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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

CASE NO: 19343/22

In the matter between :-

THE HEALTH JUSTICE INITIATIVE

Applicant

and

MINISTER OF HEALTH

First Respondent

THE INFORMATION OFFICER,

Second Respondent

NATIONAL DEPARTMENT

Third Respondent

**THE MINISTER OF SPORTS, ARTS
AND CULTURE**

THE INFORMATION OFFICER

Fourth Respondent

MINISTRY OF SPORTS, ARTS AND CULTURE

SOUTH AFRICAN MEDICAL RESEARCH COUNCIL

Fifth Respondent

**THE INFORMATION OFFICER, SOUTH AFRICAN
MEDICAL RESEARCH**

Sixth Respondent

FILING SHEET

**DOCUMENT: THIRD AND FOURTH RESPONDENTS' ANSWERING
AFFIDAVIT**

ON ROLL :

FILED BY:



ATTORNEY FOR RESPONDENTS
STATE ATTORNEY PRETORIA
SALU BUILDING
316 THABO SEHUME STREET
CNR THABO SEHUME (ANDRIES) AND FRANCIS
BAARD (SCHOEMAN) STREETS
PRIVATE BAG X91
PRETORIA, 0001
Ref: 1516/2022/Z22
Tel: (012) 309 1578
E-mail: nagongqo@justice.gov.za

TO: THE REGISTRAR OF THE HONOURABLE COURT
PRETORIA

**AND
TO:**

APPLICANT'S ATTORNEYS
POWER SINGH INC
20 BAKER STREET, ROSEBANK
JOHANNESBURG, 2196
TEL: +27 11 268 6881
FAX: +27 86 614 5818
Email: tara@powersingh.africa
tina@powersingh.africa
REF: PSIHJ-202120
C/O CENTRE FOR CHILD LAW
FACULTY OF LAW
LALW BUILDING (ROOM 4 – 31)
UNIVERSITY OF PRETORIA
PRETORIA, 0002
TEL: +27 12 420 4502
FAX: +27 420 4499
EMAIL: liesl.muller@up.ac.za
REF: LIESL MULLER

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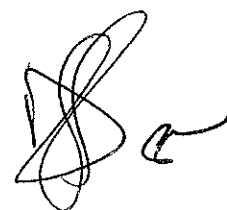
**THE MINISTER OF SPORT, ARTS
AND CULTURE**

**THE INFORMATION OFFICER,
MINISTRY OF SPORT, ARTS AND CULTURE**

Fourth Respondent

SOUTH AFRICAN MEDICAL RESEARCH COUNCIL

Fifth Respondent

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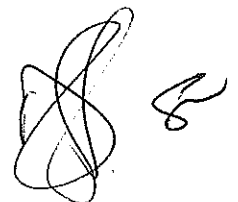
THIRD AND FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

VUSUMUZI MKHIZE

do hereby make oath and state that:

1. I am the Director-General of the Department of Sport, Arts and Culture. ("DSAC"). I am also the designated Information Officer of the DSAC in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000 ("PAIA")).
2. I am authorised to depose to this affidavit on behalf of the Minister of Sport, Arts and Culture.
3. The facts set out in this affidavit are sourced from the information available to me in my capacity as Director-General of the DSAC.
4. Save where the context indicates otherwise, the contents of this affidavit fall within my personal knowledge and are, furthermore, to the best of my belief both true and correct.
5. Where I make legal submissions, I do so on the advice of the DSAC's legal



representatives. I accept such advice as correct.

6. I have read the founding affidavit deposed to on behalf of the applicant by Fatima Hassan, and wish to respond thereto as follows:

7. I will not respond to every allegation of fact or law set out in the founding affidavit. Where those allegations are at variance with any part of this affidavit they should be construed to be denied.

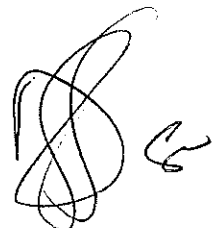
INFORMATION SOUGHT

8. The applicant seeks copies of emails and any other written requests, motivations, and correspondence from either the National Department of Health or National Department of Sport, Arts, and Culture and/or their respective Ministers, Deputy Ministers and /or their Director-Generals and /or Deputy Directors-General sent to-

- (i). the South African Medical Research Council ("SAMRC");
- (ii). the South African Health Product Regulatory Agency ("SAHPRA");
- (iii). the National Coronavirus Command Council ("NCCC");
- (iv). any other statutory or Covid-19 coordinating body in South Africa;
- (v). Ministerial Advisory Committee on Covid-19("MAC") and Ministerial Advisory Committee on Vaccines ("VMAC")

that requested permission to authorise and /or prioritise individuals other than health workers for vaccination under Sisonke Phase 1 programme, including using any stock to vaccinate

- a. Professional athletes, sports people, sports coaches, and sports

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administrators from different sporting codes in South Africa

- b. South African government officials
- c. South African diplomatic staff
- d. Cabinet members.

