IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 2023-132918

In the application between:

SAKELIGA NPC	**Applicant**
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**1st Respondent**
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	**2nd Respondent**
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	**3rd Respondent**
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE	**4th Respondent**
THEMBI NKADIMENG	**5th Respondent**
MBULELO TSHANGANA	**6th Respondent**
THINAYHO SKOSANA	**7th Respondent**
NKOSAZANA CLARICE DLAMINI ZUMA	**8th Respondent**
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**9th Respondent**

APPLICANT'S REPLYING AFFIDAVIT

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I, the undersigned,

TOBIAS VIVIAN ALBERTS

do hereby make oath and state the following:

1 I am an adult male legal officer. I am employed with the applicant, and I am duly authorised to depose to this affidavit. This is not in dispute.

2 The facts set out hereinafter fall within my personal knowledge, unless the contrary appears from the context hereof, and are both true and correct.

3 To the extent that I make legal submissions in this affidavit, I do so on the advice of the applicant's legal team.

4 This is the applicant's replying' affidavit. It being a replying affidavit, I do not deal with each of the averments made by the first to seventh respondents in their answering affidavit. My failure to do so cannot be construed as an admission of anything contained in that affidavit. To the extent that it does not accord with what I have set out in my founding affidavit and what is set out herein, it is denied.

5 Although this affidavit is filed several months after the answer of the opposing respondents was received, it is submitted that procedurally, it cannot be regarded as late. This is so since the late filing of the opposing respondents' affidavit has not yet been condoned and is thus not properly before court. Until such time, the replying affidavit cannot be regarded as due. The applicant, however, does not oppose the respondents' condonation application, and to avoid further delays in the adjudication of this case, has decided to, as a matter of caution, plead over, and file this reply.

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6 The first issue is this. When the applicant launched this application, the Minister of Cooperative Governance and Traditional Affairs was the Honourable Ms. Thembi Nkadimeng. The present Minister is the Honourable Mr. Velenkosini Hlabisa.

7 The effect of this is that the sixth respondent, save for some retained residual interest, has no further interest in this application. The applicant shall therefore not seek an order for contempt as against the previous Minister, being the sixth respondent. Instead, the applicant shall bring an interlocutory application to join the new Minister as a party to these proceedings. This shall be dealt with in a separate interlocutory application to be filed as soon as reasonably practicable.

8 Having said this, I deal with the defenses raised against Sakeliga's contempt application. Considering the answering affidavit, it seems that the case of the opposing respondents' is premised on the following:

8.1 firstly, new office bearers or officials, being a new Minister, a new Director General and a new Information Office of the National Department of Cooperative Governance and Traditional Affairs (herein "the department"), cannot be held liable for their predecessors' failures to comply with the court order.

8.2 secondly, that there is no contempt of court, since:

8.2.1 all the information that the present office bearers or officials have access to has been provided to the applicant; and/or

8.2.2 that the previous Minister complied with the order and provided everything covered by this Court's order, save for those documents on which cabinet privilege is claimed.

8.3 thirdly, although conceded that there are factually more documents, such documents, so the opposing respondents say, do not need to be disclosed, because they fall within the ambit of Section 12(a) of the Promotion of Access to Information Act (herein "PAIA") which stipulates that the PAIA does not apply to a record of the cabinet and its committees.

9 I shall revert to each of these defenses. Before doing so, I deem it apposite to reiterate the apparent deviation from the opposing respondents' previous stance. The state attorney, acting on behalf of the opposing respondents, did the following:

9.1 on 23 December 2022, in the letter already attached to the founding affidavit as annexure "SA18", the claim is made that the full record (i.e. in alleged compliance with the court order) would be delivered.

9.2 to this the applicant objected in a comprehensive letter since it was apparent that the documents referred to would constitute only a fraction of what the previous Minister should reasonably have considered.

9.3 on 12 January 2023 suddenly the state attorney claimed that it was to debrief counsel in the case and appoint a new team, without explaining what, if anything, the previous team would have done or was tasked to do.

9.4 on 20 January 2023 the state attorney claimed that the new legal team had instructions to seek a rescission and/or variation of the court order in respect whereof the applicant claims the opposing respondents are in contempt. The application would be brought as a matter of urgency.

