

**IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO : 2020/22847

IN THE MATTER BETWEEN :

HOLA BON RENAISSANCE FOUNDATION

APPLICANT

AND

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

1ST RESPONDED

MINISTER OF COOPERATIVE GOVERNANCE

AND TRADITIONAL AFFAIRS

2ND RESPONDED

REPLYING AFFIDAVIT

I, the undersigned,

Boutshitswe Preddy Mothopeng Msieleng

0. DECLARE UNDER OATH AS FOLLOWS:

0.1 I am a major male, South African citizen and registered to vote during any election. I am the 1st Applicant herein, a representative, a member and the chairperson of HOLA BON RENAISSANCE FOUNDATION (HBRF), the Applicant business address 88 Marshall Street, 2nd floor, Marshalltown, Johannesburg which is also the domicilium citandi et executandi for the Applicants.

- 0.2 Where I attach any annexure hereto, I humbly request that the Court reads its content with this Affidavit as if specifically incorporated herein.
- 0.3. For the sake of brevity, I have not fully elaborated on all issues raised herein. Additional argument will be presented to the Court on these issues at the hearing of this application.
- 0.4 The facts contained in this affidavit are, to the best of my knowledge and belief, both true and correct.
- 0.5. I have read the Answering Affidavit of the Respondent deposed to by Nkosazana Dlamini Zuma and would like to reply to it as follows.
- 0.6. To the extent that I fail to deal with any specific allegation or where such allegation is at variance with the content hereof and with the content of the Founding Affidavit and its annexures, such allegation is to be deemed denied.
- 0.7. HBRF submit that most of the answers provided by the respondent are not addressing the matters raised in the applicant's affidavit but however seeks to maintain its position of refusing to account to the nation and to the courts by not answering.
- 0.8. It is in the interest of justice and in the interest of the public that HBRF continues to approached the court seeking the court intervention because of continuous infringement to the people's rights
- 0.9. Furthermore HBRF submit that most of the answers provided by the respondent are matters to be argued and therefore only few paragraphs thereof justify a reply.

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 n 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) 0 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 and on the 30 March 2020 the Constitutional Court dismissed the application on grounds that it had no prospect of success
7. There after the State proceeded with unconstitutional regulations in a form of disaster management regulation and lock down
8. The regulations violated the rights of South Africans, in terms all forms that includes work, education, Jobs, Security, health and movement, religion etc...
9. The application was successful in a court a quo, as a result the State lodged an application for Leave to Appeal
10. 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

B) Constitutional Court -26 March 2020

11. On 26 March 2020 HBRF approach the constitutional court seek to interdict the first respondent, and furthermore as per the (notice of motion **Annexure 010 - 01**) warning the 1st respondent of what is to happen and the suffering that would take place in the Country,
12. furthermore indicating the Covid19 is not a threat, the HBRF warned the first respondent that should the respondent continue with the lock down, it will be a violation of amongst the Bill of rights

13. HBRF sought various and extension relief as set out in 12 prayers in its notice of motion pertaining to the respondent response to lockdown, implementing disaster management regulation due to Covid19 and sought inter alia :

- a. The court to Interdict the President and the State from implementing Lockdown
- b. The Court to declare that the life of the Nation is under no threat by war, invasion, general insurrection, disorder, natural disaster or other public emergency and therefore to withdraws and/ revoke the Disaster Management Act as it was issued by the Minister Dr Nkosazana Zuma on the 17 March 2020
- c. The Court to declare that the life of the Nation is under no threat by war, invasion, general insurrection, disorder, natural disaster or other public emergency and therefore to withdraws and/ revoke of the State of Emergency as instructed by the President of the Republic of South Africa
- d. The Court to declare that the disease referred to as Covid 19 known as Corana Virus possess no serious threat to the country and its people.

14. The Constitutional court dismissed the application, stating that the HBRF did not have prospect of success. Noting that the first respondent "President" was never seemed to adhere to uniform rules to submit any answering affidavit.

15. HBRF at that stage was trying to prevent a violation of human rights, and depending of poverty including inter alia:

- a. In the Public Interest
- b. The applicant requested the Court to hear application for its implication of the lockdown has a serious implication to ordinary South Africans, business, religious, economy, the State, Judiciary System and the Africans Continents

- c. The decision of the lockdown has no local standi or strong evident to support it,
- d. The Abuse of power by the President, deviating from the constitution, Chapter 5, section 84 Powers and function of the President
- e. Infringement of Bill of Rights Chapter 2, Various Section

16. This application is based from the principle of truth, justice and consistence,

17. All the above matters which are raised by the HBRF on its 26 March 2020 constitutional court application, have manifested and all the HBRF seek is social and democratic justice.

