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12.11.2020

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

Case No: 55477/2020

In the matter between:-

Before the Honourable Madam Justice Van der Schyff in Court

**MINISTER OF SOCIAL DEVELOPMENT**

Applicant

and

**CENTRE FOR CHILD LAW**

Respondent

In Re:

**CENTRE FOR CHILD LAW**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2020 -11- 12
JUDGE'S SECRETARY REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

Case No: 72513/2017

Applicant

and

**MINISTER OF SOCIAL DEVELOPMENT**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY AGENCY**

Second Respondent

**MEC FOR SOCIAL DEVELOPMENT AND WELFARE,  
LIMPOPO**

Third Respondent

**MEC FOR SOCIAL DEVELOPMENT, MPUMALANGA**

Fourth Respondent

**MEC FOR SOCIAL DEVELOPMENT, GAUTENG**

Fifth Respondent

**MEC FOR SOCIAL DEVELOPMENT, NORTH WEST**

Sixth Respondent

**MEC FOR SOCIAL DEVELOPMENT, FREE STATE**

Seventh Respondent

**MEC FOR SOCIAL DEVELOPMENT, NORTHERN CAPE**

Eight Respondent

**MEC FOR SOCIAL DEVELOPMENT, KWAZULU-NATAL**

Ninth Respondent

**MEC FOR SOCIAL DEVELOPMENT, EASTERN CAPE**

Tenth Respondent

**MEC FOR SOCIAL DEVELOPMENT, WESTERN CAPE**

Eleventh Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Twelfth Respondent

**PREMIER OF LIMPOPO PROVINCE**

Thirteen Respondent

**PREMIER OF MPUMALANGA PROVINCE**

Fourteenth Respondent

**PREMIER OF GAUTENG PROVINCE**

Fifteenth Respondent

**PREMIER OF NORTH WEST PROVINCE**

Sixteenth Respondent

**PREMIER OF FREE STATE PROVINCE**

Seventeenth Respondent

**PREMIER OF NORTHERN CAPE PROVINCE**

Eighteenth Respondent

**PREMIER OF EASTERN CAPE PROVINCE**

Nineteenth Respondent

**PREMIER OF KWAZULU-NATAL PROVINCE**

Twentieth Respondent

**PREMIER OF WESTERN CAPE PROVINCE**

Twenty-First Respondent

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**~~DRAFT~~ ORDER**

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**HAVING CONSIDERED THE MATTER AND THE DRAFT ORDER BY  
AGREEMENT BETWEEN THE PARTIES, IT IS ORDERED THAT:**

1. The forms of service and timeframes provided for in the rules are dispensed with and the matter is enrolled as one of urgency in terms of Rule 6(12) 2020 -11- 12
2. It is noted and declared that:



- 2.1 the need for the declarations made in paragraph 2 of the order of this Court under case number 72513/2017 on 28 November 2017 ("the 2017 Order") per the Honourable Mr. Justice JW Louw, further extended on 26 November 2019 per the Honourable Madam Mokose, J (the "2019 Order") has fallen away as the Applicant has by 31 August 2020 complied with paragraph 4 of the 2017

Order by having introduced in Parliament the necessary amendments to the Children's Act 38 of 2005 ("the Children's Act") on 31 August 2020, and also the Social Assistance Act 13 of 2014 ("the Social Assistance Act"); and

2.2 in order to fully produce a comprehensive legal solution regarding the foster care system as contemplated in paragraph 4 of the 2017 Order read with the terms of the 2019 order it is in the best interests of the children under foster care, to amend the terms of the 2017 Order read with the terms of the 2019 Order.

3. The terms of the 2019 Order, read with the 2017 Order issued by this Court in this matter, are amended as follows:

3.1 the period of suspension of the declarations of invalidity referred to in clause 3 of the 2017 Order is extended by a further period of 24 (twenty-four) months commencing from the date of this order, and



3.2 the Applicant and the Third to the Twenty-first Respondents are directed to file in this Court with the Judge's Registrar for Honourable Madam Justice Van der Schyff, from the date of this order until it lapses on 27 November 2022, quarterly progress reports on the measures required to implement a comprehensive legal solution including the regulations, norms and standards and other relevant measures required to resolve foster care system in all the provinces of the Republic. The said reports are required to also include any



challenges and recommendations, and copies thereof must be delivered to the Respondent, Centre for Child Law at the same time as it is filed at Court; and

3.3 the parties are directed to arrange with the Registrar of this Court, and to set the matter down for a supervision hearing before the Honourable Madam Justice Van der Schyff or any other judge as the Deputy Judge President may allocate the matter to, not later than 26 November 2021.

