

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

**CASE NO:** \_\_\_\_\_

In the matter between:

<b>DUWAYNE ESAU</b>	First Applicant
<b>NEO MKWANE</b>	Second Applicant
<b>TAMI JACKSON</b>	Third Applicant
<b>LINDO KHUZWAYO</b>	Fourth Applicant
<b>MIKHAIL MANUEL</b>	Fifth Applicant
<b>RIAAN SALIE</b>	Sixth Applicant
<b>SCOTT ROBERTS</b>	Seventh Applicant
<b>MPIYAKHE DLAMINI</b>	Eighth Applicant
and	
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	First Respondent
<b>THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	Second Respondent
<b>THE MINISTER OF TRADE, INDUSTRY AND COMPETITION</b>	Third Respondent
<b>THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA IN HIS CAPACITY AS THE CO-CHAIRPERSON OF THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Fourth Respondent
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS IN HER CAPACITY AS THE CO-CHAIRPERSON OF THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Fifth Respondent
<b>THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Sixth Respondent

THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA

Seventh Respondent

THE NATIONAL DISASTER MANAGEMENT  
CENTRE

Eighth Respondent

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**NOTICE OF MOTION**

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**PLEASE TAKE NOTICE THAT** the applicants intend to make application to the above Honourable Court on Friday, 29 May 2020 at 10h00 or so soon thereafter as Counsel may be heard for an order:

1. Declaring that the rules relating to time limits and forms be dispensed with and that this application be heard as a matter of urgency in terms of rule 6(12) of the Uniform Rules of Court.
2. Declaring that –
  - 2.1 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;
  - 2.2 alternatively to paragraph 2.1, 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.

3. 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.
4. Declaring that –
  - 4.1 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;
  - 4.2 alternatively to paragraph 4.1, 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.
5. Suspending the declaration of invalidity referred to in paragraph 4 above for a period of 30 calendar days from the date of this order.
6. Directing the first respondent to correct the constitutional defects in the Disaster Regulations within 30 calendar days of this order.
7. 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.
8. Directing that the costs of this application be paid by those respondents who oppose this application.

9. Granting further and/or alternative relief.

**PLEASE TAKE NOTICE FURTHER THAT** the affidavits of **DUWAYNE ESAU, NEO MKWANE, TAMI JACKSON, LINDO KHUZWAYO, MIKHAIL MANUEL, RIAAN SALIE, SCOTT ROBERTS** and **MPIYAKHE DLAMINI**, together with the annexures thereto, will be used in support of this application.

**KINDLY TAKE NOTICE FURTHER THAT** if you intend to oppose this application, you are required:

- a) To notify the applicants' attorney accordingly by email on or before 13h00 on Friday 22 May 2020;
- b) To deliver your answering affidavit, if any, on or before 13h00 on Monday 25 May 2020.

**KINDLY TAKE NOTICE FURTHER THAT**, the applicants will deliver their replying affidavit, if any, by Wednesday 27 May 2020.

**KINDLY TAKE NOTICE FURTHER THAT** the applicants have appointed the offices of **ADRIAANS ATTORNEYS**, 16<sup>TH</sup> Floor, 2 Long Street, CAPE TOWN as the address at which they will accept notice and service of all process in these proceedings and that such service be effected by email to the addresses:

[ashley@adriaansattorneys.com](mailto:ashley@adriaansattorneys.com) and [dominique.dirks@adriaansattorneys.com](mailto:dominique.dirks@adriaansattorneys.com).

**KINDLY PLACE THIS MATTER ON THE ROLL FOR HEARING ACCORDINGLY.**

DATED AT CAPE TOWN THIS 21<sup>st</sup> DAY OF MAY 2020.

**ASHLEY ADRIAANS  
ADRIAANS ATTORNEYS**

16<sup>th</sup> Floor  
2 Long Street  
Cape Town  
8001

[ashley@adriaansattorneys.com](mailto:ashley@adriaansattorneys.com)

[dominique.dirks@adriaansattorneys.com](mailto:dominique.dirks@adriaansattorneys.com)

Ref: AA/dd/R193

T: 021 801 5240

F: 086 504 7372

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

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

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)

**CC: THE STATE ATTORNEY, PRETORIA  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)**

**AND TO: THE SECOND RESPONDENT  
c/o THE STATE ATTORNEY  
22 LONG STREET  
CAPE TOWN**

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)

**CC: THE STATE ATTORNEY, PRETORIA  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)**

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

**CC:** By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)  
**THE STATE ATTORNEY, PRETORIA**  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)

**AND TO:** **THE FOURTH RESPONDENT**  
c/o THE STATE ATTORNEY  
22 LONG STREET  
CAPE TOWN

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)  
**CC:** **THE STATE ATTORNEY, PRETORIA**  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)

**AND TO:** **THE FIFTH RESPONDENT**  
c/o THE STATE ATTORNEY  
22 LONG STREET  
CAPE TOWN

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)  
**CC:** **THE STATE ATTORNEY, PRETORIA**  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)

**AND TO:** **THE SIXTH RESPONDENT**  
c/o THE STATE ATTORNEY  
22 LONG STREET  
CAPE TOWN

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)  
**CC:** **THE STATE ATTORNEY, PRETORIA**  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)

**AND TO:** **THE SEVENTH RESPONDENT**  
c/o THE STATE ATTORNEY  
22 LONG STREET  
CAPE TOWN

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)  
**CC:** **THE STATE ATTORNEY, PRETORIA**  
StateAttorneyPretoria@justice.gov.za  
[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)

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

CAPE TOWN

By email: [MBiko@justice.gov.za](mailto:MBiko@justice.gov.za)

**CC:**

**THE STATE ATTORNEY, PRETORIA**

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[Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)