18. It is unfortunate that legal representation throughout the country sought payments of which HBRF could not afford, hence HBRF appointed its chairperson as its representative.

19. HBRF sought what the Malawi court applied prior to the President of Malawi implement lockdown refer to the matter in the High Court Of Malawi Lilongwe District Registry, case no: 22 OF 2020, in a matter Esther Kathumba & Others v. The President & Others - 29 April 2020 order by Judge Kenyatta Nyirenda, (See the attached annexure 010 -002)

C) HIGH COURT GAUTENG DIVISION PRETORIA

20. On the 15 July 2020, HBRF approached the High Court Gauteng Division Pretoria with notice to intervene as an applicant in a matter between De Beers and others vs Minister of Cooperative Governance and traditional Affairs (COGTA) court case No: **21542/2020**,

21. It was at the hearing where all parties in the matter between (De Beers and Liberty Network Fighter) and Minister of Cooperative Governance and traditional Affairs (COGTA) refused HBRF to grant it full participation as an applicant .

22. It was the court after it recognized the merits that HBRF had and accepted it as the Amicus Curia (Friend of the Court), and whereby all parties agreed to HBRF limited role.

23. In terms of Uniform Rules of 16A, HBRF was mindful of the duty of amicus curiae not to repeat any submissions made by the parties. HBRF are of the respectful view that its submissions of substance which would be helpful to the Court in dealing with this matter focuses on the on the inception which is classification of Covid 19 on whether or not is a disaster, and HBRF argument clearly indicate it is not a disaster.

24. However, in all submission in terms of Affidavit and notice of motion made by HBRF, it be noted that COGTA has never respondent to any HBRF affidavit except that De Beers and other

25. Hence the judgement did not focus on the classification but mainly on what De Beers notice of motion and Affidavit of Disaster Management regulation Level 5,4 and 3 as per judgement of Judge Davis (See attached Annexure 010-003A) .

26. And the Minister of Cogta request for leave appeal (See the Attached Annexure 010-003 B)

D) CONSTITUTIONAL COURT

27. ON the 03 August 2020 HBRF approached the Constitutional Court on seeking direct access and urgency of the matter,

28. HBRF was allocated two court cases by the registrar which was CCT no:52/2020 and 152/2020

29. While the last case on the role was CCT: 114/2020

30. With the urgent application taking more than 10 days before it could be heard raised maladministration issues.
31. On the 11 August 2020, HBRF complained to the Public protector Adv Busisiswe Mkhwebane, who could not assist as per attached letter and respond (**annexure 010-004 A and B**)
32. On the 11 August 2020, HBRF complained to the State Investigating Unit Adv Andy Mothibi , who could not assist as well and respond **annexure 010-005**
33. On the 11 August 2020, HBRF then complain to the office of the Chief Justice as annexure , who is investigating the complain see (**annexure 010-006**)
33. Only when HBRF made a follow-up on its application it received an order dismissing direct access
34. HBRF respect the decision of the court and therefore with refusal to direct access meant HBRF could not have Constitutional court as the court of the first and last instance.
35. Hence HBRF approached High Court Gauteng Division Pretoria enabling Constitutional court to be the court of the last instance

E) HIGH COURT GAUTENG DIVISION PRETORIA

36. On the 19 August 2020, HBRF approached the High Court Gauteng Division Pretoria and it was allocated Case no:38800/2020, In the matter between Hola Bon Renaissance Foundation vs President RSA.

37. The President was required to serve his notice to oppose on the 19 August 2020 and it was only served on the 21 August 2020
38. The President was required to serve his answering affidavit on the 21st August of which he failed to adhere
39. On the 25 August 2020, the court and HBRF received a practice note see the (**attached Annexure 010-007A and 007B**)
40. The matter was removed from the urgent roll on 25 August 2020 by order of court on the following reasons “ **The Matter consists of +- 983 pages and supposed to be on semi-urgent roll or request for special allocation. Served on the Respondent on 19 August 2020 –Answering to be filed by 21 August 2020 instead of 20 August 2020 when all the papers were supposed to be in. The requirement of State 72 hrs notice not adhered to. Matter not complied with Republikeinste Publikasies & Luna Meubels Vervaardigers judgment,**
41. HBRF also considered that there are two key and very important respondent in order to seek the State to show the rationality test which is the President and Minister of Corporate governance and Traditional affairs. The application was brought to the Johannesburg high court on reasons the court is the jurisdiction of HBRF and that would save traveling costs during this difficult times for HBRF

