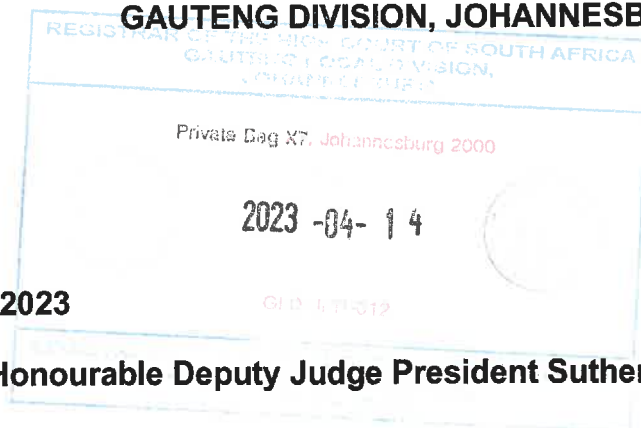




Tu Sutherland
2023/04/14

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG



CASE NO: 22/19304

On 14 April 2023

Before the Honourable Deputy Judge President Sutherland

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 OF HEALTH

Second Respondent

THE MINISTER OF HEALTH

Third Respondent

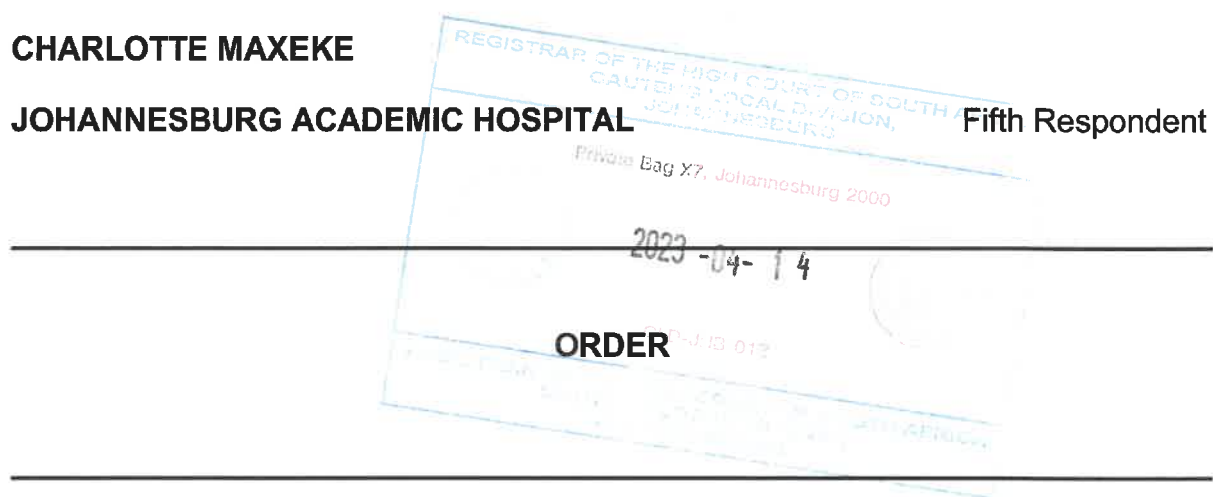
DIRECTOR GENERAL: DEPARTMENT OF HEALTH

Fourth Respondent

CHARLOTTE MAXEKE

JOHANNESBURG ACADEMIC HOSPITAL

Fifth Respondent



An order issues 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 purposes of a fees assessment.
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 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 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 accordingly invalid.
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 establishment.
6. The third respondent shall issue a directive 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 six

Are entitled to free health services at any public health establishment,

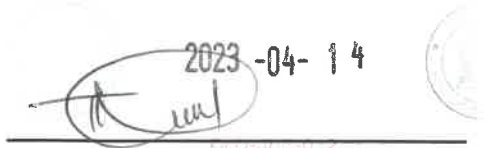
irrespective of their nationality and documentation status, unless:

Private 853 78, January 2023 They are members or beneficiaries of medical aid schemes; or

2023 -04- 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, 4 and 5, 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.

Private Bag X7, Johannesburg 2000

2023-04-14


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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
BY ORDER OF COURT

REGISTRAR

Counsel for Applicants

K Hofmeyr SC

T Pooe

Instructed by: Cliffe Dekker Hofmeyr Inc

Counsel for First to Fifth Respondents

L M Moloisane-Montsho SC

N Rasalanavho

Instructed by: State Attorney