4. During the further period of suspension as referred to in clause 3 above and notwithstanding the provisions of section 159(1)(a) of the Children's Act:

4.1 the following interim regime will apply in every children's court in the Republic:

- i) any foster care order which, as at the date of this order, is in existence or has lapsed, due to non-extension thereof, shall be deemed to have been extended and shall be valid for a period of twenty-four (24) months from the date of this order or until the end of the year on which the child subject to such foster care order, turns 18 years old as contemplated in regulation 28(3)(d) of the Regulations of the Social Assistance Act, whichever occurs first, unless extended, withdrawn, suspended or varied by the Children's Court in terms of section 48(1)(b);
- ii) a Children's Court, during the subsistence of this order, shall not refuse to extend any other foster care order except on good cause shown, or exercise its powers as contemplated in section 48(1)(b) of the Children's Act; and

SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001  <b>2020 -11- 12</b>  JUDGE'S SECRETARY REGTERS KLERK GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA
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- iii) a Children's Court shall, when considering the period of extension of a foster care order affecting an abandoned or orphaned child in the care of a family member, take into consideration the options available to it in terms of section 186(2) of the Children's Act.
5. The Second Respondent is directed to effect or continue to effect payments of all foster care orders referred to in this order until the date of which such order lapse as referred to above.
6. The Applicant is directed to publish a copy of this order in the Government Gazette and the Third to Twenty-first Respondents are to post a copy of this Order prominently at all their offices;
7. There shall be no order as to costs.

BY ORDER

*[Handwritten signature]*  
 12.11.2020

Draft order moved by counsel for the Applicant, Adv. M Mathaphuna and confirmed by the Respondent's legal representative Ms K Ozah.





CASE NO: 72513/2017

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

PRETORIA 28 NOVEMBER 2017

BEFORE THE HONOURABLE MR JUSTICE J W LOUW



In the matter between:

CENTRE FOR CHILD LAW

APPLICANT

AND

MINISTER OF SOCIAL DEVELOPMENT

1<sup>ST</sup> RESPONDENT

SOUTH AFRICAN SOCIAL SECURITY AGENCY

2<sup>ND</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT AND WELFARE,  
LIMPOPO

3<sup>RD</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, MPUMALANGA

4<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, GAUTENG

5<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, NORTH WEST

6<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, FREE STATE

7<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, NORTHERN CAPE

8<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, KWAZULU-NATAL

9<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, EASTERN CAPE

10<sup>TH</sup> RESPONDENT

MEC FOR SOCIAL DEVELOPMENT, WESTERN CAPE

11<sup>TH</sup> RESPONDENT

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

12<sup>TH</sup> RESPONDENT

PREMIER OF LIMPOPO PROVINCE

13<sup>TH</sup> RESPONDENT

PREMIER OF MPUMALANGA PROVINCE

14<sup>TH</sup> RESPONDENT

PREMIER OF GAUTENG PROVINCE

15<sup>TH</sup> RESPONDENT



PREMIER OF NORTH WEST PROVINCE  
PREMIER OF FREE STATE PROVINCE  
PREMIER OF NORTHERN CAPE PROVINCE  
PREMIER OF KWAZULU-NATAL PROVINCE  
PREMIER OF EASTERN CAPE PROVINCE  
PREMIER OF WESTERN CAPE PROVINCE

16<sup>TH</sup> RESPONDENT  
17<sup>TH</sup> RESPONDENT  
18<sup>TH</sup> RESPONDENT  
19<sup>TH</sup> RESPONDENT  
20<sup>TH</sup> RESPONDENT  
21<sup>ST</sup> RESPONDENT

HAVING read the documents filed of record, heard counsel and considered the matter:

**IT IS ORDERED THAT:**

The Draft Order marked "X" be and is hereby made an order of this Honourable Court.



BY THE COURT  
  
REGISTRAR

HH  
Attorney: CENTRE FOR CHILD LAW

## Annexure "A"

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

CASE NO: 72513/17

In the application of:

