

**Special feature:**

*Staff experiences of COVID-19  
and living under the lockdown.*

# De Doorns Case Study

By **Matthew December**, Legal Intern – Cape Town



De Doorns is a small agricultural town in the heart of the Hex River Valley, 30 kilometers outside Worcester in the Western Cape. The town is renowned as the country's biggest exporter of table grapes and a large percentage of the population consists of seasonal farmworkers.

The novel coronavirus pandemic struck South Africa during the peak of the local table grape season. The majority of people were working in the refrigerated storerooms and that was certainly a big concern as it is well known that the virus spreads rapidly in cold conditions.

## Critical Agriculture Commodities

After the President announced the lockdown, certain sectors were identified as essential services and were required to operate during the lockdown; the agricultural sector being one of them. The minister published regulations for the operation of the sector and further stated that only those working with "critical agriculture commodities" would be allowed to work during the lockdown.

However, the farmworkers in De Doorns continued working. This was very confusing as it is unlikely

## MAY 2020

- **Special feature** – some of our staff share their lockdown experiences
- **We continue our series of articles dealing with the COVID-19 lockdown**
  - The alcohol ban – is it fair?
  - Limitation of rights and COVID-19

## Write for us



We would like to invite legal practitioners to contribute to our bi-monthly newsletters by writing an article of up to 400 words (one page) on a topical issue of law. Please indicate your interest to the editor at

**[margaret@probono.org.za](mailto:margaret@probono.org.za)**

The deadline for articles for the next issue will be **1 June 2020**.

that anyone would consider table grapes as “critical agriculture commodities”. This means that financial and socio-economic factors were considered in the decision to allow De Doorns’ seasonal farmworkers to continue working. The fact that people were going to be unemployed from June to September (as is the case every year) together with the fact that a large percentage of the crop was earmarked for export, weighed heavily on the side of operation.

However, it could also be seen as an irresponsible decision by the labour department to allow De Doorns farmworkers to continue working given the fact that social distancing is basically impossible while working in those refrigerated cold rooms.

### Community compliance with regulations

The proximity of De Doorns’ township to the town centre is barely 20 metres, however the difference in people’s adherence is shockingly clear.

One example of this is the manner in which the rules on social distancing, wearing of masks and sanitizers were enforced in the town centre and the total disregard therefor in the township where people were collecting food parcels. It seems as if people need to be policed into adhering to the regulations which is really unfortunate as the number of confirmed cases continues to rise in the broader Breede Valley region (of which De Doorns forms part) and the highest concentration of people live in the township, more specifically in the informal settlement called “Lubisi”.

Even more concerning is the fact that Lubisi was the first area where a confirmed case was reported. This area is largely occupied by foreign nationals. This further raises more red flags as many of the people living here are undocumented and often shy away from seeking public medical assistance.



### The rise of the black market

The lockdown came with a ban on the sale of cigarettes and alcohol. This has created an opportunity for illegal and informal traders. The history of De Doorns, like any other small farming town in the Western Cape, has a legacy of the “dop system” where people were partly compensated with alcohol. Therefore, the town has a problem with alcohol and drug abuse. The fact that alcohol and tobacco are not readily available has given birth to a new market of illegal cigarettes being sold at exorbitant prices and the large sale and consumption of home brewed beer.

The demand has become so big that these traders are now charging up to five or six times the price they would normally charge for a packet of illegal cigarettes and are reporting record profits of up to R6,000 for a 50 litre bucket of home-made beer.



This in turn poses another risk for people as indulgence in the abovementioned substances also undermines the lockdown regulations and creates an environment where the virus can spread more rapidly.

