

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION)**

CASE NO:

In the Matter between:

RICARDO MAARMAN

APPLICANT

AND

**THE PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA**

FIRST RESPONDENT

AND

**THE MINISTER OF CO-OPERATIVE
GOVERNANCE AND TRADITIONAL
AFFAIRS**

SECOND RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

RICARDO MAARMAN

Hereby state:

1. The facts set out within this affidavit are within my personal knowledge and expertise with reference.
2. To the best of my knowledge, all the facts deposed herein are correct.
3. In certain aspects, I have relied on documentary evidence and sworn expert statements, of which relevant portions are attached as annexures marked **RM1**, whilst others are easily obtainable in the public domain.

THE PARTIES AND STANDING

4. The First Applicant is an adult male, RICARDO MAARMAN, a citizen of South Africa.
5. The Applicant holds a BA Degree in Politics/Philosophy and Economics obtained at the University of South Africa and an MA International Politics obtained at the University of Leicester in the UK. He specialized in the Post-Cold War World Order, International Security, Intelligence and Security and US Foreign Policy.
6. The Applicant brings this matter in his own interest as a concerned citizen of the Republic of South Africa and in the public interest as provided for by sections 38(a) and 38(d) of the Constitution of the Republic of South Africa, 1996 (the Constitution).
7. The First Respondent is the PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA ("the President") whose residential address is Tuynhuys, Plein St, Cape Town. and whose full and further details are unknown to me.
8. The President is cited herein in his official capacity as the head of the national executive per section 83(a) of the Constitution. The Cabinet member responsible for the administration of the Disaster Management Act No 57 of 2002 (DMA) and the Regulations promulgated pursuant to the DMA are appointed by the President and report to the President.
9. The Second Respondent is the Minister of Cooperative Governance and Traditional Affairs who is cited herein in her official capacity as the Minister mandated in terms of the provisions of the Disaster Management Act, 57 of 2002 ("the DMA") and whose Cape Town office is situated at the State Attorney 4th Floor, 22 Long Street, Cape Town, and whose full and further details are unknown to me.

NATURE OF THE APPLICATION

10. This is an urgent application for an interim interdict.
11. That this Application is heard as a matter of urgency.
12. That the Applicant's failure to comply with the time limits imposed by the Rules of this Honourable Court be condoned in terms of Rule 6 (12).
13. The Court suspend the punitive and coercive enforcement of the DMA regulations and only allow for voluntary compliance by the public to all these measures, until such time as Constitutional court case no CCT 299/21 has been finalised.
14. Further or alternative relief.
15. Cost of the application if opposed.
16. Its important to note that we are not asking this Court to make any Judgement on the Virus or the effectiveness of the DMA regulations.

URGENCY

17. The applicant submitted an application to the Constitutional Court on the 27th September 2021. On the 18 October 2021, the applicant enquired on the progress of his application. On the 22 October 2021, the Constitutional Court responded that the matter is receiving the attention of the Justices of the Honourable Court. The applicant received an Answering Affidavit from one of the Respondents on the 16 November 2021 and filed a Replying Affidavit on the 26 November 2021(**RM1**). Thus, the matter in front of the Constitutional court is ongoing and therefore this urgent application cannot be construed as self-created.

- 17.1. On the 20th December 2021, Judge President Hlophe issued a court order for papers to be filed in a certain order of dates and for this matter to be heard on an urgent basis on the 7th January 2022. **(RM2)**
- 17.2. The State/Respondents did not comply with the abovementioned court order. The State/Respondents filed their answering affidavits on the day of the hearing. The applicant did not grant condonation. Judge AG Binns-Ward on the 7th January 2022, struck the matter off the roll. **(RM3 and RM4)**
- 17.3. It is patently clear that the State/Respondents constantly seek delay and postponement, then blames the applicant for tardiness.
- 17.4. The judicial system has thus far afforded the State/Respondents every possible benefit for delay and postponement, thereby advancing the fallacious argument that the delay and postponement is evidence of a lack of urgency.
- 17.5. As if when a man is burning in a house-fire and those charged with saving him delay thereby rendering his situation as not urgent. It is preposterous and a patent travesty of justice which the applicant and the people of South Africa has had to endure for more than 20 months.
18. The facts that we are presenting to this Court are all common cause.
19. It is common cause that the lockdown measures are causing harm and limit the rights of the applicant and the people of South Africa.
20. The increased vaccination rollout together with the measures put in place during the lockdown are based on the notion of and the existence of the Sars-Cov2 virus, the claimed existence of which is at the heart of an unresolved dispute currently in front of the Constitutional Court.

21. The medium, long-term and intergenerational effects of these vaccines are unknowable, therefore those subjected to it are unable to provide informed consent, especially the children. A continuation of these measures could see the entire nation irreparably harmed. Further the Respondents have established a No-Fault Compensation fund in anticipation of the harm that vaccines are causing thereby absolving vaccine producers from such, funded by the tax-payer.
22. Whether the harms created due to the lockdown measures are justified, is a contentious matter currently before the Constitutional Court.
23. The Respondents have instituted punitive measures for non-compliance with the lockdown regulations; 6 months jail terms and or fines, thus the applicant and the people of South Africa cannot access any other remedy, for fear of the punitive measures, other than this Honourable Court.
24. It is common cause that the harms caused by the lockdown might never be remedied, therefore there can never be redress in due course. If these harms are left to continue for much longer, the judgement of the Constitutional Court could very well be a moot point. Thus, the matter is time-sensitive.
25. Every day that these harms are allowed to continue, the entire nation is brought closer to the point of no return or further beyond that point. No one knows, it's a time sensitive matter.
26. The applicant submits that the matter of the First Respondent (President Ramaphosa) herein is a prime example of the ineffectiveness of the measures, considering that the First Respondent is on record for having contracted the virus after publicly being "vaccinated against it".
27. This is a very public indication that the vaccination does not work, and if it did not work for the First Respondent, why then is the First Respondent considering setting up the enforcing of it as a mandatory step, via the DMA regulations.

28. Workplace draconian health and safety measures, which are clearly not working and of which the Respondents cannot absolutely guarantee us that it is safe are being enforced against the public against their Fundamental Constitutional rights : No. 43400 GOVERNMENT GAZETTE, 4 JUNE 2020: “This Direction does not reduce the existing obligations of the employer in terms of OHSA [occupational health and safety measures] nor prevent an employer from implementing measures that are more stringent in order to prevent the spread of the virus”. ” This Direction remains in force for as long as the declaration of a national disaster published in Government Gazette 43096 on 15 March 2020 remains in force.”
29. Schools and Universities are using the DMA to force prospective students to take the vaccination against their will otherwise they will not be allowed to study.
30. These regulations of the DMA are being used to vaccinate at least 220 000 people per day and millions have already been vaccinated (as per the First Respondent public statement dated 7 August 2021 <https://www.gov.za/blog/desk-president-78>) in violation of their Fundamental rights, not knowing what the long term effects of the vaccination will be on them. This is a serious risk that have the potential to create a litany of claims for damages against the Respondents at the expenses of the Taxpayers.
31. It is common cause that the applicant and the people of South Africa are suffering irreparable harm as a result of the DMA regulations, the dispute between the parties are whether such harm is legally and lawfully justifiable, a dispute currently before the Constitutional Court, therefore far from an established fact on either side.
32. There is no prejudice to the Respondents and the interest of justice if urgency is granted because all facts before this Court are common cause, the Respondents have already tendered Answering Affidavits in response to a similar application request for an urgent interim interdict and no new or complex matters are placed before this Court **(RM3)**.

33. This Court is called upon to adjudicate, for an Interim relief not a permanent remedy, this relief is pending the final determination by the Constitutional Court.

34. There is a grave risk of prejudice to the applicant and the people of South Africa if urgency and interim relief is not granted as they continue to suffer ongoing harm on a matter that could be ruled by the Constitutional Court as unjustified and unconstitutional.

JURISDICTION.

35. This matter falls within the Jurisdiction of this Court as the all the parties are domiciled within its Jurisdiction.

36. I also refer this Honourable Court to the Constitutional Court Rules that state; (2) Any powers or authority vesting in the Chief Justice in terms of these rules may be exercised by a judge or judges designated by the Chief Justice for that purpose.

37. As such this Court has the power to grant an interim interdict as requested.

BACKGROUND.

38. A similar application was brought in this matter under case no 21064/2021, this matter was struck from the roll by His Honourable Judge Binns-Ward, for procedural irregularities and no judgement on the merits were made.

39. During or about January 2020, the world became aware of the so-called SARS-CoV2 Virus.

40. On 15 March 2020, Dr Mmaphaka Tau, the Head of the National Disaster Management Centre in the Department of Cooperative Governance, the Second Respondent, gave notice that the Covid-19 disease pandemic,

allegedly caused by the SARS-CoV2 virus, was declared as a National Disaster **(RM5)**.

