

CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE CCT 48/17

In the matter between:

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| BLACK SASH TRUST | Applicant |
| FREEDOM UNDER LAW NPC | Intervening Party |

and

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| MINISTER OF SOCIAL DEVELOPMENT | First Respondent |
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| CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY | Second Respondent |
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| SOUTH AFRICAN SOCIAL SECURITY AGENCY | Third Respondent |
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| MINISTER OF FINANCE | Fourth Respondent |
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| NATIONAL TREASURY | Fifth Respondent |
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| CASH PAYMASTER SERVICES (PTY) LIMITED | Sixth Respondent |
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| INFORMATION REGULATOR | Seventh Respondent |
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and

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| CORRUPTION WATCH (NPC) RF | First Amicus Curiae |
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| SOUTH AFRICAN POST OFFICE SOC LIMITED | Second Amicus Curiae |
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AFFIDAVIT

I, the undersigned,

THOKAZANI MAGWAZA

do hereby make oath and state:

1. I am the Chief Executive Officer of SASSA, the third respondent, and I am cited as the second respondent in this application. I was appointed as CEO on 1 November 2016 and prior thereto I was the Acting Director-General at the Department of Social Development (“DSD”).
2. The facts deposed to herein are, unless the contrary appears from the context hereof, within my personal knowledge and belief and are both true and correct.
3. Where I make legal submissions, I do so on advice received from my legal representatives, which advice I accept to be correct.

THE PURPOSE OF THIS AFFIDAVIT

4. By way of a directive made by this Court on 5 April 2017, I have been given leave to respond to the affidavit of the first respondent, the Minister of Social Development (“the Minister”).
5. I file this affidavit pursuant to this Court’s directive.

6. I only wish to deal with the aspects raised in the affidavit of the Minister which impact on me and which are, in my respectful submission, incorrect. Accordingly, I confine myself to responding to these aspects only, without burdening this affidavit with *ad seriatim* traversal of the Minister's affidavit, save where it is necessary to give proper context.
7. Below I deal with the following aspects:
 - 7.1. First, I deal with the facts relating to governance and operational issues leading up to SASSA's approach to Court on 28 February 2017; and
 - 7.2. Second, I explain the reasons why I could not approach the Court as early as December 2016.

THE OPERATIONAL ISSUES RAISED

8. The Minister directed SASSA to appoint work streams in July 2015, as is apparent from annexure "A" hereto, to deal with the objectives stated in SASSA's report filed with the Court on 5 November 2015. Thus, I submit that since July 2015, the Minister had knowledge of inadequacies in SASSA to fulfil the objectives of the court order and the objectives of the applicable legislation.
9. Annexure "A" is a letter dated 9 July 2015, addressed by the Minister to the then CEO of SASSA, Ms Virginia Petersen ("Petersen") in which she

communicates her decision to appoint work streams and the work streams leaders. She further noted “*that in order to roll out implementation process diligently, we need to retain the collective knowledge and institutional memory of the key members of the committee*”. I pray that the contents of annexure “**A**” be read as part of this affidavit.

10. The Minister appointed individuals as part of the work streams who would report directly to her and in terms whereof she will retain direct control of the implementation process. This implementation process was to achieve a position where SASSA will directly be in charge of and responsible for paying social grants to the beneficiaries.
11. These work streams were given a broad mandate to take over the implementation of the project and SASSA was instructed not to interrupt them or delay them. The work streams reported directly to the Minister and not to SASSA. Thus, the delay in achieving the deliverables as per the report submitted to the Court must be seen in this context.
12. It is significant to point out that on 20 February 2017 at an Executive Committee meeting of SASSA, the Minister, amongst others, expressly stated in the presence of all executive members of SASSA that I should focus my energies on the day-to-day operations of SASSA and the work streams that the Minister had established would sort out the plans of SASSA’s future payment of social grants. I have not paraphrased the

Minister but summarised what she stated at this meeting apropos the matter under scrutiny.