F) HIGH COURT GAUTENG LOCAL DIVISION JOHANNESBURG

42. This application was initially launched on 1 September 2020. The respondents were required to file a notice of intention to oppose on the

- same day, the respondent filed its notice to oppose on the 3 September 2020 as per annexure
43. And to file an answering affidavit by close of business on 4 August 2020 (a date which had passed) for the matter to be heard on Tuesday 10 September 2020 (a date which does not exist).
44. Due to these typo errors, on Friday 4 September 2020, HBRF amended the notice of motion, requiring the respondents to file an answering affidavit by close of business of Monday 7 September 2020 (effectively extending the time for the respondent to prepare and respond on an urgent matters), and for the matter to be enrolled on the urgent court roll on Tuesday 15 September 2020.
45. The changes of the date and amended notice of motion was communicated to the responded, and the respondent did not indicate and/or request in any way to HBRF further time need if any, but rather request HBRF to withdraw its application.
46. Furthermore the time of which the respondent should have lodged condonation in terms of uniform rules, for a late affidavit could have acceptable should it had lodged at least on the 10th September 2020,
47. The Respondent failed to seek condonation in any form and that indicates the respondent unwilling to file answering affidavit and seek to apply delaying tactics
48. HBRF was initially allocated case number of 22913/20, after it has served the respondent it was then allocated an amended case number 22847/20 by the Registrar,

49. HBRF served the respondent on the 1st September 2020 and it was invited on caseline on the 3rd September 2020 by the registrar only after HBRF has lodged an official complain with office of the Chief justice as per the (attached Annexure 8)
50. In this application, the HBRF is a “Samaritan – a helpful person” who has given the respondent more than enough time while South Africans are suffering and the urgency of this application has been compromised, so that this court can find closure

G. NATURE OF THE APPLICATION:

51. HBRF seeks various 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:
52. The review and setting aside of the declaration and classification of the National State of Disaster of concerning the Covid-19 pandemic;
53. 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;
54. Structural relief involving Parliament, the Auditor-General, and the establishment of investigatory expert panels to be overseen by this Court; and
55. Relief which concerns other state departments including Treasury and the Department of Justice and others, all mentioned department are responsible for implements the directives of the respondent during this unconstitutional lockdown

56. Respondent has failed 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.
57. The involvement of mentioned paragraph 5.5 on departments failure's is to bring to the court attention of the respondent failure to satisfy and/or apply and/or a fulfill the rationality test in declaring lockdown, hence for the court to grant the HBRF relief it seeks
58. The HBRF main submissions/ reasons why the application should be considered an unopposed :
- a) In the interest of justice matter is urgent.
 - b) The respondent has not complied the uniform rules of the Court in terms of the answering Affidavit it does not have the place and date where the respondent signed at except the police stamp
 - c) The respondent has not complied with the uniform Rules of the court in responding and submitting the answering affidavit on time
 - d) The respondent has failed to respond the HBRF affidavit, of which it is the respondent is wasting the court time and even though the Respondent had an opportunity to request for condonation.

H) LATE FILING OF ANSWERING AFFIDAVIT

59. This Replying Affidavit has been prepared under severe time constraints owing to the Non willingness of conduct by the Respondent. By agreement between the parties, the Respondent was to serve and file the Answering Affidavit on or before 7th September 2020 after it has been extended from the 4th September 2020 .

60. The respondent failed to file same timeously despite being provided sufficient additional time to do so. Further, the respondent failed provide any reasons for the late filing of the Answering Affidavit. Such conduct demonstrates a serious and a total disregard to this Court and its rules by a State and its officials.
61. The Matter is urgent in order to save lives, the Respondent is expected to attend to this matter with the urgency it deserve. The late filing of the answering affidavit has nothing to do with saving lives that HBRF and the court are concern with, it has undermined the urgency of this matter
62. It is this court directive to restore the infringement of the bill rights which has been enjoyed by the respondent, as this matter is crucial and the Court could not simply continue to look at technicalities and/or fault as the practice is but to give an order in the interest of justice,
63. It remains important for this court to take note of the Respondent's unfortunate attitude, delays and unwillingness which has been experienced by HBRF when considering the issue of costs.
64. The 1st respondent attitude will also be mentioned in our heads of arguments, nothing from the 1st respondent has not delivered and/or contested any HBR affidavit in any way to the court, this is an indication of disrespect to the rule of law, undermining the connotation that says we are all equal before the law.