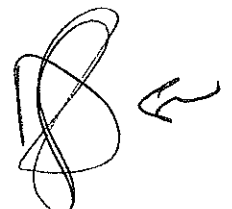
Copies of all respective responses and regulatory and /or other approvals, waivers, or rejections. Copies of all correspondence with

- i. the Department of Sport, Art, and Culture
- ii. any national and international sports bodies and /or
- iii. any local research bodies including any local research ethics committees

relating to the request and approval for professional athletes; sports officials; government officials or other persons to also be offered a vaccine through the Sisonke programme and its stock for the period April to June 2021.

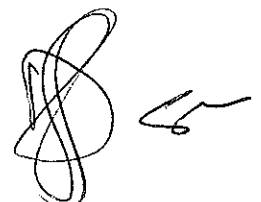
- i. A list of all categories of persons offered and /or administered a vaccine under the auspices of the Sisonke programme and from any of its stock in April-June 2021.
- ii. A copy of the list of all provincial sites where the vaccines were administered for the Sisonke programme and from any of its stock in April-June 2021.
- iii. A list of the sports bodies and codes, government departments, multilateral institutions and /or foreign embassies that participated and the total number of vaccines administered including the gender, disability, age, and occupational breakdown.

9. In this affidavit, I will confine my answer to the issues falling in DSAC's province only.

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I must mention that the request is very expansive in that it covers a wide range of information which fall with the provinces of other departments and institutions.

10. I must state at the outset that the DSAC was not involved in any request, motivation, or administration of vaccines under the auspices of Sisonke programme.
11. The DSAC's role in relations to the vaccine roll-out was a campaign wherein sports personalities and celebrities were invited to promote and encouraged the communities to vaccinate. This was done during the national roll-out programme and not Sisonke phase 1.
12. The DSAC did not request the NDoH to prioritise artists or musicians under the Sisonke or any other programme. Regarding the alleged prioritization of athletes and sports administrators and coaches, the DSAC's role was merely to facilitate the request made by the South African Sports Confederation and Olympic Committee ("SASCOC") to the NDoH for the vaccination of the athletes and sports codes who were going to attend the Olympic and Paralympics in Tokyo in July to September 2021.
13. In this regard, the DSAC received a letter from SASCOC dated 3 May 2021 addressed to me. A copy of the letter is attached hereto and marked "VM1", and the contents therein are self-explanatory. After having considered the contents of the letter, I forwarded same to the NDoH as it is the relevant Department managing distribution and administration of vaccination programme.
14. The DSAC played no role in the matter going forward. Thus, the DSAC has no information requested by the applicant in terms of the PAIA. The DSAC is not in

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possession of any information sought by the applicant. Consequently, it cannot assist the applicant.

AD SERIATIM RESPONSE

AD PARAGRAPH 1 -3

15. Save to deny that the facts are true and correct, I have no knowledge of the balance of the allegations therein.

AD PARAGRAPHS 4 – 10

16. Save to state that a request for records in terms of the PAIA, attached as "HJI 2.1" to the applicant's affidavit, was submitted to the DSAC on 28 July 2021, and the request was not responded to. Subsequently an appeal was lodged by the Applicant on 8 September 2021, which was also not responded to by the Executive Authority. The DSAC has no knowledge of the remainder of the contents of these paragraphs and can therefore neither deny nor admit same.

AD PARAGRAPHS 11- 16

17. I have no knowledge of the contents of these paragraphs and can therefore neither

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deny nor admit same.

AD PARAGRAPHS 17- 23

18. The contents of this paragraph are undisputed.

AD PARAGRAPHS 24 – 57

19. I have no knowledge of the contents of these paragraphs and can therefore neither deny nor admit same.

AD PARAGRAPH 58

20. The contents of this paragraph are undisputed.

AD PARAGRAPHS 59 – 68

21. I have no knowledge of the contents of these paragraphs and can therefore neither deny nor admit same.

AD PARAGRAPH 69

22. The contents of this paragraph are undisputed.

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AD PARAGRAPHS 69.1 AND 69.2

23. The contents of this paragraph have been responded to.

AD PARAGRAPH 69. 3

24. The records requested in this paragraph do not exist. If they exist, the DSAC does not have any knowledge in whose possession or custody these records are.

AD PARAGRAPHS 70 – 72

25. The contents of these paragraphs are undisputed.

AD PARAGRAPH 73

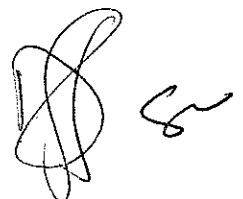
26. I have no knowledge of the contents of these paragraphs and can therefore neither deny nor admit same.

AD PARAGRAPHS 76 – 77

27. The contents of these paragraphs are undisputed.

AD PARAGRAPH 78

28. Save to admit the provisions of section 11 (1) of the PAIA, and state that the DSAC

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does not have and never had the records requested by the applicant.

AD PARAGRAPHS 79- 80

29. The DSAC does not have any record other than the annexure VM1 above.

CONCLUSION

30. Based on the above facts, I submit with respect that the applicant has failed to make a case for the order sought against the DSAC. Thus, the applicant should withdraw the litigation against the DSAC.

