IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

SCA Case No: /2025

GD Case No: 107022/2025

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
and	
MINISTER OF EMPLOYMENT AND LABOUR	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the applicants apply for an order in the following terms:

1. The applicants are granted leave to appeal to the Supreme Court of Appeal against the judgment and order of the Gauteng Division, Pretoria in Case No. 107022/2025 delivered on 28 August 2025.

2. The application for leave to appeal shall be considered and dealt with on an expedient basis in accordance with the directions of the President of the Supreme

Court of Appeal as contemplated by Rule 11(b) read with Rule 11(2) of the Supreme Court of Appeal Rules;

3. The costs of this application shall be costs in the appeal.

TAKE NOTICE FURTHER that the accompanying affidavit of **GERHARD PAPENFUS** will be used in support of the application.

TAKE NOTICE FURTHER that if you intend opposing this application, you are required to lodge your affidavit in support of your opposition, after prior service upon the applicant, with the Registrar of the Supreme Court of Appeal within one (1) month of the service of this application upon you.

DATED AND SIGNED AT PRETORIA THIS 10th DAY OF NOVEMBER 2025

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TO: **THE REGISTRAR:**
HIGH COURT GAUTENG DIVISION, PRETORIA

AND TO: **THE REGISTRAR:**
SUPREME COURT OF APPEAL
BLOEMFONTEIN

AND TO: **THE STATE ATTORNEY, PRETORIA**
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NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
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DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

FOUNDING AFFIDAVIT: APPLICATION FOR LEAVE TO APPEAL

I, the undersigned,

GERHARD PAPENFUS

do hereby make oath and state:

1. I am the CEO of the first applicant.

2. I depose to this affidavit on behalf of the applicants. The facts herein are within my own knowledge or derive from documents under my control and are true and correct. Legal submissions are based on the advice of the applicants' legal representatives.

PARTIES

3. The first applicant is the NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA ("*NEASA*"), an employers' organisation duly registered in terms of the Labour Relations Act 66 of 1995, with its head office at 160 Breed Street, Montana, Pretoria. NEASA's members comprise some 7000 employers in South Africa.

4. The second applicant is SAKELIGA NPC ("*Sakeliga*"), a duly registered non-profit company with registration number 2012/043725/08 and with principal place of business at Block A, Floor 5, Loftus Park, 416 Kirkness Street, Arcadia, Pretoria. Sakeliga is a non-profit company representing more than 15 000 subscribed businesses and over 50 000 subscribed individuals.

5. NEASA and Sakeliga launched proceedings in the High Court in the interests of their members, in the interests of employers and employees who will be affected by the targets and regulations referred to in this application, and in the public interest.

6. The first respondent is the MINISTER OF EMPLOYMENT AND LABOUR ("*the Minister*"), who is the member of the national executive responsible for the administration, implementation and enforcement of the Employment Equity Act 55 of 1998 ("*the Act*") and who is responsible for the Department of Employment and Labour ("*the Department*"). The offices of the first, second and third respondents are situated at Laboria House, 215 Francis Baard Street, Pretoria.

7. The second respondent is the DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR.

8. The third respondent is the COMMISSION FOR EMPLOYMENT EQUITY ("*the Commission*"), an organ of state established in terms of section 28 of the Act.

PURPOSE OF THE APPLICATION

9. This is an application in terms of section 17(2)(b) of the Superior Courts Act 10 of 2013 for leave to appeal against the judgment and order of the Gauteng Division, Pretoria, in case 107022/2025 dated 28 August 2025. Copies of the judgment and order of the High Court are attached as "**FA1**" and "**FA2**" ("*the judgment*").

10. The applicants apply to this Court for leave to appeal because the High Court dismissed the applicants' application for leave to appeal on 16 October 2025. A copy of the order of the High Court in the leave to appeal is attached as "**FA3**". The typed judgment has not yet been issued but the typists have been requested to attend to the typing of same. In this regard see the request to the typist attached as"**FA4**". A copy of the typed judgment will be filed with this Court as soon as possible.

BACKGROUND TO THE APPLICATION

11. The application concerns the numerical targets set by the Minister in terms of section 15A(2) of the Act.

12. Section 15A of the Act provides as follows:

> "***15A. Determination of sectoral numerical targets***
> *(1) The Minister may, by notice in the Gazette, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa.*
> *(2) The Minister may, after consulting the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1).*
> *(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor.*

(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon."

