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

**CASE NO:** 5807 | 2020

In the matter between:

**DUWAYNE ESAU**

First Applicant

**NEO MKWANE**

Second Applicant

**TAMI JACKSON**

Third Applicant

**LINDO KHUZWAYO**

Fourth Applicant

**MIKHAIL MANUEL**

Fifth Applicant

**RIAAN SALIE**

Sixth Applicant

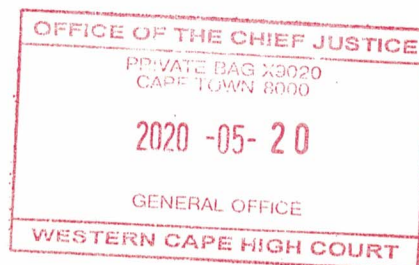
**SCOTT ROBERTS**

Seventh Applicant

**MPIYAKHE DLAMINI**

Eighth Applicant

and



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

First Respondent

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

Second Respondent

**THE MINISTER OF TRADE, INDUSTRY AND  
COMPETITION**

Third Respondent

**THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA IN HIS CAPACITY AS THE  
CO-CHAIRPERSON OF THE NATIONAL  
CORONAVIRUS COMMAND COUNCIL**

Fourth Respondent

**THE MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS IN HER CAPACITY  
AS THE CO-CHAIRPERSON OF THE NATIONAL  
CORONAVIRUS COMMAND COUNCIL**

Fifth Respondent

**THE NATIONAL CORONAVIRUS COMMAND COUNCIL**

Sixth Respondent

THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA

Seventh Respondent

THE NATIONAL DISASTER MANAGEMENT  
CENTRE

Eighth Respondent

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**RULE-16A NOTICE**

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**PLEASE TAKE NOTICE THAT on 29 May 2020 the applicants intend to seek an order in the above matter declaring that:**

1. Declaring that –
  - 1.1 the establishment and existence of the sixth respondent (**‘the Command Council’**) is inconsistent with the Constitution of the Republic of South Africa, 1996 (**‘the Constitution’**) and the Disaster Management Act, No 57 of 2002 (**‘the Act’**), and is invalid;
  - 1.2 alternatively to paragraph 1.1, to the extent that the Command Council purports to duplicate and/or supplant the functions of the National Disaster Management Centre established in Chapter 3 of the Act, the Command Council acts unlawfully and in a manner that is inconsistent with the Constitution and the Act.
2. Declaring that any decision taken or purported to have been taken by the Command Council in relation to any matter in terms of the Act is unconstitutional and invalid.
3. Declaring that –

- 3.1 the Disaster Regulations issued in terms of section 27(2) of the Act published under Government Notice No. R. 480 in *Government Gazette* 43258 of 29 April 2020 (**'the Disaster Regulations'**) are unconstitutional and invalid;
- 3.2 alternatively to paragraph 3.1, regulations 16(1) – (4), 28(1), 28(3) and 28(4), read with Part E of Table 1, of the Disaster Regulations are unconstitutional and invalid.
4. Suspending the declaration of invalidity referred to in paragraph 3 above for a period of 30 calendar days from the date of this order.
5. Directing the first respondent to correct the constitutional defects in the Disaster Regulations within 30 calendar days of this order.
6. Declaring inconsistent with the Constitution and invalid, and reviewing and setting aside, the '*Directions regarding the sale of clothing, footwear and bedding during alert level 4 of the Covid-19 national state of disaster*', published by the third respondent under Notice R. 523 in *Government Gazette* 43307 of 12 May 2020 (**'the Clothing Directions'**).

**TAKE NOTICE FURTHER** that the application concerns the following constitutional issues:

1. The role of the Command Council under the Act.
2. Whether the Disaster Regulations comply with the Constitution and any other law.



3. Whether the Clothing Directions comply with the Constitution and any other law.
4. The appropriate relief that should be granted following a declaration of invalidity in respect of the Command Council, the Disaster Regulations and the Clothing Directions.

**TAKE FURTHER NOTICE** that any interested party may, with the written consent of all the parties to the proceedings given not later than 22 May 2020, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing between the parties.

**TAKE FURTHER NOTICE** that the written consent referred to above shall be lodged with the registrar by 25 May 2020 and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for lodging of written argument.

**TAKE NOTICE FURTHER** that the terms and conditions agreed upon may be amended by the court.

**TAKE NOTICE FURTHER** that if the interested party is unable to obtain the written consent as contemplated herein, he or she may, by 25 May 2020, apply to the court to be admitted as an *amicus curiae* in the proceedings. Such application shall –

- (a) Briefly describe the interest of the interest of the *amicus curiae* in the proceedings;
- (b) Clearly and succinctly set out the submission which will be advanced by the *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 interested 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 an *amicus curiae*, shall file an answering affidavit by 27 May 2020. The answering affidavit shall clearly and succinctly set out the ground of such opposition.

**DATED AT CAPE TOWN ON THIS 28<sup>th</sup> DAY OF MAY 2020.**

**ADRIAANS ATTORNEYS**

Per: A ADRIAANS

Attorneys for the Applicants

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Reference: AA/dd/R193

**TO: THE REGISTRAR  
HIGH COURT  
CAPE TOWN**

**AND TO: THE FIRST RESPONDENT  
c/o THE STATE ATTORNEY  
22 LONG STREET**

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**AND TO: THE SECOND RESPONDENT**  
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**AND TO: THE SIXTH RESPONDENT**  
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**AND TO: THE SEVENTH RESPONDENT**

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