

Double-blow for South Africa's lockdown rules – Business Tech

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South Africa's courts have dealt a double-blow to the country's lockdown rules this week, with more provisions set to be challenged in the coming weeks as the [ban on the sale of tobacco products](#) heads to court.

On Monday (1 June) the Gauteng High Court ruled in favour of business group Sakeliga after it challenged the regulations requiring essential services to register with the Commission for Intellectual Property and Companies (CIPC).

Under level 4 lockdown regulations, only essential services were allowed to operate and required a permit in order to verify their essential services status.

While this is no longer the case at alert level 3, on 12 May the minister of Small Business Development, Khumbudzo Ntshavheni, published a directive stating that a number of the country's small businesses will need a permit or licence – issued in terms of the Business Act – to operate lawfully.

In its ruling, the court found that there exists no legal requirement to have or produce a CIPC certificate.

“The possibility that the whole of the country, or specific parts thereof, may be returned to Level 4 or Level 5, is at this stage mere speculation. It may happen or it may not,” the court said in its ruling.

“There is currently no provision or need for the issuing of CIPC certificates, even if the issue thereof was previously lawful.

“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 any person for failing to produce such a certificate.”

South Africa's lockdown regulations are invalid and unconstitutional: High Court – Business Tech 2 June 2020

The alert level 3 and alert level 4 lockdown regulations have been declared invalid and unconstitutional by the Gauteng High Court.

The Ministry in the Presidency said in a media statement it has noted the ruling delivered by the High Court on 2 June 2020.

The Gauteng High Court suspended the declaration of invalidity of the regulations for 14 days, meaning that the level 3 regulations remain in effect for now.

The court has directed the Minister of Cooperative Governance and Traditional Affairs (COGTA), in consultation with other ministers, to amend, review, and republish the regulations.

This must be done with due consideration to the limitation each regulation has on the rights guaranteed under the Bill of Rights.

The Government Communications and Information Systems (GCIS) said the Cabinet will study the judgement on alert level 3 and alert level 4 regulations.

The court action was brought by was brought by Reyno Dawid de Beer and the Liberty Fighters Network, according to The Citizen, and related to certain regulations that were put forward where rationality was questioned.

Similar court action was launched by the DA, which said that regulations have been forced on the population, but have not been subject to any safeguards that are usually in place.

Specifically, COGTA could put regulations in place without comment or oversight from parliament, and did not have to provide any reasoning as a basis.

While the High Court found that the declaration of the state of disaster in the country was rational, there were numerous regulations that did not pass the “rationality test” of serving government’s stated goal of preventing the spread of Covid-19.