

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA

CASE NO.: 353/2022

BEFORE THE HONOURABLE MADAM JUSTICE NONCEMBU

On the 27th day of July 2023

IN THE MATTER BETWEEN:

SOMA INITIATIVE (PTY) LTD

Applicant

and

THE PREMIER EASTERN CAPE PROVINCIAL GOVERNMENT

First Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
HEALTH, EASTERN CAPE**

Second Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
EDUCATION, EASTERN CAPE**

Third Respondent

**THE MINISTER OF PUBLIC SERVICE AND
ADMINISTRATION OF THE REPUBLIC OF SOUTH
AFRICA**

Fourth Respondent

ALEXANDER FORBES HEALTH (PTY) LTD Fifth Respondent

PROACTIVE HEALTH SOLUTIONS (PTY) LTD Sixth Respondent

THANDILE HEALTH RISK MANAGEMENT (PTY) LTD Seventh Respondent

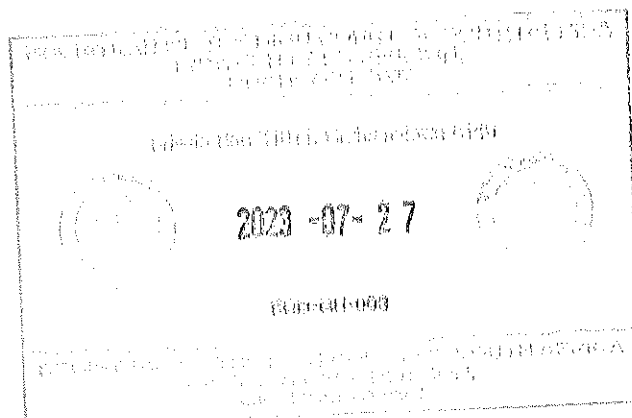
**MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE AND TRADITIONAL
AFFAIRS, EASTERN CAPE** Eighth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
COMMUNITY SAFETY, EASTERN CAPE** Ninth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, ENVIRONMENTAL
AFFAIRS AND TOURISM, EASTERN CAPE** Tenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
HUMAN SETTLEMENTS, EASTERN CAPE** Eleventh Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
PUBLIC WORKS AND INFRASTRUCTURE,
EASTERN CAPE** Twelfth Respondent



**MEMBER OF THE EXECUTIVE COUNCIL FOR
RURAL DEVELOPMENT AND AGRARIAN REFORM,
EASTERN CAPE**

Thirteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
SOCIAL DEVELOPMENT, EASTERN CAPE**

Fourteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR SPORT,
RECREATION, ARTS AND CULTURE, EASTERN CAPE**

Fifteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
TRANSPORT, EASTERN CAPE**

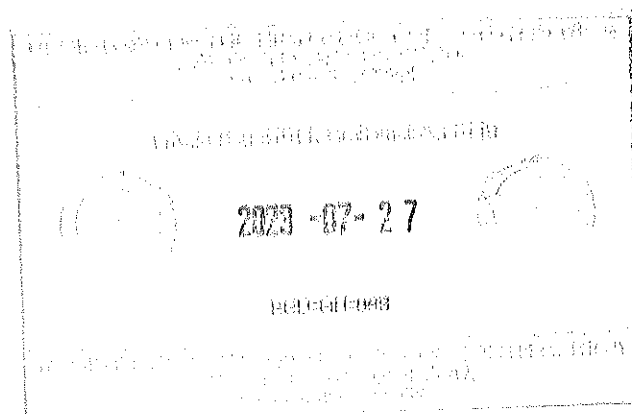
Sixteenth Respondent

**PROVINCIAL TREASURY DEPARTMENT FOR THE
EASTERN CAPE**

Seventeenth Respondent

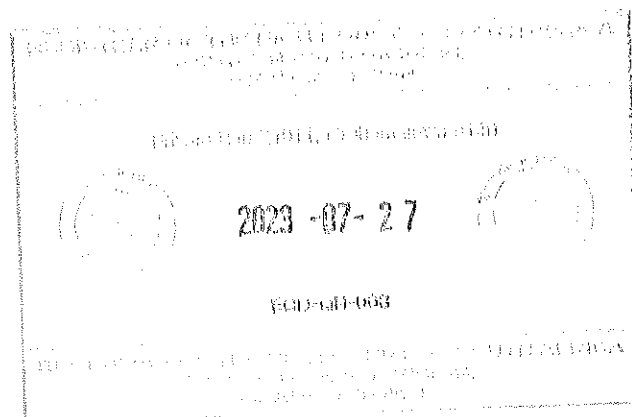
ORDER

Having heard Adv. Buchanan (SC), Counsel for the Applicant and Adv. Rorke (SC), Counsel for 1st to 3rd and 8th to 17th Respondents and Adv. Mullins, Counsel for the 5th Respondent and Adv. Erasmus (SC), Counsel for the 4th Respondent and having read the documents filed of record