13. The targets were set in Government Notice No. 6124 in Government Gazette No. 52514 on 15 April 2025 ("*the targets*" or "*the 2025 targets*").

14. The impugned regulations include regulations 9(1), 9(2), and 9(8) to 9(12) of the General Administrative Regulations published in Government Notice No. 6125 in Government Gazette No. 52515 on 15 April 2025 ("*the impugned regulations*").[1] Regulation 9 is attached as "**FA5**".

15. The targets and impugned regulations require substantial changes to the workforce in the four upper occupation levels[2] of all 18 national economic sectors over the next 5 years, which includes the public administration.

16. In terms of section 20(2A) of the Act, the 5-year targets must be adopted in the employment equity plans of every designated employer.[3] Every designated

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1 The applicants did not apply to interdict the operation and implementation of section 20(2A) of the Act pending the review, which provides that the employment equity plans of employers must comply with the targets set by the Minister in terms of section 15A. Accordingly, the applicants do not persist in applying for the interim relief, interdicting the operation and implementation of Regulations 9(5)(b), 9(7), 9(13) and 9(14).

2 Top management, senior management, professionally qualified and middle management, and skilled or technical employees. In addition, Regulation 9(12) requires employers to set annual targets with a view to conforming the two lowest occupation levels (semi-skilled and unskilled employees) to the demographic of the economically active population in South Africa.

3 s 20(2A) provides that "*The numerical goals set by an employer in terms of subsection (2) must comply with any sectoral target in terms of section 15A that applies to that employer.*". In terms of s 1 of the Act, a "*designated employer*" includes any employer who employs 50 or more employees, every municipality, and every organ of state as defined in section 139 of the Constitution, excluding the National Defence Force, the National Intelligence Agency, and the South Africa Secret Service.

employer must set annual numerical goals and implement strategies to reach such goals in years 1 to 4, in order to achieve the targets set by the Minister by the end of year five.[4] In terms of Regulation 9(13), compliance by employers with the targets will depend on the extent to which they meet the annual goals set towards the targets.

17. The targets will accordingly impact every designated employer in South Africa and potentially impact every individual who is employed by a designated employer or will apply to be employed by a designated employer.

18. In 2024, there were 15 687 such designated employers in South Africa registered with the Department, who employed an aggregate of 7 357 011 employees.

19. Accordingly, and by legislative design, the impact of the implementation of the targets will be both comprehensive and vast. Because the targets are unconstitutional and invalid, the number of businesses and individuals that will be adversely affected, and the scale of irreparable harm that will be suffered, will equally be vast.

20. On 8 July 2025, the applicants applied to the High Court on an urgent basis to interdict the implementation of the targets and impugned regulations because they are clearly unconstitutional, unlawful and invalid, and their implementation would cause irreparable harm to the constitutional rights of thousands of employers and employees. The date from which the targets would be (and now have been) implemented was 1 September 2025.

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4 See section 20(1), (2), (2A) of the Act, and Regulations 7(a) and 9(13). Regulation 9(13) provides that compliance with the targets will be assessed against compliance with the annual targets set by an employer towards the 5-year target set by the Minister.

21. In the judgment appealed against, the High Court dismissed the applicants' application for urgent interim relief.

22. Given the importance of the matter and the irreparable harm to the constitutional rights of thousands of employers and hundreds of thousands of employees that will result from the implementation of the 2025 targets on an ongoing basis from 1 September 2025 and for the next five years, the applicants now apply to the SCA to hear the appeal.[5]

23. Because the constitutional rights of so many are currently threatened and are being infringed, the applicants request the SCA to consider this application on an expedited basis.

24. The constitutional rights that are currently threatened and are being infringed include the rights to equality, dignity, freedom of trade, occupation and profession, and just administrative action contained in sections 9, 10, 22 and 33 of the Constitution.

25. The review is being delayed by the respondents. Despite repeated written demands and the delivery of a Rule 30A notice, the respondents have still not filed the Rule 53 record, necessitating an application to compel. Given the scale of the matter and the manner in which the respondents have conducted themselves to date in the review, it is unlikely to be heard before mid-2027, at the earliest.

26. By that stage, irreparable harm to thousands of employers, and tens of thousands of individuals - including women of all races - will have occurred.

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5 For the same reasons, the applicants have made a parallel application for leave to appeal directly to the Constitutional Court. The Registrar of the SCA will immediately be informed if the Constitutional Court grants leave to appeal.



