



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No.: J427/2020

The Honourable Van Niekerk J ORDERED on 1 May 2020

In the matter between:

**ASSOCIATION OF MINeworkERS AND
CONSTRUCTION UNION**

Applicant

and

**MINISTER OF MINERAL RESOURCES
AND ENERGY**

First Respondent

CHIEF INSPECTOR OF MINING

Second Respondent

**MINISTER OF CO-OPERATIVE
GOVERNANCE AND
TRADITIONAL AFFAIRS**

Third Respondent

MINERALS COUNCIL

Fourth Respondent

ORDER

HAVING HEARD COUNSEL FOR THE PARTIES, and having considered the matter:

IT IS ORDERED THAT:

1. The Second Respondent's decisions not to:

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN	
Private Bag X52, Braamfontein 2017	
	2020 -05- 01
	
LC-JHB-001	

- 1.1. require employers to prepare and implement a code of practice on the Covid-19 viral pandemic present and spreading in South Africa in terms of section 9(2) of the Mine Health and Safety Act, 1996 (**MHSA**); and
- 1.2. issue guidelines in terms section 9(3) of the MHSA,

are reviewed and set aside.
2. The Second Respondent is directed by no later than 18 May 2020 to publish a notice ("the Notice") in the Government Gazette –
 - 2.1. containing guidelines in terms of section 9(3) and 49(6) of the MHSA; and
 - 2.2. in terms of section 9(2) thereof requiring employers (as defined in the MHSA) to prepare and implement a code or codes of practice, to mitigate the effect of the outbreak of Covid-19 on the health and safety of employees (as defined in the MHSA) and persons who may be directly affected by the disease at the mine.
3. Before publishing the Notice in terms of paragraph 2, the Second Respondent shall:
 - 3.1. consult with the Mine Health and Safety Council, if constituted at the date of the order of this court;
 - 3.2. elicit and consider all available expert advice, including but not limited to the expert opinions of Professors Ehrlich, Murray, Naidoo, Sonnenberg, and Rees contained in the Applicant's papers;
 - 3.3. meaningfully engage with the relevant trade unions, including but not limited to the Applicant, relevant employer organisations, including but not limited to the Fourth Respondent, Mining Affected Communities



- United in Action, and such other interested persons as the Second Respondent may determine regarding the content of the guidelines;
- 3.4. consider the directions issued by the First Respondent on 29 April 2020 in terms of regulation 10(8) of the regulations issued in terms of section 27(2) of the Disaster Management Act No. 57 of 2002 (“the Directions”); and
- 3.5. after having completed the steps in paragraphs 3.1 to 3.4, but no later than 11 May 2020, publish the draft guidelines for public comment.
4. Pending the publication of the Notice and the lodging of codes of practice with the Chief Inspector in terms of section 9(5) of the MHSA, and in addition to complying with any regulations and directions issued under section 27(2) of the Disaster Management Act (“the Regulations”):-
- 4.1. all employers as defined in the MHSA shall, at a minimum, comply with the Standard Operating Procedures, a copy of which is attached hereto marked "A", to the extent that it is not inconsistent with the Regulations, and as read with, but not limited by, -
- 4.1.1. the Directives issued by the Second Respondent to employers on 26 March 2020, a copy of which is attached marked "B"; and
- 4.1.2. paragraphs 1 and 3(a) to (d) of the Directions, a copy of which is attached marked "C";
- 4.2. compliance with paragraph 4.1 will be deemed to constitute compliance with paragraph 2 of the Directions.



5. In order to publicise this order, the First Respondent shall publish a copy of this order in the Government Gazette within 5 days.
6. Judgment on the question of costs is reserved.

BY THE COURT


REGISTRAR



LABOUR COURT