

'Irrational' lockdown regulations invalid - High Court ruling

By  Shan Raddiffe

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The Gauteng High Court yesterday declared the Covid-19 lockdown regulations in Levels 3 and 4 unconstitutional and invalid.



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The court action was brought by Reyno Dawid de Beer, the Liberty Fighters Network (of which De Beer is president) and the Hola Bon Renaissance Foundation, against the Minister of Cooperative Governance and Traditional Affairs, Nkosazana Dlamini-Zuma.

Rational vs absurd

In his ruling, Judge J Davis questioned the rationality of several regulations, such as the blanket ban applied to traders and street vendors, fisheries, construction workers and hairdressers - especially when compared to the far more lenient regulations surrounding funeral attendance, or the absurd impracticality of food parcel distribution.

“ [A] whole community might have had limited contact with one another and then only in passing on the way to school or places of employment on any given day prior to the regulations, but are now forced to congregate in huge numbers, sometimes for days, in order to obtain food which they would have otherwise have prepared or acquired for themselves. ”

Davis also remarked on the irrationality of restricting the sale of certain clothing items, as well as limiting the hours and areas of exercise: "...To put it bluntly, it can hardly be argued that it is rational to allow scores of people to run on the promenade but were one to step a foot on the beach, it will lead to rampant infection..."



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He did, however, agree that cautionary regulations regarding education, evictions, the closure of night clubs and fitness

centres, as well as the closure of the country's borders, "all appear to to be rationally connected to the stated objectives," to limit the spread of Covid-19.

Tobacco is another case entirely

Finally, on the subject of the tobacco ban, Davis said that while the prohibition formed part of the applicants' case against the regulations as a whole, "none of the parties have expressly and separately attacked this aspect or dealt with it, either in their affidavits or in their arguments."

Davis went on to say that he will exclude this aspect from his judgment, as there is already an application brought by many more affected role players against the tobacco ban, which is to be heard by a full court later this month.



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In closing, Davis ruled the regulations unconstitutional and invalid, but has suspended the declaration for 14 days to allow for consultation and the publication of amendments.

Level 3 still applies

"This means that the Alert Level 3 regulations remain in operation for now," government said in a statement.

ABOUT SHAN RADCLIFFE

Shan Radcliffe is the editor of Bizcommunity HR, Education and Legal.

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