27. It is important to emphasise that the application for interim relief is only to interdict the implementation of targets that are clearly unconstitutional, unlawful and invalid and to prevent the irreparable harm that will be caused if those targets are implemented pending Part B of the review.

28. The application for interim relief challenges the lawfulness of the specific targets set and does not seek to interdict other provisions of Chapter 3 of the Act. The Minister and the Department are free to withdraw the current, unlawful and invalid targets and to set new targets that comply with the Constitution and section 15A of the Act. Sections 15A, 20(2A), 42(1)(aA), 53(6)(a) and 53(6)(b) of the Act, which introduce the scheme of compulsory numerical targets, are only impugned in Part B of the review. These sections will continue to apply unless and until they are found unconstitutional and such unconstitutionality is confirmed by the Constitutional Court.

29. In addition, neither the application for interim relief nor the review affects the pre-existing obligations on employers in Chapter 3 of the Act, nor the robust enforcement provisions or the powers of the Minister and the Department provided by the Act to ensure compliance with these. These pre-existing obligations include the setting of employment equity goals by individual employers in cases where the Act requires affirmative action measures for designated groups.[6]

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6 See section 20(2)(c) of the Act

THE TARGETS UNCONSTITUTIONALLY DISADVANTAGE WOMEN

The reduction of women in the workforce

30. According to the targets and impugned regulations, women are not permitted to be in the majority in any occupation level of any business that has 50 or more employees in South Africa, or in any part of public administration.[7] In all sectors and occupation levels, the percentage of employees who are women is limited to a maximum of 46.1%.[8]

31. The targets will adversely affect women of all races, including black women, who the courts have recognised as being in the category of those who have suffered the worst unfair discrimination.

32. The adverse impact of the targets in general, and how they unlawfully discriminate against women in particular, can be illustrated using the targets of one sector, namely the Health and Human Sciences Sector. Below is a table presented by the Department to employers in this sector in a virtual meeting held on 17 February 2025, prior to the setting of the 2025 targets.

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7 Except the National Defence Force, the National Intelligence Agency, and the South African Secret Service: See section 1 of the Act, definition of "*designated employer*"

8 The range in the targets for women is between 20.8% and 46.1%.

9. HUMAN HEALTH AND SOCIAL WORK ACTIVITIES - 5-YEAR SECTORAL NUMERICAL TARGETS						
		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	27.6%	39.8%	49.8%	49.8%	3%
	Female	43.7%	46.1%	46.1%	46.1%	
	Total	71.3%	85.9%	95.9%	95.9%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2024	Male	20.9%	23.3%	23.3%	20.5%	1.2%
	Female	42.1%	60.2%	71.1%	77.1%	
	Total	63.0%	83.5%	94.4%	97.6%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	23.6%	24.8%	23.4%	20.6%	1.1%
	Female	41.7%	59.2%	71.1%	77.2%	
	Total	65.3%	84.0%	94.5%	97.8%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2023	Male	19.6%	23.8%	23.0%	20.3%	1.1%
	Female	41.0%	59.1%	71.5%	77.3%	
	Total	60.6%	82.9%	94.5%	97.6%	

33. The top row (in mustard) reflects the "*PROPOSED TARGET*", that were subsequently set by the Minister, while the second row from the bottom (in purple), reflects the demographic profile of the employees of all designated employers in the Health and Human Sciences Sector as at October 2024. The demographic profile of designated employers in October 2024 will hereafter be referred to as ("*the 2024 workforce profile*").

34. The Court will note, from a comparison of the proposed target with the 2024 workforce profile, that in the Health and Human Sciences Sector:

    34.1 The 2024 workforce profile for senior management comprised 59.2% females and 24.8% males. The 2025 target is aimed at reducing females in senior management to 46.1% (**-13.1%**[9]) and increasing males to 39.8% (**+15%**).

9 "%" designates "percentage points". As explained in this affidavit, the Minister has increased, decreased and set targets by making changes in percentage points. No consideration was given to the numbers of persons that the percentage points represent, or will affect.

34.2 The 2024 workforce profile for professionally qualified and middle management comprised 71.1% females and 23.4% males. The 2025 targets aim at reducing females employed at this level to 46.1%(**-25%**) and increasing males to 49.8% (**+26.4%**). The 2025 targets will have the effect of reducing women to a minority in this occupational level, and placing men in the majority, in 5 years.

