Original KNV

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC Case No.: CCT _____ / 2026

GP Case No.: 2024-148142

In the matter between:

SAKELIGA NPC	Applicant
and	
PROPERTY PRACTITIONERS' REGULATORY AUTHORITY	First Respondent
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
NATIONAL PROPERTY FORUM	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2026 -09- 29
Z. APPEL
REGISTRAR'S CLERK
GRIFFIER VAN DIE HOË HOF
SUID-AFRIKA, GAUTENG AFDELING

NOTICE OF MOTION: APPLICATION FOR CONFIRMATION AND LEAVE TO APPEAL

TAKE NOTICE that in accordance with section 172(2)(d) of the Constitution of the Republic of South Africa, 1996, read with section 15(1)(b) of the Superior Courts Act 10 of 2013 and rule 16(4) of this Court's Rules, the applicant intends to apply to this Court for an order in the following terms in relation to the judgment and orders of the Gauteng Division of the High Court, Pretoria, under case number 2024-148142 handed down on 8 September 2026, hereinafter referred to as "the Order":

1. That leave to appeal is granted to the Applicant to appeal against the judgment and order of High Court to the extent that the Applicant's challenge to paragraphs (a)(iv), (b) and (c) of the definition of "property practitioner" in

section 1 of the Property Practitioners' Act, 22 of 2019 be declared inconsistent with the Constitution and invalid.

2. That costs of this application shall be costs in the cause.

3. That paragraph 2 of the Order be varied to read as follows:

"Paragraphs (a)(iv), (b), and (c) of the definition of "property practitioner" in s 1 of the Property Practitioners Act 22 of 2019 are declared inconsistent with the Constitution and invalid."

4. That paragraph 5 of the Order declaring section 50(a)(x) of the Property Practitioners Act 22 of 2019 inconsistent with the Constitution and invalid, is confirmed;

5. The costs of this application and the appeal are to be paid by the first respondent, including the costs of two counsel where so employed;

6. Granting further and/or alternative relief,

and that the accompanying affidavit of **TOBIAS VIVIAN ALBERTS** will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed the address of its attorneys of record set out below at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application, you are required:

(a) To notify the applicant's attorneys in writing on or before **16 October 2026**; and

(b) Within 15 days after you have so given notice of your intention to oppose the application, to file your answering affidavit, if any;

and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that if no such notice of intention to oppose is given, the applicant will request the Registrar to place the matter before the Chief Justice to be dealt with in terms of Rule 11(4).

DATED at PRETORIA on this the 28 day of SEPTEMBER 2026.



KWV INC

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TO: **THE REGISTRAR OF THE CONSTITUTIONAL COURT**
BRAAMFONTEIN

AND TO: **CHITHA INCORPORATED ATTORNEYS**
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Date 29/09/26
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AND TO: **STATE ATTORNEY: PRETORIA** *
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AND TO: **STATE ATTORNEY: PRETORIA**
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AND TO: **KGOBOKOE & COMPANY INC**
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IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC Case No.: CCT _____ / 2026

GP Case No.: 2024-148142

In the matter between:

SAKELIGA NPC	Applicant
and	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	First Respondent
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MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
NATIONAL PROPERTY FORUM	Fourth Respondent

FOUNDING AFFIDAVIT

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I, the undersigned,

TOBIAS VIVIAN ALBERTS

hereby make oath and say that:

1. I am a legal officer employed by the applicant, employed at the applicant's registered and business address at Block A, Floor 5, Loftus Park, 416 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

2. The facts contained in this affidavit fall within my personal knowledge, save where otherwise indicated or where the contrary is evident from the context hereof, and are true and correct. Where I make legal submissions herein, I do so on the advice of the applicant's legal representatives.

3. I am duly authorised to institute this application on behalf of the applicant, as appears from the resolution attached hereto, marked "**SL1**".

A. PARTIES

4. The applicant is **SAKELIGA NPC**, a non-profit company with registration number 2012/043725/08 with registered address at Block A, Floor 5, Loftus Park, 416 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

5. The first respondent is the **PROPERTY PRACTITIONERS REGULATORY AUTHORITY**, a statutory body established in terms of section 5 of the

Property Practitioners Act, Act 22 of 2019 (hereinafter referred to as "**the Act**") with principal place of business at 63 Wierda Road East, Wierda Valley, Sandton, Gauteng Province.

6. The second respondent is the **MINISTER OF HUMAN SETTLEMENTS**, the Minister responsible for the administration of the Act, whose office is situated at Govan Mbeki House, 240 Justice Mahomed Street, Pretoria, Gauteng Province.

