1/08/2023

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 22/19304

On 1 August 2023

Before The Honourable DJP Sutherland

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
Private Bag X7, Johannesburg 2000
2023 -08- 01
GLD-JHB-003

In the matter between:

SECTION27	First Applicant
KAMBA AZAMA	Second Applicant
NOMAGUGU NDLOVU	Third Applicant
SINANZENI SIBANDA	Fourth Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL GAUTENG DEPARTMENT OF HEALTH	First Respondent
HEAD OF DEPARTMENT GAUTENG DEPARTMENT OF HEALTH	Second Respondent
THE MINISTER OF HEALTH	Third Respondent
DIRECTOR GENERAL: DEPARTMENT OF HEALTH	Fourth Respondent
CHARLOTTE MAXEKE JOHANNESBURG ACADEMIC HOSPITAL AND ARBITRATION	Fifth Respondent

---

ORDER

BY AGREEMENT BETWEEN THE PARTIES, the Court Order granted by this Honourable Court on 14 April 2023 in this matter (under Case No: 2022/19304 and found on 000-1 – 000-5; and on 000-6 – 000-8 on CaseLines) is amended, to read as follows:

1. It is declared that the Hospitals Ordinance 14 of 1958 is inoperative to the extent that it requires pregnant and lactating women, and children under the age of six, who are entitled to receive free health care services, to be classified for the purpose of a fees assessment.

REGISTRAR
2023 -08- 01
GLD-JHB-003
JOHANNESBURG

2. It is declared that the Gauteng Regulations, published in General Notice 1426 in Provincial Gazette 414 of 24 November 2021 ("the Gauteng Regulations"), are invalid to the extent that they require pregnant and lactating women, and children under the age of six (who are not members or beneficiaries of a medical aid scheme) to undergo a classification and fees assessment in circumstances where they have a right to free health care services.

3. The first and second respondents are directed to amend, by 16 October 2023, the *Policy Implementation Guidelines on Patient Administration and Revenue Management, 2020*, as published in Gauteng Department of Health Circular 27 of 2020 ("the 2020 Policy"), to expressly provide that all pregnant and lactating women and children under the age of six, who are not members or beneficiaries of medical aid schemes and who have not come to South Africa for the specific purpose of obtaining health care, are entitled to free health services at any public health establishment, irrespective of their nationality and documentation status.

4. It is declared that any policies or circulars issued by the respondents that require pregnant and lactating women, and children below the age of six, who are not members or beneficiaries of medical aid schemes and who have not come to South Africa for the specific purpose of obtaining health care, to go through a classification and fee determination process are inconsistent with the National Health Act and are accordingly invalid.

REGISTRAR
RICA
Private Bag X7, Johannesburg 2000
2023 -08- 01
GLD-JHB-000

5. The third respondent is hereby directed to prepare a circular, to be issued to all provincial health departments, by 15 May 2023, recording that all pregnant and lactating women and children below the age of six, who are not members or beneficiaries of medical aid schemes, and who have not come to South Africa for the specific purpose of obtaining health care, are entitled to free health care services at any public health care establishment.

6. The third respondent shall issue a directive to the Members of the Executive Councils ("MECs") for Health in all provinces, to prepare and display posters and/or other appropriate information notices to be displayed in all health establishments in all the provinces, which material shall be displayed in prominent places in all such establishments by 17 July 2023, and which shall contain the following statements:

"ALL pregnant women

ALL women who are lactating and

ALL children below the age of 6(six)

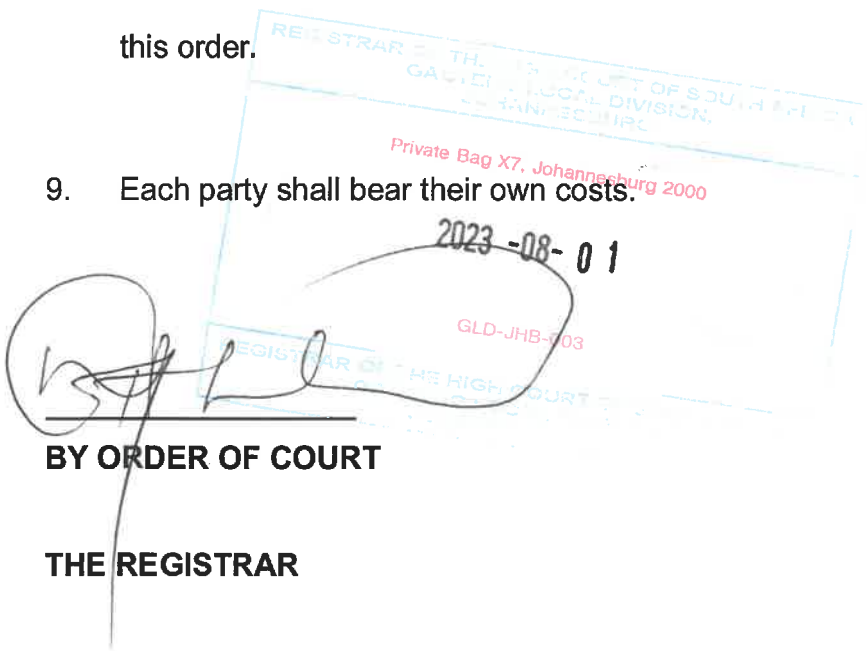
Are entitled to free health services at any public health establishment, irrespective of their nationality and documentation status, unless:

- *They are members or beneficiaries of medical aid schemes; or*
- *They have come to South Africa for the specific purpose of obtaining health care".*

7. The first, second, third and fourth respondents shall, within 5 days of the dates for compliance stipulated in paragraphs 3, 5, and 6, file a report on affidavit with the court, addressed to the Deputy Judge President, that compliance has been effected, and if there has been non-compliance, furnish an explanation why that has occurred, whereupon the Deputy Judge President shall issue such orders or directives as are appropriate to give effect to this order.

8. The first, second, third and fourth respondents shall appear before this court on 23 October 2023 whereupon they shall report comprehensively on the compliance with this order.

9. Each party shall bear their own costs.



BY ORDER OF COURT

THE REGISTRAR

Counsel for the Applicants
K Hofmeyer SC

T. Pooe

Instructed by Cliffe Dekker Hofmeyer Inc.

Counsel for the First to Fifth Respondents

L.M. Montsho-Moloisane SC

N. Rasalanavho

Instructed by: the State Attorney, Johannesburg