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STATE ATTORNEY
DX 298 PRETORIA

78

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

CASE NO: 44151/2015

In the matter between :-

LAWYERS FOR HUMAN RIGHTS

Applicant

and

THE MINISTER IN THE PRESIDENCY
AND 7 OTHERS

Respondents

NOTICE OF INTENTION TO OPPOSE

KINDLY TAKE NOTICE THAT it is the Intention of the Respondents to oppse this Application and further that they have appointed the address of their Attorneys as set out below for service on them of any Pleadings or Notices herein.

DATED at Pretoria on this the 12 JUNE 2015



RESPONDENTS ATTORNEY
THE STATE ATTORNEY - PRETORIA
GROUND FLOOR SALU BUILDING
316 THABO SEHUME STREET

PRETORIA

Ref: 3617/2015/Z80
Tel: 012 309 1554
Fax: 086 517 5732
E-mail: Inkuna@justice.gov.za
Enq: Mr N L Nkuna

**TO: THE REGISTRAR OF THE
HIGH COURT, PRETORIA**

**AND TO: APPLICANT'S ATTORNEYS
LAWYERS FOR HUMAN RIGHTS
JOHANNESBURG LAW CLINIC**

**C/O LAWYERS FOR HUMAN RIGHTS
PRETORIA LAW CLINIC
357 VISAGIE STREET
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RECEIVED COPY HEREOF:

TIME:

DATE:

153

STATE ATTORNEY
DX 298 PRETORIA

78

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

CASE NO: 44151/2015

In the matter between :-

LAWYERS FOR HUMAN RIGHTS

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FILING SHEET

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|------------------------|---|--|
| DOCUMENT FILED | : | ANSWERING AFFIDAVIT |
| DATE OF HEARING | : | 23 JUNE 2015 |
| FILED BY | : | 3rd, 4th, 6th, 7th and 8th RESPONDENTS ATTORNEY THE STATE ATTORNEY GROUND FLOOR SALU BUILDING 316 THABO SEHUME STREET PRETORIA |
| | | Ref: 3617/2015/Z80 |
| | | Tel: 012 309 1554 |

154

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**RECEIVED COPY HEREOF:
TIME:
DATE:**

LAWYERS FOR HUMAN RIGHTS-PRETORIA LAW CLINIC
ACCEPTED WITHOUT PREJUDICE
ONTVANG SONDER BENADELING VAN REGTE
DATE RECEIVED: 18-06-2015
TIME: 10:47

PP/ [Signature]

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:-

LAWYERS FOR HUMAN RIGHTS

Applicant

and

MINISTER IN THE PRESIDENCY

First Respondent

MINISTER OF HOME AFFAIRS

Second Respondent

MINISTER OF DEFENCE

Third Respondent

MINISTER OF POLICE

Fourth Respondent

DIRECTOR GENERAL OF HOME AFFAIRS

Fifth Respondent

NATIONAL COMMISSIONER OF POLICE

Sixth Respondent

PROVINCIAL COMMISSIONER OF POLICE:
GAUTENG PROVINCE

Seventh Respondent

CHIEF OF THE SOUTH AFRICAN NATIONAL
DEFENCE FORCE

Eighth Respondent

THIRD, FOURTH, SIXTH, SEVENTH AND EIGHTH RESPONDENTS'

ANSWERING AFFIDAVIT

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I, the undersigned,

CHESTER SPIERS

do hereby declare under oath and say that:

1.

- 1.1. The facts deposed to herein are, save where the contrary appears from the context, within my personal knowledge and are to the best of my belief both true and correct.
- 1.2. Where I make submissions of a legal nature I do so on the advice of the respondents' legal representatives which advice I accept as correct.
- 1.3. I am a Colonel in the South African Police Service employed as such and stationed as a Station Commander in Johannesburg Central Police Station.
- 1.4. I depose to this affidavit on behalf of the third, fourth, sixth, seventh and eighth respondents by virtue of the fact that I have personal knowledge of the facts relating to the matter to be determined by the above Honourable Court.

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2.

