IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 148142/2024

In the matter between

SAKELIGA NPC	APPLICANT
AND	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	FIRST RESPONDENT
MINISTER OF HUMAN SETTLEMENTS	SECOND RESPONDENT
MINISTER OF TRADE, INDUSTRY AND COMPETITION	THIRD RESPONDENT
NATIONAL PROPERTY FORUM	FOURTH RESPONDENT

FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

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I, the undersigned,

LEO MLAMBO

state under oath that:

1. I am an adult male South African citizen and a property practitioner by profession. I am the duly elected President of the National Property Forum NPO ("NPF"), which is cited as the Fourth Respondent in this matter, with its principal offices situated at 17 Diagonal Street, Old Johannesburg Stock Exchange Building, Johannesburg, Gauteng.

2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent. Annexed hereto, marked "AA1", is a copy of the written resolution and power of attorney confirming my authority to represent the Fourth Respondent in these proceedings and to depose to this affidavit.

3. The facts deposed to herein are, unless otherwise indicated, within my personal knowledge and belief and are true and correct. Where I advance legal submissions, I do so on the advice of my legal representatives, which advice I accept as correct.

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CONDONATION FOR LATE FILING

4. In terms of the Judicial Case Management ("JCM") meeting of 17 September 2025, the Fourth Respondent was directed to file its answering affidavit by 30 September 2025.

5. The Fourth Respondent was however unable to timeously convene a meeting between its members in order to debate and discuss the content of this answering affidavit. Accordingly, the organisation only met and furnished the legal team with instructions on Thursday, 9 October 2025.

6. In addition, the Fourth Respondent and its legal representatives were required to peruse and consider the substantial volume of documents which were filed in these proceedings, including the founding papers, the answering affidavit of the First Respondent, and the replying affidavit of the Applicant, before meaningful instructions could be furnished.

7. Once it became apparent that the answering affidavit could not reasonably be prepared by 30 September 2025, the Fourth Respondent's attorneys immediately furnished the Applicant with a formal letter requesting indulgence and explaining the circumstances of the delay. This was done in good faith in order to demonstrate to the other party that the Fourth Respondent was not in wilful default of the JCM but rather that the prevailing circumstances made it difficult to file this answering affidavit timeously.

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8. The delay was therefore not mala fides but arose from genuine and unavoidable circumstances. I accordingly seek condonation for the late delivery of this affidavit.

9. The principles which guide a Court in applications for condonation and extension of time are well known and such include the degree of lateness, the explanation, prejudice to the other parties, the prospects of success and the importance of the case.

10. This affidavit was due on 30 September 2025 but will only be filed on 20 October 2025. That makes the affidavit 14 days late which period is not significant enough to warrant a disregard of this affidavit particularly considering that it does not alter the schedule handed down after the JCM.

11. As regards prejudice, I submit that the Applicant has not suffered any material prejudice. The matter has not yet been set down for hearing, and the availability of the parties and the Court for January 2026 is still being coordinated. In these circumstances, the short delay occasioned by the Fourth Respondent's late filing has no impact on the further conduct of the proceedings.

12. By contrast, if condonation were refused, the prejudice to the Fourth Respondent and its members would be substantial, as they would be denied the opportunity to place their position before this Honourable Court in a matter that directly implicates their rights and interests.

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13. In conclusion, I submit that the points raised by the Fourth Respondent herein below are important enough to warrant consideration by the above Court. It would, therefore, be in the interests of justice for the Court to condone the late filing of this answering affidavit so as to allow completeness.

WHEREFORE, I pray for condonation in filing this answering affidavit out of time.

[A] INTRODUCTION

14. On 17 September 2025, this Honourable Court (per Madam Justice Van der Schyff) granted the Fourth Respondent leave to intervene in these proceedings and ordered its joinder as a respondent. A copy of the draft case management order recording this ruling is annexed hereto, marked **"AA2"**.

15. The Fourth Respondent is a recognised industry body representing the collective interests of historically disadvantaged property practitioners in South Africa. Its mandate includes advancing transformation, ensuring equitable participation in the property sector, and protecting the rights of its members within the regulatory framework established by the **Property Practitioners Act 22 of 2019** ("the Act").

16. The purpose of this affidavit is therefore to place before this Court the perspective of the Fourth Respondent and its members, and to demonstrate why the Applicant's constitutional challenge is unfounded, anti-transformative, and prejudicial to the continued inclusion of historically disadvantaged persons in the property sector.

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17. Before dealing with the specific allegations advanced in the Applicant's founding affidavit, I record that the **Fourth Respondent aligns itself with the answering affidavit filed by the First Respondent**. I do not repeat the detailed submissions and arguments made therein, save to the extent necessary to supplement or emphasise matters of particular relevance to the Fourth Respondent and its members.

18. The Fourth Respondent therefore confines this answering affidavit to those issues in which it and its members have a direct and substantial interest, and which bear directly on the transformative objectives that the Fourth Respondent was established to protect and advance.

