

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE CCT

In the application:

THE BLACK SASH TRUST Applicant

and

THE MINISTER OF SOCIAL DEVELOPMENT First Respondent

**CHIEF EXECUTIVE OFFICER OF THE SOUTH
AFRICAN SOCIAL SECURITY AGENCY** Second Respondent

SOUTH AFRICAN SOCIAL SECURITY AGENCY Third Respondent

THE MINISTER OF FINANCE Fourth Respondent

NATIONAL TREASURY Fifth Respondent

CASH PAYMASTER SERVICES (PTY) LTD Sixth Respondent

THE INFORMATION REGULATOR Seventh Respondent

NOTICE OF APPLICATION

KINDLY TAKE NOTICE the Black Sash Trust (the Applicant) hereby applies for orders
in the following terms:

- 1 The Applicant's failure to comply with the time limits and process prescribed by the Rules of this Court is condoned, and this application is dealt with as a matter of urgency.

- 2 The Applicant is granted direct access to this Court for the purposes of applying for the relief set out in paragraphs 3 to 13 below.

- 3 The South African Social Security Agency ("SASSA") is forthwith to file with the Court a report on affidavit in which it states how it proposes to award an "interim" contract with Cash Paymaster Services (Pty) Ltd ("CPS") or any other person for payment of social grants after 31 March 2017 in a lawful manner, having regard to the provisions of section 217 of the Constitution and the relevant statutory provisions in that regard.

- 4 It is declared that CPS is under a duty to act reasonably, with due regard to its constitutional obligations arising from the history of this matter and the fact that grant beneficiaries are dependent on it for the achievement of their constitutional rights, in negotiating and contracting with SASSA for the purpose of making payments to grant beneficiaries after 31 March 2017.

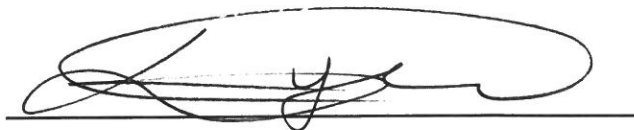
- 5 Any such contract must:
- a. contain adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants or any other purpose sanctioned by the Minister in terms of sections 20(3) and (4) of the Social Assistance Act 13 of 2004.
 - b. provide that personal information of beneficiaries is the property of SASSA;
 - c. provide that such personal information shall at the end of the contract be given to SASSA, and removed from the possession of CPS, its parent company and all its affiliate companies, except where such a company and a beneficiary have a continuing contractual relationship.
 - d. preclude a contracting party from inviting beneficiaries to “opt in” to the sharing of their confidential information for the marketing of their goods and services.
- 6 The Minister of Social Development (“the Minister”) and SASSA are to file reports on affidavit with this Court on or before a date determined by the Court, on what steps they have taken, what steps they will take, and when they will take each such future step, to ensure that the payment of all social grants is made when they fall due after 31 March 2017.

- 7 If any material change arises in relation to circumstances referred to in a report referred to in paragraph 6, the Minister and SASSA are required forthwith to report on affidavit to the Court and to explain the reason for and consequences of such change.
- 8 The Minister and SASSA are to file reports on affidavit with this Court on a quarterly basis, commencing on the date of this order, setting out how they plan to ensure the payment of social grants after the expiry of any “interim” contract, what steps they have taken in that regard, what further steps they will take, and when they will take each such future step, so as to ensure that the payment of all social grants is made when they fall due after the expiry of any “interim” contract.
- 9 The reports filed by the Minister and SASSA as contemplated in paragraph 8 shall include, but not be limited to, the applicable time-frames for the various deliverables which form part of the plan, whether such time-frames have been complied with, and if not, why that is the case and what will be done to remedy the situation.
- 10 If any material change arises in relation to circumstances referred to in a report referred to in paragraphs 8 or 9, the Minister and SASSA are required forthwith to report on affidavit to the Court and to explain the reason for and consequences of such change.

- 11 It is declared that SASSA is under a duty to ensure that the payment method which it determines:
- a. contains adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants or any other purpose sanctioned by the Minister in terms of sections 20(3) and (4) of the Social Assistance Act 13 of 2004;
 - b. provides that personal information of beneficiaries is the property of SASSA;
 - c. provides that such personal information in the possession of a third party shall at the end of the relevant contract be given to SASSA, and removed from the possession of that third party and its affiliates.
 - d. precludes a contracting party from inviting beneficiaries to “opt in” to the sharing of their confidential information for the marketing of their goods and services.
- 12 The Minister, SASSA, and any person opposing this application are ordered to pay the costs of this application jointly and severally, the one paying, the other to be absolved.
- 13 Further or alternative relief.

TAKE NOTICE FURTHER that if you wish to file an answering affidavit in this application, you are required to do so by not later than 10h00 on Monday 6 March 2017, or within such other time as may be directed by the Chief Justice or the Court.

Dated at **JOHANNESBURG** on the 28th day of February 2017.



CENTRE FOR APPLIED LEGAL STUDIES

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Ref: BHR/0062/NN

**TO: REGISTRAR OF THE ABOVE HONOURABLE
COURT, BRAAMFONTEIN**

AND TO: STATE ATTORNEY, JOHANNESBURG

**First Respondent: Minister of Social
Development**

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**Second & Third Respondents: CEO of the South
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**Fourth & Fifth Respondents: Minister of Finance
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**AND TO: THE INFORMATION REGULATOR (SOUTH
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