7. The third respondent is the **MINISTER OF TRADE, INDUSTRY AND COMPETITION**, the Minister responsible for the administration of the Broad-Based Black Economic Empowerment Act, Act 53 of 2005 (hereinafter referred to as "**the B-BBEE Act**"), whose office is situated at 77 Meintjies Street, Sunnyside, Pretoria, Gauteng Province.

8. The fourth respondent is the **NATIONAL PROPERTY FORUM**, a non-profit organisation with NPO registration number 136-116, whose office is situated at 17 Diagonal Street, Old Johannesburg Building Stock Exchange, Johannesburg, Gauteng Province.

B. OVERVIEW AND PURPOSE OF THIS APPLICATION

9. In the High Court, the applicant challenged the constitutional validity of sub-paragraphs (a)(iv), a(v), a(vi), (b), (c), (d) and (e) of the definition of "*property practitioner*" in section 1 of the Act and section 50(a)(x) of the Act. The application was opposed by the first and fourth respondents.

10. On 8 September 2026, Her Ladyship Madam Justice Van der Schyff handed down judgment in respect of the applicant's challenge. Copies of the written judgment and order are attached hereto, marked "**SL2**" and "**SL3**", respectively.

11. As appears from the written judgment and order, the High Court:

11.1. partially upheld the applicant's challenge in respect of the invalidity of the definition of "property practitioner". The High Court found that sub-paragraph (b) of the definition of "*property practitioner*" in section 1 of the Act was invalid to the extent that it includes:

11.1.1. a natural person who sells, markets, promotes or advertises a part, unit or section of, or rights or shares in, a property or property development where the part, unit, section, right or share belongs to him or her in his or her personal capacity, where that person does not do so in the course of property development or a business involving the sale, marketing, advertising or promotion of such interests, and who would not otherwise be a property practitioner as defined in the Act;

11.1.2. a person whose involvement goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another person in respect of a part, unit or section of, or rights or shares in, a property or property

development, and who does not otherwise participate in the sale, marketing, promotion or advertising of that property interest;

11.1.3. a person who sells, markets, promotes or advertises a part, unit or section of, or rights or shares in, a property or property development otherwise than in the ordinary course of business, and who would not otherwise be a property practitioner as defined in the Act;

11.2. upheld the applicant's challenge in respect of the invalidity of section 50(a)(x) of the Act.

12. In terms of section 172(2)(d) of the Constitution of the Republic of South Africa, 1996, read with section 15(1)(b) of the Superior Courts Act 10 of 2013 and rule 16(4) of this Court's Rules, the applicant seeks:

12.1. An order confirming the invalidity in respect of paragraph (b) of the definition of "property practitioner" in section 1 of the Property Practitioners' Act to the extent stated in the judgment of the High Court, although the Applicant will move for a wider order, declaring the paragraph constitutionally invalid in its entirety;

12.2. An order confirming the declaration of invalidity in respect of section 50(a)(x) of the Property Practitioners' Act, 22 of 2019;

12.3. That leave be granted to the Applicant to appeal against the judgment of the High Court, in so far as the applicant's application to have the definition of "*property practitioner*" to declare sub-paragraphs (a)(iv), (b) and (c) of the definition of "*property practitioner*" in section 1 of the Act as inconsistent with the Constitution and invalid, without reading-down the provisions of sub-paragraph (b);

12.4. That costs of this application be costs in the appeal.

13. Out of an abundance of caution and insofar as it is necessary to do so, the applicant will, together with this application, file a notice of appeal as contemplated in rule 16(2) of this Court's Rules.

C. THE CONFIRMATION OF THE DECLARATION OF INVALIDITY OF SECTION 50(a)(x) OF THE ACT

14. Section 50(a)(x) provides that the first respondent may not issue a Fidelity Fund Certificate to any person who "*is not in possession of a valid BEE certificate*".

15. The applicant challenged the constitutional validity of section 50(a)(x) of the Act on the basis that it infringed section 22 of the Constitution as:

15.1. The mere possession of a valid BEE certificate is an irrational requirement for the issue of a Fidelity Fund Certificate and the

legitimate governmental purpose which Fidelity Fund Certificates are intended to serve, namely:

15.1.1. discipline and accountability on the part of the practitioner who holds monies of third parties;

15.1.2. confidence on the part of the public whom deposit monies with such practitioners, i.e. public good faith; and

15.1.3. a measure of indemnification in the event of any financial misconduct.