34.3 The 2024 workforce profile for skilled or technical employees comprised 77.2% females and 20.6% males. The 2025 targets aim at reducing females employed at this level to 46.1% (**-31.1%**) and increasing males to 49.8% (**+29.2%**). The 2025 targets will have the effect of reducing women to a minority in this occupational level, and placing men in the majority, in 5 years.

35. The targets set by the Minister similarly reduce the percentage of women in certain occupation levels in a further 7 sectors: Accommodation and Food Service Activities, Education, Real Estate, Arts Entertainment and Recreation, Financial and Insurance Activities, Professional Scientific and Technical Activities, and the Wholesale and Retail Trade.

The irreparable harm that will be suffered by women and by employers

36. Stated in real and concrete terms, if the implementation and operation of the targets are not interdicted or suspended pending the review, the result will be that women will find it difficult or impossible to be promoted, or find employment, in the above occupation levels in the above sectors for the next five years.

37. Since these occupation levels include professionally qualified persons, and skilled or technical employees, women who are at university or completing their tertiary

training, will find it difficult, if not impossible, to find employment. The targets and impugned regulations oblige employers to employ men over women.

38. Women already employed in lower levels will have little or no prospect of promotion despite eligibility through experience or long service, as the targets oblige employers to promote men over women.

39. The harm suffered by the women who lose out on employment or promotion will be irreparable. Those who rely on women to support them will, in turn, be negatively impacted. The consequences will be most severe for households supported by single women. No remedy that may be granted by a court in due course will remedy the above loss.

40. The seriousness of the harm to women, and the extent of the violation of their constitutional rights, strikes at the core of dignity, equality, and the constitutional freedom to choose one's occupation - rights recognised by the Constitutional Court in *Affordable Medicines*[10] as fundamental to personal identity and human worth.

41. Employers who implement the unlawful targets will also suffer permanent and irreparable harm, as they will be forced to make workforce changes - through new appointments, promotions, or retrenchments - and to restructure their business, all in an effort to comply with unlawful targets. Once implemented, such changes cannot practically be undone, and no subsequent remedy granted by a court will be able to reverse the resulting losses.

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10 *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para 59

A limit on the progress of women of all races

42. The targets also unfairly discriminate against women by capping the maximum percentage of women at a maximum possible of 46.1% in all sectors.

43. The figure of 46.1% is derived from the national economically active population statistics published by Statistics South Africa in the third quarter in 2024 ("*the EAP*").

44. The EAP includes all South African citizens and permanent residents between the ages of 15 and 64 years of age who are either employed, or are unemployed and are seeking employment. The following table that shows the EAP is extracted from the Department's presentations to the sectors in February 2025.

EAP		AFRICAN	COLOURED	INDIAN	WHITE	TOTAL	DESIGNATED
NATIONAL	Male	43.5%	4.6%	1.7%	4.1%	53.9%	49.8%
	Female	37.5%	4.2%	1.0%	3.4%	46.1%	46.1%
	TOTAL	81.0%	8.8%	2.7%	7.5%	100.0%	95.9%

45. The difference between the 46.1% made up by women and the 49.8% made up by men from designated groups, is 4.1%. This corresponds to the EAP for white males

46. Regulations 9(10), 9(11) and 9(12) oblige employers to avoid employing persons from any particular designated group that exceeds the EAP, and to set targets that bring the percentage down to the EAP in cases of over-representation. In this manner, the targets and the impugned regulations prevent women from representing more than 46.1% in any occupation level, in any sector, in the economy and public administration.

47. Where women exceed 46.1%, targets must be set and strategies employed by employers to reduce such percentage in order to bring it into line with the EAP. According to the 2025 targets and impugned regulations, in all businesses and all parts of the administration, women are not permitted to be, or remain, in the majority.

48. The targets and impugned regulations are unlawful and irrational because they disadvantage women, who are a group that the Act recognises as being previously disadvantaged. They are thus contrary to section 2 of the Act[11], and unlawfully infringe sections 9, 10 and 22 of the Constitution.[12]

49. The need for urgent, interim relief interdicting the implementation of the targets pending the review is necessary to prevent irreparable harm to these constitutional rights from occurring.

THE HIGH COURT'S APPROACH

50. The approach taken by the High Court was alarming and untenable. In summary, the High Court held:

    50.1 that the application was not a constitutional matter[13];

    50.2 that interdictory relief was not appropriate in circumstances where the targets and impugned regulations had been published[14]; and

    50.3 that the applicant's prospects of success in the review are "*extremely weak*".[15]

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11 See s 2: "The purpose of this Act is to achieve equity in the workplace by (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce."

12 *Affordable Medicines* para 58-59

13 Judgment para 21 & 23: "*In this application, there is no constitutional matter involved.*"

14 Judgment para 12-19

15 Judgment para 20

51. For the reasons that follow, the applicants respectfully submit that the judgment of the High Court is clearly wrong. It is in conflict with the Promotion of Administrative Justice Act 3 of 2000 ("*PAJA*"), the Constitution, and the judgments of this Court, the Constitutional Court and other courts.

CLEAR UNLAWFULNESS

52. The judgment states that the applicants relied on three grounds of unlawfulness.[16] This is incorrect. The applicants pleaded and pressed five grounds of unlawfulness.

First ground: Failure to publish draft 2025 targets

53. Section 15A(4) requires the Minister to publish the "*draft of any notice that the Minister proposes to issue … allowing interested parties at least 30 days to comment thereon*".

54. Before section 15A took effect on 1 January 2025, the Minister published draft sector targets on two occasions: the first on 12 May 2023 ("*the 2023 draft targets*") and the second on 1 February 2024 ("*the 2024 draft targets*").

55. The drafts differed in that the 2023 draft proposed separate targets for different racial groups and proposed national and provincial targets, whereas the 2024 draft proposed collective targets for designated groups, and proposed national targets only. Nevertheless, the numerical targets themselves proposed in the 2023 and 2024 drafts, when aggregated, largely corresponded.[17]

56. The targets set on 15 April 2025 bore no relation to the draft 2023 and 2024 targets.

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16 Judgment para 11.

17 Apart from isolated exceptions, the 2024 draft targets differed only in one respect, namely that the collective target for designated groups was 3.5% less than the 2023 draft targets.

57. The 2025 targets were developed using an entirely new method that added fixed percentage increases of 6%, 7%, 8% or 9% to the 2024 workforce profile. These percentages were only adjusted where the EAP was exceeded. The targets were also prepared using information that only came into existence in October 2024, eight months after the draft 2024 targets were published.

58. Every target for every employment level in every sector was different. The differences in the combined targets for designated groups ranged from **1%** to **+29%**. The average change across all sectors and occupational levels was an increase of **11.9%**.

59. This new method of setting targets, and the proposed new and radically[18] different targets produced by it, were not published in draft form by the Minister for public comment as required in terms of section 15A(4) of the Act. The public had no opportunity to comment on the new method used by the Minister in setting the targets, or on the feasibility or fairness of the materially different targets it produced.

60. The High Court nonetheless found that the Minister had complied with section 15A(4) by publishing the draft 2023 and 2024 targets. It held that no further publication was required before the 15 April 2025 notice, as the public had already been permitted to express views on the earlier versions.[19] This was despite the fact that the respondents failed to show any connection between the 2025 targets and the earlier draft targets or the public's comments on those earlier drafts.

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18 Here meant literally, radical coming from the Latin word "*radix*" meaning "root".

19 Judgment para 37-38. The High Court also misconstrued the argument for the applicants, suggesting incorrectly that the applicants had argued that the 2025 targets should have been published in final form for comment. The High Court also incorrectly suggested the applicants argued for publication of 30-days from 15 April 2025 after the publication of the 2025 targets in final form.

61. The High Court's approach has already been rightly rejected by the decision of this Court in *Kouga*.[20] There it was held that where bylaws published by a Municipality were "*markedly different*" from the draft bylaws that were published for comment, "*republication of the revised draft was necessary to meet the legislative requirements of the Constitution and the Systems Act*".[21]

62. The 2025 targets are accordingly clearly unlawful, and their implementation should be interdicted.

Second ground: The Minister failed to consult with the sectors

63. Section 15A(2) provides that the Minister may only set targets for national economic sectors "*after consulting the relevant sectors*".

