

SOUTH AFRICAN MARKET INSIGHTS

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From the graphic above, on All Industries level its clear that South Africa's economy hasn't made a lot of headway in terms of real growth (growth after adjusting for inflation), since 2009. Our recovery from the financial recessions set on by the US sub prime crisis has been extremely slow.

Finance, real estate and business services is the largest industry in South Africa, and it has been contributing more and more to South Africa's economy as the years has gone by.

Government is the second largest contributor to our economy, contributing 17% to our overall GDP. It is a large part of our GDP, but other developing and developed countries, have government contributions to GDP that is even larger than 17%.

Manufacturing, one of South Arica's largest industries, suffered a significant drop in its contribution to South Africa's GDP in 2009 and it has struggled to gain momentum ever since (this is in part due to lower demand for goods, and partly due to lack of stable power supply from ESKOM).

From the graphic above its pretty clear that the mining and quarrying industry suffered a near total collapse from 2008 onwards (largely than



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"AA"

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YOUR REF :

OUR REF : ZOMAR/bs/

11 MAY 2020

THE OFFICE OF THE MINISTER OF CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS
BY EMAIL

THE OFFICE OF THE STATE ATTORNEYS
BY EMAIL

Dear Sir / Madam

Re : REYNO DAWID DE BEER & LIBERTY FIGHTERS / MINISTER OF CO-
OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

We act on the instruction of our clients Reyno Dawid De Beer and Liberty Fighters.

Our clients instruct us to apply to court to challenge the lawfulness of all the Lockdown and Alert Level regulations promulgated by the Minister of Co-operative Governance and Traditional Affairs.

Our clients intend bringing an urgent application raising the following issues :

- i. Our clients contend that the Regulations issued in terms of Section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) – including the various amendments and further regulations promulgated thereafter, are unconstitutional

and/or invalid or otherwise illegal. Applicants say so for the reason that these delegated legislation, are not only unreasonably violating almost every single Section contained in the Bill of Rights, but specifically regulating matters which are within the exclusive legislative competence of the National or Provincial Legislatures as intended in Schedule 5 of the *Constitution*.

- ii. Further, our clients instruct that the *CoGTA Minister* used her delegated powers to make regulations in terms of Section 27(2) of the *DMA* which regulations far exceed the purpose and objects of Section 27(2). Any regulations promulgated must comply with Section 146(6) of the *Constitution* read with Section 59(4) of the *DMA*. This process never happened and therefore the regulations are unlawful, unconstitutional and invalid.
- iii. Our clients also instruct that the national state of disaster, also known generally as the "Lockdown", declared by the *CoGTA Minister* in terms of Section 27(1) of the *DMA* on 15 March 2020 was irrational and based on incorrect advice and/or reaction to unconfirmed and/or otherwise unreliable international and national medical and health results not taking our country's unique socio-economic conditions in consideration.
- iv. In addition to the foregoing, the prohibition on gatherings in Regulation 23 and as defined in Regulation 1 of GN No. R480 GG No. 43258 dated 29 April 2020

(hereinafter referred to as the "*New Regulations*"), is invalid as it is in direct violation and contradicts the absolute limitation contained in Section 14(1) of the Regulation of Gatherings Act 205 of 1993 (hereinafter referred to as the "*Gatherings Act*"). The current regulations conflict with legislation enacted by Parliament that permit gatherings of the people. The current regulations effectively prevent any protest against the actions of Government in relation to the declaration of a national state of disaster.

v. In addition to the foregoing, the decision to utilise the DMA to manage the current Covid crisis is unlawful. We say so for the following reasons. Section 27(1) of the DMA provides that a national state of disaster may be declared only if :

(1) existing legislation or other contingency arrangements do not cater adequately for dealing with the disaster effectively or

(2) there are special circumstances that warrant the declaration of a national state of disaster.

There exists a piece of legislation known as the International Health Regulations Act 28 of 1974 (hereinafter referred to as the "IHRA") that adequately provides for dealing with Covid 19. The IHRA lists a whole range of infectious diseases that are subject to it's regulations. It also sets out guidelines for the management of such diseases. This act was resorted to in treating a host of infectious diseases in South Africa for many decades. There is no reason why government

resorted to the draconian lockdown regulations when legislation existed that provided a less restrictive mechanism to deal with the Covid 19 pandemic.

