IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION: PRETORIA

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

REPLYING AFFIDAVIT

I, the undersigned

TOBIAS VIVIAN ALBERTS

make oath and say that:

1 I am the same deponent to the founding affidavit in this matter with full particulars set out therein.

2 The facts herein deposed to fall within my personal knowledge unless otherwise indicated and are, to the best of my knowledge, both true and correct.

3 Where I make submissions of a legal nature, I do so on advice from the Applicant's legal representatives.

4 I remain duly authorised to proceed with this application.

5 I have read the answering affidavit of Thatohatsi Ramaili, the chief executive officer of the first respondent (the "**Authority**"), dated 31 March 2025.

6 I have also read the founding affidavit of Leo Mlambo on behalf of the National Property Forum ("**NPF**") in support of its application to intervene in this matter.

7 Before responding *seriatim* to the allegations in the Authority's answering affidavit and the NPF's founding affidavit, I briefly deal with the withdrawal of the Minister of Trade, Industry and Competition's opposition to this application and the NPF's intervention application.

8 Words and phrases defined in the founding affidavit bear the same meaning in this affidavit.

THE AUTHORITY IS THE SOLE STATE OPPONENT

9 On 24 February 2025, the third respondent, the Minister of Trade, Industry and Competition ("**Trade Minister**") filed a notice of intention to oppose this application.

10 The Trade Minister is the Minister principally responsible for the implementation of the BEE Act.

11 Insofar as any legislation contemplates the advancement of transformation, the Trade Minister is the principal proponent thereof in accordance with the B-BBEE Act and the sector codes published in accordance therewith.

12 On 12 March 2025, the Trade Minister withdrew his opposition to this application and indicated that he would abide the outcome of these proceedings.

13 It is clear that the Trade Minister's initial opposition was no more than a knee-jerk response and that, upon further reflection or advice, the Trade Minister decided to abide the court's decision in respect of the relief sought.

14 The purpose of the present challenge is to ensure that the laws enacted can be sensibly implemented.

15 It will be submitted at the hearing of this application that the Authority is now the sole state opponent to the relief sought. The Authority opposes this application purely on an argumentative basis and without any facts to support or corroborate the statements made in its answering affidavit.

THE INTERVENTION BY THE NPF

16 While Sakeliga denies that:

16.1 The NPF has made out a case on the facts entitling them to intervene, and;

16.2 The NPF has a direct and substantial interest in this application, and is therefore not entitled Sakeliga is advised and submits that, due to the constitutional nature of this application, third parties are more readily admitted in such proceedings in order to provide the court with their views.

17 For this reason, Sakeliga does not object to or oppose the NPF's intervention.

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18 Sakeliga will seek that an order be granted in the following terms, either at a judicial case management meeting or at the commencement of the hearing of this application:

18.1 That the NPF is granted leave to intervene as the fourth respondent in this application; and

18.2 That the NPF's founding affidavit stand as its answering affidavit in this application.

THE ALLEGATIONS CONTAINED IN THE AUTHORITY'S ANSWERING AFFIDAVIT

19 I shall now deal *seriatim* with the allegations contained in the Authority's answering affidavit. Insofar as any allegation, conclusion or inference drawn in the Authority's answering affidavit is inconsistent with what is stated in my founding affidavit or this affidavit, such allegation, conclusion or inference is denied, as if specifically traversed.

AD PARAGRAPH 1 THEREOF

20 The content of this paragraph is admitted.

AD PARAGRAPH 2 THEREOF

21 The content of this paragraph is denied.

AD PARAGRAPH 3 THEREOF

22 The content of this paragraph is admitted.

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AD PARAGRAPH 4 THEREOF

23 The content of this paragraph is denied.

AD PARAGRAPHS 5 TO 24 THEREOF

24 Save to admit the provisions of the Act insofar as they are correctly reproduced herein, the content of this paragraph is denied. It is specifically denied that all of the provisions quoted by the Authority are relevant.

25 Legal argument will be advanced at the hearing of this application in respect of the proper interpretation of the Act and the impugned provisions thereof.

AD PARAGRAPH 25 THEREOF

26 The content of this paragraph is admitted.

27 Save as stated in the founding affidavit, the applicant does not take issue with the remainder of the content of the Act.

AD PARAGRAPHS 26 AND 27 THEREOF

28 The content of these paragraphs is denied.

29 The requirement of a B-BBEE certificate in section 50 of the Act is irrational and does not serve either the objects of the Act or the Act's stated purpose in relation to transformation for the reasons set out in the founding affidavit.