The applicant is bringing this application in terms of section 38 of the Constitution of the Republic of South Africa. The relief sought by the applicant , insofar as it relates to the third, fourth, sixth, seventh and eighth respondents is for an order:

- 2.1. declaring the employment of the South African National Defence Force in co-operation with the South African Police Service under operation "Fiela-Reclaim" without the required notice being given in the Government Gazette in terms of section 19(2) of the Defence Force Act, unlawful;
- 2.2. declaring authorization issued under section 13(7) of the South African Police Service Act for operations which took place in central Johannesburg on 8 May 2015 unlawful and as such to be set aside;
- 2.3. interdicting and restraining the sixth and seventh respondents from issuing any future authorizations in terms of section 13(7) of the South African Police Service Act for operations under the operation "Fiela-Reclaim" to the extent that such may not be necessary to restore public order or to ensure the safety of the public in a particular area;

- 2.4. interdicting and restraining the respondents from conducting further operations under operation "Fiela-Reclaim" within the private dwellings, without warrant issued by Magistrates in terms of the Criminal Procedure Act;
- 2.5. interdicting and restraining the respondents from using force to enter or gain access into private dwellings in the operation until the requirements of section 27 of the Criminal Procedure Act have been complied with; and
- 2.6. payment of costs of the application.

3.

I set out hereunder the reasons why it is submitted that the application is ill-conceived and ought to be dismissed.

4.

AD URGENCY

- 4.1 The operations under the alleged operation "Fiela-Reclaim" which were done on 8 May 2015 were conducted under a written authorisation by the

Provincial Commissioner dated 6 May 2015. Such authorization was limited to be enforced on 8 of May 2015 from 04am to 12h00. It therefore expired at 12h00 on that date. Such operations came and went and any entertainment thereof is academic. Consequently setting aside the same will have no practical effect.

4.2 I am advised that courts have refused to entertain matters of academic interest where the judgment will in any event serve no purpose other than to give an opinion of the court.

5.

The applicant was aware of such events hence it conducted some interviews of the persons detained in terms thereof since May 2015. It waited until mid-June to bring this application on an urgent basis. It is submitted that there is no acceptable explanation whatsoever in the founding affidavit of the applicant as to why it waited until the said authorisation had expired to bring this application for the same to be set aside.

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6.

The employment of the South African National Defence Force by the President was done in terms section 201(2)(a) of the Constitution. The President has complied with all the requirements set out in that section. The applicant contends that such employment was not published in the Government Gazette by the third respondent as contemplated in section 19(2) of the Defence Force Act 42 of 2002. and was therefore unlawful. Legal argument will be advanced at the hearing of this matter that the contention by the applicant in this regard has no merit and ought to be rejected.

7.

7.1 Furthermore the employment of the South African National Defence Force in so far as it related to section 13(7) authorization, has come and gone as the operation took place on the 8th of May 2015. Consequently any necessity to publish such employment would have related to that date. It is accordingly submitted that the applicant's contention is therefore moot.

7.2 In the light of the above it is submitted that there is no urgency in entertaining this application.

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8.

AD RESTRAINT ORDER

The applicant seeks an order interdicting and restraining the respondents from performing their statutory duties. Legal argument will be advanced at the hearing of this matter that the above Honourable Court ought not to interfere in the exercise of a statutory power assigned to the executive government as this will intrude in the heartland power thereof thus constituting a violation of the doctrine of separation of powers.

9.

I am advised that the Constitutional Court has held that, in recognition of the separation of powers, courts ought not to prevent the exercise of statutory powers which are exclusively assigned to the executive or the legislative branches of government. If in exceptional cases this has to be done the court must assess carefully to what extent such interdict may disrupt the legislative functions conferred on such functionaries by law. In circumstances where the court would do so it will only do so under exceptional circumstances where a strong and a clearest case has been made out for the relief sought.

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10.1 In *casu* the applicant seeks an interdict restraining the sixth and seventh respondents from performing the functions conferred on them by the legislature in terms of section 13(7) to the extent that such power is exercised where future operations are not necessary to restore public order or to ensure the safety of the public in the particular area. It must be pointed out to the above Honourable Court that section 13(7) authorisations are only used whenever there is a need to restore public order or to ensure the safety of the public.

10.2 As formulated in the notice of motion the relief sought is conditional upon the absence of necessity to restore public order or to ensure public safety in a particular area. It is submitted that the above Honourable cannot grant such a conditional order. Legal argument in this regard will be advanced at the hearing of the matter.

11.

11.1 This restraint order sought, if granted, will offend against the mischief which is sought to be achieved by the legislature. The powers conferred on the National or Provincial Commissioner, in terms of section 13(7) of

the South African Police Service Act, are to be exercised whenever it is necessary and reasonable in the circumstances in order to restore public order or to ensure the safety of the public in a particular area. Consequently the prohibitory interdict sought by the applicant can never be enforceable in that the authorization is issued for no other purpose other than to restore public order or ensure public safety.

11.2 Furthermore legal argument will be advanced at the hearing of this matter that the applicant has failed to show all the requirements for a final interdict in this regard.

12.