41. Furthermore, on 15 March 2020, the First Respondent issued a declaration of a National State of Disaster and published the declaration in the Government Gazette of that date and on subsequent monthly extensions continued with the declaration and publications of the regulations relating to the National State of Disaster. This declaration was predicated on the claim that there was a virus called SARS-CoV2 which caused the disease Covid-19, which had allegedly erupted into a pandemic. No direct and irrefutable proof of the said virus accompanied the above declaration.
42. The abovementioned declaration resulted in the limitation of the applicant's rights and those of the entire South African population, as enshrined in the Constitution of the Republic of South Africa under the Bill of rights.
43. The Applicant and more than seventeen thousand South Africans, made an application to the Constitutional Court asking the Court to declare the DMA regulations as unlawful and invalid, to be set aside "The First Respondent failed to have discharged his obligation to uphold, defend and protect the Constitution as the supreme law of the Republic per section 83(b) of the Constitution, in that he limited the Bill of Rights without any reasonable justification as it should have been in an open and democratic society as per sections 36(1) and 32(1) of the constitution." Case number CCT299/21 annexed as **RM6**
44. This Honourable Court is being approached by the applicant for this honourable Court to order the suspension of the enforcement of the DMA regulations through punitive and coercive means and only allow for voluntary compliance of the public to all these measures, until such time as Constitutional Court case no CCT 299/21 has been finalised.
45. The Respondents cannot deny that their response to the Covid-19 Pandemic has had a huge negative impact on our economy.

THE APPLICANT'S LOCUS STANDI

46. The Applicant brings this application, being party to an ongoing dispute which includes the First Respondent directly and the Second Respondent indirectly, a dispute which has a direct bearing on this application which is currently before the Constitutional Court for adjudication of final relief of which this Court is asked for interim relief related to that matter. Also, an application by virtue of section 38(a) of the Constitution, by acting in his and their own interests and in accordance with its own objectives directed at the protection of his Constitutional Rights and financial sustainability.
47. The Applicant also brings the application in the public interest of all South Africans as a whole and in terms of section 38(d) of the Constitution, with the objective of the protection of their Constitutional Rights and financial sustainability.

THE LEGAL AND CONSTITUTIONAL PRINCIPLES INVOLVED

48. The Constitution provides that the Republic of South Africa is a sovereign, democratic state founded, *inter alia*, on the following values: Human dignity, the achievement of equality and the advancement of human rights and freedoms and the Rule of Law.
49. The Constitution, provides that "All spheres of government and all organs of state within each sphere must be loyal to the Constitution, the Republic and its people; respect the constitutional status and not assume any power or function except those conferred on them in terms of the Constitution."
50. The Constitution also provides that expressly, for the handling of disasters on a national, provincial and local level. In this regard, reference is made to section 4 and chapters 3, 4 and 5 of the DMA I submit that, upon a proper interpretation

of the DMA, the provisions thereof do not entitle the National Government, in the case of a national disaster, to usurp the Bill of rights as contained in the Constitution.

51. Furthermore, I submit that the DMA, being a statute which by its very nature cannot contain limitations on the rights entrenched in the Bill of Rights, and that it must be restrictively interpreted, so as to impose a minimum limitation on those rights, in accordance with section 36 of the Constitution.

52. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

53. These abovementioned 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 the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.

54. No law including the DMA, may limit any right entrenched in the Bill of Rights.

55. It is therefore submitted that, in so far as the Regulations or any Direction Purportedly issued pursuant thereto, that will violate the above-mentioned fundamental rights will be inconsistent with the Constitution, and therefore illegal and void to the extent of such inconsistency.

56. Furthermore, the rights in the Bill of Rights cannot be infringed upon or limited in any way, save in terms of the provisions of section 36 or 37, despite this provision, there have been numerous reported cases brought before courts on this basis alone.

57. The national state of disaster, announced in terms of the DMA, is not a state of emergency, as contemplated in section 37, and therefore the rights contained in the Bill of rights continue to apply and may only be limited in terms of section 36.

58. The State may not interfere with those freedoms, except under Section 36 of the Constitution, which is continually occurring on a daily basis without any justification.

59. My respectful submission is that until the Respondents have shown in the appropriate Court that the Limitation of the rights of the applicant and the people of South Africa is justified in terms of Section 36. (1) of the Constitution, it will be prohibited from limiting such rights.

RULE 16 A

60. A Rule 16 A notice will be issued together with the issuing of this application
(See Attached copy of the notice marked RM7)

PRIMA FACIE RIGHT.

61. The applicant, have the following undisputable *prima facie* rights.

62. The public has *prima facie* right to bodily and psychological integrity, which includes the right to make decisions concerning in and control over their body which includes the choice whether they want to take the risk of exposure when interacting with another person.
63. To Human dignity.
64. Life.
65. Freedom and security of the person not to be treated or punished in a cruel, inhuman or degrading way.
66. Not to have limitations imposed on their rights entrenched in the Bill of Rights, and if so that it must be restrictively interpreted, so as to impose a minimum limitation on those rights, in accordance with section 36 of the Constitution.
67. That the Bill of Rights be applied to all law including the DMA.
68. That the Bill of rights binds the legislature, the executive, the judiciary and all organs of state including the respondents.
69. The right to practice their trade, occupation or profession.
70. The right to administrative action that is lawful, reasonable and procedurally fair.
71. The right not to have these abovementioned rights 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 the nature of the right; the importance of the purpose of the limitation; the nature and extent of

the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.

72. The right to demand that the respondents give due consideration to the limitation of the rights of everyone when considering the amendments to the regulations.

73. Relief sought against the Minister is for this Honourable Court to grant an urgent interim interdict to suspend the punitive and coercive enforcement of the DMA regulations. This application therefore seeks an order from the Court, in order to prevent ongoing irreparable harm and to restore the applicant's basic human rights, whilst the causa of this harm is a matter of dispute before the Honourable Constitutional Court.

74. From the above it is clear that a strong case has been made by the applicant and those it is acting on behalf of, have at least one prima facie right.

REASONABLE APPREHENSION OF IRREPARABLE AND IMMINENT HARM;

75. I submit that harm is apparent in this instance, without the relief sought to prevent further harm the applicant and the people of South Africa will continue to suffer irreparable harm.

76. The applicant and the people of South Africa are severely prejudiced economically by the exclusion in the form mandatory vaccinations which the President said might be required across the economy and which is currently required by many employers, which is causing irreparable harm to the people of South Africa.

77. SA is facing a sovereign debt crises.

78. There are less harmful and restrictive means available to achieve the Respondent's purpose, such as voluntary compliance to all the DMA measures instead of coercive and punitive compliance. The Respondents ordinarily commands control of the entire public health care resources, financial resources in the form of taxation, the ability to raise public debt which it has done and media broadcasting. The Respondents have had almost two years with extraordinary powers and resources focussed on this matter.

79. From the above it is clear that a strong case has been made by the applicant and those it is acting on behalf of, the existence of the reasonable apprehension of irreparable and imminent harm.

BALANCE OF CONVENIENCE;

80. The balance of convenience favours the granting of the interdict.

81. I submit that on weighing up the consequences of the prejudice that each party would suffer if this Interdict is not granted, it would be immeasurably more detrimental towards the applicant and the people of South Africa than it would be for the Respondents if it is not granted.

HARMS, INJUSTICES & PREJUDICE

82. GOVERNMENT GAZETTE No. 43148, 25 MARCH 2020: "5 (1) No person who has been confirmed, as a clinical case or as a laboratory confirmed case as having contracted COVID-19, or who is suspected of having contracted COVID-19, or who has been in contact with a person who is a carrier of COVID-19 may refuse consent to – (a) submission of that person to a medical examination, including but not limited to the taking of any bodily sample by a person

authorised in law to do so; (b) admission of that person to a health establishment or a quarantine or isolation site; or (c) submission of that person to mandatory prophylaxis, treatment, isolation or quarantine, or isolation in order to prevent transmission”.

83. Workplace draconian health and safety measures: No. 43400 GOVERNMENT GAZETTE, 4 JUNE 2020: “This Direction does not reduce the existing obligations of the employer in terms of OHS [occupational health and safety measures] nor prevent an employer from implementing measures that are more stringent in order to prevent the spread of the virus”. ”This Direction remains in force for as long as the declaration of a national disaster published in Government Gazette 43096 on 15 March 2020 remains in force.”

84. No. 44895 GOVERNMENT GAZETTE, 25 July 2021: “33.(1) Every person is confined to his or her place of residence from 22H00 until 04H00 daily”. ”34. (2) The wearing of a facemask is mandatory for every person when in a public place”.

85. It is common cause that the applicant and the people of South Africa are suffering irreparable harm as a result of the DMA regulations, the dispute between the parties are whether such harm is legally and lawfully justifiable, a dispute currently before the Constitutional Court, therefore far from an established fact on either side.

86. There is no harm and or prejudice to be suffered in the event that the Court suspend the punitive and coercive enforcement of the DMA regulations and only allow for voluntary compliance of the public to all these measures, until such time as Constitutional case no CCT 299/21 has been finalised, for the following reasons amongst others:

86.1. It is impossible to determine the effectiveness of the lockdown measures, because no one knows what would have transpired if the measures were never imposed, any such claim would be unsubstantiated and mere speculation.

