

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 1357 /2021

IN THE MATTER BETWEEN:

HOLA BON RENAISSANCE FOUNDATION

1ST APPLICANT

AND

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

1ST RESPONDENT

MINISTER COOPERATIVE GOVERNANCE AND

TRADITIONAL AFFAIRS

2ND RESPONDENT

MINISTER OF HEALTH

3RD RESPONDENT

MINISTER OF FINANCE

4^H RESPONDENT

SOUTH AFRICAN MEDICAL RESEARCH COUNCIL

5TH RESPONDENT

PRACTICE NOTE FOR A SPECIAL MOTION

1 NAMES OF PARTIES, CASE NUMBER AND HEARING DATES

1.1 The names of the parties and the case number appear above.

1.2 The matter to be set down for hearing as a special motion on 2nd March 2021.

2 NAMES AND CONTACT DETAILS OF COUNSEL IN THE MOTION2.1 For the Applicant:

Name : Bontshitswe Preddy Mothopeng

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2.2 For the First, and Second respondents:

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Name: Adv G Snyman

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2.3 For the Third respondents:

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Name: Adv N Mothapo

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2.4 For the Forth respondents:

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NATURE OF THE MOTION

3. PART A – Seeks an interim relief pending the review application sought in Part B of the Notice of Motion.

3.1 The relief sought is for the review and setting aside in terms of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) of the decisions of the first and second respondents to classify COVID19 a national Disaster.

3.2 To the review and setting aside the first and second respondent decisions to declare Covid19 a national disaster in term of section 27(2) of National Disaster Management Act

3.3 To the review and setting aside the decision of the first and second respondent to declare to procure vaccine for the 10% of the population

3.4 While noting that 94-99% (ninety four to ninety nine) of the COVID19 infected patients have self healed and that all those have underlined health condition they can be treated, as per Dr Taban practical experimental in saving lives of COVID 19 patients, hence there is no disaster from the pandemic, however it is pandemic but State actions are a disaster to its nation .

3.5 The relief is before the court on the special allocation

3.6 The first, second and third respondents oppose all of the main relief sought.

3.7 The fourth respondent does not oppose any of the relief sought.

3.8 The fifth respondent has no relief sought against it how ever it is refered and mentioned to in the replying affidavit

4 THE ISSUES TO BE DETERMINED

4.1 Whether or not the decisions of the first and second respondents to implement lockdown in terms of section 27(2) of National Disaster Management Act are irrational, unlawful and unconstitutional and stand to be reviewed and set aside;

4.2 Whether directions should be given by this Court to the first and second respondents pertaining to the reconsideration of their decisions in terms of section 8(1)(c)(i) of PAJA;

4.3 The duties imposed on, and factors to be considered by, the first and second respondents in making their decisions in terms of section 27(2) of National Disaster Management Act are irrational, unlawful and unconstitutional.

4.4 The place of Disaster Management Act in the overall legislative scheme;

4.5 Whether or not the Disaster Management Act decisions were taken in a procedural fairly manner;

4.6 What the implications are for a decision to lock down the country in terms of Disaster Management Act

4.7 Whether the first and second respondents took into account the interests of local communities in terms of the bill of right , including the right to dignity;

4.8 Whether or not the first and second respondents failed to apply the precautionary principle and the vulnerable ecosystems principle in Disaster Management Act;4.9 Whether whether the first and second respondent decision to procure and/or source 10% of the population vaccine was irrational, unjustifiable and unconstitutional

4.10 Whether the decision of the first and second responded to play low the African Solution to Covid19 offered by Africa, from the Republic of Madagasca in a form of a herb was irrational, unjustifiable and unconstitutional

4.11 whether the first and second respondent decision to gazette and classify Covid19 a national disaster was not rationally connected to the means taken to combat COVID19 “coronavirus”

4.12 Whether the first and second respondent decision to implement lockdown regulations-driven response to the Coronavirus pandemic vs any other pandemic including TB, Influenca, SARS CO to list a few,

4.13 whether the first and second respondent decision about how to combat Coronavirus, should have considered reasonable threshold that includes its hazard assessment and impact assessment which is lead to its decision to declare a national disaster.

4.14 whether the first and second respondent failed to provide the reasonable threshold from its vulnerability assessment which is lead to its decision to declare a national disaster.

4.15 . The rationality review which ask a narrow question :

a) Is there a rational connection between the government's objectives and the means chosen to achieve them ?

b) Whether the rationality was about whether a decision is right or wrong.

c) Whether It follows that this case the question is much narrower, is there a rational connection between the whether the first and second respondent objectives.

d) Whether the court a quo's answer is an emphatic 'NO' or an arrogant "Yes".