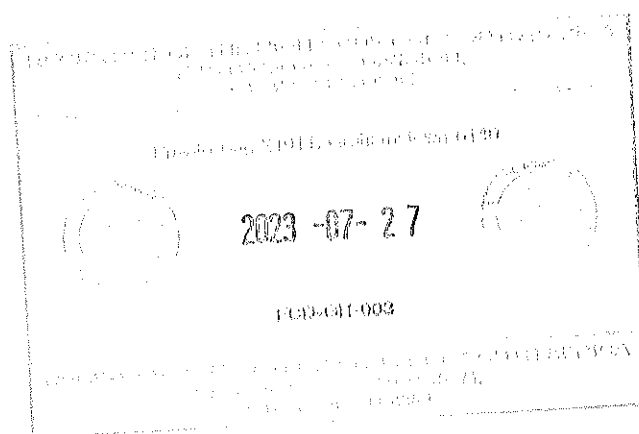


IT IS ORDERED (it being recorded for the sake of clarity that this order is not by agreement between the parties) **THAT:**

1. The decision by the First to Third and Eighth to Seventeenth Respondents to appoint the Fifth Respondent ("*Alexander Forbes*") as the Health Risk Manager for the period 1 January 2022 (for a period of 36 months) to 31 December 2024 in respect of the Eastern Cape is declared to be unlawful, invalid and is set aside in terms of Section 172(1)(a) of the Constitution ("*the declaration of invalidity*").
2. This declaration of invalidity is suspended pending the finalisation of the process as set out below.
3. The remaining relief sought in Part B of this application is be and is hereby postponed *sine die*.
4. The legal representatives of the Applicant, First to Third and Eighth to Seventeenth Respondents ("*the State Respondents*") together with the legal representatives of Alexander Forbes and the Fourth Respondent ("*the DPSA*") shall, within 20 days of this order, exchange their written proposals regarding what they propose would be just and equitable relief in terms of Section 172(1)(b) of the Constitution pursuant to the declaration of invalidity.



5. The legal representatives of the State Respondents, Alexander Forbes and the DPSA respectively shall meet with the legal representatives of the Applicant within 25 days of this Order in order to attempt to seek an agreement relating to what would be just and equitable relief in terms of Section 172(1)(b) of the Constitution pursuant to the declaration of invalidity. In the event that such an agreement is reached, the parties may approach the Court and seek such further relief as has been agreed between them within 10 days of that meeting of the parties, or so soon thereafter as the matter may be set down and heard.
6. The process set out in paragraphs 4 and 5 above will be conducted on a "*without prejudice*" basis.
7. Failing an agreement on a satisfactory outcome within the 25 day period referred to in paragraph 5 above the matter will be set down for a hearing relating to what would be just and equitable relief in terms of Section 172(1)(b) of the Constitution pursuant to the declaration of invalidity. In the event that an agreement cannot be reached:
 - 7.1. The Applicant may deliver a supplementary affidavit within 10 days of the expiry of the 25 day period referred to in paragraph 5 above.



- 7.2. The Respondents may deliver, within 10 days of the delivery of the Applicant's supplementary affidavit or if no such supplementary affidavit is delivered, within 20 days after the expiry of the 25 day period referred to in paragraph 5 above, a supplementary affidavit (if any).
- 7.3. The Applicant may deliver a supplementary responding affidavit within 10 days of the delivery of the Respondents' supplementary affidavits, if any.
8. The supplementary papers described in paragraph 7 above shall deal only with the just and equitable relief in terms of Section 172(1)(b) of the Constitution pursuant to the declaration of invalidity.
9. The costs occasioned by this postponement and the hearing of the matter on 27 July 2023 shall stand over for later determination.
10. A copy of this order shall be served on the Sixth and Seventh Respondents by the Applicant's attorney of record as soon as possible after the granting of this order.

BY ORDER OF THE COURT



N.N. NGOENZI
REGISTRAR
WHITESIDES

