

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN JOHANNESBURG**

Case No.: _____/2020

In the matter between:

In the matter between:

**ASSOCIATION OF MINEWORKERS AND
CONSTRUCTION UNION**

Applicant

and

**MINISTER OF MINERAL RESOURCES
AND ENERGY**

First Respondent

CHIEF INSPECTOR OF MINING

Second Respondent

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

Third Respondent

MINERALS COUNCIL SOUTH AFRICA

Fourth Respondent

NOTICE OF MOTION

PART A

KINDLY TAKE NOTICE THAT the the Applicant will apply at the above Honourable Court on Tuesday 21 April 2020 at 14h00, or as soon thereafter as the matter may be heard for an order in the following terms:

- 1 The Applicant's non-compliance with the ordinary Rules of Court, including the manner of service, and with the rules and other statutory instruments relating to the commissioning of affidavits, is condoned and the matter is enrolled on the urgent roll.

- 2 The parties' legal representatives are permitted to make oral representations during Part A and Part B of the matter's hearing through Zoom or similar electronic means as directed by the urgent court duty judge.

- 3 The parties are directed to publish this application to enable mining companies to consider joining this application as follows:
 - 3.1 The Applicant and the Fourth Respondent must place this application on their websites within 8 hours of the grant of an order under Part A;
 - 3.2 The Third Respondent must place this application on its website on its dedicated page for Covid-19 within 8 hours of the grant of an order under Part A;
 - 3.3 The Applicant and the Fourth Respondent must publish a link to this application on the parties' Facebook and Twitter accounts, if any;
 - 3.4 The Fourth Respondent must distribute this application to all its members by email, provided that it will be sufficient compliance if the Fourth Respondent emails a link to the application on its website.
 - 3.5 The Applicant must publish a short notice in the Business Day newspaper and, if the publishing format permits this, the Business Report supplement that accompanies certain newspapers in the Independent Media Group, briefly describing the application and inviting mining companies to review the application at the Applicant's website, arrangements for such

publication to be effected with the newspapers within 8 hours of the grant of an order under Part A, with publication to follow on the earliest day possible in terms of the newspapers' publishing timetable.

3.6 The Applicant's attorneys must within 8 hours of the grant of an order under this Part A –

3.6.1 Email the application, or the link to it on one or more of the websites referred to above, to all of the entities listed in annexure GK3 to the affidavit of G Kahn, where an email address has been identified;

3.6.2 Endeavour to fax to those entities on annexure GK3 for whom a fax number only has been found, a letter drawing their attention to the application and providing all of the links to the application on the websites referred to above;

3.6.3 Send by SMS a short notification of the application and one of the links to one of the websites referred to above, where only a cell phone number for the entity has been identified;

3.6.4 Endeavour to telephone those entities where only a landline number has been identified and inform them of the nature of the application and a link to one of the websites referred to above.

- 4 It is directed that any mining company may join this application as a respondent by giving notice of opposition by email to the Applicant's attorneys on the email address given below, which notice must –
 - 4.1 be given by no later than close of business on Wednesday 22 April 2020;
and
 - 4.2 immediately be transmitted by the Applicant's attorneys to all Respondents and the Registrar.
- 5 Alternative and/or additional measures of service and/or publication as directed by the court.
- 6 Costs in the cause.

PART B

KINDLY TAKE NOTICE FURTHER THAT the the Applicant will apply at the above Honourable Court on Tuesday 28 April 2020 at 10h00, or as the urgent court judge directs, for an order in the following terms:

- 1 The First Respondent's decision not to (alternatively, failure to) –
 - 1.1 declare that the Covid-19 viral pandemic present and spreading in South Africa is a health hazard as contemplated in section 76(1) of the the Mine Health and Safety Act ("the MHSA") and to publish a notice immediately to that effect;
 - 1.2 publish by way of a notice in the Government Gazette mandatory conditions, standards of fitness, measures to eliminate, control and minimise health risks associated with the health hazard, compulsory measurements of occupational hygiene to be conducted, compulsory medical surveillance to be conducted in respect of employees exposed to the health hazard and other appropriate measures in terms of paragraphs (a) to (f) of section 76(2) of the MHSA, is reviewed and set aside.
- 2 The decision (alternatively, failure to take a decision) referred to in prayer 1 is substituted with a decision to declare that the Covid-19 viral pandemic present and spreading in South Africa is a health hazard as contemplated in section 76(1) of the the Mine Health and Safety Act ("the MHSA").

- 3 The First Respondent is directed immediately to publish a notice announcing the declaration in the Government Gazette.

- 4 Alternatively to prayers 2 and 3 the decision in paragraph 1.1 is remitted to the First Respondent for reconsideration with directions to –
 - 4.1 consider, at a minimum, the expert opinion of Professors Ehrlich, Murray, Naidoo, Sonnenberg, and Rees (“the expert opinion”); and
 - 4.2 reach a decision in terms of section 76(1) by no later than close of business on Thursday 30 April 2020 or such alternative date as this court may determine.

- 5 The decision in paragraph 1.2 is remitted to the First Respondent who is directed to publish, alternatively, reconsider publishing, by way of a notice in the Government Gazette mandatory conditions, standards of fitness, measures to eliminate, control and minimise health risks associated with the health hazard, compulsory measurements of occupational hygiene to be conducted, compulsory medical surveillance to be conducted in respect of employees exposed to the health hazard and other appropriate measures in terms of paragraphs (a) to (f) of section 76(2) of the MHSA, with directions to –
 - 5.1 consider, at a minimum, the expert opinion; and
 - 5.2 provide the Applicant with an opportunity to comment on the draft notice before promulgation; and

- 5.3 reach a decision in terms of section 76(2) by no later than close of business on Friday 8 May 2020 or such alternative date as this court may determine.