13. I need to make the point that since July 2015, the Minister understood the issues, was in control of the process and knew or ought to have known of all developments in this important process and matter.
14. The Minister correctly points out in paragraph 16 of her affidavit that SASSA decided on 15 October 2015 not to award the tender to a third party service provider, but to assume the duty to perform the payment functions itself. The decision to insource the payment function within SASSA was, however, taken in 2011 and reaffirmed in the 2014 Request for Proposals (RFP) when the tender was awarded to CPS. Thus, it was contemplated that upon the termination of the tender flowing from the 2014 RFP, which was not awarded, that the function would be performed by SASSA.
15. It is also correct that SASSA genuinely believed that the plan was ambitious, but nevertheless worked towards meeting such deliverables. SASSA commenced the process to implement the plan to achieve the deliverables as previously undertaken to the Court. This process was derailed once the Minister directed SASSA to appoint the work streams in accordance with her directive set out in her letter of 9 July 2015. I refer the Court to the hand writing instruction appearing on the first page of annexure "A" in which Petersen records "please implement this instruction". The instruction is addressed to Ms Raphaahle Ramakgopa ("Ramokgopa") who

was the project executive manager responsible for the implementation of the project.

16. I am informed that the first time that SASSA's executive management interacted with the work streams was in October 2016. Prior to my appointment and to date, the work streams leaders take instructions from and report to the Minister directly through the project leader, Ms Zodwa Mvulane ("Mvulane"). The report dated 2 March 2017 referred to in this paragraph was filed by the Minister, possibly working together with the work streams leaders, and does not represent SASSA's position.
17. The report was signed by the Acting CEO, Ms T Mzobe, who, I submit, had limited knowledge of SASSA and its operations at the time. The contents of the report was not confirmed by any member of the executive management of SASSA.
18. I also note a contradiction between the statements in paragraph 17 compared to that in paragraph 18 of the Minister's affidavit. The Minister states that SASSA genuinely believed that the plan was ambitious, but it was capable of meeting those deliverables. However, she mentions in paragraph 18 that she and SASSA were advised that the plan was overly optimistic, unreliable and underpinned by insufficient research and resource allocations.

The Appointment of CSIR and NISG

19. I disagree with the version provided by the Minister in paragraph 19 of her affidavit on the engagement with the Council for Scientific and Industrial Research (“CSIR”)¹. SASSA had already engaged the services of CSIR by December 2013 to advice on the appropriate payment solution.

20. The Ministerial Advisory Committee was appointed in September 2013, and not September 2014. This committee did not include experts from the CSIR or National Institute of Smart Government (“NISG”) based in India. The CSIR commenced work in December 2013, although the Memorandum of Understanding was signed in March 2014, their mandate was different from that of the Advisory Committee. The NISG was appointed in mid-April 2015 to work with SASSA and its partners such as the CSIR to develop effective ways of delivering social grants through the use of ICT. The CEO of NISG was appointed in his personal capacity as a member of the Advisory Committee. He in turn, offered the services of his two ICT experts to conduct analysis and make recommendations to SASSA.

Meeting with Government Printing Works

¹ The Council for Scientific and Industrial Research is South Africa's central and premier scientific research and development organisation. It was established by an act of parliament in 1945.

21. In paragraph 27 of her affidavit, the Minister alludes to a meeting that we both attended with people from the Government Printing Works (“GPW”). I dispute the contents of this paragraph. The Minister never met with me and people from GPW, (not in my presence) in regard to the printing of beneficiary cards.
22. I can categorically state that the Minister was not part of my meeting with the GPW.

THE MEETING OF 12 OCTOBER 2016

23. In paragraph 39 of her affidavit, the Minister states that she held a telephone conference with me during which she impressed upon me the urgency of reporting to the Court that SASSA will not be able to implement a system to pay social grants itself.
24. I wish to provide the following context to the telephone conference:
- 24.1. I was with the Minister of Friday 8 April 2016 in Bloemfontein;
- 24.2. The Minister went to Qwa Qwa without me on Saturday 9 April 2016;
- 24.3. On Sunday 10 April 2016, I was with the Minister the whole day at an event in Eastern Cape. After the event, we had a one on one meeting having our usual discussions;

