...*". This letter is attached as **annexure "AA 5"**.

20. I respect the applicant's constitutional right of access to court, to seek any relief he deems fit, and to seek to hold government accountable. These are entrenched principles of our constitutional democracy which I uphold.

21. However, the applicant's repeated approaches to Court seeking the same or similar relief, and doing so on extremely truncated and unwarranted timeframes, is repetitive and burdensome, and an abuse of court process.

NO URGENCY

22. The extensive relief sought by the applicant is patently not urgent. There can be no prejudice to the applicant should the matter be heard in the ordinary course.

23. The applicant purports to deal with urgency at paragraphs 143 to 157 of its founding affidavit. The applicant makes vague and sweeping allegations of harm. This is not an adequate basis for urgency.
24. In addition, the applicant provides no justification for the extremely truncated timeframes imposed for the filing of answering papers.
25. The founding papers with annexures run in excess of 1000 pages. The extensive and wide-ranging relief sought by the applicant implicates other state departments and organs of state. It is necessary for me to consult with relevant Cabinet ministers, and other bodies coordinating COVID-19 responses, as well as the other bodies implicated by the applicant.
26. Responding comprehensively to this application will take time.
27. I submit that given the nature of the application and the importance of the matters under consideration, the application cannot be properly determined without the respondents being afforded adequate time to file a comprehensive answering affidavit.

ABUSE OF PROCESS

28. The applicant approaches this Court seeking virtually identical relief, and on virtually identical papers, as it sought in *Hola Bon Renaissance Foundation // President of South Africa* under case number 38800/2020 in the Pretoria High Court. A copy of the Notice of Motion in that application is attached as **annexure "AA 6"**. These papers also correspond with the applicant's application for direct access to the Constitutional Court which was dismissed on 12 August 2020. The Notice of Motion in the application for direct access is attached as **annexure "AA 7"**.

29. The Pretoria High Court urgent application was launched by the applicant on Wednesday 19 August 2020:

- a. the President was required to file a notice of intention to oppose on the same day;
- b. the President was required to file an answering affidavit by close of business on 21 August 2020; and
- c. the matter was enrolled for hearing on the urgent roll for 25 August 2020.

30. The court removed the matter from the urgent roll on 25 August 2020. The court order of Justice Khumalo is attached as **annexure "AA 8"**. The reasons provided by the Registrar to the applicant for the removal from the roll are attached as **annexure "AA 9"**.

31. The applicant thereafter launched this application in this court, seeking the same relief, and this time also joining me as the second respondent. The applicant again launched the application on extremely truncated timeframes.

32. The applicant has failed to mention the urgent Pretoria High Court application, or set out the basis on which it has now enrolled the matter again on the urgent roll in the Johannesburg High Court. This amounts to impermissible 'forum shopping' and an abuse of court process. It is also an abuse of state funds and resources.

33. This is amplified by the applicant's participation as an *amicus curiae* in *De Beer & Others*, where the court has already dealt with the relief which the applicant appears to seek in prayers 3 to 6, and 8-9, in this application.

CONCLUSION

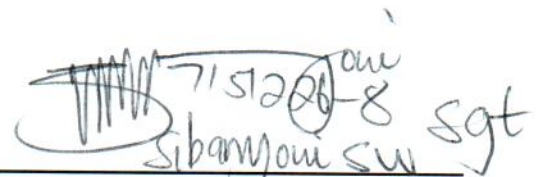
34. The relief sought by the applicant is not urgent. Any prejudice experienced by the applicant may be dealt with, if necessary, by the hearing of the matter in due course, and affording the respondents a reasonable opportunity to respond comprehensively to the substance of the application.
35. The respondents ask for an order that the application be dismissed. It is submitted that this is an appropriate matter in which costs ought to be awarded against the applicant due to the manner in which it has approached this Court.

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DEPONENT

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed to before me at PRETORIA on this the ____ day of SEPTEMBER 2020, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Notice R1648 of the 19th of August 1977, as amended, have been complied with.

SOUTH AFRICAN POLICE SERVICE
BRYNTIRION STATIC GUARD SERVICES
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PROTECTION AND SECURITY SERVICES PRETORIA
SOUTH AFRICAN POLICE SERVICE

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COMMISSIONER OF OATHS