

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

CASE NO: 21726/11

In the application of:-

MINISTER OF SOCIAL DEVELOPMENT

APPLICANT

In re:

CENTRE FOR CHILD LAW

APPLICANT

And

**MINISTER OF SOCIAL DEVELOPMENT
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

**1ST RESPONDENT
2ND RESPONDENT**

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

3RD RESPONDENT

**MEC FOR HEALTH AND SOCIAL DEVELOPMENT,
MPUMALANGA**

4TH RESPONDENT

**MEC FOR HEALTH AND SOCIAL DEVELOPMENT,
GAUTENG**

5TH RESPONDENT

**MEC FOR HEALTH AND SOCIAL DEVELOPMENT,
WOMAN, CHILDREN AND PEOPLE WITH
DISSABILITIES, NORTH WEST**

6TH RESPONDENT

**MEC FOR SOCIAL DEVELOPMENT,
FREE STATE**

7TH RESPONDENT

**MEC FOR SOCIAL DEVELOPMENT,
NORTHERN CAPE**

8TH RESPONDENT

**MEC FOR SOCIAL DEVELOPMENT,
KWAZULU NATAL**

9TH RESPONDENT

**MEC FOR SOCIAL DEVELOPMENT,
EASTERN CAPE**

10TH RESPONDENT

**MEC FOR SOCIAL DEVELOPMENT,
WESTERN CAPE**

11TH RESPONDENT

FOUNDING AFFIDAVIT

H.K. [Signature]

I, the undersigned

COCEKO BAMBIHLELO JOHAN PAKADE

1. Declare that I am the Director General in the National Department of Social Development and I am deposing to this affidavit in my capacity as such in terms of conducting and discharging my duties in this regard from the national offices of Social Development situated at 134 Pretorius Street, Pretoria.
2. I am duly authorised to depose to this affidavit by virtue of the office that I hold and the delegation by Minister of Social Development, Honorable Ms.Bathabile Olive Dlamini.
3. The contents of this affidavit fall within my personal knowledge and are both true and correct.

URGENCY

4. The current order for payments of Foster Care Grants expires on the 31st of December 2014. The Applicant will only be heard on the 16th of January 2015 when the current order has already expired.

4.1. **NATIONAL CRISIS:**

The order granted by the Honorable Judge Claassen on the 10th of May 2011 affects all the Provinces in South Africa; if the order is not



varied before the expiry date on 31 December 2014 the Departments of Social Development will have a National Crisis on their hands.

4.2. **NO PAYMENTS WILL BE PROCESSED**

Department of Social Development will not be able to process any payments to foster care beneficiaries if its not authorized in terms of a court order or in terms of law. Payments are processed one month in advance; therefore the payments of January 2015 will not be processed if the order is not granted now.

4.3. **STABILITY AND CLARITY**

By varying the order granted on the 10th of May 2011 to extend to 31 January 2017, it will stabilize the Foster care system and provide clarity.

4.4. **BEST INTEREST OF THE CHILD**

Section 28(2) of the Constitution states that:

'[a] child's best interests are of paramount importance in all matters concerning the child.'

If the order for the variation of the existing foster care order is not granted the children in foster care will not receive their grant at the end of January 2015 which will in turn subject the children to hardship such as going without food, without school uniform and related school needs, inability to pay for school fees and to meet all needs ancillary thereto.

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AD VARIATION

5. The aim of this application is to vary the contents of paragraph 4,5 and 6 of the previous order which was granted by the Honourable Justice Claasen J on the 10th May 2011, in terms of Rule 42 of the Uniform Rules of the High Court.
6. The variation only relates to the time frames stipulated thereon. I humbly attach herewith marked as **Annexure "CP1"** for ease of reference.
7. The further empowering provision also stems from prayer 10 of the above mentioned order which states that;
 - (i) *In the event that any of the parties cannot comply with a direction in paragraph 3 to 8, they, may approach this court for appropriate relief."*
8. In the event that the court would be inclined to grant this order, the prayer would read as follows;

"The procedure set out in paragraph 3 will continue to be followed until 31 December 2017 or until such a time as the Children's Act 38 of 2005 is amended to provide for a more comprehensive legal solution or which ever happens first."

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9. The variation is in a nutshell the extension of the periods provided in the Draft Order, to the 31st December 2017.
10. For the sake of clarity and brevity, it is not necessary to repeat some of the contents of the draft order as they are self-explanatory and the variation will not affect any implementation thereof, thus they will remain effective as they are.
11. Further that the variation be published in the Government Gazette within 15 days of this order.
12. In this founding affidavit I will provide background information regarding the expiry of foster care orders and the measures that had been put in place in an effort to redress the situation. In addition, I will provide the status of the foster care orders as per the SOCPEN report since there are no updated reports received from the provinces. I will also provide a recommendation on how should the duration of the North Gauteng High Court Order be dealt with.

BACKGROUND

13. The Department of Social Development has the mandate to manage foster care cases according to Chapter 12 of the Children's Act No 38 of 2005. The department is currently experiencing systematic challenges with the management of foster care cases at provincial level.



14. On 07/07/2010 the South African Social Security Agency submitted to the Chief Directorate: Children a list of 299 076 foster children with lapsed foster care orders who received foster child grants per province. An action plan was developed in June 2010, which was adapted to provincial plans for implementation. In April 2011, a North Gauteng High Court Order was issued in response to the lapsed foster care orders.
15. It ordered that the Social Development must extend the foster care orders administratively in terms of the Child Care Act and to provide a solution to the challenges experienced with the foster care programme by 2014. The action plan was revised and enhanced as a project plan for foster care. The project plan was approved by MINMEC on 30 September 2011. The purpose of the project plan is to assist the provinces to eradicate the foster care backlog. Its objectives are to:
- Ensure that the provinces comply with the judgment of the High Court Order;
 - Eradicate the backlog of foster care orders that lapsed in all 9 provinces by 31 November 2011;
 - Put systematic mechanisms in place for effective management of the foster care programme.
16. The provinces customized their project plans to be in line with the national project plan. The provinces have been implementing the project plan and the National Department has monitored its implementation through the

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intersectoral provincial workshops from August 2012 to March 2013 with the following objectives:

- To track the progress made by the provinces in the implementation of the project plan;
 - Capacitate the provinces to be able to conduct the verification and reconciliation of the database of children in foster care.
 - Develop a plan for rolling out the verification and reconciliation process.
 - Inform the provinces about the South Gauteng High Court Order on the application of Section 150(1) (a) of the Children's Act 38 of 2005.
17. The Order in question is due to cease at the end of December 2014, which will require the Provinces to begin to extend the foster care orders as per the provisions of Section 159 of the Children's Act.

AD REASONS

18. I wish to state to the Honourable Court the reasons for the variation:

18.1. The First Reason is that there was and still there is a Foster Care backlog, which we have endeavoured to reduce by developing a project plan and management, immediately after the Court order was granted.

18.2. I humbly attach and refer the Honourable to the Project Plan for Management of Forster Care Document which will indicate and



showcase the challenges encountered and measures which were taken to address these challenges. I mark it Annexure "CP2".

18.3. The challenges and causes of the Foster Care Backlog are found in Paragraph 3.1, Page 4-6. My Counsel will elaborate more on the issues as the repetition of same in this affidavit will be laborious for the court.

FOSTER CARE STATUS ON THE BACKLOG OF EXPIRED FOSTER CARE ORDERS

19. Table 1 below indicates the progress that was reported in February 2013 by the provinces. The report indicated that there was a reduction of 90% backlog of lapsed foster care orders.

TABLE 1: FOSTER CARE ORDERS ISSUED (PROVINCIAL DSD REPORTS, FEB 2013)

PROVINCES	PROVINCIAL LAPSED COURT ORDERS (MARCH 2009 AND EARLIER TO JUNE 2011)	ORDERS BY DOJ&CD FOR REOPENING AND EXTENSION ORDERS (APRIL 2010-FEB 2013)	ORDERS ISSUED BY DSD (JUNE 2011-FEBRUARY 2013)	FOSTER CHILDREN REMOVED FROM DATABASE	TOTAL OF COURT ORDERS ISSUED (APRIL 2010-FEBRUARY 2013)	OUTSTANDING BACKLOG (FEB 2013)
EC	42 210 (SASSA) 43 867(DSD)	32 298	18 662	1 657	50 960 (100%)	0 0
FS	33 535 (SASSA)	3 317	29 818	400	33 135 (100%)	0
GP	45 379 (SASSA) 50 373 (DSD)	13 767	36 606	0	50 373 (100%)	0

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KZN	98 380 (SASSA)	12 780	82 092	3 164 (Closed)	98 036 (99%)	344
LP	24 400 (SASSA) 24 000 (DSD)	10 494	10 722	3 184 (Closed)	21 216 100%	0
MP	19 747 (SASSA) 21 196 (DSD)	17 555	3 641	0	0 (100%) 21 196	0
NC	7637 (SASSA)	760	6 675	271 (Closed)	7 435 (98%)	202
NW	12 578 (SASSA)	0	10 328	2358 (Closed)	10 328 (100%)	0
WC	15 210 (SASSA) 22 366 (DSD)	5 938	15 210	1 218	21 148 (100%)	0 0
TOTAL	299 076 (SASSA) 313 932 (DSD)	96 909	213 754	12 252	313 827 (99%)	5 46

The SOCPEN data set indicates that there has been a significant reduction of the initial backlog of 299 076 however, the subsequent years reflect a recurring backlog.

TABLE 2: STATUS ON THE BACKLOG OF EXPIRED FOSTER CARE ORDERS (SOCPEN: SEPT, 2014)

REGION	ORIGINAL BASELINE JUNE 2010	BASELINE IN 2011	Remaining volume as at 3 Nov 2014 without 18 year olds	Remaining without 18 year olds and Cat 1
EC	42 210 (SASSA): 43 867(DSD)	27 155	18 980	18 655
FS	33 535 (SASSA)	10 314	12 691	12 335
GP	45 379 (SASSA): 50 373 (DSD)	23 900	24 213	22 651

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KZN	98 380 (SASSA)	30 239	59 367	59 351
LP	24 400 (SASSA): 24 000 (DSD)	26 166	23 707	21 034
MP	19 747 (SASSA): 21 196 (DSD)	9 096	10 304	9 710
NC	7637 (SASSA)	4 032	582	497
NW	12 578 (SASSA)	11 097	10 794	10 771
WC	15 210 (SASSA): 22 366 (DSD)	6 913	7 070 (provincial 6 784)	7 057
TOTAL	299 076 (SASSA): 313 932 (DSD)	148 912	167 708	1621

NATIONAL DEPARTMENT'S INTERVENTION TO ADDRESS THE SYSTEMIC AND IMPLEMENTATION CHALLENGES

20. The National Department has collaborated with National SASSA and the Department of Justice and Constitutional Development in the effort to address the implementation challenges of the Children's Act through quarterly meetings. The Chief Directorate: Children monitored the implementation of the project plan in 8 provinces with the exception of Eastern Cape.
21. The National Department participated in magistrates' forum meetings in KwaZulu-Natal, Limpopo and Gauteng lobbying for the sensible interpretation of the Act and the High Court Order issued on the extension of foster care orders with a particular emphasis on the application of Section 186.

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22. The Chief Directorate: Children begun with the process of reviewing the provisions of foster care in the Children's Act to provide a long-term solution to the administrative challenges experienced. However, the period provided by the North Gauteng High Court is limited as a result the deadline will not be met by 2014 to provide a solution to the foster care programme through legislative review process.

23. In the absence of an electronic information management system for foster care, the National Department developed an Excel spreadsheet template and a foster care monitoring tool. The Excel spreadsheet template is intended for provinces to develop and maintain databases of children in foster care. The monthly foster care monitoring tool is intended to report on the services rendered on foster care. The Chief Directorate: Information Management and Technology has included the development of a foster care information management system in its operational plan for this financial year.


24. The Acting Deputy Director-General approved the concept of establishing a project management unit at the National Office to facilitate the process of analysing the administrative systems in provinces and overhaul the foster care system to improve its functioning.

25. The National Department of Social Development identified that there are social work graduates that are not employed due to the unavailability of budget allocations. The Department approached the National Treasury to

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allocate funding for this purpose. National Treasury allocated R 846 011m over a period of 3 years.

26. The Department also engaged the veteran social workers to assist the Department to strengthen the social work force and to assist with the supervision of social work graduates. They are also utilised by SASSA to trace social security grant beneficiaries (e.g. foster child grant) for re-registration process and updating of the foster care orders.
27. The Department finalized a costing model for the services rendered by NPOs and it is in the process of developing a funding model. The outcomes of this process will provide facts that will be used to bid for funding from the National Treasury. This will provide a long-term solution that may alleviate the workload carried by the Department.
28. The Directorate: Child Protection incorporated the verification and reconciliation exercise to capacitate the provinces and enable them to comply with the North Gauteng High Court Order with regard to the identification of the affected children.
29. SASSA regularly provides SOCPEN reports and databases of foster children whose orders are due to lapse to the provincial offices, to enable the offices to follow up on these orders. In addition to this, the National Department distributed a spreadsheet with indicators that enable the social worker, supervisor and canalisation officer to track the foster care orders that are due to lapse.

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30. The Chief Directorate: Children and National SASSA meet periodically to deliberate on the implementation challenges. The following issues were addressed:

- SASSA informed its provincial officials to capture on SOCPEN all the foster care orders that are covered by the North Gauteng High Court Order without the review process, which requires the presence of the foster parents.
- SOCPEN has been updated to make provision for foster care orders that were issued for more than a period of 2 years.
- National SASSA addressed the challenge experienced with the respective offices that use the quota system to limit the number of intake cases per day.
- Provincial DSD and SASSA offices employed social workers to assist with the backlog. The Table below indicates the measures put in place by the respective provinces.

TABLE 3: MEASURES PUT IN PLACE BY PROVINCES

PROVINCE	MEASURES PUT IN PLACE
Eastern Cape	17 Family Finders Alfred Nzo and Chris Hani decentralised Child Care Management Units to Service Offices which facilitates the management of the programme
Free State	52 additional social workers were employed in 2014 by DSD.
Gauteng	Province increased budget for advertisements of children in terms of Regulation 53. SASSA employed 10 social workers as Family Finders DSD employed additional 300 social workers Involve EPWP workers to provide administrative support to social workers. Letsema Approval for overtime work Shifted social workers from those with less backlog to those with the highest.

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	Social workers with more experienced are specialising on finalisation of court inquiries and supervision of foster placements.
KwaZulu-Natal	Capacity building SASSA employed 8 Project managers and 22 Family Finders Approved overtime work for social workers Some service offices are specialising on foster care. (Durban cluster) 1079 social workers are involved d in foster care, 115 appointed supervisors and 38 acting supervisors. Province procured 700 laptops and printers DSD employed 187 graduate social workers.
Limpopo	Additional 300 social workers were employed. SASSA employed 5 project managers and 8 family finders
Mpumalanga	Family finders (5) and 4 project managers 66 social workers specialising in foster care Organisational structure for alternative care unit in place but requires funding
N. Cape	SASSA employed 5 project managers and 1 social auxiliary worker. Districts are piloting specialisation on foster care. Number of specialising social workers
North West	
W. Cape	Province increases the NGO funding by 6% annually. Additional posts also funded in NGO's. Department funds 369 social work posts and 105 social auxiliary work posts. Canalisation officers designated to issue foster care orders. SASSA employed 5 social workers, 4 social auxiliary workers employed by SASSA.
TOTAL	

DEPARTMENT'S PLAN TO ADDRESS THE ONGOING CHALLENGE REGARDING THE MANAGEMENT OF THE FOSTER CARE ORDERS

31. A project plan for foster care was developed to address the systemic changes experienced in the provinces regarding the implementation of the foster care provisions of the Act.
32. The project plan has the following components:
 - **Short term activities** which mainly involve putting administrative mechanisms for investigation of reported cases for foster care

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investigation to avoid the accumulation of backlogs, reduction of the backlog of lapsed foster care orders and extension of foster care orders that are due to lapse on time.