- 24.4. On Monday 11 April 2016 at around 8h30 Ms Mvulane called me to tell me about a meeting that was going to take place around 12h00. I enquired about the agenda of the meeting. She informed me that it was about the issue of the Constitutional Court. I informed her that I was not aware of such meeting and that I did not understand the need for that meeting as there was already a prior decision that SASSA will only approach the Court after stakeholder engagement (National Treasury, Reserve Bank and Social Development). She informed that the Minister had called the meeting.
- 24.5. I confirmed my availability for the meeting albeit that I was surprised that the Minister had called a meeting but had not informed me about it during the time we were together in the weekend preceding the meeting.
25. At this meeting the merits and demerits of approaching the Court were thoroughly analysed. I indicated that I was not in a position to file a meaningful affidavit with the Court during December 2016 having only taken office as the CEO on 1 November 2016.
26. Immediately upon my taking office, I took steps to engage National Treasury, DSD and the SA Reserve Bank. I was optimistic that a solution could be found in terms whereof SASSA with the assistance with other government agencies would be in a position to pay social grants. The

indications of National Treasury and the SA Reserve Bank was to the effect that this was possible if SASSA were to utilise local banks. Mindful of the fact that the use of local banks is contemplated in the Social Assistance Regulations, I saw no major stumbling block and hence I put my energies in finding alternative solutions.

27. In retrospect it was the Minister who was determined that an internal solution will not be found. It then transpired that the Minister was against the utilisation of local banks and the Post Office.
28. I utilised December 2016 and January 2017 to familiarise myself with legal opinions that had been obtained and to date I have difficulty understanding why the Minister was adamant that CPS be used. I should point out that the Trengove SC opinion was procured by the work streams and not by SASSA.
29. In paragraph 45 of the her affidavit, the Minister states that she engaged with SASSA on possible options and interim arrangements and concluded that CPS was a least risky option to ensure uninterrupted payment of social grants after 31 March 2017. I wish to clarify that there is no record of the Minister engaging with SASSA to consider available options and solutions to ensure that social grants were paid subsequent to the termination of the contract with CPS, bearing in mind that there was no alternative arrangement in place.

30. To my knowledge, alternative options were explored by SASSA officials (including myself) with relevant officials of National Treasury and DSD.

SASSA's Withdrawn Application

31. In paragraphs 48 and 49, the Minister deals with SASSA's application which was filed on 28 February 2017 which it was later instructed to withdraw. A decision to institute the application was taken at a meeting on 16 February 2017 which I arranged and facilitated on instruction from the Minister herself.
32. The Minister never communicated with me that SASSA should not approach this Court. The first time that it came to my knowledge that the Minister instructed legal services in SASSA not to approach the Court was on 16 February 2017, that she still has to consult and that filing was to be done on 20 February 2017.
33. I waited for the Minister's instructions pursuant to her proposal to consult on the affidavit but given the fact that the deadline of 31 March 2017 was imminent and upon legal advice provided to me, I took a decision to file the application on 28 February 2017. I submit that in doing so, I was not required to consult with the Minister. I am not required to consult the Minister on every operational aspect of the work of SASSA.

34. In conclusion I wish to clarify that contrary to what the Minister says in paragraph 53 of her affidavit, as the DDG for Social Security, I was not responsible for “shaping” how SASSA would implement its mandate prior to my appointment. That fell within the purview of SASSA and, in particular, its Executive Committee under the leadership of the Minister.

Obiter

35. Finally, I have called upon Mr Zane Dangor (“Dangor”) who was, at the material time the Director-General in the DSD, to deal with the matters in the Minister’s affidavit in which he is implicated. I have a good relationship with Dangor and I have prevailed upon him to file an affidavit in order to assist this Court to come to a just and equitable decision.

36. Dangor has been cooperative and has indicated that he will seek independent legal advice and endeavour to file an affidavit by close of business on Monday 10 April 2017.

DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the

deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at _____ on this _____ day of APRIL 2017 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

FULL NAMES:

DESIGNATION:

ADDRESS: