

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 16402/2017

In the matter between :-

THE VOICE OF THE UNBORN BABY NPC

Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

MINISTER OF HEALTH

Second Respondent

In Re:

THE VOICE OF THE UNBORN BABY NPC

Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

MINISTER OF HEALTH

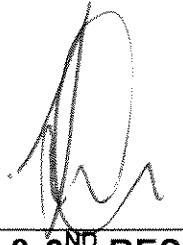
Second Respondent

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**DOCUMENT: FIRST AND SECOND RESPONDENTS'
ANSWERING AFFIDAVIT**

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**TO: THE REGISTRAR
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**AND
TO: APPLICANT'S ATTORNEYS
INGRAM ATTORNEYS
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IN THE HIGH COURT OF SOUTH AFRICA
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CASE NO: 16402/17

In the matter between:

THE VOICE OF THE UNBORN BABY NPC

Applicant

And

MINISTER OF HOME AFFAIRS

First Respondent

MINISTER OF HEALTH

Second Respondent

FIRST AND SECOND RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned;

DR YOGAPRAGASEN GOVINDSAMY PILLAY

do hereby make oath and say:

1. I am employed by the Department of Health as Deputy Director General: HIV and AIDS, TB and Maternal, Child and Women's Health. I am authorised to depose to this affidavit on behalf of the Minister of Health, second respondent. I am also authorised to depose to this affidavit on behalf of the first respondent, the Minister of Home Affairs. The confirmatory affidavit to this effect is attached. The first respondent

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opposes the application on the same grounds that I have set out in this affidavit, and thus it was convenient to confirm the contents herein instead of repeating the same allegations in a separate affidavit. The second respondent also opposes this application on the same grounds. In this affidavit, I refer to the first and second respondent as the state respondents.

2. There are currently two applications before this Court. The main application is brought by the Voice of the Unborn Baby NPC, which is described in the founding affidavit as a non-profit company founded in September 2015.
3. The second application, under the same case number, is launched by Catholic Archdiocese of Durban, which is described in the founding affidavit deposed to by Cardinal Wilfred Fox Napier as a voluntary association. The application by the Catholic Archdiocese of Durban is to intervene in the main application as the second applicant. Thus, in this affidavit, and to avoid confusion, the Voice of the Unborn Baby NPC is referred to as the applicant, and the Catholic Archdiocese of Durban as intervening party.
4. The State respondents do not oppose the intervention of the Catholic Archdiocese of Durban's application to intervene as the second applicant, but oppose the substantive relief sought by the intervening party in the

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notice of motion. A separate affidavit opposing the substantive relief by the intervening party will be filed.

5. The focal point of this affidavit is the founding affidavit of the applicant, deposed to by Sonja Smith-Janse van Rensburg and the expert affidavit of Dr Daniel Johannes Botha.

6. The facts herein contained are within my personal knowledge, unless it is clear from the context that I have no such personal knowledge, and are to the best of my belief both true and correct. I make legal submission in this affidavit on the strength of legal advice that has been obtained from the State respondents legal representatives and I accept the legal advice as sound and correct.

THE RELIEF SOUGHT

7. The relief sought by the applicant in the notice of motion is primarily a declaratory order of unconstitutionality of section 20(1) and 18(1) – 18(3) of Birth and Death Registration Act 51 of 1992 ("BADRA"), as well as the unconstitutionality of regulation 1 of the Regulations Relating to the Management of Human Remains, published by the Minister of Health in the Gazette of 22 May 2013, in terms of National Health Act ("NHA"). Other relief are consequential to the main relief. In essence, the attack on section 20(1) of BADRA is that it does not make provision for the right of

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“bereaved parents” of a dead fetus other than still-born to bury the dead fetus if they so elect. The attack on Regulation 1 of the Regulations Relating to the Management of Human Remains is that the definition of “corpse” and “human remains” in the Regulations does not make provision for the right of the “bereaved parents” to bury the dead fetus other than still-born if they elect.

8. It is contended by the applicant that sections 20(1) read with section 18(1) – 18(3) infringe on the “bereaved parents” constitutional right to dignity, privacy and equality.
9. The State respondents deny that section 20(1) read with section 18(1) – (3), and Regulation 1 of the Regulations Relating to the Management of Human Remains are unconstitutional nor infringing on the “bereaved parents” constitutional right to dignity, privacy and equality.

VIABILITY

10. Viability is a legal concept defined in BADRA. Viability means capable of surviving outside the mother's womb. BADRA posits viability at 26 weeks of gestation. The legal construct of viability at 26 weeks by BADRA is not contested by the applicant. This much is expressed in no uncertain terms in paragraph 19 of the founding affidavit in which the applicant states:

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“(19) The purpose of this application is not to engage the issue of the appropriate gestational age (or body weight) for viability in the South African context. The applicant does not challenge 26 weeks as the benchmark for viability. In the context of spontaneous pregnancy loss, the purpose of this application is to ameliorate the drastically divergent legal effects of miscarriage vis-a-vis still birth from the perspective of the bereaved parent – irrespective of how viability is legally established in current or future legislation.”

11. The applicant’s characterisation of the application as evidenced by paragraph 19 of the founding affidavit is fundamentally flawed. The applicant can find no unconstitutionality in section 20(1) and Regulation 1 without attacking the legal construction of viability in BADRA, particularly when viability as a legal concept was not arbitrarily introduced but was inserted to serve a legitimate purpose. Importantly viability is a critical legal concept which gives meaning to the concept of life and human life. In legal terms, there is no human life in the absence of viability.
12. In paragraph 10 of the founding affidavit the applicant further states that its application does not explicitly or implicitly aim to allocate any legal rights or quasi-rights to a fetus. In essence, the applicant accepts that a fetus does not have legal rights because it is not yet a human being.
13. With these above fundamental concessions having been made by the applicant in the founding affidavit aforesaid, what remains of this application is what the applicant says in the remaining part of paragraph 10 where it says:



“... Rather, this application is grounded on the reality that many expecting parents make a significant emotional investment in their prospective child long before birth and that pregnancy loss consequently has an undeniable negative emotional impact on such bereaved parents. This application focuses on the rights of such bereaved parents.”

14. The foregoing reveals the true nature of this application, which is an application not grounded on law or constitutional infringement but purely on perceived emotional state of “bereaved parents” in the event of pregnancy loss. Thus, this application does not raise any legal issues which require the Court’s consideration. It simply and purely raises moral issues which require debate by society. The issues raised by this application are of no difference to a continuing debate on euthanasia or even on whether death penalty or capital punishment is suited for South Africa or not or whether a referendum should be held on such issues. There are no legal issues which require determination by the Court nor is the Court empowered to impose its value judgment on society on such matters. These are matters which the applicant should put up there for society to debate, and not for the Court to decide.
15. In my respectful submission, once the applicant admits that a fetus has no legal right and that viability is not challenged as prescribed by BADRA, there exists no legal dispute or issue requiring this Court’s determination.
16. Further, the applicant has constructed concepts and definitions which are not legally recognised, such as “bereaved parents” when no child was born alive, or bereaved parents when no viability was realised in terms of

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BADRA, concepts such as child, when there is no child in law prior to 26 weeks of gestation. At inception, one could rather speak of the products of conception and not a child or baby, and burial is in respect if human remains, corpse or dead human body and not a fetus. The rational basis upon which BADRA recognises a burial of a still-born is because the law recognises its viability at 26 weeks, of its ability to survive outside the mother's womb had it not been for the still-birth.

17. The applicant is providing no legal and scientific justification as to why the law should recognise the burial of a fetus of less than 26 weeks upon termination of pregnancy or pregnancy loss save to say that most parents are emotionally attached to their "children" from conception of pregnancy. The mere fact that a prospective mother feels emotionally attached to her pregnancy even if it is still at conception or a mere 2 weeks does not mean that a legal right exists for the prospective mother to bury the fetus even if it means an embryo.

18. In such situations where the law that prescribes viability is not challenged and the gestational age of viability is not attacked, and the non-recognition of a fetus as a person with legal rights is not attacked, the constitutionality of BADRA in not recognising burial of a dead fetus of less than 26 weeks does not arise. As such, the infringement of the prospective parents' dignity, privacy and equality does not arise because section 20(1) is neither unconstitutional nor invalid.

MT ✓

19. Further, a heavy reliance has been placed on the so called expert opinion of Dr Botha in his affidavit. Dr Botha has provided no expert opinion which this Court can competently rely on. Dr Botha is a gynaecologist and obstetrician specialising in reproductive medicine. Dr Botha also does not challenge the legislative gestational age of 26 weeks in BADRA but confirms it. Dr Botha also does not challenge the legal construction that a fetus is not a person and therefore does not have legal rights but confirms it. Dr Botha seeks to express an opinion on the psychological impact of pregnancy loss on the prospective parents, yet he is not a psychologist.
20. His opinion on the possible psychological impact on the prospective parents is thus inadmissible. Even if it was so that is what the prospective parents suffer emotionally and psychologically it still does not give rise to the constitutionality of section 20(1) and Regulation 1. As a result, the expert opinion of Dr Botha is of no evidentiary value and require no contrary expert opinion to counter it. It simply does not assist the Court at all.

THE LIMITATION CLAUSE

21. Section 36 of the Constitution limits the rights in the bill of rights by law of general application. To the extent as contended for by the applicant that the constitutional rights of the "bereaved parents" to bury the fetus have

been infringed, such is limited by the law of general application, which is BADRA which is not unconstitutional taking into account the nature of the right, which is to bury the dead fetus not recognised by law as a corpse or still-born, the importance of the purpose of this limitation, the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.

THE IMPORTANCE OF THE PURPOSE OF LIMITATION

22. First, the law does not recognise a fetus as having legal right, and a fetus below 26 weeks is excluded by law as viability in South Africa. This is not contested.

23. The proviso that the “bereaved parents” should be granted an election if they want to bury or not, does not resolve the pertinent issue of emotional and psychological attachment every bereaved parent is likely to have to the dead fetus thus wishing to bury even when such bereaved parent has no means to ensure a proper disposal of the fetal remains in compliance with the law. The government is in no way able to ascertain in each case as to whether the disposal was done in accordance with the law. Bereaved families can still conduct a ceremony without the right to bury a fetus and can still find closure through proper governmental support such as counselling and the like.

MS

24. It cannot be gainsaid that pregnancy loss irrespective of when it happens unabatedly results in emotional and psychological trauma to the bereaved parents. It is also correct that different "parents" would react differently to the pregnancy loss depending on how much they have emotionally invested on the pregnancy which subsequently terminated. The reasons for the termination also play a role in the emotional state of the parents.
25. However, the emotional trauma experienced by parents is not ameliorated by declaring unconstitutional section 20(1) of BADRA or Regulation 1 of the Regulations. Neither is it ameliorated by permitting the parents to bury the fetus irrespective of whether the pregnancy loss occurred at viability stage, even when recognising that the fetus was not viable at the time of pregnancy.
26. The emotional stress is not ameliorated by the burial per se nor the presence of a casket. The emotional stress is ameliorated by the psychological and counselling support that government makes available to the bereaved parents. If the parents require a ritual or small ceremony and a priest to conduct a small service outside or inside the hospital, the government can provide such support and make that available. It is therefore not correct that the emotional trauma is ameliorated by an actual funeral of a fetus and the presence of a casket.
27. The notion that an order granting bereaved parents who elect to bury the fetus the right to bury does not infringe on other rights already confirmed

MT ✓

by legislation to bury the still born is misguided. It in fact constitutes no election at all because burial is an occasion that carries with it financial responsibility. This means that those who are poor and cannot afford a funeral ceremony and the costs of burial would be forced to make an election not to bury even if their wish is to bury, or they may elect to bury but leave it to the State to carry the costs of the burial. In fact, such an order as sought by the applicant is potentially discriminating against poor parents.

28. I turn to answer paragraph by paragraph the contents of the founding affidavit. My failure to respond to all the paragraphs is not to be construed as an admission but a denial. Before I do so I wish to state that the applicant has not demonstrated its locus standi or a direct and material interest which entitles it to seek the orders in the notice of motion. It seems as if the applicant was created purely for economic interest and to advance a commercial gain by seeking an order permitting burials of fetuses of less than 26 weeks of gestational age. Legal argument will be presented to Court to demonstrate that such an interest is not permissible in the context of section 38 of the Constitution.

29. AD PARAGRAPHS 1 – 4

I have no knowledge of the contents of paragraphs 1 and 2. I deny the contents of paragraph 3. I note the contents of paragraph 4 but dispute the legal contentious advanced and the constitutional challenge.



30. AD PARAGRAPH 5 – 6

I have no knowledge of the contents of paragraph 5. I note the contents of paragraph 6.

31. AD PARAGRAPHS 7 – 8

I admit the contents of these paragraphs.

32. AD PARAGRAPHS 9-10

I note the contents of paragraph 9 and the characterisation of the application. I also note that the application is not premised on the legal principles relating to the pregnancy loss but on the emotional consequences which do not give rise to a constitutional challenge of a legislation. I note the applicants' concession that a fetus does not enjoy legal rights in law.

33. AD PARAGRAPHS 11

I note the contents of this paragraph.

34. AD PARAGRAPHS 12- 13

I note the contents of these paragraphs.

MJ ✓

35. AD PARAGRAPH 14

35.1 I note the contents of this paragraph. In addition, BADRA defines burial to mean “any other mode of burial”.

35.2 Save as aforesaid, any manner of disposition does not preclude the opportunity to perform any mentioned rituals. Consequently, there is no need for a physical body for all the ceremonies and rituals to be performed.

36. AD PARAGRAPH 15

I admit the contents of this paragraph.

37. AD PARAGRAPH 16

The legal definition of still-born in BADRA is not challenged by the applicant.

38. AD PARAGRAPH 17

It is correct that the World Health Organisation (“WHO”) recommends 28 weeks of gestation for purposes of viability. The BADRA has set viability at 26 weeks which is not contested by the applicant as unconstitutional.

39. AD PARAGRAPH 18

I admit the contents of this paragraph.

40. AD PARAGRAPH 19

40.1 The contents of this paragraph flies in the face of the purported constitutional challenge of the provisions of BADRA and Regulation 1, because, the applicant cannot conceivably challenge the constitutionality of the provisions of BADRA without challenging the legal phenomenon of viability in BADRA. BADRA makes it clear as to what can legally be buried and what cannot be buried and the determining factor is the legal phenomenon of viability and not arbitrary construction.

40.2 One does not ameliorate the emotional state of bereaved parents by declaring legislation unconstitutional, but one does so by providing such bereaved parents with the necessary counselling and other forms of support. What the applicant should have investigated is what moral, psychological and other forms of support do government provide the bereaved parents instead of its baseless attack of the legislation. There is nothing wrong with the legislation.

41. AD PARAGRAPH 20

I deny that variability is to be used as a variable content. BADRA currently defines variability at 26 weeks of intra uterine existence. As such viability is constant.

42. AD PARAGRAPH 21

This application is difficult to construct, particularly given the fact that it is not based on the law but on morality. As I have stated above, the issues raised in this application are suited for a societal debate than a Court of law. The Court cannot prescribe to society on such matters.

43. AD PARAGRAPH 22

I deny the contents of this paragraph.

44. AD PARAGRAPH 23

I deny the contents of this paragraph. These allegations are unfounded since there is no study to support the allegations that the position of bereaved parents of induced pregnancy loss mirror the position of the bereaved parents in the miscarriage.

MT

45. AD PARAGRAPH 24

The fact of the matter is that different bereaved families or parents would react differently to pregnancy loss irrespective of the cause of that loss. There can be no generalisation in the absence of comprehensive study to that effect. Be that as it may, it matters not on what state of mind the bereaved parents find themselves for legal purposes because viability is set by legislation and it is not contested.

46. AD PARAGRAPH 25

The applicant understand fetus as anything from conception to live birth, accordingly by fetal remains the applicant is referring to anything from embryo to live birth, meaning that according to the applicant the bereaved parents should be allowed to bury an embryo if they so wish and denying them to do so is unconstitutional. Such a proposition with respect is absurd and legally untenable.

47. AD PARAGRAPH 26

I deny the contents of this paragraph. There is no legal basis for this proposition by the applicant particularly given that the applicant does not challenge BADRA on the mandatory burial of a still-born.

MT ✓

48. AD PARAGRAPH 27

I deny the contents of this paragraph. No human rights infringement is implicated in this application.

49. AD PARAGRAPH 28

I deny the contents of this paragraph.

50. AD PARAGRAPH 29

I deny the contents of this paragraph. There is a clear legitimate purpose that is served by BADRA. Importantly is to confine burial to human remains, corpse and still born, which is determined by viability.

51. AD PARAGRAPH 30

I deny the contents of this paragraph.

52. AD PARAGRAPH 31

No case has been made out for such relief.

NT ✓

53. AD PARAGRAPH 32

The contents of this paragraph are hypothetical and speculative. In any event they add nothing to the application.

54. AD PARAGRAPH 33

I admit the contents of this paragraph.

55. AD PARAGRAPH 34

I admit the contents of this paragraph.

56. AD PARAGRAPH 35

I deny the contents of this paragraph. There is no paradox at all.

57. AD PARAGRAPH 36

I deny that the definition of still-birth posits the still-born as a dead child. This is so because the definition posits the still-born child as a child who showed no sign of life after complete birth.

MT ✓

58. AD PARAGRAPH 37

The applicant in fact admits that a fetus does not have a legal status, yet seeks an order that a legislative prohibition of burying a fetus of less than 26 weeks on pregnancy loss is unconstitutional.

59. AD PARAGRAPH 38

I note the contents of this paragraph.

60. AD PARAGRAPH 39


I deny that termination of pregnancy would qualify as still-birth. Termination of pregnancy presumes that the fetus is still alive and therefore cannot be a still-born. In any event, this debate is unnecessary because COTOPA deals with termination of pregnancy and its provisions are not a subject of legal challenge in this application.

61. AD PARAGRAPH 40

I deny the contents of this paragraph.

62. AD PARAGRAPH 41

I deny the contents of this paragraph. COTOPA deals with issues of termination of pregnancy.

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63. AD PARAGRAPH 42

I admit the contents of this paragraph.

64. AD PARAGRAPH 43

I admit the contents of this paragraph.

65. AD PARAGRAPH 44

I admit the contents of this paragraph.

66. AD PARAGRAPH 45

I admit the contents of this paragraph.

67. AD PARAGRAPH 46

I admit the contents of this paragraph, as long as the induced pregnancy loss occurs prior to 26 weeks, there was no viability as contemplated in BADRA.

68. AD PARAGRAPH 47

I admit the contents of this paragraph.

MT 

69. AD PARAGRAPH 48

There is no misalignment between the Regulations and BADRA.

70. AD PARAGRAPH 49

I admit the contents of this paragraph.

71. AD PARAGRAPH 50

Whilst I agree that the regulations do not include still-born fetus in the definition, the regulation does not exclude still-born specifically.

72. AD PARAGRAPH 51

The contents of this paragraph are argumentative and accordingly denied.

73. AD PARAGRAPH 52

The contents of this paragraph are argumentative and are therefore denied.

74. AD PARAGRAPH 53

The regulations do not deal with burial, BADRA deals with burial. As a result, the contents of this paragraph are misguided.



75. AD PARAGRAPH 54

It is correct that BADRA regulates burials and not the regulations.

76. AD PARAGRAPH 55

The NHA does not deal with the issue of fetus at all. Therefore, the argument that the regulations do not make provision for the burial of fetuses is absurd.

77. AD PARAGRAPH 56

The constitutional challenge is misguided and informed by abstract and not legal considerations.

78. AD PARAGRAPHS 57

I deny the contents of this paragraph. Dead fetuses either fall within the pre-viability or post viability stage. As a matter of law those that fall within the pre-viability stage are incinerated as medical waste.

79. AD PARAGRAPH 58- 62

The contents of these paragraphs are admitted.

A handwritten signature or set of initials, possibly 'MS', with a checkmark-like stroke extending upwards and to the right.

80. AD PARAGRAPH 63

I deny the contents of this paragraph. The object of the National Standards is to ensure strict compliance with the management of health care risk waste. In this regard, there are no safeguards to ensure that waste is correctly handled and disposed of should parents be given fetal remains. The object of the National standards is therefore not about undesirability but about health and safety in relation to the handling of health care risk waste.

81. AD PARAGRAPH 64

I note the contents of this paragraph.

82. AD PARAGRAPH 65

I deny the contents of this paragraph. The National Standards does not concern itself with viability but with the handling of health care risk waste.

83. AD PARAGRAPH 66- 68

The so called expert opinion do not take the applicant's case any further. Dr Botha sought to express an opinion on matters in which he is not an expert. I have dealt with that above. The expert opinion of Dr Oliver and Reverend Klopper also do not take the applicants case any further. The issue in this application is whether or not the applicant has made out a case for the declaration of unconstitutionality of BADRA and the regulations and it has not.



84. AD PARAGRAPH 69- 74

I deny the contents of these paragraphs for the following reasons:

- 84.1 The experts by their very profession and profile only deal with cases of wanted pregnancies. This is so because, they are in private practice of sorts. This means that they cater for only a specific profile. Their own expert in annexure Smith 2 paragraph 34 admitted that whilst the experience of loss of pregnancy at early stage and late stage is similar, this observation cannot be generalised.
- 84.2 The availability of 4D technology is not general and therefore the conclusions drawn cannot be generalised. Moreover, the profile of the people that access the 4D technology has not been explained. It is my assumption that these are the people that are excited at being pregnant, financially able to handle the burden of pregnancy and would be excited at any stage of the pregnancy. Therefore, the loss of pregnancy for this category may be expected to be devastating.
- 84.3 There is no clear basis as to why the imputation of grief to expecting parents would be only to wanted pregnancies. Anecdotally, it can be said that even those that did not plan for



pregnancies would want the pregnancy on discovering their pregnant state and would also go through the same level of grief. The reason for this is because parents have the right to choose in terms of COTOPA.