In the alternative to prayers 1 - 5

- 6 The Second Respondent's decision not to (alternatively, failure to) –
- 6.1 require employers to prepare and implement a code of practice on the Covid-19 viral pandemic present and spreading in South Africa in terms of section 9(2) of the MHSA; and
- 6.2 issue guidelines in terms section 9(3) of the MHSA, is reviewed and set aside.
- 7 The decisions (alternatively, failure to take decisions) referred to in prayer 6 are substituted with decisions to require employers to prepare and implement a code of practice on the Covid-19 viral pandemic present and spreading in South Africa in terms of section 9(2) of the MHSA and to issue guidelines in terms of section 9(3) of the MHSA.
- 8 The First Respondent is directed by no later than Friday 8 May 2020 to publish a notice in the Government Gazette issuing guidelines in terms of section 9(3) and 49(6) of the MHSA, taking into account, at a minimum, the expert opinion.

- 9 Alternatively to prayers 7 and 8, the matter is remitted to the Second Respondent for reconsideration with directions to –
- 9.1 consider, at a minimum, the expert opinion; and
- 9.2 provide the Applicant with an opportunity to comment on the draft guidelines before promulgation; and
- 9.3 reach a decision in terms of section 9(2) and (3) by no later than close of business on Friday 8 May 2020 or such alternative date as this court may determine.

In the further alternative to prayers 6 - 9:

- 10 Regulations 11J, 11K and Schedule B, Part B, Item 22 of the regulations in Government Notice 318 of 18 March 2020, as amended,¹ are declared to be constitutionally invalid and are set aside.
- 11 The Third Respondent is directed to issue fresh regulations pertaining to mining as an essential service with directions to –
- 11.1 consider, at a minimum, the expert opinion; and

¹ GN 318 of 18 March 2020 issued in terms of section 27 (2) of the Disaster Management Act No. 57 of 2002 and contained in Government Gazette No. 43107, as amended by Government Notice R.398 in Government Gazette No. 43148 of 25 March 2020, Government Notice R.419 contained in Government Gazette No. 43168 dated 26 March 2020, Government Notice R. 446 of 2 April 2020 contained in Government Gazette No. 43199 and Government Notice R. 465 of 16 April 2020 published in Government Gazette No. 43232.

11.2 provide the Applicant with an opportunity to comment on the draft regulations before promulgation; and

11.3 publish amended regulations by no later than Friday 8 May 2020.

12 Further and/or alternative relief is granted.

13 The costs of this application, including the costs of the orders in Part A, are to be paid, jointly and severally, by the First Respondent and any Respondents opposing it.

KINDLY TAKE NOTICE THAT the accompanying affidavits of **JEFFREY MPHAHLELE** and **GEORGE IB KAHN** will be used in support of this application.

KINDLY TAKE FURTHER NOTICE that the Applicant has appointed Richard Spoor Inc Attorneys as its legal representatives in these proceedings and will accept delivery of all further notices and papers in this matter at the address detailed below.

KINDLY TAKE NOTICE that if any party intends opposing Part A of this application, they are required to:

1 Inform the Applicant's attorneys in writing of their intention to oppose this application and appoint in such notification an address at which they will accept notice and service of all documents in these proceedings, including by email, by 18h00 on **MONDAY, 20 APRIL 2020**.

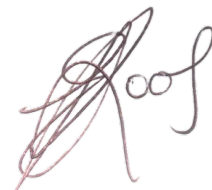
2 Deliver their answering affidavits by 10h00 on **TUESDAY 21 APRIL 2020**.

KINDLY TAKE NOTICE that if any party or any mining company intends opposing Part B of this application, they are required to:

- 1 Inform the Applicant's attorneys in writing of their intention to oppose this application and appointing in such notification an address at which they will accept notice and service of all documents in these proceedings, including by email by 17h00 on **THURSDAY, 23 APRIL 2020**.
- 2 Deliver their answering affidavits by 17h00 on **FRIDAY, 24 APRIL 2020**.
- 3 The Applicant shall deliver its replying affidavit by 09h00 on **SUNDAY, 26 APRIL 2020**.
- 4 The parties to deliver their heads of argument by 13h00 on **MONDAY, 27 APRIL 2020**.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY

SIGNED AT JOHANNESBURG ON THIS THE 20th OF APRIL 2020.



RICHARD SPOOR INC. ATTORNEYS
Attorneys for the Applicant
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Parktown, Johannesburg

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(Please contact us on email or cellphone during lockdown)

Ref: Roos/Kahn/AMCU Covid-19

TO: REGISTRAR OF THE ABOVE HONOURABLE COURT

Johannesburg

Urgent Roll Section

Ms F Ntuli

Email: fntuli@judiciary.org.za

Cell: 082 778 6295

AND TO: MINISTER OF MINERALS RESOURCES AND ENERGY

First Respondent

Department of Mineral Resources and Energy

C/o State Attorney

Johannesburg Office

85 Albertina Sisulu Rd,

Kensington,

Johannesburg

2101

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SERVICE BY EMAIL

AND TO: CHIEF INSPECTOR OF MINES

Second Respondent

Department of Minerals

Tel: 012 444 3275

C/o State Attorney

Johannesburg Office

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SERVICE BY EMAIL

AND TO: **MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**
Third Respondent
Department of Cooperative Governance and Traditional Affairs
C/o State Attorney
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SERVICE BY EMAIL

AND TO: **MINERALS COUNCIL OF SOUTH AFRICA**
Fourth Respondent
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