- vi. In addition to the foregoing, our clients submit that restrictions introduced by the lockdown regulations are unlawful and unconstitutional as the country is not in a State of Emergency. Section 37 of the Constitution sets out the only instance when government may be permitted to infringe upon the Bill of Rights, to the extent set out in the Covid 19 regulations. A state of emergency has various checks and balances to prevent an abuse of the section by the State. Section 37 sets out rights that are non-derogable. In addition, South Africa is a signatory to the International Covenant on Civil and Political Rights. Had a state of emergency been declared, a Human Rights Committee set up by the United Nations would be required to monitor how the state of emergency is implemented. The Committee is a watchdog to ensure that emergency measures are as least restrictive as possible. Our government circumvented it's obligations arising from this international instrument by clothing it's violations of the constitutional rights of the people of South Africa, by naming it's measures a 'national state of disaster'. In this manner there is no oversight at all over governments actions. This has allowed for the abuse of power as has been seen on the news and social media, by police and members of the military. These abuses have been overlooked by government.

vii. In addition, our clients instruct that the declarations of additional essential services contained in Paragraph B Annexure B of the *DMA* Regulations prior to the *New Regulations* (hereinafter referred to as the "*Old Regulations*") and subsequently confirmed in the *New Regulations* were irrational and *ultra vires* and resultantly invalid in that the declaration of essential services is the exclusive responsibility of the Essential Services Committee (ESC) established in terms of Section 70 of the Labour Relations Act No. 66 of 1995 (hereinafter referred to as the "*LRA*") and not that of the *CoGTA Minister*. Section 210 of the *LRA* also provides for an absolute limitation in the processes for identifying essential services established in terms of the *LRA*. Section 210 of the *LRA* provides that in the event of a conflict between the provisions of the *LRA* and any other law, the provisions of the *LRA* shall prevail. The Lockdown Regulations are in conflict with the *LRA* and are therefore unlawful and must be set aside.

viii. Further to have allowed *inter alia* the mining sector to have operated as an essential service not having been declared as one by the ESC and only contributing around 8% to the GDP as an subordinate economic sector, was hypocritical, unreasonable and irrational. This decision has also put mineworkers who work in a health high-risk employment sector, as recognised by the National Institute for Communicable Diseases (NICD) of South Africa, in harm's way under the current national disaster circumstances.

ix. In addition to the foregoing, to have disallowed *inter alia* the full financial and property industry and hair and beauty salons as essential services, within the process of understanding in relation to other decisions of the **CoGTA Minister**, was unreasonable and irrational and therefore unlawful.

Our instructions are to apply to a competent court for orders, *inter alia* declaring the regulations unconstitutional, unlawful and invalid.

While our client challenges the validity of the mentioned regulations in their entirety, our client as a courtesy enquires whether the Minister may be willing to reconsider her position regarding the continued lockdown and oppressive regulations. Our clients, without admitting any legality in the existing regulations, invites you to mediation of the issues herein. In this regard we take note of the response sent by the State Attorneys in the matter of Gods Church Must Rise, in which you conveyed :

"Your client has requested our clients to engage in mediation with it in relation to allowing congregational worship. While they accept that this issue is on pressing importance to our client, the President and the Minister simply do not have the capacity to participate in a structured mediation at this stage – and particularly not on the urgent timetable you appear to envisage. Their timetable is fully engaged in attending the exigencies of the Covid -19 pandemic. Nor can they



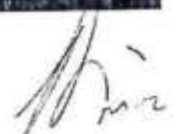
prioritize engagement with a particular person or interest group under the threat of litigation."

Having regard to the foregoing, please let us know whether we are correct in assuming that the Minister has no time to put into effect the provisions of Regulation 13 of her current Covid regulations. Our client will shortly serve and file it's application to court, unless we hear the contrary from you.

Your response hereto is awaited by 10h00 on Tuesday, 12 May 2020.

Yours faithfully

ZEHIR OMAR ATTORNEYS



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

CASE NUMBER: 21542/2020

In the matter between:-

REYNO DAWID DE BEER

1st Applicant

LIBERTY FIGHTERS NETWORK

2nd Applicant

AND

MINISTER OF COOPERATIVE GOVERNANCE


Respondent

AND TRADITIONAL AFFAIRS

CERTIFICATE OF URGENCY

I, the undersigned YASMIN OMAR, I am attorney with rights of appearance in the High Court, practicing at Zehir Omar Attorneys at 95 Seventh Street, Springs. I have read the papers in this matter and certify that this matter is of such an urgent nature that it must be heard on 19 May 2020.

DATED AT Springs ON THIS THE DAY OF 13 May 2020.


YASMIN OMAR
ATTORNEY FOR APPLICANT