

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

IXI
8/11/2022

Case No: 55477/2020

In the matter between:-

MINISTER OF SOCIAL DEVELOPMENT

Applicant

and

CENTRE FOR CHILD LAW

Respondent

In Re:

CENTRE FOR CHILD LAW

and

MINISTER OF SOCIAL DEVELOPMENT

THE SOUTH AFRICAN SOCIAL SECURITY AGENCY

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

MEC FOR SOCIAL DEVELOPMENT, MPUMALANGA

MEC FOR SOCIAL DEVELOPMENT, GAUTENG

MEC FOR SOCIAL DEVELOPMENT, NORTH WEST

MEC FOR SOCIAL DEVELOPMENT, FREE STATE

MEC FOR SOCIAL DEVELOPMENT, NORTHERN CAPE

MEC FOR SOCIAL DEVELOPMENT, KWAZULU-NATAL

MEC FOR SOCIAL DEVELOPMENT, EASTERN CAPE

MEC FOR SOCIAL DEVELOPMENT, WESTERN CAPE



Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh Respondent

Eighth Respondent

Ninth Respondent

Tenth Respondent

Eleventh Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Twelfth Respondent
PREMIER OF LIMPOPO PROVINCE	Thirteen Respondent
PREMIER OF MPUMALANGA PROVINCE	Fourteenth Respondent
PREMIER OF GAUTENG PROVINCE	Fifteenth Respondent
PREMIER OF NORTH WEST PROVINCE	Sixteenth Respondent
PREMIER OF FREE STATE PROVINCE	Seventeenth Respondent
PREMIER OF NORTHERN CAPE PROVINCE	Eighteenth Respondent
PREMIER OF EASTERN CAPE PROVINCE	Nineteenth Respondent
PREMIER OF KWAZULU-NATAL PROVINCE	Twentieth Respondent
PREMIER OF WESTERN CAPE PROVINCE	Twenty-First Respondent

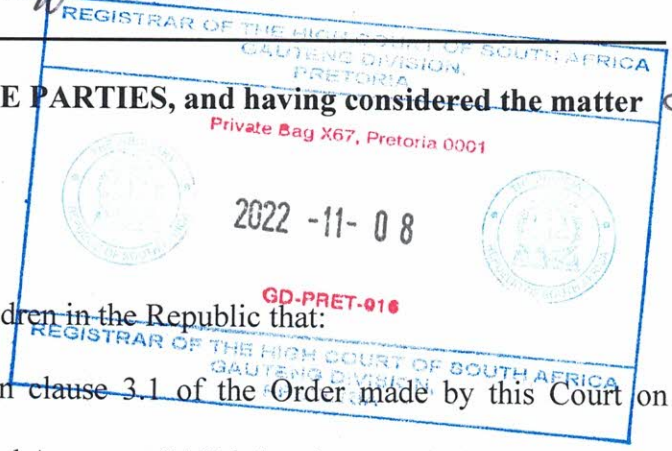
DRAFT ORDER

BY AGREEMENT BETWEEN THE PARTIES, and having considered the matter

and heard

counsel

IT IS ORDERED THAT:



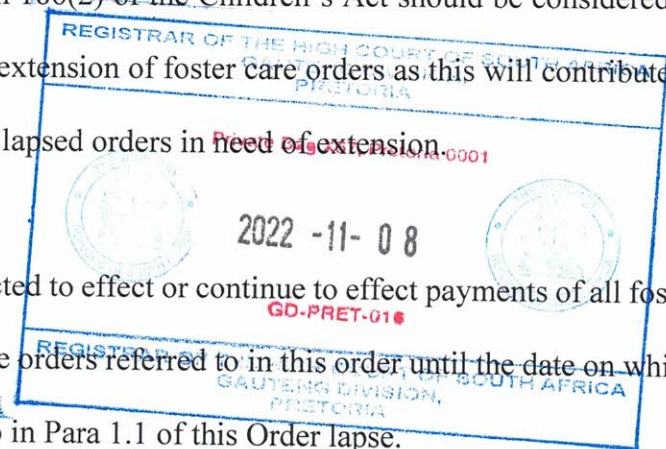
1. It is in the best interests of children in the Republic that:
 - 1.1 the period stipulated in clause 3.1 of the Order made by this Court on 12 November 2020 (marked Annexure "A") is hereby extended by a further period of twelve (12) months from the date of this Order to 11 November 2023;
 - 1.2 the interim regime as contemplated clause 4.1 of Annexure "A", and subject to the provisions of section 159(1) and section 186 of the Children's Act 38 of 2005, will apply to every and any foster care order that is in existence at the date of this order, and such order shall be deemed to be extended for a further period of 12-months from the date of this order or until the end of the year on which

the child subject to such foster care order turns 18 years old as contemplated in Regulation 28(3)(d) of the Regulations of the Social Assistance Act, whichever occurs first unless such foster care order is extended, withdrawn, suspended or varied by the Children's Court in terms of section 159, 186 or 48(1)(b) of the Children's Act;

1.3 a Children's Court, during the subsistence of this Order, shall not refuse save for instances where good cause is shown to extend a foster care order as contemplated in section 159, 186 or 48(1)(b) of the Children's Act; and

1.4 the provisions of section 186(2) of the Children's Act should be considered in all instances relating to extension of foster care orders as this will contribute to reducing the backlog of lapsed orders in need of extension.

