

DISPUTES

COVID-19 and funerals: What is the legal position?

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Introduction

The highly contagious and even deadly Coronavirus (“**Covid 19**”) has had a devastating impact on the world. In fact, due to the widespread impact and number of people affected globally, the World Health Organisation has declared Covid 19 to be a pandemic.

As a result, on 15 March 2020, President Cyril Ramaphosa (“**the President**”) declared Covid 19 a national state of disaster in South Africa. Following the President’s declaration of a national disaster, the number of reported cases of South Africans testing positive for Covid 19 rapidly increased.

A “national state of disaster” is defined in the Disaster Management Act No 57 of 2002 (as amended), as “*a disastrous event which occurs or threatens to occur in more than one province in South Africa, or a single province which is unable to deal with the disaster effectively on its own*”.

On 22 March 2020, the President announced that a firmer approach to curb the spread of Covid 19 was necessary, by declaring a national lockdown (“**Lockdown**”). The Lockdown has been effective since midnight on 26 March 2020 and will continue to be effective up to (and including) midnight on 30 April 2020, as further extended by the President.

The effect of the Lockdown is that the freedom of movement of people is limited. People are required to remain in their homes at all times, and may only leave their homes should they require essential goods, such as food, or essential services, such as medical attention.

As such, the Lockdown has negatively affected the livelihood of South Africans. An interesting aspect that was of particular concern to the general public was whether or not people may travel across provincial borders to attend a funeral of a loved one.

Recent case law

One day after the declaration of the Lockdown, the Mpumalanga High Court (“**the Court**”) was approached on an urgent basis by Mr Karel Willem van Heerden (“**the Applicant**”). The Applicant sought the Court’s permission, despite the President’s declaration of the Lockdown and the various travel bans that have been implemented as a result thereof, to travel to the Eastern Cape in order to support his mother at the funeral of his late grandfather.

Although expressly sympathetic to the Applicant’s ordeal, the Court dismissed this application.

The Reasons for the dismissal of the application

The prohibition against travelling across provincial borders, amongst other things, are outlined in the Regulations published by the Minister of Cooperative Governance and Traditional Affairs (“**the Cooperative Governance Minister**”). The Regulations outline the various restrictions which are necessary to prevent the escalation of Covid 19 and/or to alleviate, contain and minimise the effects of Covid 19 (“**the Covid 19 Regulations**”).

The Covid 19 Regulations, in essence, restrict movement with the exception of, amongst other things, attending funerals. The main problem in the Applicant's case was that the funeral which he wished to attend was in another province, and the Covid 19 Regulations prohibited travel between provinces.

The Court based its decision to dismiss the Applicant's application on the travel restriction imposed by the Covid 19 Regulations, which apply to everyone who is in South Africa during the Lockdown period.

The Court further emphasised its constitutional duty to apply the law impartially, and that, despite the unfortunate circumstances, it could not authorise a person to break the law.

Amendments to the COVID-19 regulations

However, on 1 April 2020, after the Court had made its decision in the Applicant's case, the Cooperative Governance Minister gazetted amendments to the Covid 19 Regulations. Accordingly, the amended Covid 19 Regulations now provide that movement between provinces and districts is prohibited except for attendance of funerals as provided for and on conditions set out in sub-regulation (8).

Persons attending funerals are now required to obtain permits authorising them to travel across provinces, and they will be expected to produce such permits to police officials at road blocks. In order to obtain these permits, persons must have a death certificate or a certified copy thereof. A permit may be obtained from a Magistrate or Station Commander (or most senior person at the police station).

Commentary

The restrictions imposed by the Covid 19 Regulations have had painful consequences on the Applicant, his family and others in similar positions as the Applicant.

The Court, however, treated Covid 19 with the seriousness it deserves and it followed the letter of the law, rightly so. As a result, the Court's decision may have saved many lives, including the life of the Applicant.

It is, however, worrying that the Covid 19 Regulations have already been relaxed by further amendments in just the first week of the Lockdown. This creates some doubt as to whether the spread of Covid 19 will successfully be curbed speedily, and whether the Covid 19 curve will be flattened by the end of the Lockdown period.

Further, based on coverage in both mainstream media and social media, it is clear that some South Africans are not treating Covid 19 with the seriousness it deserves.

We have seen instances of blatant disregard of the Covid 19 Regulations by those insisting on proceeding with social events (such as a bride and groom who were recorded being arrested on their wedding day over the last weekend), selling or purchasing alcohol and not staying within the confines of their homes, amongst other things. South Africans should take note that non compliance with the Covid 19 Regulations is a crime punishable by a fine and/or imprisonment.

Conclusion

When considering breaking the law by flouting the Covid 19 Regulations by, for example, attending an event, going shopping for non essential items and purchasing or selling alcohol, spare a thought for the law abiding citizen who was prevented from burying his family member in order to protect his own health and the health of others, including yours.

It is imperative that we all rally together, stay within the confines of the law (and our homes) and work towards ending the spread of Covid 19.



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