### Conclusion

My personal observation in De Doorns has been that the biggest enabler for the virus to spread are the people themselves. Lockdown is a myth in this town, and everyone seems to continue with business as usual, with others using this trying time as an opportunity to make money. One can only hope that lockdown regulations are properly enforced as the circumstances in De Doorns, particularly the working conditions of the seasonal farmworkers, are those in which a virus like COVID-19 can rapidly spread and wreak havoc. ●



# Life in White City, Jabavu, Soweto

By Nkuli Zuke, Receptionist,  
Johannesburg

My experience with this lockdown in my area is traumatic with the number of people who are dying. I worry about how far the infections will escalate and whether there will be a cure anytime soon. I have not experienced much testing in the township and I wonder if testing will ever reach us. There are long queues when we go to buy groceries and stocks are sometimes low. On the issue of food parcels, so many people are in need and have registered to receive parcels but these have not been delivered and I am concerned about how hard it is for people to be locked in their houses without any food. ●



## The dangers of Illegal home brewed alcohol

By Fina Diba, data capturer, Johannesburg

I live in Thokoza on the East Rand. It concerns me that our president is trying to keep us safe but the community doesn't seem to realise that there is a reason for alcohol being banned during the lockdown as people often misbehave when they are drunk. Now that they cannot buy alcohol, many people have started to brew their own illegally. I am worried that this could be very dangerous and will affect their health. A two-litre bottle of this brew costs R20,00 and I have seen many people consuming it. ●



# The alcohol ban: was the decision to ban the sale of alcohol administratively fair?

By: **Matthew December, Legal Intern – Cape Town**

Following the global coronavirus outbreak, President Cyril Ramaphosa announced a nationwide lockdown for two weeks from 26 March 2020. This was done in terms of the Disaster Management Act, and the said lockdown was accompanied by a list of regulations meant to limit the spread of the virus. One of the most controversial regulations was a total ban on the sale of alcohol and cigarettes. This led to a public outcry and frustration which in turn resulted in a few liquor stores in and around Cape Town being looted. The regulations were clearly administrative decisions and as such would have to be in line with the Promotion of Administration of Justice Act (PAJA).

According to PAJA, unless the context indicates otherwise 'administrative action' means any decision taken, or any failure to take a decision -

- (a) by an organ of state, when-
  - (i) exercising a power in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation; or
- (b) by a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision.

This definition has a range of exceptions which the ban does not seem to fall under.

The overriding principle with regard to an administrative decision that materially and adversely affects the public is that an administrator should hold some sort of public inquiry. However, an administrator may deviate from this principle "if it is reasonable and justifiable in the circumstances." In determining whether deviation from the overriding



principle is justifiable and reasonable, the following must be considered: the objects of the empowering provision; the nature and purpose thereof; the need to take the administrative action; the likely effect of the administrative action; the urgency of taking the administrative action or the urgency of the matter; and the need to promote efficient administration and good governance.

This then means that an inquiry must be made into the objects of the Disaster Management Act in order to conclude whether the regulation on the ban of alcohol was fair in terms of PAJA. The preamble of the Act states that it is aimed at providing for "an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters; mitigating the severity of disasters; emergency preparedness; rapid and effective response to disasters and post-disaster recovery; the establishment of national, provincial and municipal disaster management centres; disaster management volunteers; and matters incidental thereto."

Another important principle in determining whether an administrative decision is substantively

and procedurally fair is that an administrator must give reasons for his/her decision. These reasons must also be logical, they must be for a legitimate purpose and be sensible. In this case, the ban on alcohol sales is said to be a measure to enforce social distancing and to minimise travel and human interaction. This surely makes sense with regard to the other regulations and the nature of the pandemic which led to the lockdown.