**CENTRE FOR CHILD LAW**

Applicant

and

**MINISTER OF SOCIAL DEVELOPMENT**

First Respondent

**SOUTH AFRICAN SOCIAL SECURITY AGENCY**

Second Respondent

**MEC FOR SOCIAL DEVELOPMENT AND WELFARE,  
LIMPOPO**

Third Respondent

**MEC FOR SOCIAL DEVELOPMENT, MPUMALANGA**

Fourth Respondent

**MEC FOR SOCIAL DEVELOPMENT, GAUTENG**

Fifth Respondent

**MEC FOR SOCIAL DEVELOPMENT, NORTH WEST**

Sixth Respondent

**MEC FOR SOCIAL DEVELOPMENT, FREE STATE**

Seventh Respondent

**MEC FOR SOCIAL DEVELOPMENT, NORTHERN CAPE**

Eighth Respondent

**MEC FOR SOCIAL DEVELOPMENT, KWAZULU-NATAL**

Ninth Respondent

**MEC FOR SOCIAL DEVELOPMENT, EASTERN CAPE**

Tenth Respondent

**MEC FOR SOCIAL DEVELOPMENT, WESTERN CAPE**

Eleventh Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Twelfth Respondent

**PREMIER OF LIMPOPO PROVINCE**

Thirteenth Respondent

**PREMIER OF MPUMALANGA PROVINCE**

Fourteenth Respondent

**PREMIER OF GAUTENG PROVINCE**

Fifteenth Respondent

**PREMIER OF NORTH WEST PROVINCE**

Sixteenth Respondent

**PREMIER OF FREE STATE PROVINCE**

Seventeenth Respondent

**PREMIER OF NORTHERN CAPE PROVINCE**

Eighteenth Respondent

**PREMIER OF KWAZULU-NATAL PROVINCE**

Nineteenth Respondent



**PREMIER OF EASTERN CAPE PROVINCE**

Twentieth Respondent

**PREMIER OF WESTERN CAPE PROVINCE**

Twenty-first Respondent

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**DRAFT ORDER**

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By agreement between the applicant and first respondent, the remaining respondents having seen the draft order and having elected to abide, the following order is made:

- 1 The forms and service provided for in the rules of this court are dispensed to the extent necessary and the matter is disposed of by way of urgency in terms of rule 6(12)(a) of the Uniform Rules of Court.
- 2 It is declared that:
  - 2.1 The delay by the first respondent in preparing and introducing before Parliament amending legislation to produce a comprehensive legal solution in respect of the foster care system is unconstitutional, unlawful and invalid; and
  - 2.2 The delay in putting in place the necessary mechanisms, structures, resources to ensure that the foster care system operates in a sustainable and effective manner is unconstitutional, unlawful and invalid.

- 3 The declarations of invalidity in paragraph 2 are suspended for 24 months from the date of this order.
- 4 The first respondent is directed, within 15 months of this order, to prepare and introduce before Parliament the necessary amendments to the Children's Act 38 of 2005 and/or the Social Assistance Act 13 of 2014, to produce a comprehensive legal solution regarding the foster care system.
- 5 During the period of suspension referred to in paragraph 3 and notwithstanding section 159(1)(a) of the Children's Act 38 of 2005, the following interim regime will be in place:
  - 5.1 Any foster care order which, as at the date of this order, is in existence or has lapsed due to non-extension shall be deemed to be validly in place for 24 months from the date of this order or until the child subject to the order turns 18, whichever comes first; and
  - 5.2 Notwithstanding the terms of this order, nothing shall prevent a Children's Court during the existence of this order and/or after it has lapsed, from hearing a matter and making an appropriate order in terms of the Children's Act regarding a foster care order falling within the ambit of this order. which may include extending, terminating or varying the foster care.
- 6 The second respondent is directed to effect payments of all foster care orders referred to in paragraph 5 above, effective from the date of this order.

7 At six-monthly intervals calculated from the date of this order, the first respondent must file a report with this Court and the applicant, setting out:

7.1 The progress made in giving effect to paragraph 4 of this order; and

7.2 any other matter she may consider necessary to report on.

8 At six-monthly intervals calculated from the date of this order, the third to eleventh respondents, and the thirteenth to twenty first respondents, must file a report with this Court and the applicant, setting out any difficulties experienced in relation to the interim regime dealt with by paragraph 5 of this order.

9 The first respondent is directed to publish a copy of this order in the Government Gazette.

10 All parties shall bear their own costs.



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

Case No: 72513/2017

Before the Honourable Mokose J  
26 November 2019

In the matter between:-

**MINISTER OF SOCIAL DEVELOPMENT**

Applicant

and

**CENTRE FOR CHILD LAW**

Respondent

In Re:

