



SA Childcare Association *Stronger Together!*

20 10 2020 - Press Release

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

Judgement 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 Hon. Minister Zulu lost her bid in the High Court to keep Early Childhood Development Centres (ECD centres) closed, 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.

Finally, the Minister and the MECs have been brought to account for their heartless failure during lockdown by a judgement declaring that the Minister and her MECs have failed in their constitutional duties and must pay 100% subsidies to funded ECD centres whether they are operational or not.

The MECs put forward the view that only the operational ECD centres should receive the subsidies. The Judge, in response, 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.

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 judgement of Judge Fabricius in the High Court in July which enabled ECD centres to reopen.

The judge reminded the respondents that the state is under a higher duty to respect the law and to tread respectfully when dealing with rights. 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 granted an order declaring that the Minister and the MECs had failed to fulfil their constitutional duties to protect the interests of vulnerable children, and she expressed her dissatisfaction by awarding a punitive costs order, which is rare for these kinds of matters.

We are privileged to be able to stand up and speak out for the rights of children and the people who care for them. We thank our legal team of Van Wyk and Associates, and Advocate Anne-Lize Lourens.

This is not the end, but only a skirmish in the war, 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 is 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 in the case were:

SA Childcare, represented by Anton and Arno van der Merwe

Centre for Early Childhood Development, represented by Prof Eric Atmore

Reverend Magadla representing Eastern Cape ECDs

Soshanguve Forum (Gauteng)

Bonang Day Care

Busy Bee Creche

Feed the Babies Fund

The Communities and Responsible Care Organisation

Expert evidence:

Prof Atmore, Prof Mark Tomlinson, Prof Servaas van der Berg, Prof Jeremy Seekings, Prof Peter Cooper, Ms Gerda Kriel

Counsel: Adv. Lourens

Attorneys: Antonie van Wyk, Elisabeth van Wyk (Administrative Law Consultant)

Van Wyk and Associates