30 The requirement of a tax clearance certificate cannot be equated to the requirement of a "valid BEE certificate" in section 50(1)(a)(x) of the Act. A tax clearance certificate is a rational requirement for a fidelity fund certificate as it

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relates to the practitioners' financial management and property practitioners manage third parties' money in their trust account.

AD PARAGRAPHS 28 AND 29 THEREOF

31 The content of these paragraphs is denied.

AD PARAGRAPH 30 THEREOF

32 Save to admit that all a property practitioner is required to do is to submit a valid BEE certificate, the remainder of the content of this paragraph is denied.

33 The Authority's admission as stated above is a concession that the regulations referred to in paragraph 65 of the founding affidavit are *ultra vires* the Act.

34 The Authority conflates the submission of a BEE certificate with measures described in Chapter 4 of the Act, such as capacity building programmes and administering the Property Sector Transformation Fund. The legislature's distinct requirement for the submission of a BEE certificate for purposes of obtaining a fidelity fund certificate is found in Chapter 8 of the Act.

AD PARAGRAPHS 31 TO 34 THEREOF

35 The content of these paragraphs are denied.

36 The applicant objects to the respondent's use of vague arguments to avoid the legal and constitutional issues raised by the applicant in papers. The respondent avoids the legitimate constitutional challenge to section 50(a)(x).

AD PARAGRAPHS 35 TO 38 THEREOF

37 The content of these paragraphs is denied. The power of exemption in terms of section 4 vests in the Authority and not in the Minister. The Minister may therefore not issue regulations dealing with exemptions.

AD PARAGRAPHS 39 TO 45 THEREOF

38 Save to admit the provisions of the Act insofar as they are correctly reproduced herein, the content of this paragraph is denied.

39 Legal argument will be advanced at the hearing of this application in respect of the proper interpretation of the Act and the impugned provisions thereof.

AD PARAGRAPH 46 THEREOF

40 It is unclear what is meant by "section 1(f)(g) of the Act" and, as such, the content of this paragraph is denied.

AD PARAGRAPH 47 THEREOF

41 The content of this paragraph is denied.

42 Legal argument will be advanced at the hearing of this application in respect of the proper interpretation of the Act and the impugned provisions thereof.

AD PARAGRAPH 48 THEREOF

43 The content of this paragraph is noted.

AD PARAGRAPHS 49 TO 50 THEREOF

44 The content of these paragraphs is noted.

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AD PARAGRAPHS 51 TO 53 THEREOF

45 Save as set out in the founding affidavit and herein above, the content of these paragraphs is denied.

AD PARAGRAPH 54 THEREOF

46 Save to admit that without a fidelity fund certificate, one cannot practice, and that the Act criminalises performing the function of a property practitioner without a fidelity fund certificate, the remainder of the content of this paragraph is denied.

AD PARAGRAPH 55 THEREOF

47 The content of this paragraph is denied.

AD PARAGRAPH 56 THEREOF

48 The content of this paragraph is denied.

AD PARAGRAPH 57 THEREOF

49 The content of this paragraph is denied.

AD PARAGRAPHS 58 TO 59 THEREOF

50 The content of these paragraphs is denied.

AD PARAGRAPH 60 THEREOF

51 Save as set out in the founding affidavit and herein above, the content of this paragraph is denied.

AD PARAGRAPHS 61 TO 62 THEREOF

52 The content of these paragraphs is noted.

AD PARAGRAPHS 63 TO 71 THEREOF

53 Save as set out in the founding affidavit and herein above, the content of this paragraph is denied.

AD PARAGRAPH 72 THEREOF

54 The content of this paragraph is noted.

AD PARAGRAPHS 73 TO 75 THEREOF

55 Save as set out in the founding affidavit and herein above, the content of this paragraph is denied.

AD PARAGRAPH 76 THEREOF

56 The content of this paragraph is noted.

AD PARAGRAPH 77 THEREOF

57 It is noted that the deponent to the answering affidavit is not aware that section 50(a)(x) is unique. The deponent's legal representatives ought to have advised her on the correctness of this statement in accordance with her statement in paragraph 2 of the answering affidavit.

58 Save as stated above, the content of this paragraph is denied.

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AD PARAGRAPH 78 THEREOF

59 Save as set out in the founding affidavit and herein above, the content of this paragraph is denied.

AD PARAGRAPH 79 THEREOF

60 The content of this paragraph is noted.

AD PARAGRAPH 80 THEREOF

61 Save to admit that Property Sector Transformation Charter Code was promulgated in 2017 and before the enactment of the Act, the remainder of the content of this paragraph is denied.