[B] STRUCTURE OF THE AFFIDAVIT

19. This answering affidavit is structured in the following sequence:

19.1 **Firstly**, I deal with the declaration of invalidity of the definition of "Property Practitioner" in terms of section 1 of the Property Practitioners Act 22 of 2019 ("PPA") and the importance of that definition for inclusive and accountable regulation of the sector; then

19.2 **Secondly**, I deal with allegations that section 50(a)(x) of the PPA, should be declared unconstitutional as it pertains to the requirement of a B-BBEE certificate for the issuing of Fidelity Fund Certificates. In this regard the Fourth Respondent supports the provision and submits that it is a necessary and constitutionally legitimate measure to ensure sectoral transformation;

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19.3 **Thirdly,** I challenge the constitutional arguments raised by the Applicant under section 22 of the Constitution, insofar as they would, if upheld, undermine the progress of transformation and re-entrench the exclusion of historically disadvantaged practitioners.

19.4 **Lastly**, I demonstrate that the Applicant failed to make out a case for the declaratory relief and that the application falls to be dismissed with costs.

20. In approaching these issues, the Fourth Respondent places before this Honourable Court the real and practical interests of its members, who are practitioners working across the property industry, and who will be directly prejudiced if the relief sought by the Applicant is granted.

21. I now deal with each issue separately and in more detail.

[C] DECLARATION OF INVALIDITY OF THE DEFINITION OF "PROPERTY PRACTITIONER"

22. The Applicant seeks to impugn the statutory definition of "Property Practitioner" in section 1 of the Act on the basis that it is overbroad, irrational, and unconstitutional. This submission is without merit.

23. The biggest change introduced by the Act, compared with the repealed Estate Agency Affairs Act 112 of 1976 ("EAAA"), is the scope of regulation. Whereas the EAAA applied narrowly to estate agents, the Act deliberately extends to all persons and entities who, for reward, engage in property-related activities

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such as selling, buying, managing, leasing, or financing property or business undertakings. This ensures comprehensive regulation of the industry, which was previously fragmented and incomplete.

24. The definition expressly encompasses, amongst others:

24.1 estate agents;

24.2 directors, trustees, and employees of estate agencies;

24.3 auctioneers;

24.4 property developers;

24.5 property managers;

24.6 franchisees;

24.7 providers of bridging finance; and

24.8 mortgage brokers.

25. The inclusion of these categories is not arbitrary but serves a clear and rational purpose. All of these actors play a direct role in property transactions and, in many cases, handle consumer trust monies. It is therefore necessary that they are subject to the same regulatory framework of accountability, disclosure, and consumer protection.

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26. Under the former dispensation, transformation efforts were confined largely to estate agents, leaving vast areas of the property sector untouched by regulatory and equality measures. The broader definition is crucial precisely because transformation must reach across the entire property value chain, not merely one narrow segment of it.

27. The Applicant's approach, which seeks to narrow the definition, would disproportionately exclude historically disadvantaged practitioners. Many members of the Fourth Respondent operate as property managers, managing agents, trustees, or mortgage originators categories which the Applicant now seeks to exclude from regulation. If this were accepted, it would re-entrench historical patterns of exclusion by ensuring that transformation is again confined to the estate agency practice alone.

28. The broadened definition also prevents regulatory arbitrage. Without it, unscrupulous actors could simply restructure their business models to fall outside a narrow definition of "estate agent", thereby evading oversight, avoiding compliance with fidelity fund requirements, and undermining both consumer protection and transformation objectives.

29. In these circumstances, the statutory definition of "Property Practitioner" is rationally connected to legitimate governmental purposes: to protect consumers, to ensure uniformity and accountability across the sector, and to give practical effect to section 9(2) of the Constitution by advancing substantive equality and transformation.

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[D] CONSTITUTIONALITY OF SECTION 50(a)(x) OF THE ACT

30. The Applicant further seeks to impugn section 50(a)(x) of the Act, which requires that a legal entity applying for a Fidelity Fund Certificate ("FFC") be in possession of a valid B-BBEE certificate. The Applicant contends that this provision is irrational, unconstitutional, and discriminatory. I submit that these contentions are unfounded.

31. Section 50(a)(x) must be understood within the context of the history of the property sector in South Africa. For decades, access to property ownership, financing, and professional participation was systematically denied to black South Africans. The property sector remains among the least transformed sectors of the economy, still dominated by a small minority.

32. Against this background, section 50(a)(x) serves an essential and constitutionally legitimate purpose: it ensures that participation in the regulated property sector is directly tied to the national imperative of transformation. In terms of section 9(2) of the Constitution, legislative measures designed to promote the achievement of substantive equality and redress past disadvantage are not only permissible but required.

33. The Fidelity Fund Certificate is the statutory licence to lawfully operate as a property practitioner. Linking the FFC to a B-BBEE certificate ensures that transformation is embedded at the point of entry, thereby preventing continued exclusion and entrenching diversity and inclusivity across the sector.

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34. The Applicant's complaint that this requirement creates an insurmountable burden for small or emerging practitioners is factually incorrect. Exempted Micro Enterprises (EMEs) and Qualifying Small Enterprises (QSEs) may submit sworn affidavits confirming their B-BBEE status, at no cost. This makes compliance simple, accessible, and proportionate for new entrants, including the very practitioners whom the Fourth Respondent represents.

