



**the doj & cd**

Department:  
Justice and Constitutional Development  
**REPUBLIC OF SOUTH AFRICA**

**OFFICE OF THE CHIEF STATE LAW ADVISER**

Private Bag X81, PRETORIA, 0001, Tel (012) 315 1130, Fax (012) 315 1743, Momentum Centre East Tower 12<sup>th</sup> Floor,  
Pretorius Street. Office E-mail: [OCSLA@justice.gov.za](mailto:OCSLA@justice.gov.za)

Ref: 255/2020/21

Enq: Adv B Venter

Tel: (012) 315 1338

E-mail: [bventer@justice.gov.za](mailto:bventer@justice.gov.za)

Website: <http://www.doj.gov.za>

Date: 14 April 2021

Mr John Jeffery

The Deputy Minister for Justice and Constitutional Development

Department of Justice and Constitutional Development

Private Bag X276

**PRETORIA**

0001

**For attention: Mr Blendynn Williams**

**E-mail: [blwilliams@justice.gov.za](mailto:blwilliams@justice.gov.za)**

Dear Mr Jeffery

**EVICCTIONS DURING LOCKDOWN: YOUR UNNUMBERED LETTER DATED 1  
MARCH 2021 REFERS**

**INTRODUCTION AND BACKGROUND**

1. The Office of the Deputy Minister of the Department of Justice and Constitutional Development (the "Department") informs us that sheriffs are experiencing numerous issues on whether or not eviction orders, which were granted prior to the commencement of the national state of disaster can be executed after

the commencement of the Regulations<sup>1</sup> (the “Regulations”), issued in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002) (the “Disaster Management Act”) in terms of which evictions are not allowed.

2. The South African Board for Sheriffs (the “Board”) informed the Department that it is advising sheriffs that orders, which were granted prior to the commencement of the Regulations, should be treated the same as if these orders were granted during the national state of disaster, and would be subject to the Regulations, which does not allow evictions, except those that are authorised by a Court of Law.

3. We are further informed that sheriffs have been threatened with urgent applications to compel them to continue with such evictions and, as such, urgent direction is sought from the Department on the intention of the legislature regarding evictions, especially those which were granted prior to the national state of disaster and which are requested to be carried out after the national state of disaster has been declared.

## **LEGAL QUESTION**

4. Our legal opinion is sought on the question whether eviction orders that were granted before the commencement of the national state of disaster, may be executed after the national state of disaster has been declared.

## **DISCUSSION**

5. It is common cause that the Minister of Cooperative Governance and Traditional Affairs, Dr Nkosazana Dlamini Zuma (the “Minister”), declared a national state of disaster<sup>2</sup> on 15 March 2020 in terms of the Disaster Management Act and the Regulations authorising the national state of disaster are still valid. The Minister

---

<sup>1</sup> Published under Government Notice No. 480, in Government *Gazette* No. 43258 of 29 April 2020, as amended.

<sup>2</sup> See Government Notice No. 313, published in Government *Gazette* No. 43096 of 15 March 2020.

announced, by notice<sup>3</sup> on 28 February 2021 that Alert Level 1, as adjusted, will apply nationally.

6. Regulation 73 of the Regulations<sup>4</sup> specifically deals with eviction and demolition of places of residence, and provides as follows:

**“Eviction and demolition of places of residence**

**73.** (1) A person may not be evicted from his or her land or home or have his or her place of residence demolished for the duration of the national state of disaster unless a competent court has granted an order authorising the eviction or demolition.

(2) A competent court may suspend or stay an order for eviction or demolition contemplated in subregulation (1) until after the lapse or termination of the national state of disaster **unless the court is of the opinion that it is not just or equitable to suspend or stay the order having regard**, in addition to any other relevant consideration, **to—**

- (a) the need, in the public interest for all persons to have access to a place of residence and basic services to protect their health and the health of others and to avoid unnecessary movement and gathering with other persons;
- (b) any restrictions on movement or other relevant restrictions in place at the relevant time in terms of these Regulations;
- (c) the impact of the disaster on the parties;
- (d) **the prejudice to any party of a delay in executing the order and whether such prejudice outweighs the prejudice of the persons who will be subject to the order;**
- (e) whether any affected person has been prejudiced in their ability to access legal services as a result of the disaster;
- (f) whether affected persons will have immediate access to an alternative place of residence and basic services;
- (g) whether adequate measures are in place to protect the health of any person in the process of a relocation;
- (h) whether any occupier is causing harm to others or there is a threat to life; and
- (i) whether the party applying for such an order has taken reasonable steps in good faith to make alternative arrangements with all affected persons, including but not limited to payment arrangements that would preclude the need for any relocation during the national state of disaster.

---

<sup>3</sup> Government Notice No. R. 151, published in Government *Gazette* No. 44201 of 28 February 2021.

<sup>4</sup> Regulations published under Government Notice No. R. 152, in Government *Gazette* No. 44201 of 28 February 2021.

(3) A court hearing an application to authorise an eviction or demolition may, where appropriate and in addition to any other report that is required by law, request a report from the responsible member of the executive regarding the availability of emergency accommodation or quarantine or isolation facilities pursuant to these Regulations.” (Our emphasis and underlining.)

7. Therefore, in terms of regulation 73(1), the general rule regarding evictions during Alert Level 1 is that **nobody may be evicted from his or her land or home for the duration of the national state of disaster, unless a competent court has granted an order** authorising the eviction.