2. The Second Respondent is directed to effect or continue to effect payments of all foster child grants related to foster care orders referred to in this order until the date on which the foster care orders referred to in Para 1.1 of this Order lapse.



3. The First Respondent is directed to develop an action plan to resolve all outstanding issues regarding the comprehensive legal solution.

4. The action plan referred to in paragraph 3 above must:

4.1 describe the 'foster care crisis' that necessitated the original 2011 High Court order;

4.2 describe the comprehensive legal solution to this crisis and elaborate on how each provision of the laws or regulations that have been recently amended contribute towards the solution; and

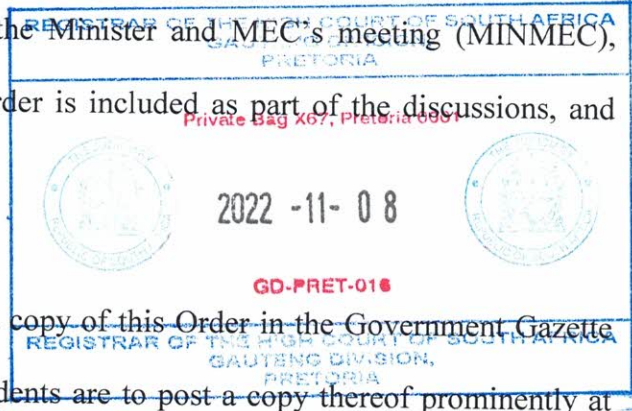
4.3 specify the roles, responsibilities, timeframes and resources required to implement each aspect of the comprehensive legal solution be delivered to the Centre for Child Law on/or before 27 January 2023 for it to make any comments thereon.

5. The finalised action plan shall be filed with the Registrar for the Honourable Madam Justice Van der Schyff on/or before on/or before 31 January 2023, and if the

need arises the judge, may in her discretion call for a case management meeting after receipt of the action plan to issue further directives

6. The First Respondent shall ensure that at all high-level meetings of the Department, including but not limited to the Executive Committee (EXCO), Heads of Social

Development Services (HSDS) and the Minister and MEC's meeting (MINMEC), compliance with the terms of this Order is included as part of the discussions, and relevant progress thereon is recorded.



7. The Applicant is directed to publish a copy of this Order in the Government Gazette and the Third to Twenty-first Respondents are to post a copy thereof prominently at their all their offices.

8. The First, to Eleventh Respondents are directed to file with the Judge's Registrar for the Honourable Madam Justice Van der Schyff, from the date of this Order, quarterly

progress reports on the measures required in the implementation of the comprehensive legal solution.

9. The quarterly reports must:

9.1 include progress reports on the development of the legislative instruments required to implement any amendments of the legislation passed by Parliament including but not limited to the regulations, norms and standards;

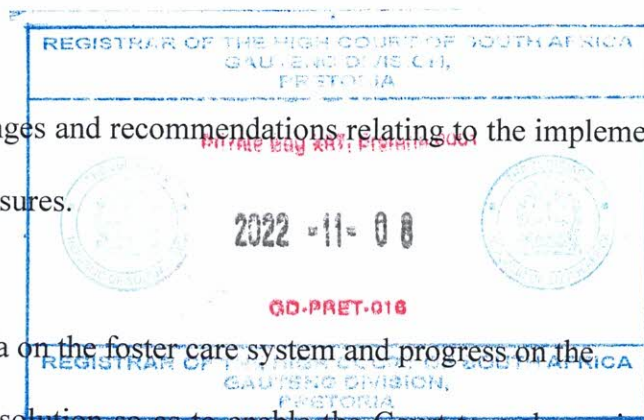
9.2 include notes regarding discussion with relevant stakeholders in the foster care system including but not limited to the Presiding Officers of Children's Courts; and the CCL;

9.3 also detail the challenges and recommendations relating to the implementation of these required measures.

9.4 provide statistical data on the foster care system and progress on the comprehensive legal solution so as to enable the Court to make an informed assessment of the progress being made in realising the terms of this order.

9.5 copies of such quarterly reports are due on 31 January, 30 April, 31 July and 30 October 2023 and must be delivered to the Centre for Child Law at the same time as they are filed at Court.

10. The Centre for Child Law shall within 10-days of receipt of all the quarterly reports, deliver its comments thereon to the First Respondent, and file such with the Registrar of this Court;



11. The Parties are directed to arrange with the Registrar for Honourable Madam Justice Van der Schyff, for a supervisory hearing regarding this matter to be held on or before 21 April 2023, and subsequently on/or before 31 July 2023, or so soon as they are satisfied that the measures required to ameliorate the challenges have all been implemented.

12. There are no orders as to costs.


BY ORDER

Applicant's Legal Representative: Ms. Karabo Ozah;
For the Centre for Child Law

Counsel for the Respondents: Adv. Mathaphuna
Briefed by the State Attorney: Pretoria