35. By way of example, the overwhelming majority of the Fourth Respondent's members are small and emerging practitioners who qualify as Exempted Micro Enterprises ("EMEs") or Qualifying Small Enterprises ("QSEs"). For these members, compliance with section 50(a)(x) requires no costly verification process; a simple sworn affidavit suffices. Far from excluding them, the provision affirms their legitimacy and allows them to participate on equal terms with larger, established competitors.

36. Larger and more established entities, which have historically benefitted from structural privilege, are required to provide verified certificates. This differentiation is rational and fair: it places the compliance burden where it belongs, while ensuring that smaller, disadvantaged entities are not excluded from the market.

37. Section 22 of the Constitution does not guarantee an unfettered right to trade; it expressly allows that the practice of a trade, occupation, or profession may be regulated by law. The only constitutional standard is that such regulation

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must be rational and consistent with the limitation framework in section 36. Section 50(a)(x) easily meets this test.

38. The limitation imposed is modest and is a basic requirement of demonstrating B-BBEE compliance while the purpose it serves is profound, namely dismantling entrenched patterns of exclusion in the property sector. In balancing the nature of the right (section 22), the importance of the purpose (transformation and substantive equality), and the proportionality of the means used, the provision is plainly reasonable and justifiable in an open and democratic society.

39. Striking down section 50(a)(x) would roll back the limited but hard-won gains of transformation, directly prejudicing the members of the Fourth Respondent and perpetuating the very inequalities the Constitution requires to be dismantled.

[E] REGULATION 2 CHALLENGE

40. The Applicant also seeks to invalidate Regulation 2 of the regulations promulgated under Proclamation 47 of 2022, alleging that the Minister exceeded her powers in issuing exemptions and that such authority vests only in the PPRA.

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41. To avoid prolixity, I will not regurgitate the submissions of the First Respondent in this affidavit but simply confirm that the Fourth Respondent aligns itself with those submissions.

42. That being said, I will however supplement them only to highlight the practical impact of Regulation 2 on the members of the Fourth Respondent.

43. Regulation 2 provides a mechanism through which certain classes of property practitioners particularly smaller and emerging participants may be exempted from onerous compliance requirements in appropriate circumstances. These exemptions are not arbitrary; they operate to ensure that the objectives of transformation are not frustrated by burdens that would otherwise deter new entrants into the sector.

44. The Applicant's challenge to Regulation 2 ignores the protective role that exemptions play. Many of the Fourth Respondent's members are Exempted Micro Enterprises and Qualifying Small Enterprises, for whom transitional relief and regulatory flexibility are essential in ensuring sustainable participation. Removing this mechanism would expose such practitioners to immediate and disproportionate regulatory burdens, undermining both the legislative purpose of inclusivity and the constitutional imperative of substantive equality.

45. Even if there were to be any doubt as to whether the Minister or the PPRA is the appropriate body to administer exemptions, such doubt cannot justify

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striking down the provision in its entirety. The proper approach, consistent with the principle of constitutional avoidance, would be to interpret or regulate the provision in a manner that preserves exemptions, rather than extinguishing them altogether.

46. From the perspective of the Fourth Respondent and its members, the wholesale invalidation of Regulation 2 would have a profoundly negative effect, reversing progress made in diversifying the property sector and discouraging historically disadvantaged practitioners from entering the regulated market.

[F] CONCLUSION

47. The relief sought by the Applicant, if granted, would have far-reaching and harmful consequences for the members of the Fourth Respondent and for the property sector more broadly.

48. Narrowing the definition of "Property Practitioner" would exclude entire categories of practitioners such as property managers, managing agents, mortgage originators, trustees and others from regulation. This would not only undermine consumer protection but would also disproportionately exclude the very historically disadvantaged practitioners whom the Fourth Respondent represents, reversing progress in diversifying the industry.

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49. Striking down section 50(a)(x) would remove one of the few effective mechanisms through which transformation is embedded in the property sector. It would entrench the dominance of well-established incumbents, while undermining the ability of emerging black-owned enterprises to participate on equal terms.

50. Invalidating Regulation 2 would eliminate a protective mechanism designed to ease the compliance burden on small and emerging enterprises, thereby discouraging participation and driving historically disadvantaged practitioners out of the regulated space.

51. In each of these respects, the Applicant's challenge is not about constitutional rights but about resisting transformation. The prejudice to the Fourth Respondent and its members if the application succeeds would be immediate, direct and substantial.

52. For these reasons, I respectfully submit that the application is without merit and falls to be dismissed with costs.

[G] RELIEF SOUGHT

53. The Fourth Respondent accordingly prays for an order in the following terms:

53.1. That the application be dismissed with costs, such costs to include the costs of two counsel;

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53.2. Alternatively, and only in the event that this Honourable Court finds any defect in the impugned provisions, that such defect be remedied in a manner that preserves the transformative and protective purposes of the Act, rather than by striking down the provisions in their entirety.

DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Pretoria on this the 20th day of October 2025, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

Full names:

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