- **Medium term activities** that focus on the preparatory work towards putting mechanisms in place for a sustainability plan; and
- **Long-term activities**, which involve putting mechanisms in place to sustain the achieved outcomes thus far.

33. The Department is currently undertaking policy review processes that will contribute toward the review of the Children's Act. These include conducting an audit and implementation evaluation of the foster care programme, assessing the systemic arrangements that impact on the programme. The Minister appointed an independent Committee to oversee the implementation of the activities indicated below and advise her with on measures that may be put in place to address the challenges experienced within the foster care programme.

34. The other main reason which is also interlinked with the above mentioned challenge was the lack of Human resource capacity.

35. This is in turn propelled by the issue of experienced social workers leaving the country for better opportunities and or leaving the profession.

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36. Just to give a broader perspective to the Honourable Court, and to put it in numbers, there are currently 5 306 social workers who render generic social work services including foster care services to 553 916 foster children. Consequent to this it became evident that there were vacant posts that needed to be filled.
37. In the nutshell the ratio of social cases being 1:60 by implication meant that additional 3725 social workers are required to manage 553 916 foster children.
38. Thus far the number has been significantly reduced in an attempt to comply with the court order.
39. In this regard I humbly refer the Honourable Court to Annexure "CP2" Paragraph 7, Page 21- 32 which is the measures taken to manage the foster care orders.
40. The measures taken by Department were an attempt to comply with the Court Order, however the deadline of 31 December 2014 will unfortunately not be met as there are a number of outstanding foster court cases which have not been solved. In this regard I humbly refer the Honourable Court to SASSA Integrated Foster Care Project Outstanding backlog which shows the stats of all the outstanding cases and additional cases that increases monthly. I attach the same and mark it Annexure "CP3" and "CP4" respectively.

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41. In terms of Annexure “CP4” which indicates the additional cases, every month that the backlog is not eliminated, more records are added to the volume, increasing the number of cases in backlog.
42. The ultimate reason for the request for the extension and or variation of this order is for the accommodation of the anticipated amendment of the Children’s Act 38 of 2005 as the time for the amendment is at this stage unknown to Department of the Social Development. It is possible that the process of Amending the Act may take three (3) years.
43. However the Ministerial Task Team is endeavouring to amend the legislation.

CONCLUSION AND RECOMMENDATION

44. There has been a significant progress made toward the eradication of the initial backlog of expired foster care orders. However, the figures indicate that there is a recurring backlog. The evaluation of the foster care system, policy review and Children’s Act are going to provide a long term solution and put mechanisms in place to sustain the implementation of the foster care programme.

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45. The Chief Directorate: Children recommend that the North Gauteng High Court be approached, requesting an extension of the duration of the Order for the provinces to continue extending these orders administratively, providing sufficient time to undertake the policy review processes.

WHEREFORE In light of the above reasons I humbly request the Honourable Court to grant the order in terms of the Urgent Application.



DEPONENT

THUS SIGNED AND SWORN to before me at **PRETORIA** on this the 11th day of **DECEMBER 2014** by the deponent he having acknowledged that he knows and understands the contents of this affidavit and considers the same to be true and correct, that he has no objection to taking the prescribed oath and considers the same to be binding on his conscience.



COMMISSIONER OF OATHS

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

1.1 Do you know and understand the contents of the declaration?
Answer: Yes

1.2 Do you have any objections to taking the prescribed oath?
Answer: No

1.3 Do you consider the prescribed oath to be binding on your conscience?
Answer: Yes

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration which was sworn to/affirmed before me and the deponents signature/thumb print/mark was placed thereon in my presence.

Signature: [Signature] Date: 11/12/14
NELSON KHOMOTSO TSIANE
LEGAL ADVISOR
Ex Officio Commissioner of Oaths
HUMAN SCIENCE RESEARCH COUNCIL 134 PRETORIUS STREET PRETORIA