62 Legal argument will be advanced at the hearing of this application in respect of the proper interpretation of the Act, read together with the BEE Act, the Property Sector Transformation Code and the impugned provisions thereof.

AD PARAGRAPH 81 THEREOF

63 Save to admit that section 48 of the Act is not challenged by the applicant, the remainder of the content of this paragraph is denied.

AD PARAGRAPHS 82 TO 89 THEREOF

64 Save as set out in the founding affidavit and herein above, the content of these paragraphs is denied.

AD PARAGRAPHS 90 AND 91 THEREOF

65 Save to note the admission in respect of annexure X6, the remainder of the content of these paragraphs is denied.

AD PARAGRAPHS 92 TO 94 THEREOF

66 Save as set out in the founding affidavit and herein above, the content of these paragraphs is denied.

AD PARAGRAPH 95 THEREOF

67 Save to note the admission in respect of annexure X7, the remainder of the content of this paragraph is denied.

AD PARAGRAPHS 96 TO 101 THEREOF

68 Save as set out in the founding affidavit and herein above, the content of these paragraphs is denied.

THE ALLEGATIONS CONTAINED IN THE NPF'S FOUNDING AFFIDAVIT

69 I shall now deal *seriatim* with the allegations contained in the NPF's founding affidavit. Insofar as any allegation, conclusion or inference drawn in the NPF's founding affidavit is inconsistent with what is stated in my founding affidavit or this affidavit, such allegation, conclusion or inference is denied, as if specifically traversed.

AD PARAGRAPH 1 THEREOF

70 The content of this paragraph is denied.

AD PARAGRAPH 2 THEREOF

71 The content of this paragraph is noted.

AD PARAGRAPHS 3 AND 4 THEREOF

72 The content of these paragraphs is denied.

AD PARAGRAPHS 5 TO 9 THEREOF

73 The content of these paragraphs is admitted.

AD PARAGRAPH 10 THEREOF

74 The content of this paragraph is denied.

75 It is specifically denied that if the relief sought by Sakeliga in this application succeeds that any particular group of property practitioners will be negatively impacted.

AD PARAGRAPHS 11 TO 18 THEREOF

76 Save to admit the NPF's locus standi to act in the interests of its members, the remainder of the content of these paragraphs is denied.

77 I have already dealt with the NPF's intervention herein above.

AD PARAGRAPHS 19 TO 25 THEREOF

78 Sakeliga admits the challenges raised by Sakeliga as reflected in Sakeliga's founding affidavit.

79 Save as stated above, the content of these paragraphs is denied.

AD PARAGRAPH 26 THEREOF

80 Sakeliga submits that the NPF's concerns are without foundation.

81 The NPF fails to appreciate that the B-BBEE requirement in section 50(a)(x) presents an irrational requirement as:

81.1 it is inherently irrational to compel fledgling black-owned businesses and property practitioners to obtain a B-BBEE certificate at great costs and expense for purposes of obtaining a fidelity fund certificate. Such a requirement presents a direct barrier to entry for such businesses;

81.2 As set out in Sakeliga's founding affidavit, the Act, read together with the B-BBEE Act, already addresses the NPF's concerns.

82 Save as stated above, the content of this paragraph is denied.

AD PARAGRAPH 27 THEREOF

83 Sakeliga submits that the NPF's concerns are without foundation.

84 As explained in the founding affidavit, the Act casts the net too wide and includes persons which the Act never could have intended to regulate. This is an absurdity.

85 Rather, this challenge seeks to ensure legal certainty thereby encouraging lawful compliance across the property sector.

86 Save as stated above, the content of this paragraph is denied.

AD PARAGRAPH 28 THEREOF

87 The content of this paragraph is denied.

AD PARAGRAPHS 29 TO 31 THEREOF

88 The content of these paragraphs is denied.

89 I repeat the content of paragraphs 80 to 85 above.

AD PARAGRAPHS 32 TO 34 THEREOF

90 The content of these paragraphs is denied.

91 The NPF does not provide any evidence in support of its allegations.

AD PARAGRAPH 35 THEREOF

92 I have dealt with the NPF's intervention herein above.

93 Save as stated above, the content of this paragraph is denied.

RELIEF SOUGHT

In the premises, Sakeliga persists with the relief sought and prays for an order as set forth in the Notice of Motion.

DEPONENT

THUS SIGNED AND SWORN TO BEFORE ME AT Pretoria ON THIS 8th DAY OF August 2025, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON HIS CONSCIENCE.

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