4.16 Whether the first and second respondent has obligation when making regulations in terms of Disaster Management Act, to ensure that the means taken to combat coronavirus "Covid19" are rationally connected to the purpose it seeks to achieve,

4.17 Whether the first and second respondent decision affected the limitation of rights by regulations are reasonable, justifiable and there is no proportionality between State objective and the limitation of the rights.

4.18 Whether the approach of saving lives of critical Covid19 patients as illustrated and proven by Dr Taban was reasonable and practical or the first and second responded decision to vaccinate South Africans is correct.

4.19 Whether the first and second respondent decision to lockdown the country and implement regulations that reduce the number of employees working health and Social institution who were required to assist the public was not a contributor to the rising death in the country

4.19 Part B- Under Rule 53(1)(a) of the Uniform Rules of Court, the respondents are called upon to whether show cause why the aforementioned decisions should not be reviewed and corrected or set aside.

4.20 PART B- Under Rule 53(1)(b) of the Uniform Rules of Court, the first to second respondents are whether required to dispatch to this Honourable Court the record of the proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, evidence and other information which were before the respondents at the time when the decisions in question were made), together with such reasons as they are by law required to give or desire to make, and to notify the applicants that they have done so.

5 MAIN RELIEF SOUGHT BY THE APPLICANTS

5.1 . That the non-compliance to the Uniform Court Rules and Practice Directives

regarding the forms, time period be condoned and any other procedural referred to the Rule 6 of the Uniform Rules of the Court("The Rules") and that this application is being heard on a semi- urgent basis in terms of the provision of Rule 6(12) of the Rules

PART A – Intermin Relief on Urgent basis

5.2. Interdict the respondents from procuring and/ or Sourcing and/or paying and/or obtaining Covid19 Vaccine

5.3. Interdict the respondents from implementing and/ or deploying and/ or vaccinating any human being in the Republic of South Africa

5.4. Withdrawal of Visa and/or withdrawal of work permit of WHO (World Health Organization) delegation in the Republic of South Africa

5.5.Declaring the sourcing and/or procurement of COVID19 vaccine for the 10% (percent) of the South African population is irrational, unlawful and unconstitutional

5.6.Declaring that the classification Coronavirus and/or COVID19 as the national disaster in terms of National Disaster Management Act 57 of 2002 is irrational, unlawful and unconstitutional.

5.7.Declaring that the Disaster Management regulations of Coronavirus lockdown

from level five (5) to level one (1), issued in terms of section 27(2) of National Disaster Management Act are irrational, unlawful and unconstitutional.

5.8. Declare to set aside the Disaster Management regulations of Coronavirus lockdown from level five (5) to level one (1), issued in terms of section 27(2) of National Disaster Management Act, which violates sections 12 (1), 15(1), 21(1), 23(1), 27 and 28 of the Constitution of the Republic of South Africa Act 108 of 1996.

5.9. Directing the first to second respondents to review, adjust, align and update the threshold that classifies a National disaster within the National Disaster Management Act.

5.10. Directing the first to second respondents to classify, priorities and categorizes all national disaster under the South African material condition and context

5.11. Declaring that the respondent has failed to consider the limitation of their imposed regulation on the rights guaranteed in the Bill of Rights of the constitution

5.12. Declaring that the Coronavirus and/or COVID19 is a health-related matter and not a disaster in its nature, within the definition and meaning in terms of the National Disaster Management Act.

5.13. Declaring the establishment of an independent committee made up of panel of experts both in in the country and international to compile and validate a country

and a global report on Covid19, and be tabled before the executive , legislature and the nation

5.14. That the order be with effect from delivery of judgment shall not retrospectively

5.15. Directing that this application be referred to oral evidence in an open court on any point cannot be decided on papers alternatively be referred to trial, if material disputes arises on papers.

5.16. No relief is sought against the 5th Respondent

5.17 PART B

5.17. Costs of Suit; and

5.18. Further or alternative relief.

6 ESTIMATES OF THE PROBABLE DURATION OF THE MOTION

1 (one) day

7. SPECIAL MOTION

The Special motion to be heard by the court on the 2 March 2021,

8. THE URGENCY

On the 2 February 2021, it was ordered the matter be struck from the roll by Judge Mabuse, as the matter was not urgent.

9. MATTER IS RIPE FOR HEARING

On the 26 January 2021, A letter was send to the respondents attorney indicating the applicant intend to approach the Deputy Judge President (annexure 2), only the fifth Respondent responded.

8 NECESSITY OF READING THE PAPERS

The number of pages in the main application is 2196.

It is necessary to read –

7.1 the notice of motion;

7.2 the founding, supplementary, answering and replying affidavits;

7.3 the annexures to them, where the material parts are not quoted in the

body of the affidavit. where expressly referred to in the affidavits or the heads of argument and attached to the affidavits.