15.2. The provision is vague and arbitrary as the Act itself does not define what constitutes a "valid BEE certificate" and the first respondent was unable to apply or enforce this requirement in a rational and even manner;

15.3. The requirement is an onerous, regressive regulatory measure which does not advance the objectives of the Act, specifically amongst small, micro and medium enterprises in the property sector;

15.4. Insofar as the Property Practitioners' Act seeks to regulate the profession of "*property practitioner*" (as broadly defined under the Act), the requirement is an unreasonable measure which infringes the right to choose a profession; and

15.5. Insofar as it regulates the practice of the profession of "property practitioner" (as broadly defined under the Act), the requirement is irrational and does not pass constitutional muster.

16. In terms of section 48(1)(a) of the Act, no person or entity may act as a property practitioner unless he or she or it has been issued with a Fidelity Fund Certificate.

17. The High Court found *inter alia* that section 50(a)(x) was unconstitutional and invalid on the basis that:

17.1. Section 50(a)(x) fails the requirement of legal certainty inherent in the rule of law as neither the Act nor the applicable statutory framework identifies with reasonable certainty what document is required, from whom it is required, or what substantive standard must be satisfied for the document to be "valid". As such, the persons affected by the Act and the first respondent, as the authority charged with administering the Act, cannot determine what is required from this provision with any reasonable certainty; and

17.2. The uncertainty of what is required by section 50(a)(x) negatively affects the freedom of choice of occupation protected under section 22 of the Constitution as an applicant cannot determine what documentary requirement must be satisfied, and such limitation was not reasonable or justifiable under section 36 of the Constitution.

18. Notwithstanding the High Court's findings set out above, the applicant persists with the totality of its grounds of challenge in respect of section 50(a)(x) of the Act and seeks the confirmation of the High Court's order declaring section 50(a)(x) of the Act inconsistent with the Constitution and invalid.

D. THE APPEAL AGAINST THE HIGH COURT'S JUDGMENT IN RESPECT OF PARAGRAPHS (a)(iv), (b) AND (c) OF THE DEFINITION OF "PROPERTY PRACTITIONER

(a) Prospects of Success

19. The applicant challenged the definition of "*property practitioner*" on the basis that it was overbroad. The applicant specifically challenged sub-paragraphs (a)(iv) to (e) of the definition.

20. The High Court granted only limited relief, having declared paragraph (b) unconstitutional but ordered that, during the period of suspension in which Parliament is given time to rectify matters, the clause should be read down to exclude certain classes of persons from the definition of "*property practitioners*".

21. The Act has its origins in the Estate Agency Affairs Act, Act 112 of 1976, which is the only legislation which was repealed in terms of section 76 of the Act.

22. Fundamentally, what the Act does is to broaden the scope of the concept of "*property practitioner*" to include every profession and role player in respect of immovable property across the entire property sector. The Act maintains,

however, without distinction, all the regulatory provisions specific to estate agents. This forces all these diverse role players into the single regulatory "mould" of an estate agent and, inevitably, leads to irrational consequences.

23. The High Court, with respect, erred in its finding that the definition's extension beyond the former estate agent model does not, by itself, establish irrationality.

24. The High Court nevertheless partially recognised this irrationality in respect of sub-paragraph (b) of the definition and declared this sub-paragraph to be inconsistent with the Constitution and invalid to a limited extent while reading-in certain provisions in an attempt to save the sub-paragraph (b) of the definition.

25. The applicant submits that, save only for purposes of an interim remedy as contemplated in paragraph 8(a) of the order granted by the High Court, such a reading-down does not save this part of the definition. The whole of sub-paragraph (b) ought to have been declared invalid.

26. With the benefit of the High Court's judgment, the applicant persists with its challenge in respect of sub-paragraphs (a)(iv), (b) and (c) of the definition of "*property practitioner*":

26.1. Sub-paragraph (a)(iv) brings entities such as bond brokers, who assist purchasers to obtain financing from financial institutions to purchase a property at the best possible rate, into the ambit of the Act. Such

entities provide a service to purchasers of immovable property. They do not handle funds of any party. To require of them to hold trust accounts and Fidelity Fund Certificates, is irrational. The High Court erred in respect of this sub-paragraph as the irrationality is not cured by the purpose of the Act or the opening qualification of sub-paragraph (a);

26.2. Sub-paragraph (b) includes:

26.2.1. a private seller who does not involve an intermediary;

26.2.2. a property developer selling units from a development directly to the public; and

26.2.3. persons who merely advertise or market such transactions (including third party platforms such as local newspapers who may publish advertisements in their classifieds sections on behalf of private sellers and their online equivalents, such as Property24, even if advertising on behalf of an 'Estate Agent');

26.3. Sub-paragraph (c) includes any person who, for remuneration, manages a property on behalf of another. This logically operates to include (amongst others):

26.3.1. a caretaker of a block of flats;

26.3.2. a farm manager employed to manage a farm on behalf of the owner;

26.3.3. a factotum appointed to fix and maintain another's property;

26.3.4. a matron of a school or university residence; and

26.3.5. a housekeeper or student temporarily looking after a property for the owner (for example, while the owner is on holiday or abroad).