In conclusion, many of the arguments against the alcohol ban relate to financial, socio-economic and employment factors. However, the decision to ban all alcohol sales seems to be rational and due consideration appears to have been taken. The Gauteng Liquor Board has threatened to take the matter to court. However, the Presidency has asked the Board to hold off on litigation for the matter to be deliberated by the Executive. It will be interesting to see on which grounds the ban on alcohol sales will be challenged and what factors the court will consider in making a final decision on the matter. As such, the doctrine of separation of powers will also be heavily in the spotlight should the matter go the judicial route. ●

# Limitation of Rights and COVID-19

By Nicole Dayanand, Staff Attorney, Durban

Our Constitution was drafted carefully and with great deliberation. In general, our Constitution is a sophisticated piece of legislation. It provides for a number of aspects, all of which are important, but the most well-known chapter is the Bill of Rights. The Bill of Rights is the foundation of our Democracy in South Africa, with Chapter 2 of the Constitution of the Republic of South Africa, 1996 (the Constitution) providing for a wide range of rights, which include the following: freedom of religion, belief and opinion, freedom of movement and residence, freedom of trade, occupation and profession.

Section 36 of the Constitution however provides for the limitation of rights. This means that in some instances the limitation of a right can be considered lawful. For a limitation to be lawful in terms of Section 36 of the Constitution, the requirements are:

- The limitation must apply to all people and not just one person or group;
- The limitation must be reasonable and justifiable in an open and democratic society;
- The limitation must be based on human dignity, equality and freedom.

Section 36 of the Constitution further specifically provides that when limiting rights all relevant factors must be taken into account, including:

- The nature of the right;
- The importance of the purpose of the limitation;
- The nature and extent of the limitation;
- The relation between the limitation and its purpose; and



- Less restrictive means to achieve the purpose.

On 15 March 2020, the President declared a National State of Disaster and subsequently announced a nationwide lockdown for 21 days starting on 26 March 2020. In implementing the lockdown, regulations were put in place for the duration of the lockdown. These regulations limit some basic rights and freedoms as per Section 27(2) of the National Disaster Act 57 of 2002 (the Act). This section states that the President may make regulations concerning inter alia the regulation of traffic, the regulation of movement of persons and goods, the control and occupancy of premises and the suspension or limitation of the sale of alcoholic beverages.

Some examples of the regulations that were implemented are listed below:

- For the period of the lockdown every person is confined to his or her residence, unless strictly for the

purpose of performing an essential service, obtaining an essential good, collecting a social grant or seeking medical attention;

- All businesses and other entities shall cease operation during the lockdown, save for any business or entity involved in the manufacturing, supply or provision of an essential service;
- A maximum of fifty people are allowed at a funeral. Burials or cremations within 24 hours require a permit from the police with a sworn affidavit and supporting letter from a cultural/religious leader;
- The movement of children between co-parents is only permitted if the parent are in possession of a Court Order, a registered parenting plan and a certified birth certificate of the child;
- The sale of clothing and essential goods for the care of toddlers up to 36 months is permitted;

- No person may be evicted from their place of residence for the duration of the lockdown;
- Grocery stores, wholesale markets, spaza/tuck shops and vegetable sellers providing essential goods

may trade with written permission from their municipal authorities.

Section 27(3)(a) of the Act states that these regulations must only be exercised to the extent that it is necessary for the purposes of

assisting and protecting the public.

In response to the nationwide lockdown, an NGO called The Hola Bon Renaissance Foundation brought an urgent application to the Constitutional Court to declare the lockdown unconstitutional (CCT 52/20). The Applicant submitted that, by declaring a lockdown, the President is violating the Constitutional rights of South African citizens including the right to freedom of movement, healthcare and food and that this was an abuse of power. The issue faced by the Court was whether the President acted unconstitutionally by declaring a nationwide lockdown due to the COVID-19 pandemic.

The Constitutional Court dismissed the application and refused to award costs to the NGO. This decision by the Constitutional Court was based on the fact that Section 36 of the Constitution clearly states that our rights in the Bill of Rights may be limited under certain circumstances. Section 27 (2) and (3) of the Disaster Management Act further supports the Court's decision. The President has acted in terms of Section 27(2) by limiting movement and trade and only allowing essential services to carry on business. The lockdown protects the public against the COVID-19 virus and has proven to slow down the increasing rate of infection. At its core our Constitution purports to protect the people of this nation and the President's decision to declare a nation-wide lockdown was made with that core value in mind. ●