8. In terms of regulation 73(2), **a competent court may suspend or stay an order for eviction until after the lapse or termination of the national state of disaster**, unless the court is of the opinion that it is not just or equitable to suspend or stay the order having regard to, amongst other relevant considerations, the factors set out in regulation 73(2)(a) to (i). These factors include, amongst others, the following:

- (a) the need, in the public interest, for all persons to have access to a place of residence and basic services, to protect their health;
- (b) the impact of the disaster on the parties;
- (c) the prejudice to any party of a delay in executing the order and whether such prejudice outweighs the prejudice of the persons who will be subject to the order;
- (d) whether affected persons will have immediate access to an alternative place of residence and basic services; and
- (e) whether the party applying for such an order has taken reasonable steps in good faith to make alternative arrangements with all affected persons, including but not limited to payment arrangements that would preclude the need for any relocation during the national state of disaster.

9. Consequently, it is clear that nobody may be evicted from their home or land during the national state of disaster without an eviction court order, obtained in accordance with regulation 73 of the Regulations. A court may also stay or suspend an existing eviction order (e.g. in instances where there is an existing eviction order

that must still be executed) until after the lapse or termination of the national state of disaster. If a court is of the opinion that it is not just and equitable to stay or suspend an eviction order, after consideration of the factors listed in regulation 73(2)(a) to (i), the court may grant or authorise an eviction order, or the execution thereof.

10. The question directed to us is **whether regulation 73 is applicable to eviction orders granted before the national state of disaster has been declared and which have not been executed yet.**

11. Although the court order to evict has been made before the commencement of the Regulations, the execution thereof is part of the order and the implications of such an eviction must therefore be considered in view of the Regulations.<sup>5</sup> In other words, the matter must be placed before a court, in terms of regulation 73, which authorises courts to stay or suspend eviction orders, or to allow them to proceed.

12. It is therefore necessary to consider whether the execution of such an eviction order (where the order is made before the commencement of the Regulations, but executed after the commencement thereof) will be contradictory to the Regulations. In order to establish this, it is necessary to consider the purpose of the Disaster Management Act and the Regulations.

13. The Regulations were issued by the Minister in terms of section 27(2) of the Disaster Management Act. The long title sets out the purpose of the Act and provides, amongst other things, for “*an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery and rehabilitation*”.

14. In terms of section 27(3) of the Disaster Management Act, the Minister’s power to make regulations may be exercised only to the extent that this is necessary for the purpose of—

- (a) assisting and protecting the public;
- (b) providing relief to the public;

---

<sup>5</sup> *Du Toit v Minister for Safety & Security, RSA & another* [2009] JOL 24357 (CC).

- (c) protecting property;
- (d) preventing or combating disruption; or
- (e) dealing with the destructive and other effects of the disaster.

The current Regulations were thus issued for the purpose of assisting and protecting the public, providing relief to the public, protecting property, preventing and combating disruption and dealing with the destructive effects of COVID-19, which has been declared a global pandemic by the WHO.

15. It is essential to note that, section 39(2) of the Constitution of the Republic of South Africa, 1996 (the "Constitution"), directs courts, tribunals or forums, when interpreting any legislation, to promote the spirit, purport and objects of the Bill of Rights. In this regard, when considering section 73 of the Regulations, courts are authorised to stay or suspend eviction orders **until after the lapse or termination of the national state of disaster**, to protect the rights of persons, as contained in the Bill of Rights.

16. South Africa recorded its first case of COVID-19 on 5 March 2020. On 15 March 2020, acting under section 3, read with section 27 of the Act, the Minister declared a national state of disaster.<sup>6</sup> The Minister made the following declaration at that time:

"Considering the magnitude and severity of the COVID-19 outbreak which has been declared a global pandemic by the World Health Organisation (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre, and taking into account the need to augment the existing measures undertaken by organs of state to deal with the pandemic .... hereby declare a national state of disaster having recognised that special circumstances exist to warrant the declaration of a national state of disaster ...."

The President announced a strict national lockdown with effect from midnight on 26 March 2020. Regulations were promulgated, putting in place measures to deal with

---

<sup>6</sup> See Government Notice No. 313, published in Government *Gazette* No. 43096 of 15 March 2020.

the pandemic.<sup>7</sup> The stringent lockdown measures were eased progressively over time.

17. The purpose of the Regulations is to prevent the spreading of the COVID-19 virus and to protect persons. By executing an eviction order without considering the purpose of the Regulations, read within the spirit, purport and objects of the Constitution, and especially the factors listed in regulation 73(2)(a) to (i), the purpose of the Regulations will be defeated.

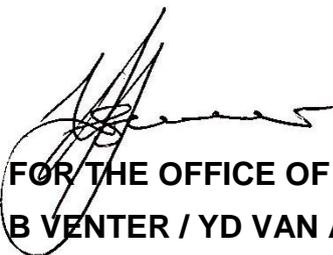
18. In light of the above, we are of the view that, irrespective of whether an eviction order was granted prior to, or after the commencement of the national state of disaster, the execution of an eviction order during the national state of disaster, without a court order in terms of regulation 73, would be in conflict with the purpose of the Regulations, read within the spirit and purport of the Constitution.

## **CONCLUSION**

19. In our opinion, an eviction order may not be executed, irrespective of whether it was granted before or after the commencement of the national state of disaster, without complying with regulation 73 of the Regulations.

20. Therefore, even if an eviction order was issued before the declaration of the state of national disaster, the court must be approached to authorise the execution of that eviction order, or to stay or suspend the eviction order until after the lapse or termination of the national state of disaster.

Yours sincerely,



**FOR THE OFFICE OF THE CHIEF STATE LAW ADVISOR  
B VENTER / YD VAN ASWEGEN / N LEKGORO / SM MASAPU**

---

<sup>7</sup> See Government Notice No. 398, published in Government *Gazette* No. 43181 of 25 March 2020.