27. The context provided by the Act adds to the irrationality. Each of the individuals and entities are caught in the broad definition of "*property practitioner*", regardless of whether it is a generally recognised profession or occupation or not, with no consideration whether such person, class or profession handles trust monies or has any use for a Fidelity Fund Certificate and, as such, each person:

27.1. is subject to inspectors of the first respondent's powers to enter, inspect, search and seizure as contemplated in section 25 of the Act;

27.2. is required to keep and maintain a trust account, regardless of whether it has any need to hold client's money or not;

27.3. is required to obtain a Fidelity Fund Certificate from the first respondent and, for that purpose, obtain a "valid BEE certificate" as

contemplated in section 50(a)(x) of the Act.

28. Section 2 of the Act confirms that the Act is not concerned solely with regulating the professions and occupations involved in the property sector but is intended to extend also to any rights, obligations, and interests in the immovable property itself.

29. The irrationality cannot be cured by the exemption provision of the Act which, in terms of section 4(1) of the Act, only applies to an individual applicant for exemption in respect of specific provisions of the Act. It does not permit the wholesale exemption of categories of persons.

30. Accordingly, the applicant submits that the High Court erred in respect of its dismissal of the applicant's challenge to sub-paragraphs (a)(iv), (b) and (c) of the definition of "*property practitioner*" and reading-down the clear meaning of sub-paragraph (b).

31. The applicant consequently seeks leave to appeal against the judgment of the High Court and the variation of the High Court's order and to declare sub-paragraphs (a)(iv), (b) and (c) of the definition of "*property practitioner*" inconsistent with the Constitution and invalid.

(b) <u>Jurisdiction and Direct Appeal</u>

32. I submit that this Court's jurisdiction is engaged because the subject matter is the declaration of constitutional invalidity of several provisions of the Act.

33. I am further advised that the appeal, which is lodged directly to this court, makes logical sense, since the subject matter of the appeal is inextricably linked to the application for confirmation of the High Court's orders. It will be anomalous to first appeal to an intermediate court of appeal, i.e. the full court or the Supreme Court of Appeal, which may come to a different conclusion than the High Court, and then to place a confusing kaleidoscope of issues before this court. Time, money and resources will be saved if these matters are dealt with by this Court directly, in conjunction with the confirmation proceedings.

34. The constitutional matters raised in the appeal are of immense public importance. They are live controversies within the Property Sector. The appeal involves, *inter alia*, the question whether property developers (who make use of estate agents to sell their properties) and all persons who manage someone else' property: (five such categories are listed above; employees and those rendering services to a Property Practitioner or an attorney) must be included in the definition of "*property practitioners*" and have their own trust accounts and Fidelity Fund Certificates.

35. There is also some urgency in the resolution of the issues raised in the application, since there is currently a sense of uncertainty as to who must register and obtain a Fidelity Fund Certificate, and many run the risk of inadvertently not complying with the Act and being exposed to harsh enforcement powers.

A

36. I am advised that the facts on which the applicant will rely in the appeal are all dealt with in the motion that had served before the High Court.

37. I submit that there is a reasonable prospect that the judgment of the High Court will be supplemented and varied in this appeal, for the reasons stated above.

38. I submit that the interests of justice require these issues to be resolved without the delay of decisions of intermediate courts of appeal, which will lead to a piecemeal adjudication of the matter, since the confirmation proceedings in this Court coupled with those raised in the appeal, will be finally determinative of the issues raised in the matters raised in the High Court.

E. CONCLUSION

39. In the circumstances, the applicant prays for an order set out in the notice of motion prefixed to this affidavit and requests the Chief Justice to issue directions regarding the further proceedings in this matter.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the content of this affidavit which was signed and sworn to, before me, at Pretoria on this 28 day of September 2026, the Regulations contained in Government Notice No. R. 1258 dated 21 July 1972 (as amended) and Government Notice No. R.4648 dated 19 August 1977 (as amended) having been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

ADDRESS:

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A