

IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO.

In the matter between:-

PATRICK MOLWANE LEPHUNYA

Applicant

and

THE STATE PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA

First Respondent

THE MINISTER OF LAW AND ORDER

Second Respondent

THE OFFICER COMMANDING,
JOHANNESBURG PRISON

Third Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that Application will be made to the above Honourable Court on behalf of the abovenamed Applicant on 26 August 1986 at 10H00 or so soon thereafter as this matter may be heard for an order in the following terms:-

1. Condoning the Applicant's failure to comply with the Rules of this Honourable Court and directing that this matter be dealt with as one of urgency and that the rules relating to forms, time limits and service be dispensed with in terms of Rule 6(12) of the Rules of the Supreme Court.

2. Declaring Regulation 3(3) of the emergency regulations promulgated in terms of the Public Safety Act 3 of 1953, being R109 of 1986 contained in Government Gazette No. 10280 dated 12 June 1986 to be invalid and of no force and effect.
3. Declaring the notice issued by the Second Respondent purporting to authorise the further detention of PATRICK MOLWANE LEPHUNYA to be invalid and of no force and effect in law.
4. Declaring the detention of PATRICK MOLWANE LEPHUNYA to be unlawful as from the 27 June 1986 to the date of his release.
5. Directing the Second Respondent to secure the release of PATRICK MOLWANE LEPHUNYA from detention forthwith.
6. Directing the First and Second Respondents to pay the costs of this application whether jointly and severally or otherwise in the event of opposition to any of the orders sought herein.
7. Granting the applicant further and/or alternative relief.

AND TAKE NOTICE FURTHER that the accompanying affidavit of PATRICK MOLWANE LEPHUNYA together with the annexures

/hereto...

hereto will be used in support hereof.

AND TAKE NOTICE FURTHER that if you intend opposing this application, you are required to notify the Applicant's Attorney in writing and to file your Answering Affidavits, if any, by no later than 14H00 on 25 August 1986.

AND TAKE NOTICE FURTHER that the Applicant has appointed the address as set out hereunder at which he will accept notice and service of all process in these proceedings.

KINDLY place the matter on the roll for hearing accordingly.

DATED at JOHANNESBURG this 21st day of August 1986.

TO:
THE REGISTRAR
ABOVE HONOURABLE COURT
JOHANNESBURG

KRISH NAIDOO
APPLICANT'S ATTORNEY
209 DARRAGH HOUSE
13 WANDERERS STREET
JOHANNESBURG
P.O. BOX 8694
JOHANNESBURG 2000
TEL: 23-9351
REF: K. NAIDOO

AND TO:
FIRST RESPONDENT
OFFICE OF THE STATE PRESIDENT
UNION BUILDINGS
PRETORIA

Received copy hereof
this day of August
1986.

FOR: FIRST RESPONDENT

/AND TO...

AND TO:
SECOND RESPONDENT
c/o STATE ATTORNEY
833 SUPREME COURT BUILDING
PRITCHARD STREET
JOHANNESBURG.

Received copy hereof
this day of August
1986.

FOR:SECOND RESPONDENT

AND TO:
THIRD RESPONDENT
JOHANNESBURG PRISON
MONDEOR.

Received copy hereof
this day of August
1986.

FOR:THIRD RESPONDENT

IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO.

In the matter between:-

PATRICK MOLWANE LEPHUNYA

Applicant

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First Responuent

THE MINISTER OF LAW AND ORDER

Second Respondent

THE OFFICER COMMANDING,
JOHANNESBURG PRISON

Third Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned,

PATRICK MOLWANE LEPHUNYA

do hereby make oath and say:-

1. I am the Applicant in this matter. I am an adult male residing at 2260A Naledi, Soweto and save where appears from the context, the facts deposed to herein are within my own personal knowledge and belief both true and correct.

