



SA Childcare Association *Stronger Together!*

20 10 2020 - Press Release

SA Childcare and 7 others v Minister of Social Development and MECs:

Judgment was handed down in the North Gauteng High Court by Judge Janse van Nieuwenhuizen on 20 October 2020 in the case brought by SA Childcare and seven other applicants against the Minister of Social Development and all MECs except the MEC in the Western Cape.

The applicants sought an order to force the Minister and the MECs (except the MEC of the Western Cape where they continued to do the right thing) to fulfil their constitutional duties to uphold the right to life, nutrition, social services, education, and the enhancement of development, by paying the subsidies to indigent nursery schools across the country to enable them to feed children, amongst other things.

*More than three months after Minister Zulu was ordered by the High Court to allow Early Childhood Development Centres (ECD centres) to open, many ECD centres **of all kinds** are still closed across the country, rural, urban, registered, unregistered, funded by DSD and unfunded. The ECD sector is staggering under the weight of nearly seven months of closure.*

Practitioners are out of options and children lack food and care. Against this tragic backdrop the Department of Social Development also opted to withhold subsidies from the ECD centres who need it most.

In effect this left more than 700 000 children who used to receive their only meal of the day at their ECD centre starving and neglected. By contrast, the Western

Cape activated the kitchens at ECD centres during lockdown to ensure that poor children didn't go hungry. The provision of food is an essential service and should never have been withheld, especially from children, at any stage of the lockdown.

Finally, the Minister and the MECs have been brought to account for this heartless neglect by an order declaring that they have failed in their constitutional duties to vulnerable children and caregivers and must pay 100% subsidies to funded ECD centres for the duration of the lockdown's alert levels, whether they are operational or not, for the whole of the 2020/2021 financial year. The judge made sure that this order would apply equally to centres which had signed service level agreements to receive the subsidies as well as those who had not been able to sign them during lockdown.

Should the MECs fail to make payment without delay, and if the Minister fails to discharge her constitutional duty to ensure payment immediately, the judge left room for the applicants to approach the court again to enforce the order. Such failure will also leave the Minister and the MECs open to an order of contempt of court.

The MECs put forward the view that only the ECD centres which were operational should receive the subsidies. The Judge was not persuaded by this argument and expressed dismay that this in turn placed the ECDs in poor communities in the invidious position that they cannot open without receiving the subsidy, but without opening they cannot receive the subsidy. In the end, the very purpose of the subsidies, which is to provide for nutrition, care and learning opportunities to children in underprivileged societies, is once again circumvented. Her words were,

“the predicament seems to have escaped the MECs or they simply do not care for the plight of poor young vulnerable children in their communities”

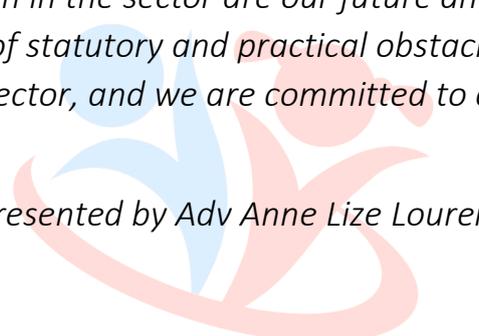
In response to allegations that DSD officials have intimidated and threatened ECD centres with closure, torn up NPO and partial care certificates and even frightened ECD centre owners/supervisors with jail time if they do not wait for a date from the President to re-open', the judge urged the legal teams in the case to advise their clients that nothing stands in the way of reopening and that finally the Directions align with the judgment of Judge Fabricius in the High Court in July which enabled ECD centres to reopen. Officials who persist with this conduct must be reported and dealt with.

The judge reminded the respondents that the state is under a higher duty to respect the law and to tread respectfully when dealing with the rights of citizens. In contrast, the judge said that the MECs, in dealing with the people at grassroots level, the very people the state is constitutionally obliged to serve, had displayed 'absolute no-care arrogance' and that their remarks in opposition were particularly hurtful and demeaning of the plight of young, vulnerable hungry children.

The judge expressed her dissatisfaction with the Minister and the MECs for their persistent denial of their constitutional obligations throughout the proceedings by awarding a punitive costs order, which is rare for these kinds of matters.

This is not the end, but only a skirmish in the war, said the legal team in the case, "as we believe that government does not yet fully appreciate the fact that all the pre-school children in the sector are our future and deserve more support. There are still a myriad of statutory and practical obstacles to the proper functioning of the ECD sector, and we are committed to continue fighting for this worthy cause".

The applicants were represented by Adv Anne Lize Lourens, instructed by Van Wyk and Associates



SA Childcare Association
Stronger Together!