The applicant seems to misinterpret section 13(7) as if such authorization only concerns a situation where there has been a prior violence in the area concerned and therefore the authorization is merely aimed at restoring the public order.

13.

It is submitted that the above interpretation is not in accordance with the wording of the statute.

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14.

I am advised that even if there has been no prior violence in the area concerned the Provincial Commissioner is entitled to invoke the provisions of section 13(7) in order to ensure the safety of the public in that particular area.

15.

15.1. Furthermore the legislature authorizes members of the South African Police Service, where it is reasonably necessary for purposes of control over the illegal movement of people or goods across the borders of the Republic, to search without warrant any person, premises or other places or vehicles for any objects of any nature at any place in the Republic with a view to seize any article found in possession of such persons or premises.

15.2. No search warrant is necessary when the members of the South African Police Service exercise their powers in terms of section 13(7). Consequently the exercise of such powers as are conferred on the police by the legislature fall within the exclusive terrain of their functions and consequently the above Honourable Court has no jurisdiction to restrain them from performing such statutory duties.

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15.3 Furthermore the Criminal Procedure Act authorises use of force as may be reasonably necessary to overcome any resistance against such search or against entry of the premises including the breaking of any door or window of such premises when a search without a warrant is conducted.

16.

It is accordingly submitted that in the light of the above this application is ill-conceived and ought to be dismissed with costs and/or struck off the roll for lack of urgency.

17.

FACTUAL BACKGROUND

As already stated hereinbefore I am the Station Commander in the South African Police Service stationed at Johannesburg Central. Prior to the authorization by the Provincial Commissioner in terms of section 13(7) of the South African Police Service Act I had received complaints from the community and in particular in the vicinity of the Fattis Mansion in Johannesburg that criminals were using that building for their criminal activities. In particular it was alleged that the armed

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robberies were taking place in that vicinity after which the criminals would run into Fattis Mansion building making it difficult for the police to pursue them.

18.

Fattis Mansion Building and the immediate surroundings is a notorious area in Johannesburg in that such building is alleged to be occupied by some of the criminals and it is difficult to locate them as the building is dark with no electricity. The building is so dilapidated that it is not uncommon for criminals to use it as a hide out.

19.

Crime Intelligence report was also filed to the effect that it was reasonably suspected that dealing in illegal drugs and robberies committed in the streets were being perpetrated by criminals occupying Fatties Mansion Building. In order to ensure the safety of the community in the area and general public at large in the area I then applied to the Provincial Commissioner: Gauteng for an authorization for the cordoning off of the identified area with a view to enter and search without a warrant within the specified period.

20.

On 6 May 2015 the Provincial Commissioner issued a written authorization to cordon off and search the identified area of Fatties Mansion. The written authorisation empowered the police to enter and, without a warrant, search any person in the premises or vehicles receptacle of any nature with a view to retrieve any weapons and/or articles with which crimes were being committed in order to ensure the safety of the public in the area. I attach hereto the said written authority as annexure "CS1".

21.

As can be gleaned from the authorization the validity thereof was limited to be applied to the Fatties Mansion for the period 8 May 2015 from 4h00 in the morning to 12h00 noon.

22.

In order to ensure that the operation would be successful it was necessary to seek the employment of the South African National Defence Force in order to assist the South African Police Service members in this operation.

23.

For this reason an authorization was sought and obtained from the President of the country to employ 338 members of the South African National Defence Force to assist the South African Police Service to maintain law and order at the Fatties Mansion. Such employment was made by the President as is evident from annexure "FA4" to the founding affidavit.

24.

By virtue of the powers vested in him in terms of section 201(2)(a) of the Constitution of the Republic, per Presidential Minute No. 110 of 2015, the President employed 338 members of the South African National Defence Force for service in co-operation with the South African Police Service in the maintenance of law and order in, *inter alia*, Gauteng province effective from 21 April until 30 June 2015. I attach hereto such Presidential Minute as annexure "CS2". The President duly notified Parliament of the exercise of such powers through the National Council of Provinces and the Speaker of the National Assembly.

25.

Subsequent to such employment by the President the Minister of Defence and Military Veterans directed that such employment by the President be performed in co-operation with the South African Police Service. I attach hereto as annexure "CS3" such directions by the Minister.

26.

On 8 May 2015 the operation which was tagged as "Operation Fiela-Reclaim" commenced as authorized. The members of the South African Police Service in co-operation with the members of the South African National Defence Force and the immigration officials from the Department of Home Affairs conducted the operation at Fatties Mansion and retrieved various items suspected to be stolen including dangerous weapons and illegal drugs. Arrests were made subsequent to that.

27.

The South African Defence Force members were not at any stage involved in the search of the building and/or persons. Their task was confined mainly at

cordoning off the building so as to provide protection and prevent any criminals escaping during the time of the raid.

28.

Notwithstanding the fact that in terms of the law once the South African National Defence Force are employed by the President in terms of section 202 of the Constitution read with section 13(7) of the South African Police Act they are entitled to perform any such duties as are performed by the members of the South African Police Service, they have not participated in the search of persons and/or premises. Major **Harold Justinus Modise** whose confirmatory affidavit is attached hereto as annexure "CS4" was in charge of the members of the South African National Defence Force in monitoring and controlling their operation. He has advised me that he ensured that his members were not involved in the exercise of searching the premises and/or persons.

29.

Consequently any allegations that members of the South African National Defence Force were pointing firearms at persons and/or searching them and/or violently ill-treating them, such allegations are false.

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30.

Furthermore I am informed by Major Modise that the members of the South African National Defence Force involved in the operation did not carry R5 rifles but carried R4 rifles.

31.

Members of the South African Police Service were accompanied by the National Intervention Unit and Tactical Response Team (specialised units in the South African Police Service) who may have been mistaken as soldiers by members of the public as they also wear camouflage uniform.

32.

In any event I deny that such members performed any unlawful acts when the search was being conducted at the Fatties Mansion Building.

33.

I confirm that the members of the South African Police Service acted within the limits of the law as envisaged in the Constitution and the South African Police Service Act.

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34.

AD STRIKING OUT

34.1. The founding affidavit of the applicant was deposed to by an attorney Elzemari Teperman. None of the people who were consulted and/or were allegedly ill-treated had confirmed the allegations contained in the affidavit.

34.2. The applicant had ample opportunity since the 8th of May 2015 or subsequent thereafter to compile affidavits from its clients to lay such complaints as are mentioned in the founding affidavit so as to authenticate such allegations as being truthful. The applicant has failed to do so. Instead it attached draft statements by its clients all of which have not been attested by any person.

35.

Furthermore the only violence referred to in the founding affidavit which was allegedly perpetrated by the members of the South African Police Service was a slapping on the face and trampling on the head which is not only denied but is highly unlikely in the circumstances described that caused the slapping on the

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face. Furthermore I am not aware of any criminal case of assault having been reported in relation to these allegations.

36.

Consequently all the allegations relating to the mistreatment or violence perpetrated on the premises ought to be strike out as hearsay evidence. The applicant had all the opportunity to obtain such evidence and file it before the above Honourable Court but has failed to do so. Any afterthought to do so will be opposed.

37.

I now wish to deal with the founding affidavit of the applicant *seriatim* to the extent that it applies to the South African Police Service and the National Defence Force. The portion dealing with the Minister of Home Affairs is left to be dealt with by the second respondent.

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38.

AD PARAGRAPHS 1, 2 AND 3 THEREOF

Save to deny the correctness of any allegations contained in the affidavit which are in conflict with my version, I note the allegations contained herein.

39.

AD PARAGRAPHS 4,5, 6, 7, 8, 9, 10, 11 AND 12 THEREOF

I do not take issue with the allegations contained herein.

40.

AD PARAGRAPHS 13 AND 14 THEREOF

Save to deny that the application is urgent and that the applicant is entitled to the relief sought, I note the contents hereof.

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41.

AD PARAGRAPHS 18 , 19 AND 20 THEREOF

41.1. I note that the applicant had consulted extensively before bringing this application and therefore was in a position to file affidavits by the people complaining of any wrongdoings by the members of the South African Police Service.

41.2. I deny that anybody who was arrested and/or detained was harassed or subjected to any violent behaviour by members of the South African Police Service.

42.

AD PARAGRAPH 29 THEREOF

42.1. I deny the allegations contained herein. As already indicated above I received complaints from the members of the public about the crimes that were committed and that criminals were using the building Fatties Mansion for criminal activities.

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42.2. It is submitted that in any event public violence as envisaged in section 13(7) is not confined to any form thereof. It can take the form of xenophobic or otherwise. It remains public violence and that the State has a duty to react to such public violence in order to ensure the safety of its citizens.

42.3. I wish to emphasize herein that the purpose of the operation was not xenophobic driven but was aimed at crime prevention and ensuring public safety.

43.

AD PARAGRAPH 31.1 THEREOF

The operation referred to in this paragraph might have been a routine operation of the police in terms of the law. Notwithstanding a reference by Nigel Brankin to the South African National Defence, I am advised by Major Modise that the South African National Defence Force was not involved in that operation but on that date they were at Diepsloot. In any event Nigel Brankin makes no reference to an event of 2 May 2015.

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44.

AD PARAGRAPHS 32 AND 33 THEREOF

There may have been police operations in the normal course of events as it is their function to do so throughout the country and this is not challenged as being unlawful.

45.

AD PARAGRAPH 34 THEREOF

I deny that the operation on 8 May 2015 and in particular at Fatties Mansion resulted in any constitutional rights being violated either to South African citizens or foreign nationals. It can be noted that none of the persons whose rights are alleged to have been violated have filed any affidavit in this regard. In any event an operation in terms of section 13(7) is constitutionally valid and is not a violation of any person's right.

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AD PARAGRAPH 36 THEREOF

I confirm that the operation did take place on the 8th of May 2015 at Fatties Mansion as was authorized by the Provincial Commissioner.

47.

AD PARAGRAPHS 37, 38 AND 39 THEREOF

47.1. I confirm that lawyers, whose names I cannot remember, did approach me and requested to consult with people and they gave me a list of 7 persons. There were hundreds of people that were at the police station and attended to by the officials of Home Affairs. I tasked the members of the South African Police Service to look for the persons listed on the paper that was given to me by those lawyers.

47.2. The lawyers were impatient and demanded to see their clients immediately and could not wait. I was informed by the members whom I had tasked that it was difficult to locate the people in the list as some did not respond when their names were called. For these reasons I requested

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the lawyers to give us a chance to assist them in locating the persons mentioned in the list. They were impatient and left as they could not wait.

47.3. I had insisted earlier that they should give me the names of their clients because it is not practically possible to allow everybody to simply enter the police station and ask to interview the detainees without showing proof that the persons to be interviewed are their clients.

47.4. When the copy of the authorization in terms of section 13(7) was requested I informed the lawyers that I was busy assisting officials from Home Affairs and that I would provide them with a copy which was available.

47.5. In any event I am advised that the person who is entitled to a copy of the authorization is a person affected thereby.

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48.

AD PARAGRAPHS 40, 41, 42 AND 43 THEREOF

48.1. I deny that the applicant was only given access to 1 person. As already stated herein before these lawyers were impatient and did not want to wait and demanded that things be done their own way.

48.2. The launching of the urgent application in the High Court was as a result of impatience and when such was launched the lawyers were informed that the applicant was not denied any access to the people and it was not necessary to oppose such an application hence an agreement was reached.

49.

AD PARAGRAPHS 48, 49, 50 AND 51 THEREOF

I deny that the deponent was denied access to consult with anybody as long as that person could be located. I had initially advised the lawyers that they should liaise with me if they wanted to consult or if they had encountered any difficulties. This was not done. I deny that I had advised anybody that the lawyers were not

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allowed to consult with the detainees. I even gave them my contact cell phone number to call me any time regarding their clients.

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AD PARAGRAPHS 53, 54 AND 55 THEREOF

It is not correct that anybody was denied access to consult with the detainees. I had already stated herein before that some of the detainees could not respond when they were being called.

51.

AD PARAGRAPH 69 THEREOF

I note that the deponent says that approximately 185 persons were consulted and none of them had filed any affidavit in this Court.

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52.

AD PARAGRAPHS 71 AND 72 THEREOF

I deny that it was not possible to obtain confirmatory affidavits of the consulted people and I object to any further affidavit being filed as the deponent had all the ample opportunity to obtain such affidavits. If any of such affidavits are filed now such confirmatory affidavit will be filed merely to respond to what I have stated herein. Consequently I object to such affidavit being filed. I am advised that in any event the applicant is not entitled to file further affidavits which should have accompanied the founding affidavit.

53.

AD PARAGRAPH 76 THEREOF

53.1. I deny that the cordoning off of the mansion took place at 3:00. It was at 4:00 as authorized by the Provincial Commissioner and furthermore as stated herein before the members of the South African National Defence Force cordoned off the area and provided protection.

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- 53.2. I deny that there were no disturbances or dangerous situations prior to the 8th of May 2015.
- 53.3. I confirm that members of the South African Police Service did audibly knocked on the doors and when there was no response they were entitled to forcibly enter the premises and conduct search.
- 53.4. Furthermore there is nothing untoward in the South African Police Service requiring weapons that were possessed by the Mansion dwellers as this building is notorious for harbouring criminals and foreign undocumented nationals.
- 53.5. I deny that the occupants were not allowed to retrieve their documents. It is inconceivable that a person would be asked to produce a document and thereafter not be allowed to produce same.
- 53.6. I deny that any children were ever arrested and taken in for detention. Furthermore food was supplied to the people that were arrested.
- 53.7. As there were many people that were brought to the station I did not look at the time as to when the people who had legal documentation left. I further deny that any monies or any goods were stolen by the members of

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the South African Police Service from the people or the dwellers of any building.

53.8. I deny that people who brought passports and/or other documents were denied access by the police and were in fact turned away. It is correct that certain people who were there did not have documents and when those were brought to the Police station by friends and relatives they were released after verification.

54.

AD PARAGRAPHS 77, 78 AND 79 THEREOF

I deny that any detainee was slapped in the face by the members of the South African Police Service. In any event it is inconceivable that a person would be slapped simply for showing papers. I further deny that any of the soldiers were involved in processing any detainees and that any person was told by a soldier to go home failing which that person would be shot.

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55.

AD PARAGRAPHS 87 TO 98 THEREOF

For the reasons set out herein before I deny that this matter is urgent.

56.

AD PARAGRAPHS 99 TO 100 THEREOF

The applicant had consulted since the 8th of May 2015 and if it wished to challenge the validity of the employment of the South African National Defence Force the interdict sought in the notice of motion should have been done and there was no need to wait for any consultation in that regard. I deny that any detention of persons pursuant to the raid was unlawful.

57.

AD PARAGRAPHS 103 TO 104 THEREOF

57.1. I wish to state to the above Honourable Court that the operation by the South African Police Service can only be done within the limits of the law

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and as already stated above it is submitted that the above Honourable Court ought not to interfere with that statutory duty.

57.2. I further deny that any person was arrested by reason of the fact that such person was living with foreigners. Furthermore the deponent has not taken the Court into confidence by attaching any confirmatory affidavit in this regard.

58.

AD PARAGRAPH 106 THEREOF

I deny that operation was conducted in an unlawful manner and that it violated any person's rights. However even if such rights were violated the police were acting professional within the terrains of the law. The police are entitled to perform their statutory duties in any event.

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59.

AD PARAGRAPHS 107 TO 110 THEREOF

I deny the allegations contained in these paragraphs and refer the above Honourable Court to what I have already stated in regard to the urgency of this matter.

60.

AD PARAGRAPHS 111 TO 113 THEREOF

I deny that the employment of the South African National Defence Force was in contravention of section 19(2). In any event legal argument will be advanced at the hearing of this matter in regard to the notice referred to in section 19(2). However the employment of the South African National Defence Force is the duty of the President as a Commander in Chief of the army and the publication of the notice does not precede the employment thereof. Consequently such employment cannot be termed as being unlawful.

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AD PARAGRAPHS 114 TO 116 THEREOF

I deny the allegations contained in paragraph 116 and I have already referred to the Crime Intelligence Report herein before.

62.

AD PARAGRAPH 117 THEREOF

I deny that the police are entitled to perform their duties in relation to search only after a search warrant has been issued by a Magistrate. Section 13(7) authorizes such a search without a warrant. Consequently the submissions in paragraphs 117 to 124 are ill-conceived.

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AD PARAGRAPH 125 THEREOF

I have already stated that the SANDF members were not involved in the search. Furthermore when the police are performing their duties they do not need consent of the dwellers when they act within the limits of the law.

64.

AD PARAGRAPH 131 THEREOF

I deny that the members of the South African Police Service simply kicked the doors without knocking in the private dwellings. The police would audibly demand admission to the private dwelling and if no response therein is received they are entitled to forcibly enter the premises.

65.

AD PARAGRAPHS 143 TO 148 THEREOF

I deny the allegations contained in these paragraphs.

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AD PARAGRAPH 164 THEREOF

I reiterate that the operation that was conducted on the 8th of May 2015 was lawful. In any event it is submitted that it is too late for the Court to entertain such an argument at this stage as such authorization expired on the 8th of May 2015. Consequently I deny that anybody was deprived of any constitutional right as the police were acting within limits of the law.

70.

AD PARAGRAPHS 169 TO 173 THEREOF

The contention contained herein has already been responded to. Accordingly it is submitted that the application is ill-conceived and ought to be dismissed and/or struck off the roll for lack of urgency.

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71.

AD AFFIDAVIT NIGEL KEITH BRANKEN

AD PARAGRAPHS 1 TO 5 THEREOF

Save to deny that any allegation which is in conflict with my version is correct I do not take issue with the contents of these paragraphs.

72.

AD PARAGRAPH 6 THEREOF

I deny that any members of the SANDF were present at any scene referred to by the deponent. In any event the deponent herein contradicts the main deponent in that she (Ms Eizemarie Temperman) refers to an incident on the 2nd of May 2015 and the deponent refers to an incident of the 27th of April 2015. As already stated above in the incident of the 2nd of May 2015 no SANDF members were present as they were at Diepsloot during the corresponding period. The deponent has failed to identify the police member who instructed him to delete photos, event and consequently I am unable to respond thereto effectively.

CP
✓✓

73.

AD PARAGRAPHS 7, 8, 9, 10 AND 11 THEREOF

I am unable to respond to these allegations effectively in that they are not specific in relation as to who instructed the deponent to delete the photographs or not to take such photographs. I deny that any soldier was present during that incident. It is possible that deponent might have mistaken the members of the TRT as soldiers.

74.

AD PARAGRAPH 12 THEREOF

I deny the allegations contained herein.

CG
73

75.

AD PARAGRAPH 13 THEREOF

I disagree with the deponent that the presence of police in order to maintain law and order is not required at Hillbrow suburb as the area is notorious and plagued with robberies.

76.

AD PARAGRAPH 14 THEREOF

I deny that the members of the SANDF raided any Methodist Church in Johannesburg.

77.

AD PARAGRAPHS 15, 16 AND 17 THEREOF

I deny that the members of the SANDF were armed with any R5 weapons as the members employed in this operation did not carry such weapons.

194
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G

78.

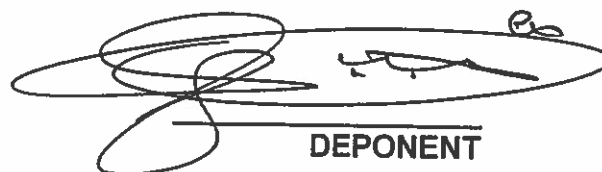
AD AFFIDAVIT OF ZIBUSISO WAYNE NCUBE

AD PARAGRAPHS 1 TO 3 THEREOF

To the extent that the deponent confirms the correctness of the affidavit of Elzemarie Temperman, which confirmation is in conflict with my version, the correctness thereof is denied. The affidavit of Linda Hamadziripi and that of Cynthia Nkosi are dealt with by the second respondent.

79.

It is accordingly submitted that the application ought to be struck off the roll for lack of urgency or dismissed with costs.


DEPONENT

I CONFIRM that the deponent has acknowledged that he knows and understands the contents of this affidavit, that the contents thereof are true and correct, that he has no objection to taking this oath, and regards the oath to be binding on his conscience.

195

196

THUS SIGNED and SWORN to before me, at PRETORIA on this 18th
day of JUNE 2015.

COMMISSIONER OF OATHS:

*DUMAS ROPHE MHLABELA
ACTING CHIEF CLERK
28 CHURCH SQUARE
PRETORIA*

DIRECTOR OF PUBLIC PROSECUTIONS
PRIVATE BAG X300
18 JUN 2015
DOCKET
PRETORIA 0001
NORTH GAUTENG: PRETORIA

*10
EP*

WRITTEN AUTHORISATION FOR A CORDON / JUVIEXHKE CSI
(IN ACCORDANCE WITH SECTION 13(7) OF THE SOUTH AFRICAN POLICE SERVICE ACT, ACT 68 OF 1995)

TO: The Station Commander
SA Police Service
JHB CENTRAL SAPS

"CSI"

197

WHERE AS,

- from written application by COLONEL C. SPIERS, JHB CENTRAL SAPS there are reasonable grounds to believe that the public order has been disturbed, and/or the safety of the public is threatened in the area mentioned hereafter (or any part thereof):
and

- It is reasonable in the circumstances to cordon off the area mentioned hereafter (or any part thereof),

I, LESETJA JOEL MOTHIBA (PROVINCIAL COMMISSIONER: SAPS: GAUTENG)

HEREBY AUTHORISE YOU TO:

(a) Cordon off the area mentioned hereafter (or any part thereof), which area is known as:
JHB CENTRAL: SECTOR 3: FATTIS MANSION.

Bordered by:

North - Jeppe Street
East - Harrison Street
South - Loveday Street
West - Kerk Street

(See attached aerial photograph and photo copy of aerial photograph).

(b) Without a warrant, search any person, premises, vehicle, receptacle or object (of whatever nature) in the mentioned area (or any part thereof), and/or

(c) Without a warrant, seize any article referred to in section 20 of the Criminal Procedure Act, Act 51 of 1977, found in the mentioned area (or any part thereof).

TO achieve the following objective(s):

- * restore the public order in the mentioned area (or any part thereof); and/or
- * ensure the safety of the public in the mentioned area (or any part thereof).

This written authority shall apply to the mentioned area (or any part thereof) for the period from 2015-05-08 from 04h00 to 12h00

Granted by me at JOHANNESBURG on the 06 day of MAY 2015


LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
LESETJA JOEL MOTHIBA

2015-05-06

✓
CS

"CSZ"

10/06/2015

81/172488
(Z 19E)

Oca



198

PRESIDENT'S MINUTE NO 110 /2015

By virtue of the powers vested in me in terms of Section 201(2)(a) of the Constitution of the Republic of South Africa, 1996, read with Section 19 of the Defence Act (Act No 42 of 2002), I hereby authorise the employment of 338 members of the South African National Defence Force for service in cooperation with the South African Police Service in the maintenance of law and order in Kwa Zulu-Natal, Gauteng Province and any other area in the Republic of South Africa as the need requires. The deployment will take place from 21 April 2015 until 30 June 2015.

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA on this 24 day of APRIL in the year Two Thousand and Fifteen.

PRESIDENT

Lotlwise Mf
MINISTER OF THE CABINET

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"CS3" CS3



199 PAGE 02
18/12/2015
E. Cape.

MINISTRY OF DEFENCE AND MILITARY VETERANS
Republic of South Africa

**DIRECTION UNDER SECTION 202(2) OF THE CONSTITUTION OF THE
REPUBLIC OF SOUTH AFRICA, 1996**

WHEREAS the President of the Republic of South Africa in terms of Presidential Minute/2015 and by virtue of the powers vested in him in terms of section 201(2)(a) of the Constitution of the Republic of South Africa, 1996, read with Section 19 of the Defence Act, (Act No. 42 of 2002), authorise the deployment of 338 members of the South African National Defence Force (SANDF), for service in cooperation with the South African Police Service in the maintenance of law and order in Kwa-Zulu Natal, Gauteng Province and any other area in the Republic of South Africa as the need requires. The deployment will take place from 21 April 2015 until 30 June 2016, or as the security situation allows.

NOW THEREFORE I hereby, in terms of Section 202(2) of the Constitution of the Republic of South Africa, 1996, direct that such employment be performed in cooperation with the Southern African Police Service.

THUS directed at _____ on this _____ day of _____
this year Two Thousand and Fifteen.

Robiwe Mf
MINISTER OF DEFENCE AND MILITARY VETERANS

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CS 4

200

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:-

LAWYERS FOR HUMAN RIGHTS

Applicant

and

MINISTER IN THE PRESIDENCY

First Respondent

MINISTER OF HOME AFFAIRS

Second Respondent

MINISTER OF DEFENCE

Third Respondent

MINISTER OF POLICE

Fourth Respondent

DIRECTOR GENERAL OF HOME AFFAIRS

Fifth Respondent

NATIONAL COMMISSIONER OF POLICE

Sixth Respondent

**PROVINCIAL COMMISSIONER OF POLICE:
GAUTENG PROVINCE**

Seventh Respondent

**CHIEF OF THE SOUTH AFRICAN NATIONAL
DEFENCE FORCE**

Eighth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

HAROLD JUSTINUS MODISE

do hereby declare under oath and say that:

CS 4
HSM

1.

- 1.1. The facts deposed to herein are, save where the contrary appears from the context, within my personal knowledge and are to the best of my belief both true and correct.
- 1.2. Where I make submissions of a legal nature I do so on the advice of the respondents' legal representatives which advice I accept as correct.
- 1.3. I am employed by the South African National Defence Force as a Major stationed as such at Joint Tac HQ, Doornkop Military Base, Gauteng.

2.

I have read the answering affidavit of CHESTER SPIERS and hereby confirm the contents thereof in so far as they relate to me. I also agree with the submissions contained therein.



 DEPONENT

I CONFIRM that the deponent has acknowledged that he knows and understands the contents of this affidavit, that the contents thereof are true and correct, that he has no objection to taking this oath, and regards the oath to be binding on his conscience.

CE 5

202

THUS SIGNED and SWORN to before me, at PRETORIA on this 18th
day of JUNE 2015.



7
COMMISSIONER OF OATHS:

NUMA RESPECT MOKALELA
ACTING CHIEF CLERK
28 CHURCH SQUARES
PRETORIA

| |
|---------------------------------|
| DIRECTOR OF PUBLIC PROSECUTIONS |
| PRIVATE BAG X300 |
| 18 JUN 2015 |
| DOCKET PRETORIA 0001 |
| NORTH GAUTENG: PRETORIA |

65
HEM