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- 2.1. The First Respondent is THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA who is cited herein as the person responsible for formulating and causing to be promulgated certain regulations pursuant to the declaration of a state of emergency in the Republic of South Africa and published in Government Gazette No. 10280 dated 12 June 1986 of, care of the Office of the State President, Union Buildings, Pretoria.
- 2.2. The Second Respondent is THE MINISTER OF LAW AND ORDER, cited herein in his capacity as such and as head of the South African Police Force in terms of the provisions of Section 2 of the State Liability Act, Act 20 of 1967, of care of the Deputy State Attorney, 833 Supreme Court Building, Pritchard Street, Johannesburg.
- 2.3. The Third Respondent is the OFFICER COMMANDING, JOHANNESBURG PRISON, who is cited herein for the interest he may have in this application of The Johannesburg Prison, Mondeor, Johannesburg.
- 3.1. On 12 June 1986 the State President, acting in terms of Section 2(1)(a) of the Public Safety

/Act...

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Act 3 of 1953, declared that a state of emergency existed within the Republic of South Africa.

- 3.2. On the same date the State President made certain regulations in terms of Section 3(1)(a) of the Public Safety Act 3 of 1953. For the sake of convenience of this Honourable Court, copies of the relevant gazettes are annexed hereto. These regulations shall hereafter be referred to as "the regulations".
4. I was arrested on 12 June 1986 and subsequently detained in terms of the regulations.
5. On or about 25 June 1986 and at the Johannesburg Prison, I was informed by a prison official that the Second Respondent had ordered my further detention in terms of regulation 3(3) of the regulations until my release or until the upliftment of the state of emergency. I was not shown a copy of the notice.
6. I contend that the notice purporting to order my further detention is void and of no force and effect in law for, inter alia, the following reasons:-

/7.1...

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- 6.1. regulation 3(3) of the regulations is ultra vires Section 3(1)(a) of the Public Safety Act 3 of 1953 and is void and of no force and effect in law.
- 6.2. the Second Respondent has acted ultra vires the powers conferred upon him in terms of regulation 3(3) of the regulations in that :-
- 6.2.1. he has extended my detention without furnishing reasons for the extension and without affording me an opportunity to make representations for the termination of my detention.
- 6.2.2. the order purporting to extend the period of my detention , inasmuch as it provides for my detention until my release or until the upliftment of the state of emergency, precludes me from making any representations to the Second Respondent; alternatively it precludes the consideration of any such representations prior to the end of the state of emergency.
7. I am not in possession of the order issued by the Second Respondent purporting to authorise my further detention. I hereby call upon the Second and Third Respondents to produce the said order at the hearing of this matter in terms of the provisions of Rule 35(12) of the Rules of this

/Honourable...

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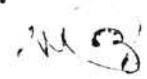
Honourable Court.

8. On 12 August 1986 my attorney directed a letter to the Second Respondent informing him, inter alia, that regulation 3(3) was invalid and that the continued detention of the Applicant was unlawful. A copy of the said letter is annexed hereto marked "A".
9. I respectfully submit that the ordinary Rules of Court should be dispensed with and that the application be heard as a matter of urgency for the following reasons:-
 - 8.1. I am being detained under severe conditions conditions in circumstances where I am not alleged to have committed any offence.
 - 8.2. this application is central to my right of liberty.
 - 8.3. if the application was brought and adjudicated upon in the ordinary course, substantial redress will not be achieved.

WHEREFORE I pray that an order be granted in terms of the Notice of Motion to which this affidavit is annexed and which I have read.


DEPONENT

ATHUS...



THUS DONE, SIGNED and SWORN TO, before me, at Johannesburg on this 21 day of August 1986, the deponent having acknowledged that he knows and understands the contents of this affidavit; that he has no objection to taking the prescribed oath and that he considers the said oath to be binding on his conscience.

M Z Osman

COMMISSIONER OF OATHS

Mohamed Zuneid Osman
COMMISSIONER OF OATHS
PRACTISING ATTORNEY - R.S.A.
Rassbro Centre, 77 Gemshok Street
Lenasia, Jhb. 1820