9.5 such an application has not been forthcoming, but in the same letter it is claimed that "the further documents" demanded by the applicant fall within the exemption of Section 12(a) of PAIA. Regard should be given to the fact, I respectfully submit, that the same opposing respondent also claim that they do not know which "further documents" the applicant seeks in terms of PAIA. Yet, they assert privilege on such unknown documents.

9.6 be that as it may, instead of bringing the rescission application and/or variation, the state attorney on 23 February 2023 in the letter, annexure "SA30" to the founding affidavit, changes its position again and says that after a very diligent perusal of the documents the opposing respondents hold the firm view that the court order has been complied with.

10 The defense is either that the documents sought are protected by privilege, or the applicant has been provided with all the documents requested. The opposing respondents cannot claim both.

11 Bearing this is mind, the present Minister, and the ninth respondent, who subsequently delivered a confirmatory affidavit, were invited to state on oath that they persist with the letter of 23 February 2023, annexure "SA30" to the founding affidavit. The previous minister, Dlamini-Zuma, was specifically challenged to



indicate whether she still holds the view that she has provided the applicant with all the documents as ordered by this Court.

12 It is very important to bear in mind that such confirmation has not been provided. All that Mrs. Dlamini-Zuma said in her confirmatory affidavit, is that the record was furnished and the court order complied with. She does not address the question whether further documents, not provided, were considered by her,

13 I proceed to deal with the main defenses raised, whereafter I shall deal, to the extent required, ad seriatim with some of the paragraphs in the replying affidavit.

OLD VERSUS NEW ADMINISTRATION

14 The sixth to eighth respondents tell this Court that the applicant's decision to have joined them constitutes a misjoinder. It is argued that this is so, because they cannot in their personal capacities be held responsible for what their predecessors "failed to do".

15 Logic dictates that this argument is wrong. The coercion to comply with a court order lies in the sanction that court may possibly impose.

16 Should this Court exercise its discretion to grant as sanction for the contempt an order for imprisonment (and it does not matter whether it is suspended or not) the individuals who hold at that point in time the office of Minister or the Director General or the Information Officer of the department are liable to undergo the sentence imposed. As such, it is important that all incumbents be joined in their personal capacities and more particularly be served with the order and the pending application.



17 It is wrong, I respectfully submit, to allege that the successors of the previous Minister, the previous Director General and erstwhile Information Officer are not liable to comply with a court order directed at them in their official capacities. Such an interpretation would exonerate all government officials from contempt the moment they start playing musical chairs (something that is a regular occurrence within state departments).

18 The order of 9 November 2022 was directed at specifically the first respondent, the second respondent, the third respondent and the fourth respondent. It was directed at whomever may hold those offices at the time of the issuing of the order, and until compliance with the order. Should any of those persons vacate the office, whilst the order has not been complied with or fully complied with, the successor who steps into the shoes will be liable to ensure that the court order is complied with. If not, that specific successor is in contempt of the order.

19 In this respect, this Court will note that the declaration of contempt, as per prayer 1 of the notice of motion, is sought against the first up to the seventh respondents. The order for imprisonment, should this Court exercise its discretion to grant such order, is directed at the persons who hold the offices. Compliance with court orders is an inherent responsibility taken up by those who hold the office of the first, third and fourth respondents. That brings with it risks should one, becoming aware of the order, elect not to comply with the court order.

ALLEGED COMPLIANCE WITH THE COURT ORDER AND CABINET PRIVILEGE

20 The point that the opposing respondents had delivered all documents, as ordered, is defied by their own conduct and reliance on privilege. On 11 November 2024, being in receipt of the answering affidavit, the applicant

delivered a notice in terms of the provisions of Rule 35(12). A copy of that notice is attached hereto and marked Annexure "**RA1**".

21 On 15 November 2024 the opposing respondents delivered a reply thereto, which is dated 30 November 2024. This Court will find that reply at CaseLines at 3-1 to 03-117. Due to its voluminous nature, it shall not be attached hereto.

22 Thereafter, and on 26 November 2024, the state attorney delivered a letter which is attached hereto and marked Annexure "**RA2**". In the letter they claim that the record was furnished in error. They also mention that there is an objection to the Rule 35(12) notice, and the objection is attached to the letter. That objection is attached hereto and marked **Annexure "RA3"**. The objection has procedurally not been pursued.

23 Important is the fact that the applicant had no prior access to the documents that were delivered together with the Rule 35(12) reply. They were news. As such, those documents alone already establish that the contention of the opposing respondents' that the full record had been delivered is wrong.

24 What is more so, those documents do not fall within the so-called cabinet privilege. It follows that the opposing respondents themselves have demonstrated that they failed to comply with the order.

25 The second point is this. The opposing respondents, in previous correspondence, referred to hereinabove, concede that, to be able to rely on cabinet privilege, they had to rescind or vary the order of 9 November 2022. Despite their undertaking that they would bring such an application, they did not do so. The inescapable consequence of this is that the order is unaffected.

26 Prayer 3 of the 9 November 2022 order stipulates that the first four respondents must comply with the applicant's PAIA request within 30 days of the date of the order and provide the applicant with all the documents and information requested in the PAIA request. They failed to do this.

27 The PAIA request in the PAIA "Annexure A" refers to all records, reasons, reports, findings, deliberations, communications, memoranda and further documentation relied upon by the Minster in making the following decisions:

27.1 the decision, in terms of Section 27(1) of the Disaster Management Act, No. 57 of 2002 (herein "***the DMA***"), to declare a national state of disaster.

27.2 the decision to extend the declaration of the national state of disaster from time to time.

27.3 the decisions to issue the different lockdown regulations issued in terms of Section 27(2) of the DMA.

28 The order does not provide for one single exclusion. The order does not allow the opposing respondents to *ex post facto* the unchallenged order, rely on cabinet privilege. The legal position, as it stands, is that court orders must be adhered to until and unless set aside.

29 There is no challenge against the existing court order. As such, the concession that there are further documents in respect whereof cabinet privilege is claimed, confirms the fact that the opposing respondents are in contempt. It warrants a contempt declaration.

30 It further confirms that the contempt is willful and *mala fide*. I say so, because the opposing respondents accept and acknowledge, if they wished to rely on Section 12(a) of PAIA, they should have either set aside or varied the initial order. They acquiesced in the order and thereby waived any cabinet privilege.

31 Moreover, Section 12(a) defense lies against a PAIA application. It does not constitute a defense against a court order. This shall be dealt with in argument at the hearing of this application should it be required.

32 Furthermore, protection is sought on the premise that the National Coronavirus Command Council ("***THE NCCC***") constituted a cabinet committee. It is argued that the deliberations, minutes and the presentation at the meeting of the NCCC constitute cabinet records to which PAIA does not apply.

33 It is then vaguely alleged that the meetings of the NCCC, the presentations made there, the minutes generated, the communications, emails and all other documents emanating from these meetings are records of either cabinet or one of the cabinet committees to implement the decisions of the NCCC.

34 This Court will remember that the entity that was called the NCCC resulted in widespread criticism of the NCCC. This is so, because of its ability to make far reaching decisions unchecked. At the time when it operated, the government refused to give clarity on what the NCCC is, save to mention that it is a council which will include, amongst others, members of an interministerial committee which who will all be dealing with the impact of the Coronavirus.

35 The fact is that that council relied on presentations made to it such as medical experts etcetera. According to the opposing respondents, reports presented to



the NCCC were multifaceted, covering the impact of the Virus on the economy, on health, legal and education sectors, amongst others. Such information was however prepared by different bodies, including the Forum of South African Directors General and the NATJOINST. The NATJOINTS is the National Joint Operational and Intelligence Structure which is a South African government body responsible for coordinating security and law enforcement processes in this Country.

36 Both the NATJOINTS and FOSAD are not members of cabinet and do not constitute cabinet committees. Whatever memoranda and documents they prepared are not covered by Section 12(a) of PAIA. In addition, one can safely assume that these bodies relied on extraneous information received from other entities.

37 Bearing in mind that a PAIA defense cannot be raised against an existing court order. It lies against the application brought in terms of PAIA. Once an order has been granted the Court is *functus officio*, and its order must be complied with.

38 The inclusion of FOSAD and the NATJOINTS under the notion of cabinet and its committees is an unwarranted expansive construction of the word "*cabinet*" and inconsistent with the purpose of PAIA. The point is this. You cannot claim that a pre-existing body suddenly becomes a cabinet committee to avoid a PAIA disclosure.

39 It follows that non-compliance with the court order has been established and the refusal to comply with the court order, against the backdrop of the fact that there is no application to set it aside, establishes beyond reasonable doubt the element of willfulness and *mala fide*.

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40 I proceed to deal with some of the paragraphs in the answering affidavit. The answering affidavit was deposed to by the Director General (herein the "***DG***") of the second respondent.

41 AD PARAGRAPH 2 THEREOF

Important for purposes hereof is that the DG confirms that he considered the PAIA request of 15 December 2022, the application in terms of PAIA as well as the order that was granted. He was therefore fully appraised of exactly that what was required of the opposing respondents.

42 AD PARAGRAPH 6 THEREOF

The declaration of contempt is sought as against all the opposing respondents. As indicated hereinbefore, no relief will be sought against the sixth respondent, since she has vacated her position as the Minister.

43 AD PARAGRAPHS 8 and 9 THEREOF

I have dealt with the reason why the office holders are cited in their personal capacities as well.

44 AD PARAGRAPH 10 THEREOF

44.1 It was for Minister Dlamini-Zuma to explain why the ministry did not comply with the court order, whilst she was in charge.

44.2 There was no relief granted or sought in the previous application, and the 9 November 2022 order does not include any such order, as against the President.

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45 AD PARAGRAPH 12 THEREOF

45.1 It is true that, erroneously so, the citation of the DG was not properly set out in the founding affidavit in the prior application. It is, however, apparent from the heading and the remainder of the content of that application, against whom relief was sought.

45.2 The applicant sought relief against the DG. The applicant did not seek relief against the President. The court order reflects that.

45.3 Be that as it may, the DG accepts in paragraph 7 of the opposing affidavit, that he is the designated official responsible for the department's day-to-day administration. This surely includes a duty to comply with court orders.

45.4 The DG also confirms that he is fully informed about the existence of the court order and the department's duties in respect thereof. Even if he had not been properly joined to the previous application, which is disputed, his joinder to this application is proper and to seek a contempt order against him, in the circumstances, is also proper.

45.5 This shall be elaborated upon during argument at the hearing of this application.

46 AD PARAGRAPH 14 THEREOF

The content of this paragraph is denied. it is not understood how one reads the papers in the PAIA application to find confirmation that no case for contempt has been made out. The case for contempt is made out in the present application.

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47 AD PARAGRAPH 16 THEREOF

I reiterate that this is wrong. The order is specifically directed at the DG. The applicant intended to seek relief against the DG, sought relief against the DG and the court granted relief as against the DG. No relief was sought as against the President of the Republic of South Africa.

48 AD PARAGRAPH 17 THEREOF

This is misconstrued. I dealt with this hereinbefore. The order was granted against the Minister of Cooperative Governance and Traditional Affairs. It was granted against the office. It is a known and natural concept that that office may be occupied by different people from time to time. All successors become responsible to adhere to court orders granted against that specific office.

49 AD PARAGRAPHS 19 to 23 THEREOF

49.1 The content of this paragraph is denied.

49.2 It is curious, however, how the DG claims not to have any knowledge of the record relied upon by the previous Minister and the erstwhile Information Officer. Yet, in the same affidavit the DG confirms that the full record has been disclosed and that there was compliance with the November 2022 court order.

49.3 It follows that the DG does not know whether those documents that his department provided to the applicant would constitute the full and complete record. He says that neither he nor his administration has any such knowledge.

49.4 How the DG claims compliance in the face of this, is not explained.

50 AD PARAGRAPH 24 THEREOF

50.1 This is incorrect. The 9 November 2022 order cites the Minister, the Director General and the Information Officer of the National Department of Cooperative Governance and Traditional Affairs.

50.2 It is a generic citation. It does not refer to Minister Dlamini-Zuma or Ms Williamson. The fact that they were, at that stage, the official office bearers cannot deviate from the fact that the order operates as against all their successors, should they vacate their office.

51 AD PARAGRAPH 26 THEREOF

51.1 This is disputed. In the affidavit of Minister Dlamini-Zuma, she merely mentions that she managed the applicant's request for information and that she directed that the department furnish the applicant with a record and give effect to the order of 9 November 2022.

51.2 She then claims that the record was furnished, and the court order complied with. There is no single shred of evidence of who, within the Department, allegedly complied with the court order and when, how or where did she present all the documents as set out in the court order.

51.3 Neither Minister Dlamini-Zuma, nor anyone else, deals properly with that what has been set out in my founding affidavit.

52 AD PARAGRAPH 28 THEREOF

The DG must have misread most parts, if not everything, that has been set out in the founding affidavit. I do not intend to repeat it here. Against the backdrop of several concessions made already, the DG cannot *bona fide* tell this Court that there was compliance with the court order, which required disclosure of all records, reasons, reports, findings, deliberations, communications, memoranda and/or further documentation relied on by the first respondent.

53 AD PARAGRAPH 28.12 THEREOF (should be 28.3)

It is not understood why certain contributions of the NATJOINTS are here not clothed in the same secrecy as claimed later in the replying affidavit. The case seems to be that some documents originating from the same structure ought to be regarded as privileged and others not.

54 AD PARAGRAPH 29 THEREOF

This is wrong. The order sought is an order for contempt, because of non-compliance with the 9 November 2022 order.

55 AD PARAGRAPH 30 THEREOF

It is not purely the applicant's subjective view that the Minister did not produce all the documents. It is confirmed by the DG himself. He tells this Court that on several unidentified documents cabinet privilege is called. He concedes objectively that the record is not produced. In any event, there is no proper answer to the details set out in the founding affidavit. He further, on his own concession, has no idea in respect of which documents he seeks cabinet privilege protection.

56 AD PARAGRAPH 32 THEREOF

This is plainly incorrect. It is apparent that the DG chooses not to address substantial parts of the founding affidavit. He would have appreciated that a detailed exposition has been pleaded demonstrating that a limited number of documents were provided and that there was non-compliance with the court order.

57 AD PARAGRAPH 33 THEREOF

57.1 This is also incorrect. In the founding affidavit a proper exposition is provided about what the applicant believes all the documents might be.

57.2 It can surely not be the case of the opposing respondents that the applicant, who was forced to bring a PAIA application, because it does not have the documents, must now identify with particularity the unknown documents that it does not have access to. Such argument is untenable.

57.3 That information falls squarely within the knowledge of the opposing respondents. They must tell this Court which documents they relied on and, if they do not want to disclose it, they must tell the Court why they are excused from compliance with the court order in respect of such identified documents.

58 AD PARAGRAPH 34 THEREOF

This is disputed. I dealt with this issue hereinbefore. The fact that the DG learned that "*a record*" had been furnished by the former administration on 3 occasions

does not confirm that a proper and full record of all documents, as envisaged in the court order, was provided.

59 AD PARAGRAPH 35 and 36 THEREOF

The content of this paragraph is disputed.

59.1 The founding affidavit in paragraphs 86 to 111 deals in particularity with documents that should have been provided under the court order. It does not broadly deal with only "*every scrap of paper*".

59.2 The case law, however, requires that such provision of documents includes indeed every scrap of paper.

59.3 I reiterate that the privilege defence is improper.

60 AD PARAGRAPH 37 THEREOF

The applicant is not bound by Advocate Glynnis Breytenbach's decision not to take the matter any further. The content of this paragraph is therefore irrelevant, save for the following fact. There were other documents that the opposing respondents had not discovered, which were provided to Advocate Breytenbach.

61 AD PARAGRAPH 40 THEREOF

This is incorrect. Section 23(8) stipulates the classification of a disaster. Section 23 designates primary responsibility to a particular sphere of government. In this case, it was the Minister and the Department.

62 AD PARAGRAPHS 42 to 51 THEREOF

62.1 To the extent that it does not accord with that what I have dealt with hereinbefore, the content of these paragraphs is denied.

62.2 It is specifically denied that Section 12(a) of PAIA applies to a court order.

62.3 Legal argument in respect of the incorrect interpretation of the DMA shall be presented to this Court at the hearing of this application, if required.

63 AD PARAGRAPH 54 THEREOF

The DG confirms that both the DG and the Minister had access to these records, which have not been disclosed. This is so, because the DG (and/or his predecessor) is part of FOSAD, being the Forum of South Africa Directors-General. This ought to be read against his earlier averments that he has no knowledge about which documents were considered.

64 AD PARAGRAPH 55 THEREOF

I dispute that the opposing respondents disclosed all information that they had access to. So much is conceded by themselves.

65 AD PARAGRAPH 61 THEREOF

This is obviously incorrect. The court order dictates what the opposing respondents must do. This includes the Minister, the DG and the Information Officer.

66 AD PARAGRAPH 62 THEREOF

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It is incorrect to allege that an order for contempt cannot be issued against the first four respondents. These issues will be dealt with in argument. The opposing respondents' interpretation is denied.

67 AD PARAGRAPHS 64 up to 67 THEREOF

I dealt with these issues. The content of these paragraphs is denied. The opposing respondents misconstrue the purpose of the joinder of the fifth to seventh respondents in their personal capacities. This shall be elaborated upon in argument.

68 AD PARAGRAPH 69 THEREOF

This paragraph is also ill-considered. The additional orders are there to ensure that there is compliance with the previous court order. It does not constitute a deviation of the existing order. It clarifies the existing order and is coercive in nature.

69 AD PARAGRAPH 93 THEREOF

This is misconceived. It is not true that only a person against whom a court order is made, can be in contempt of court. Be that as it may, the court order was granted against the Minister, the DG and the Information Officer.

70 AD PARAGRAPH 94 THEREOF

The applicant has no obligation to tell the Court what the legal requirements for the relief sought are. That will be a matter of argument, and it is for the Court to decide on those issues.

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71 AD PARAGRAPH 95 THEREOF

This is also incorrect. The officials are concededly aware of the court order and have failed to comply with the court order.

72 AD PARAGRAPH 109 THEREOF

This is incorrect. The opposing respondents themselves confirm that they did not provide a full record.

73 AD PARAGRAPH 111.13 THEREOF

The fact that reports were shared with officials on a "*need to know basis*" does not make them subject to cabinet privilege.

74 AD PARAGRAPH 112 THEREOF

The DG is in no position to record this denial. On his own version, he does not know.

75 AD PARAGRAPH 129 THEREOF

How the averment that the opposing respondents "*attempted compliance with the court order*" can be interpreted as compliance escapes the mind. The letter, in detail, tells the opposing respondents why they have not complied.

76 AD PARAGRAPH 151 THEREOF

How documents relating to meetings of the National Disaster Management Centre, NATJOINTS and the National Joint Operations Centre are protected by cabinet privilege is not explained.

77 AD PARAGRAPHS 152 and 155 THEREOF

This is an oversimplification. The question is not whether the DG is in possession of those documents. The question is whether the Department, under his control, is in possession of the documents. The further question is whether those documents were in the possession of the Department or any of the individuals cited in the court order. If so, what happened to these documents?

78 AD PARAGRAPHS 162 to 164 THEREOF

78.1 This is plainly incorrect. The applicant tells the opposing respondents that it is totally improbable that the record would consist of only 11 documents referred to in paragraphs 88.1 to 88.11. It is the alleged in the respondents' answer that it is for the applicant to demonstrate that there are more documents and that the respondents are in contempt of court.

78.2 This is not only implausible, but also unacceptable.

78.3 The DG was required to answer the simple question that was posed. Are the 11 documents, referred to, the only documents that were considered when the declaration of a national disaster was made (Yes or No)?

79 AD PARAGRAPH 176 -177 THEREOF

79.1 The applicant and its attorney have systems which allow efficient and fast perusal of large records received.

79.2 The notion that the applicant and its legal team were not diligent in concluding that a full record was not provided is therefore plainly wrong.

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79.3 Upon receipt of the documents and/or records disclosed by the 1st to 7th respondents, the applicant and its legal team compiled a register of all the documents actually received and compared said documents against those documents requested. This process of reviewing documents allows the applicant and its legal team to effectively and efficiently review documents and determine whether said documents correspond with those sought in the request for access to information.

79.4 Upon review of the documents and the register the applicant and its legal team had compiled, the applicant and its legal team concluded that the 1st to 7th respondents had failed alternatively, refused to provide the applicant with all of the requested documents.

80 AD PARAGRAPH 182 THEREOF

80.1 The content of this paragraph is ill-conceived. The court order orders the disclosure of all records and will include those records that the Minister believes are protected by cabinet privilege.

80.2 I reiterate that no effort was made to identify documents that are indeed so covered by cabinet privilege. Be that as it may, the court order stands and must be complied with.

80.3 It is not for the Minister or the DG to tell this Court which of the documents it has decided it will exclude from compliance with the order.

81 AD PARAGRAPHS 191 to 205 THEREOF (the issue of condonation)

81.1 It is for this Court to decide whether to condone the late filing of the answering affidavit. The applicant has no objection to the condonation application.

81.2 The applicant, however, records, premised on that what has been set out hereinbefore and what is recorded in the founding affidavit, that it disputes the opposing respondents so-called prospects of success.

CONCLUSION

82 In the premises, the applicant persists with the relief sought. I respectfully request this Court to issue an order as prayed for.

DEPONENT

SIGNED and SWORN to at Pretoria on this the 8th day of August 2025 in my presence after the deponent acknowledged that the deponent has read the affidavit, that the deponent knows and understands the contents thereof, that the deponent has no objection to taking the prescribed oath and that the deponent regards the oath as binding on the deponent's conscience.

COMMISSIONER OF OATHS

Herman Kelderman
Commissioner of Oaths
Practicing Attorney
A Wolmarans Inc. Attorneys
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RA1

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No.: 2023-132918

In the application between:

SAKELIGA NPC	Applicant
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	Second Respondent
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	Third Respondent
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE	Fourth Respondent
THEMBI NKADIMENG	Fifth Respondent
MBULELO TSHANGANA	Sixth Respondent
THINAYHYO SKOSANA	Seventh Respondent
NKOSAZANA CLARICE DLAMINI ZUMA	Eighth Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Ninth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

APPLICANT'S NOTICE IN TERMS OF RULE 35(12)

8/8/2025-2:00:15 PM

KINDLY TAKE NOTICE THAT the applicant requires the first to seventh respondents ("the respondents"), within ten (10) days of receipt of this notice, to produce for its inspection and copying the following documents and/or tape recordings referred to in the first to seventh respondent's answering affidavit and the attachments thereto:

1. The complete record delivered by the former Minister Dlamini-Zuma to Advocate Glynnis Breytenbach as referred to in paragraph 37 of the respondents' answering affidavit.



2. Copies of the various sources of information from different government departments as communicated by their executive authorities as referred in paragraph 43 of the respondents' answering affidavit.

3. The records upon which the NCCC based their decisions or recommendations to either extend the state of disaster or amend the Regulations, which were then sent to the COGTA Minister for her to act accordingly and give effect thereto under the DMA as referred to in paragraph 47 of the respondents' answering affidavit.

4. The remainder of the documents and/or information on which the previous Minister Dlamini-Zuma relied on when amending regulations or extending the state of disaster under the DMA as the respondents stated in paragraph 55 of their answering affidavit in that there "*may be other information that can be publicly disclosed*".

SIGNED at **PRETORIA** on **11 NOVEMBER 2024**.

8/8/2025-2:00:15 PM

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND TO: **THE STATE ATTORNEY: PRETORIA**
ATTORNEYS FOR THE RESPONDENTS
SALU Building
CNR Thabo Sehume Street &
Francis Baard Street
Pretoria
Tel: 012 309 1507
E-Mail: OSebitso@justice.gov.za
REF: 0061/24/Z71
Enq: Sebitso O (Ms)

SERVICE BY E-MAIL & CASELINES

Office of the State Attorney
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PRETORIA
0001

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Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1507
(Secretary): (012) 309 1503

26 NOVEMBER 2024

Enquires: **MS O SEBITSO**
Email: OSebitso@justice.gov.za

My ref: 0060/24/Z71
ref:

KRIEK WASSENAAR AND VENTER INCORPORATED
3RD FLOOR, HB FORUM BUILDING
13 STAMVRUG ROAD
VAL DE GRACE
PRETORIA

EMAIL: melissa@kriekprok.co.za

RE: SAKELIGA / MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS AND OTHERS

1. The above matter and your client's notice in terms of Rule 35(12) issued on 11 November 2024 bear reference.

2. We note the record furnished to your offices on 13 November 2024. We are instructed to advise, as we hereby do, that the record was furnished in error.

3. Further, our clients object to your client's notice in terms of Rule 35(12) and we enclose under cover hereof our clients' notice of objection.

4. Kindly note that our clients maintain that they have provided your client with all relevant information. We have thus been instructed to inform you that should this 'fishing expedition' of your client continue, it will necessitate our clients to seek an appropriate costs order at the appropriate time.

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5. Our clients' rights are reserved. Please be guided accordingly.

Yours Faithfully

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O SEBITSO
FOR: STATE ATTORNEY (PRETORIA)

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO.: 2023-132918

In the matter between:

SAKELIGA NPC	Applicant
and	
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE TRADITIONAL AFFAIRS	Second Respondent
THE NATIONAL DIRECTOR IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Fourth Respondent
THEMBI NKADIMENG	Fifth Respondent
MBULELO TSHANGANA	Sixth Respondent
THINAHYO SKHOSANA	Seventh Respondent
NKOSAZANA CLARENCE DLAMINI	Eighth Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Ninth Respondent

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NOTICE OF OBJECTION TO APPLICANT'S NOTICE IN TERMS OF RULE 35(12)

TAKE NOTICE that the respondents object to the applicant's notice in terms of 35(12) filed on 11 November 2024.

TAKE NOTICE FURTHER that the grounds of objection are as set out hereunder:

1. The notice is irregular for want of compliance with Rule 35(13) of the Rules of this Honourable Court.

2. Furthermore, the entire notice is a fishing expedition that is not conducive to the expeditious finalisation of this contempt application.

3. By filing this notice, the applicant appears to be oblivious to the judgment of Moshoana J, handed down in this matter on 12 September 2024.

4. **Ad Para 1**

   4.1. Although certain documents were furnished on 13 November 2024 in ostensible response to this request, the response was done in error.

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4.2. Nonetheless, the documents sought are irrelevant to the issues with which this court is seized.

4.3. This request is a fishing expedition, which if entertained will involve this Court in an investigation and determination of an entirely collateral issue.

5. **Ad Para 2**

5.1. Paragraph 43 of the answering affidavit does not refer to material that may be validly requested via Rule 35(12).

5.2. In any event, the request is vague and embarrassing and fails to identify with any degree of reasonable certainty the information that the respondents are required to produce.

5.3. We repeat that the applicant has been provided with all the information that some of the respondents were ordered to provide.

6. **Ad Para 3**

6.1. The documents sought herein are privileged. They are exempt from disclosure in terms of section 12(a) of the Promotion of Access to Information Act, 2 of 2000 ("**PAIA**").

7. **Ad Para 4**

7.1. Paragraph 55 of the answering affidavit does not refer to material that may be validly requested via Rule 35(12).

7.2. Nonetheless, the request pertains to information which is clearly not within the respondents' possession.

7.3. Furthermore, the request is vague and embarrassing and fails to identify with any degree of reasonable certainty the documents that the respondents are allegedly required to produce.

7.4. In addition, the information sought, to the extent that it exists and can be disclosed, is not under the respondents' control and or in their possession. We repeat, *ad nauseam*, the relevant respondents furnished the applicant with all of the documents in their possession and under their control.

DATED AT PRETORIA ON THIS THE 26TH DAY OF NOVEMBER 2024.

A.E. SNYMAN

RESPONDENTS ATTORNEYS
STATE ATTORNEY PRETORIA
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CNR THABO SEHUME &
FRANCIS BAARD STREET
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Enq: MS O SEBITSO

A

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND
TO: **KRIEK WASSENAAR & VENTER INCORPORATED**

ATTORNEYS FOR THE APPLICANT

THIRD FLOOR

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