A simplified explanation of the De Beer Judgment by Adv Nadene Badenhorst

1) The Court was satisfied that there was enough reason for Government to have declared a national state of disaster. (Note the Court did not deal with the issue of whether the NCCC is a valid structure).

2) However, that does not mean that Government can bulldoze over fundamental rights. The end does not justify whatever means.

3) The means (regulations) used to achieve the end (flattening the curve, so our health system can cope with the fall-out of the virus) must be constitutional. This implies that the means must be rational (there must be a rational connection between every particular regulation, and Government's objective). It must also be proportional (go no further than what is absolutely necessary to achieve the objective.)

4) Many of the regulations are neither rational nor proportional, e.g. restriction on exercise times; people can walk on the prom but not on the beach; fact that hairdressers - even with appropriate protocols in place - can't work and not feed their children, but people squeeze together in taxis; fact that you can't visit your friend or family member when they're on death's door , but 50 people can gather for a funeral once the person is already dead. (The Court mentioned other examples as well).

5) Some of the regulations make sense and still stand, e. g. the cautionary regulations relating to education, prohibitions against evictions, initiation practices, and the closure of night clubs, fitness clubs and borders. But many regulations don't and are 'disconnected' from Government's stated objective. (Note that the Court didn't deal with the tobacco issue because that is coming up in a separate court case).

6) AS A RESULT, Lockdown Regulations for Levels 4 and 3 are declared unconstitutional.

7) Government is given 14 business days to go back to the drawing board, carefully consider what is actually necessary to achieve Government's objective, and then write regulations which will not just run roughshod over people's fundamental rights.

8) In meanwhile, the Level 3 regulations stand - but only for 14 business days.

9) Note the judgment didn't deal with Directives issued by various Ministers in terms of the Regulations, but the principle remains - every Clause therein needs to be rationally connected, and proportional, to the end goal. As such, the unconstitutionality of the Level 4 and 3 Regulations may well have a knock-on effect on some of these Directives that may have to be reviewed as well (or are open to similar legal challenge).

Another very well-considered, timely and brave judgment that sets good legal precedent!