84.4 Furthermore, even people who have chosen to terminate their pregnancies according to COTOPA, still go through the same level of grief. Therefore, grief cannot be used as an independent reason against the provisions of BADRA. Annexed refer to annexure "LO4".

85. AD PARAGRAPH 75

I deny that incineration precludes the opportunity for a ceremony as incineration is becoming broadly accepted in practice.

86. AD PARAGRAPH 76- 78

I deny the contents of this paragraph. Sufficient directed counselling can achieve the same result. In addition, burial itself cannot fulfil the functions as explained in this paragraph.



87. AD PARAGRAPH 79

I note the contents of this paragraph. The interest of the bereaved parents should be weighed against the interests of society. In this regard I repeat the contents of paragraph 83.

88. AD PARAGRAPH 80

The right to human dignity, whilst it entails the protection of person's autonomy cannot outweigh the public interest. In this regard, the relevant statutes regulate aspects of human conduct that have an impact on society.

89. AD PARAGRAPH 81

I deny the contents of this paragraph.

90. AD PARAGRAPH 82- 83

I deny that category B includes induced pregnancy loss post 26 weeks gestation. The word "bereaved parents" is a relative word, it cannot be used carelessly.

91. AD PARAGRAPH 84

I note the contents of this paragraph. However, the duty to bury in category B does not exist in law. in any event this is a moral issue and not a legal issue.

MSK

92. AD PARAGRAPH 85

I deny the contents of this paragraph. Viability has already been defined as a specific time in the development of the fetus and because of this the issue of social construct falls outside the definition because it is non-scientific. By the experts' own admission if a person who wanted a child, such person would as far as she is concerned deem proof of pregnancy as viability.

93. AD PARAGRAPH 86- 89

I deny the contents of this paragraph. Further arguments will be advanced at the hearing of this application.

94. AD PARAGRAPH 90

I note the contents of this paragraph.

95. AD PARAGRAPH 91

BADRA does not concern itself with induced pregnancy post 26 weeks gestation.

96. AD PARAGRAPH 92

I note the contents of this paragraph.



97. AD PARAGRAPH 93- 94

I deny the contents of these paragraphs.

98. AD PARAGRAPH 95

There is a legitimate governmental purpose that is served by the legal prohibition of burial of fetus less than 26 weeks of gestational period.

99. AD PARAGRAPH 96- 97

I deny the contents of this paragraph.

100. AD PARAGRAPH 98- 101

I deny the contents of this paragraph.

101. AD PARAGRAPH 102- 110

There is no policy of government on management of Birth Under 26 weeks of gestation. As pointed out in the paragraph, the document referred to is a draft which was never discussed internally or at all. It remains what it is, a draft that has never been processed. Even if it was processed, it could not be adopted because it contradicts BADRA.



102. AD PARAGRAPH 111

The applicant is not entitled to any declaratory order.

103. AD PARAGRAPH 112

Section 20 (1) of BADRA is not unconstitutional.

104. AD PARAGRAPH 113

There is no legal basis for Parliament to be directed to revise BADRA because there is nothing unconstitutional about BADRA.

105. AD PARAGRAPH 114- 120

There is no legal basis for the relief sought in these paragraphs.

106. AD PARAGRAPH 121- 122

I deny that the Applicant is entitled to the relief sought.

107. AD PARAGRAPH 123- 124

I deny that the Applicant is entitled to the relief sought.



CONCLUSION

For the above reasons, it is prayed that the application be dismissed with costs, such costs to include the costs consequent upon the employment of three counsel.



DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at MS 24TH PRETORIA on this the 24TH day of **NOVEMBER 2017**, the regulations contained in Government Notice NO. 1648 dated 19 August 1977 (as amended) having been complied with.



COMMISSIONER OF OATHS

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit.

The Commissioner does not have any objection to taking the oath; and the deponent understands the oath to be binding on his/her conscience.

The oath was sworn to and signed before me at PRETORIA on this 24TH day of NOVEMBER 2017 and the administering of the oath complied with the regulations contained in Government Gazette No. R1256 of 21 July 1977, as amended.

JOHN MEEGANE
COMMISSIONER OF OATHS
(Full names)

012 357 3708
Telephone number

John Meebane
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