- 86.2. The DMA regulations have been in place for almost two years and by the Respondents' own reports which the applicant question the validity thereof, death and infection rates have not stopped. There is no dispute between the parties that people have continued to fall ill and die during the aforementioned almost two year period.
- 86.3. The issue which is before the Constitutional Court is whether all the above is directly as a result of the SARS-Cov- 2 Virus or not, therefore this is not in dispute in this forum, and it is up to the Constitutional Court to adjudicate on this point.
- 86.4. The assertion that there is a viral-pandemic (SARS-Cov-2 pandemic) constitutes a claim which is a matter of dispute in front of the Constitutional Court.
- 86.5. Therefore no claim that an interim interdict would worsen the pandemic can be substantiated, it would therefore be mere speculation. The Constitutional Court recently ruled that the Municipal Elections may proceed, despite the Moseneke Commission Report, which investigated whether an election should be held due to the "pandemic" was brought before the Court argued *"The Moseneke Inquiry concluded that, if held in October 2021, the local government election would not be free and fair and would put at risk the people's constitutional right to have access to health care services and the right to freedom and security of the person, which includes the right to bodily and psychological integrity"* CCT 245/21."
- 86.6. Hence a legal precedent has been set by the Constitutional Court, which must be followed by all other Courts in South Africa, when faced with a similar matter.
- 86.7. The order sought in this application does not seek to remove all the measures the Respondents rely on, to the contrary, all these measures would remain in place even though we dispute its effectiveness, but only

the punitive and coercive nature thereof would be interdicted in the interim.

87. An urgent interim interdict cannot be dismissed merely because the Respondents argue that there is a pandemic, the law must take its course as per normal, especially when the claim of a pandemic is the cause of the irreparable harm, which itself is a matter of dispute in front of the Constitutional Court.

88. The irreparable harm and extreme limitations on the applicant's and people of South Africa's human rights are common cause and established facts.

89. It is common cause and established fact between the parties that the causa of this irreparable harm and extreme limitations of human rights, is the so-called SARS-Cov-2 viral pandemic which forms the central point of a dispute currently in front of the Constitutional Court and therefore the possibility exists that this causa may be eventually removed as deemed unlawful and unjustifiable.

THE RISKS AND PROPORTIONALITY

90. We therefore humbly submit to the Honourable Court to take heed of the following.

91. The effectiveness of the ongoing lockdown measures are unknowable, the actual measures are untouched by this application, the justification or lawfulness of the lockdown is a matter of dispute currently before the

Constitutional Court and the harm that an interim interdict would do as far as combating the “pandemic” is concerned, is completely unfounded and irrelevant as the measures are left untouched by this application only punitive force and coercion in relation to these measures are to be interdicted.

92. This Honourable Court should grant the interim interdict because common cause established facts should take precedence over undisputed information or opinions and speculation, and because the entire nation is exposed to irreparable harm caused by events which the Constitutional Court could determine to be unreasonable and unjustifiable.

NO OTHER REMEDY

93. At this stage in time the Applicant and the people of South Africa have no other adequate remedy available, to prevent imminent and irreparable harm befalling them.

94. This honourable Court is not here burdened with the merits of the underlying dispute - the sole enquiry is simply whether the *causa* is in dispute. It is common cause that the *causa* is a matter of dispute between the parties, before the Constitutional Court and that the applicant and the people of South Africa are suffering irreparable harm and possibly ongoing injustice, because of the limitations of fundamental human rights due to the punitive and coercive execution of the DMA regulations the effectiveness of which is indeterminate.

95. The applicant is requesting this Honourable Court to interdict the punitive and coercive enforcement of the DMA regulations and only allow for voluntary compliance of the public to all these measures, until such time as Constitutional case no CCT 299/21 has been finalised.

96. This Court should only consider whether the justification and lawfulness of the DMA regulations are being disputed before the Constitutional Court, that the lockdown measures are untouched by this application even though the effectiveness of these regulations are indeterminate, that the regulations are indeed harmful and that the interdict would cause no harm to the Respondents and would serve to protect the applicant and the people of South Africa against irreparable harm.

97. Hence an order to interdict the punitive and coercive enforcement of the DMA regulations and only allow for voluntary compliance of the public to all these measures, until such time as Constitutional case no CCT 299/21 has been finalised, should be granted in favour of the applicant and the people of South Africa, against the Respondents.

IN THESE PREMISES, I respectfully pray for an Order in terms of the Notice of Motion prefixed hereto.

DEPONENT

RICARDO MAARMAN

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this the _____ day of _____ 2022.

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

DESIGNATION: