

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No:

45509/2020

In the matter between:

MAKANA PEOPLE'S CENTRE

Applicant

and

MINISTER OF HEALTH**MEC FOR HEALTH: EASTERN CAPE PROVINCE**

First Respondent

MEC FOR HEALTH: FREE STATE PROVINCE

Second Respondent

MEC FOR HEALTH: GAUTENG PROVINCE

Third Respondent

MEC FOR HEALTH: KWAZULU NATAL PROVINCE

Fourth Respondent

MEC FOR HEALTH: LIMPOPO PROVINCE

Fifth Respondent

MEC FOR HEALTH: MPUMALANGA PROVINCE

Sixth Respondent

MEC FOR HEALTH: NORTH-WEST PROVINCE

Seventh Respondent

MEC FOR HEALTH: NORTHERN-CAPE PROVINCE

Eighth Respondent

MEC FOR HEALTH: WESTERN CAPE

Ninth Respondent

Tenth Respondent

NOTICE IN TERMS OF RULE 16A

TAKE NOTICE THAT the Applicant has raised the following constitutional issues in its founding affidavit:-

- 1 Whether the scheme for the involuntary detention of a mental health care user created under sections 33 and 34 of the Mental Health Act 17 of 2002 (**MHCA**), is inconsistent with the Constitution of the Republic of South Africa, and

therefore invalid, to the extent that it does not provide for an automatic independent review prior to or immediately following the initial detention of a person involuntarily detained under the MHCA.

- 2 Whether s 34(7) and s 36 of the MHCA are inconsistent with the Constitution and invalid to the extent that they do not provide the Review Board and High Court with the discretion to examine the mental health care user who is the subject of the review proceedings;

- 3 Whether chapter IV of the MHCA is inconsistent with the Constitution and invalid to the extent that it fails to provide an adequate level of independence to the Mental Health Care Review Board(s).

- 4 Whether ss 18(3), 20(4), 21, and 23 of the MHCA are inconsistent with the Constitution and invalid to the extent that they fail to provide an adequate level of independence to the Mental Health Care Review Board(s).

TAKE NOTICE FURTHER THAT any interested party may, with the written consent of all the parties to the proceedings, given not later than 20 days after the filing of this notice, be admitted to the proceedings as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.


TAKE NOTICE FURTHER THAT the written consent referred to above shall, within 5 days of it being obtained, be lodged with the Registrar, and the *amicus curiae* shall, in addition to any other provision of the Rules, comply with the times agreed upon for the lodging of the written argument.

TAKE NOTICE FURTHER THAT if the interested party is unable to obtain written consent as contemplated herein, he or she may, within 5 days of the expiry of the 20-day period prescribed above, apply to the Court to be admitted as *amicus curiae* in the proceedings. Such application shall:-

- a) Briefly describe the interest of the prospective *amicus curiae* in the proceedings;
- b) Clearly and succinctly set out the submissions which will be advanced by the prospective *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court, and are different from those of the other parties; and
- c) Be served upon all the parties to the proceedings.

TAKE NOTICE FURTHER THAT any party to the proceedings who wishes to oppose an application to be admitted as *amicus curiae* shall file an answering affidavit within 5 days of the service of such application upon such party. The answering affidavit shall set out clearly and succinctly the grounds for such opposition.

Thus signed and dated at Pretoria on this the 09th day of September 2020.


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(Applicant's Attorneys)
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 Cc: mahlodi@nandibulabulainc.co.za
 Ref: MAT0036/09/2020

To: **The Registrar of the above Honourable Court,**
 Cnr. Madiba & Paul Kruger Streets
 Pretoria

And to: **Minister of Health**
(First Respondent)
 Civitas Building
 222 Thabo Sehume Street
 Pretoria Central
 Pretoria
 Gauteng Province
Per: minister@health.gov.za
Cc: Keitumetse.Mngadi@health.gov.za
Bcc: Emsie.Grundling@health.gov.za
Bcc: Ichowe@justice.gov.za – State Attorney: Pretoria
Bcc: Stateattorneypretoria@justice.gov.za

Also service by sheriff

And to: **The Mec for Health: Eastern Cape Province**
(Second Respondent)
 Dukambana Building
 Independence Avenue
 Bisho
 Eastern Cape Province
Per: Sindiswa.gomba@echealth.gov.za
Cc: Nosimpiwe.maliti@echealth.gov.za
Bcc: t.dlanjwa@justice.gov.za — State Attorney: East London

And to: **The Mec for Health: Free State Province**
(Third Respondent)
 Bophelo House
 Cnr. Maitland and Harvey Road

Bloemfontein
 Free State Province
Per: mvambiM@fshealth.gov.za
Cc: motaud@fshealth.gov.za
Bcc: BaMaranyane@justice.gov.za – State Attorney: Bloemfontein

And to: **The Mec for Health: Gauteng Province
 (Fourth Respondent)**
 Department of Health
 45 Commissioner Street
 Johannesburg
 Gauteng Province
Per: Bandile.Masuku@gauteng.gov.za
Cc: Mkhululi.Lukhele@gauteng.gov.za
Bcc: ZNhlayisi@justice.gov.za – State Attorney: Johannesburg

And to: **The Mec for Health: KwaZulu-Natal Province
 (Fifth Respondent)**
 Natalia, 330 Langalibalele (Longmarket) Street
 Pietermaritzburg (3201)
Per: Nomagugu.Simelane-Zulu@kznhealth.gov.za
Cc: Sandile.Tshabalala@kznhealth.gov.za
Bcc: NPeete@justice.gov.za – State Attorney: Durban

And to: **The Mec for Health: Limpopo Province
 (Sixth Respondent)**
 Fidel Castro Ruz House
 18 College Street
 Polokwane
 Limpopo Province
Per: Mec.support@dhshd.limpopo.gov.za
Cc: Mchuene@justice.gov.za – State Attorney: Polokwane

And to: **The Mec for Health: Mpumalanga Province
 (Seventh Respondent)**
 7 Government Boulevard
 Building 3, Riverside Park (Ext. 2)
 Nelspruit
 Mpumalanga Province
Per: Pretty.D@mpuhealth.gov.za
Cc: bhekist@mphealth.gov.za

Bcc: ArMasekoameng@justice.gov.za – State Attorney: Nelspruit

**And to: The Mec for Health: North West Province
(Eighth Respondent)**

Cnr. 1st Street & Sekame Road

Mafikeng

North West Province

Per: Vmbulawa@npwg.gov.za

Cc: tlekgethwane@nwpq.gov.za

Bcc: MMotshabi@justice.gov.za – State Attorney: Mafikeng

**And to: The Mec for Health: Northern Cape Province
(Ninth Respondent)**

James Exum Building

Du Toit Span Road

Kimberly

Northern Cape

Per: Imaruping@ncpg.gov.za

Cc: NGcilitshana@justice.gov.za – State Attorney: Kimberly

**And to: The Mec for Health: Western Cape Province
(Tenth Respondent)**

20th Floor, 4 Dorp Street

Cape Town

Western Cape Province

Per: Unathi.Mayinje@westerncape.gov.za

Cc: Douglas.Newman@westerncape.gov.za

Bcc: MBiko@justice.gov.za – State Attorney: Cape Town