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`Covid-19 Litigation – Business - CIPC certificate

Businesses no longer need State of Disaster licences to operate

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Businesses are now free trade with only their self-issued permits, and without government licences relating to the State of Disaster.

While several types of businesses, as announced in the Level 3 regulations, remain prohibited, all other businesses are free to operate without first obtaining some new government licence from national, provincial, or local government, or any other organ of state.

This is according to a recent judgment in favour of business group Sakeliga who filed a case in the High Court against President Cyril Ramaphosa and eight others.

“The applicant sought a declaratory order that the sixth respondent (the Commission for Intellectual Property and Companies) has no authority to issue ‘Essential Service Permits/Certificates’ to enable any company or close corporation to conduct essential or permitted services in terms of the regulations issued under the Disaster Management Act 57 of 2002 (the so-called Level 4 regulations), and further ancillary declaratory orders,” read part of the judgment.

However, the department of trade and industry and the CIPC had already announced the withdrawal of the CIPC certificate system on Sunday.

The judgment, which was awarded with costs, set aside “the unwithdrawn regulations by the minister of small business development” as well as what Sakeliga calls the unlawful status of any would-be CIPC certificate enforcement.

“The court case is a victory for freedom to do business in South Africa. Under the guise of a medical crisis, the state was implementing a general system of business licencing in South Africa,” said Sakeliga CEO Piet le Roux in a statement.

“Through uncertainty and red tape, government severely restricted businesses’ ability to operate even when permitted under the often arbitrary and harmful regulations. Especially hard-hit were businesses not registered with the CIPC (most businesses in South Africa), chiefly small and medium-sized enterprises, such as sole-proprietors of all stripes, including so-called informal traders,” added Le Roux.

With regard to the withdrawal of the CIPC certificate system on Sunday, the judge found that there exists no legal requirement to have or produce a CIPC certificate: “No enforcement officer is therefore entitled to demand the production of a CIPC certificate by any business, whatever the nature of the business, and will act unlawfully if he does so or if he or she arrests or fines or takes any action against a person for failing to produce such certificate.”

Le Roux maintains that business licencing is as unacceptable now as it was in 2013 when then Minister Rob Davies attempted to develop and pass a Business Licensing Act: "Just as there is no justification for requiring government permission before consumption, so there is no justification for requiring government permission before production."

"Regrettably, much that is arbitrary and harmful in the State of Disaster regulations remain even after this judgment," Le Roux says. "Several types of businesses are still unreasonably excluded from doing business. This and much more must be tackled, and many are working to correct it through litigation and otherwise. We wish them all the best and will continue to do our best too."

Sakeliga points out that, as concurred by the state's attorney during court proceedings, businesses and persons who suffered or suffers harm because of unlawful requirements, such as to produce CIPC certificates, could consider suing for damages.

"Sakeliga wishes to thank its members, the public, and all business owners who supported this application – including those who served as deponents for supplementary affidavits. Ultimately, this victory belongs to them," concluded the organisation's statement.