Case No: 72513/2017

**CENTRE FOR CHILD LAW**

Applicant

and

**MINISTER OF SOCIAL DEVELOPMENT**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY AGENCY**

Second Respondent

**MEC FOR SOCIAL DEVELOPMENT AND WELFARE,  
LIMPOPO**

Third Respondent

**MEC FOR SOCIAL DEVELOPMENT, MPUMALANGA**

Fourth Respondent

**MEC FOR SOCIAL DEVELOPMENT, GAUTENG**

Fifth Respondent

**MEC FOR SOCIAL DEVELOPMENT, NORTH WEST**

Sixth Respondent

**MEC FOR SOCIAL DEVELOPMENT, FREE STATE**

Seventh Respondent

**MEC FOR SOCIAL DEVELOPMENT, NORTHERN CAPE**

Eight Respondent

**MEC FOR SOCIAL DEVELOPMENT, KWAZULU-NATAL**

Ninth Respondent

**MEC FOR SOCIAL DEVELOPMENT, EASTERN CAPE**

Tenth Respondent

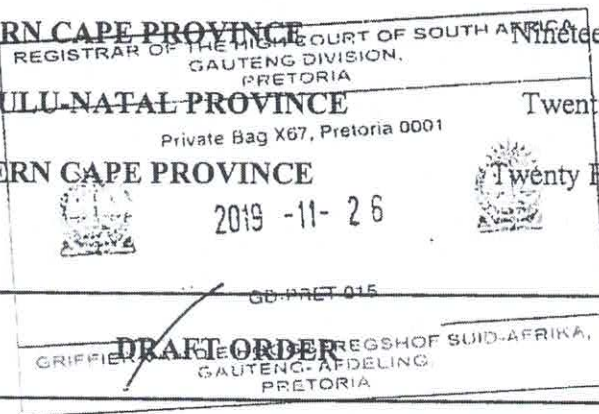
**MEC FOR SOCIAL DEVELOPMENT, WESTERN CAPE**

Eleventh Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Twelfth Respondent

PREMIER OF LIMPOPO PROVINCE	Thirteenth Respondent
PREMIER OF MPUMALANGA PROVINCE	Fourteenth Respondent
PREMIER OF GAUTENG PROVINCE	Fifteenth Respondent
PREMIER OF NORTH WEST PROVINCE	Sixteenth Respondent
PREMIER OF FREE STATE PROVINCE	Seventeenth Respondent
PREMIER OF NORTHERN CAPE PROVINCE	Eighteenth Respondent
PREMIER OF EASTERN CAPE PROVINCE	Nineteenth Respondent
PREMIER OF KWAZULU-NATAL PROVINCE	Twentieth Respondent
PREMIER OF WESTERN CAPE PROVINCE	Twenty First Respondent



Having heard counsel and having read the documents filed on record, it is ordered that ~~that~~ *by agreement between the parties*

1. The forms and service provided for in the rules of this Court are dispensed with and the matter is enrolled and disposed off as one of urgency in terms of rule 6(12) of the Uniform Rules of Court.
2. The terms of the court order handed down by the Honourable Mr. Justice JW Louw in the above Honourable Court under case number 72513/2017 on 28 November 2017 ("the 2017 Order") are hereby varied in the following terms:
  - 2.1 extending the period of suspension in respect of the declaration of invalidity stated in clause 3 of the 2017 Order by a further period of 12 (twelve) months;
  - 2.2 that during the further period of suspension:

2.2.1 the Applicant is to request Parliament to expedite the process for the consideration and tabling of amendments to the Children's Act, 2005 as contemplated in clause 4 of the 2017 Order;

2.2.2 the Applicant is directed to report to the High Court and the respondent on any challenges experienced in implementing paragraph 2.2.1;

2.2.3 notwithstanding the provisions of section 159(1)(a) of the Children's Act 38 of 2005, the following interim regime will be in place:

place: 2013 -11- 26

i) any foster care order which, as at the date of this order, is in existence or has lapsed due to non-extension thereof, shall be deemed to have been extended and shall be valid for a period of twelve (12) months from the date of this order or until the end of the year on which the child subject to such foster care order turns 18 years old in terms of regulation 28(3)(d) of the regulations of the Social Assistance Act 13 of 2004, whichever occurs first;

ii) notwithstanding the terms of this order, nothing shall prevent a Children's Court during the existence of this order and/or after it has lapsed, from hearing a matter and making an



appropriate order in terms of the Children's Act regarding any foster care application falling within the ambit of this order, which may include the powers of such court in section 48(1)(b) of the Children's Act.

3. The second respondent is directed to effect or continue to effect payments of all foster care orders referred to in this order until the date such order lapses as referred to above.

4. The Applicant, the third to the eleventh and the thirteenth to twentieth first respondents are directed, at three-monthly intervals from the date of this order until it lapses:

4.1 to deliver progress reports to the Respondent and file such reports with this Court;

4.2 to include in such report referred to in 4.1 above, progress made in implementing the provisions of paragraph 4 of the 2017 Order, and any difficulties experienced in relation to the interim regime dealt with in paragraph 2.2.2 above.

5. The Applicant is directed to publish a copy of this Order in the Government Gazette.

6. Each party shall bear its own costs

By Order

Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION,  
PRETORIA

Private Bag 281, Pretoria 000

GAUTENG DIVISION,  
PRETORIA