31. Failing which the DSAC will submit that the application should be dismissed with costs.

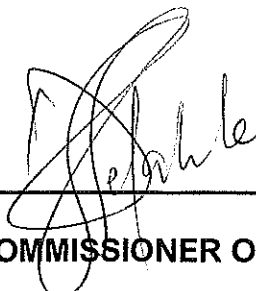
It will be submitted with respect that the principles relating the costs as enunciated in the Biowatch decision are unapplicable in these proceedings.



DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at PRETORIA on this the 14th day of July 2022, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.





COMMISSIONER OF OATHS

Full Names:

Capacity:

DERICK SELAHLE
COMMISSIONER OF OATHS
Practising Attorney
126 Centenary Building
23 Bureau Lane, Pretoria, 0002

Designation:

Address:



VMI



Olympic House | James and Ethel Grey Park
Atholl Oaklands Road | Melrose
P.O. Box 1355 | Houghton, South Africa 2041

Tel: +27 87 351-2082
Fax: 086 607 5547
Email: admin@sascoc.co.za
www.sascoc.co.za

3 May 2021

Mr. Vusumuzi Mkhize
Director General
National Department of Sport, Arts and Culture
Pretoria
0001

Dear DG Mkhize

VACCINATION FOR THE SOUTH AFRICAN OLYMPIC AND PARALYMPIC TEAMS

As you may be aware, a delegation of South Africans will soon be travelling to Tokyo to participate in the Olympic Games (23 July to 10 August 2021), and the Paralympic Games (24 August to 5 September 2021). We are writing on behalf of Team South Africa to motivate that this delegation be vaccinated before their participation at the Games.

The Olympic Games were postponed last year due the Covid-19 Pandemic, which has been significantly disruptive in numerous ways nationally and globally. Thankfully, we seem to be emerging from the crisis and creating a new normal, which includes the resumption of national sport and international competition. With confirmation from the International Olympic Committee (IOC) that the Games will be staged this year, SASCOC has begun a process of engagement and intense preparation to ensure that our athletes and officials remain healthy and minimise risk of illness leading up to and during the Games.

Whilst vaccination is not compulsory for individuals participating in the Games, the IOC has urged that, where possible, Olympic and Paralympic teams be vaccinated given their role as ambassadors of the NOC/NPC and "to promote safe sport as a contributor to the health and well-being of individuals and communities". Many countries have responded to this call, and we ask that the South African Government give this request serious consideration. Specifically, we would like to request that athletes and officials be included in Phase 1b/2 of the Sisonke trial.

While we are aware that the athletes are young and generally well, we ask that you consider the following as motivating factors:

- Athletes are at increased risk due to their high training volumes as well as their travel requirements. Many of them are travelling to final qualification competitions in Africa and Europe, as well as the actual travel to Tokyo itself.
- While there are considerable risk mitigation strategies in place, staying at the Olympic Village will immediately place athletes and officials at risk from other countries and teams given the relatively close contact with these individuals.

BOARD MEMBERS

Mr Barry Hendricks | Ms Lwandile Simelane | Dr Debbie Alexander | Mr Anant Singh | Mr Alan Fritz |
Ms Moekie Grobbelaar | Ms Ilhaam Groenewald | Ms Kim Pople | Mr Qondisa Ngwenya | Ms Ayanda Ngubo |
Ms Mapule Mokoena | Mr Khotso Mokoena



Olympic House | James and Ethel Grey Park
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Fax: 086 607 5547
Email: admin@sascoc.co.za
www.sascoc.co.za

- If any team members contract Covid it will compromise the entire delegation, placing everyone at risk. Should an athlete contract Covid, their immediate team, for example a football or hockey team, or a rowing crew, would have to withdraw into quarantine based on them being close contacts. This would end their chances of participating in the Games.
- Athletes (and their contacts) with Covid would have to isolate at the Village until either they were better (if they had mild disease) or the quarantine period had passed. In the event of more serious illness they would need to be admitted to hospital. Either way it would delay them flying home. There are potential financial and emotional implications to this situation
- The entire scenario would burden the South African Medical Team travelling with the Olympic Team, placing the medical team (and entire delegation) at risk and taking them away from the athletes who are well and able to perform.
- With their permission, the athletes could be used as Ambassadors of our Vaccine Rollout, and positively influence vaccination decisions of friends, family and South African citizens at large.

With this in mind, we would like to motivate for the entire South African Olympic and Paralympic Team to be vaccinated against Covid 19 preferably as soon as possible. The vaccination would need to be done well before they fly to Tokyo, or other international competition in order to ensure they are well and in no way compromised by the vaccine.

We therefore kindly request your good office, Director General, to engage the National Department of Health and plead for our case and consideration in this regard because as a collective, we have a duty of care towards our National Team and Pride.

Your cooperation in this regard will be highly appreciated DG.

Yours Faithfully

Ravi Govender
Acting Chief Executive Officer

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