

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2020/9215

In the matter between:

LERATO MOELA

First Applicant

MATSOBANE SHAUN MATLHWANA

Second Applicant

and

**ADAM HABIB (VICE-CHANCELLOR: UNIVERSITY OF THE
WITWATERSRAND)**

First Respondent

**JEROME SEPTEMBER (DEAN OF STUDENTS:
UNIVERSITY OF THE WITWATERSRAND)**

Second Respondent

JUDGMENT SUMMARY

Background

On 16 March 2020, the University of the Witwatersrand ('the University') directed that all students in residences must vacate the premises within 72 hours. The University's decision was made in response to the SARS-COV-19 ('COVID-19') pandemic, in light of the fact that a medical student at the University had tested positive for the virus. The decision to vacate the residences was challenged on an urgent basis by two law students who occupied the residences.

Issue

The initial relief that the applicants sought was an order directing the University (a) to refrain from evacuating the residence students without satisfying themselves that the students had been tested for COVID-19 and were safe to go home; and (b) to extend the evacuation notice until a mechanism is devised to limit the rapid spread of the virus. The applicants based their relief on the constitutional rights to life and access to health care. They asserted that ordering the evacuation of the residences, without the University taking any precautionary measures, would increase the risk of the further spread of the virus to the students' respective communities in which they reside.

During the course of the hearing, the applicants abandoned the original relief sought, and asked that the Court direct that they be permitted to remain in their residences and self-quarantine. Given that the matter held a wider public interest, the Court determined that it would deal with the relief as originally sought as well as the amended relief sought.

The Court

The Court noted that the applicants had cited the Vice-Chancellor and Dean of Students as the respondents. The decision to vacate the residences had been made by the Senior Executive Team of the University, together with the Chairman of the University's Council. The respondents therefore argued that the relief sought, if granted, could not be implemented by the Vice-Chancellor and Dean of Students. The Court further noted that the applicants did not have the requisite *locus standi* to seek relief on behalf of other students.

The Court detailed the actions taken by the University in response to the COVID-19 pandemic. The University had alleged that the decision to suspend the academic programme and close down the residences, on the advice of their experts, was the best course of action in order to limit the spread of the virus especially because of the viral load at the University, at that stage, being very low.

The medical student attending the University had tested positive for the virus on 15 March 2020. She had been in self-quarantine from 12 March 2020, the date on which she became aware that she had had contact with a person who had tested positive for COVID-19. The student was not housed at any of the University residences.

The University contended, and the Court accepted the submission, that keeping the residences open could very well increase the risk of infections, particularly in light of the fact that trade unions had communicated that workers who ordinarily keep the residences operational had indicated that they would not work at the residences for safety reasons. Dining halls would be closed, and the residences would not be maintained and cleaned.

The University made it clear that it was simply not feasible to have every student at the residences tested, and the Court held same. These residences housed approximately 6 000 students. Only one student had tested positive for the virus. The University did not have the power, obligation, or resources to test all the students at the residences.

The Court held that if the 2 applicants were permitted to remain at the residences, the University would be obliged to extend this option to all students in residence, which would defeat the very purpose of the measure being taken – that is, limiting the spread of the virus. Furthermore, neither of the 2 applicants could demonstrate that they were exhibiting symptoms of COVID-19, or that they had been in contact with the medical student who had tested positive for COVID-19. The applicants did not, under the current dispensation, qualify for a COVID-19 test.

The applicants had alleged that the response of the University to the pandemic was reckless and negligent. On being invited to withdraw this allegation, they did so at the hearing. The Court held that the University had not acted recklessly or negligently; it had acted in line with expert advice and the government's strategy in response to the pandemic, with due regard to the best interests of the University community as a whole. The University had followed the protocols recommended by the WHO, the NICD, the President, and renowned experts in the field.

Accordingly, the application was dismissed, with no order as to costs.

Coram: Weiner J
Heard: 17-18 March 2020
Delivered: 19 March 2020