I) REPLY TO THE RESPONDENT ANSWERING AFFIDAVIT

AD PARAGRAPH 6 THEREOF:-

65. I deny that the HBRF is not an applicant in the matter between De Beers and Minister of Cogta, However HBRF is an Amicus Curia and it participate and is guided by the Uniform rules 16A, which is only to guide and assist the court

AD PARAGRAPH 7 THEREOF:-

66. I deny that the 2nd Respondent failed to carry out the court orders and chose to apply for leave to appeal, on the following grounds

- a) The court has strayed over its pleadings
- b) Labelling some parts of the court order a wholesale declaration
- c) That the court order is vague

AD PARAGRAPH 8 THEREOF:-

67. I deny that HBR participated in full, for the respondent in that matter has never responded to any Amicus Curiae” HBRF” notice of motion and/or Founding Affidavit and/or head of argument

AD PARAGRAPH 9 THEREOF:-

68. I deny, that since 26 March 2020, the country has been told of saving lives and the day to day decision and meetings of the existence of the National Corona Virus Command Council (“the NCCC”). Therefore responding to our request should be extracted from the minutes or/and meeting that are setting now and then or/and on adhoc

AD PARAGRAPH 10 THEREOF:-

69. I deny, with the State pushing everyone on technology, that the existence of the National Corona Virus Command Council (“the NCCC”) and parliament have been held via Microsoft team or/and Zoom platforms, which enables any members of the NCCC to attend anytime from anywhere.

AD PARAGRAPH 11 THEREOF:-

70. I deny, instead HBRF has been a “Samaritan – a helpful person” who has given the respondent more than enough time while South Africans are suffering and the urgency of this application has been compromised,

irrespective of all the efforts of the State to ensure that the State refuses the matter to be heard and noting the maladministration and maybe corruption that took place against HBRF during its strive for justice in almost at all courts. Justice has been delayed and justice has been denied

AD PARAGRAPH 12 THEREOF:-

71. I deny, the court must save lives, save the economy and resort the bill of rights which has been violated by the respondents for more than 160 days. The respondent has the right of appealing the judgment court if the respondent seeks to do so and or label the court order as it chooses to as in the matter of Justice

AD PARAGRAPH 12 THEREOF:-

72. The respondent intentionally forgot to mention that it respondent with notice to oppose on the 3rd of September 2020, giving it enough time to file its answering affidavit **(Annexure 010-009)**

J) URGENCY

AD PARAGRAPH 22 THEREOF:-

73. I deny, the respondent has no local standi giving that the respondent has never served an answering affidavit on any of our arguments in any court approached by HBRF, secondly the respondent has not shown the court any harm any of the respondent and the general public will safer if this matter is heard on urgent basis.
74. the HBRF rejected in the strongest tone, that the respondent plea is baseless and the respondent must be subjected to the court judgment, of which the applicant believe the court shall also reject that plea, in order stop waiting state resources and further infringement in the lives and rights of all South Africans

AD PARAGRAPH 23 THEREOF:-

75. I deny, the court to consider all submission made by HBRF such as the notice of motion and founding affidavit, heads of argument

AD PARAGRAPH 24-34 THEREOF:-

76. I deny, as per the above submitted background to the court, it is the court that must declare that the respondent is abusing State resources, abusing power and abusing the courts

77. May the court take into consideration all the mentioned challenges for HBRF to be able to save lives of all South Africans and residents in the republic who might be of foreign nation but are also suffering like many South Africans

78. It is the HBRF constitution 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

34. Access to courts Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

WHEREFORE Applicants pray for an order in terms of our Notice of Motion.

DATED AT JOHANNESBURG ON THIS 15 DAY OF September 2020.

[Handwritten signature]

BOUTSHITSWE PREDDY MOTHOPENG MSIELENG
Applicant s Representative
Hola Bon Renaissance Foundation
88 MARSHALL STREET
2ND FLOOR, MARSHALLTOWN
JOHANNESBURG
TEL:0681596956
EMAIL:INFO@HBRFOUNDATION.ORG.ZA
EMAIL: HBRFOUNDATION@GMAIL.COM
REF NO: HBRPres0004-

I CERTIFY that this Affidavit was SIGNED and SWORN to before me at Orlando on this the 15 of September 2020, after the Representative declared that he is familiar with the contents of this affidavit, and regards the prescribed oath as binding on his/her conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258 dated 21 July 1972 (as amended)

72588128
/ Ramatjantja

COMMISSIONER OF OATHS 72586928 / Ramatjantja
FULL NAMES: Ramatjantja W's
BUSINESS ADDRESS: 6157 moori street
Orlando East
CAPACITY: CBT

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2020 -09- 15
ORLANDO
SOUTH AFRICAN POLICE SERVICE