64. Section 1 of the Act defines "*sector*" to mean "*an industry or service or part of any industry or service*". The Minister identified 18 sectors in terms of section 15A(1) on 15 April 2025.[22]

65. Before the High Court, the evidence demonstrated that between June 2019 and November 2022, the Department held limited "*sector engagements*" with isolated

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20 *Kouga Municipality v Bellingan* 2012 (2) SA 95 (SCA) para 9

21 *Kouga* idem. The same approach was followed by the Constitutional Court in *South African Iron and Steel Institute v Speaker of the National Assembly* 2023 (10) BCLR 1232 (CC), and see also the Full Bench decision in *Earthlife Africa (Cape Town) v Director-General: DEAT & Another* 2005 (3) SA 156 (C) para 64

22 They are: (1) Accommodation and Food Service Activities, (2) Administrative and Support Activities, (3) Agriculture, Forestry and Fishing, (4) Arts, Entertainment and Recreation, (5) Construction, (6) Education, (7) Electricity, Gas, Steam and Air-Conditioning Supply, (8) Financial and Insurance Activities, (9) Human Health and Social Work Activities, (10) Information and Communication, (11) Manufacturing, (12) Mining and Quarrying, (13) Professional, Scientific and Technical Activities, (14) Public Administration and Defence; Compulsory Social Security, (15) Real Estate Activities, (16) Transportation and Storage, (17) Water Supply, Sewerage, Waste Management and Remediation Activities, and (18) Wholesale and Retail Trade; Repair of Motor Vehicles and Motor Cycles

industry bodies who could not represent the whole sector.[23] The Employment Equity Amendment Act 4 of 2022 ("*the Amendment Act*") – introducing section 15A - was passed on 17 May 2022. Accordingly, almost all of these "*sector engagements*" were held before the Amendment Act became law.

66. There were no targets, in draft form or otherwise, on the table between June 2019 and November 2022.

67. The only real attempt by the Department to consult with the sectors on the proposed 2025 targets occurred through virtual meetings held on MS Teams between 11 February 2025 and 19 February 2025. As to these meetings, the following facts were either admitted or not pertinently confronted and contradicted by the respondents[24]:

    67.1 Invitations to these meetings were sent only to CEOs and senior EE managers of registered employers; not all registered employers received the invitations;[25] and employers in the sectors who were not yet registered, were not invited.

    67.2 The Department provided some employers with the proposed 2025 targets one or two days before the meeting. The remainder saw the proposed 2025 targets for the first time during the meeting.

    67.3 Employers had insufficient time to consider the proposed targets or meaningfully make representations on the targets during the meetings.

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23 For instance, in the case of the Transport and Storage Sector, the Department met only with one stakeholder from the sector: the Road Freight Association.

24 *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) para 13

25 Affidavits of members who did not receive the invitations were attached to the founding affidavit.

67.4 The meetings were rushed and lasted for a limited duration between 1 to 1.5 hours at a time, save the meeting for the Retail Sector. Attendance was limited by the virtual platform to 1000 participants. In the case of the Manufacturing Sector, employers could not access the platform because the limit had been reached.

67.5 The meetings functioned largely as information sessions, and not consultations, with the majority of the time taken up by the Department's presentation and questions of an administrative nature. The Department avoided answering comments in the "chats" that commented on the substance of the proposed 2025 targets.

67.6 Less than 20 employers out of the hundreds of employers who attended, had opportunity to speak in the meetings, before the meetings were ended. Employers who wished to speak in the meetings were prevented from doing so by the time limit.

67.7 Between 4 and 8 working days were afforded to those attending the meetings to make submissions in writing, depending on the sector.

67.8 The Minister and the Department made no attempt at any stage to consult with employees from the sectors.

67.9 The Commission finalised the 2025 targets on 3 March 2025, less than a week from the last day for written submissions by employers. None of the targets proposed to employers in the virtual meetings were changed.



67.10 The respondents did not allege that the Minister, the Department, or the Commission considered any comments or representations made by employers during or after the virtual meetings.

68. In its judgment, the High Court first considered which persons or entities were included in the "*sectors*". It rejected the applicants' contention that "sectors" include *at least* employers and employees, holding instead that "*sectors*" comprise "*various other stakeholders*" within an industry or service and is not confined to employers or employees alone.[26]

69. The High Court did not make clear who these "*various other stakeholders*" were. It did indicate, however, that "*a sector does not necessarily … include employees*".[27] This apparently contradicted what it had stated earlier.

70. The High Court also did not analyse whether there had been proper consultation with the "*various other stakeholders*". It held that the mere fact that there had been "*a consultation process*" prior to the setting of targets, was sufficient, reasoning that section 15A(2) does not prescribe how or when consultation must occur, provided it precedes the Minister's decision to set targets.[28]

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26 Judgment para 31

27 Judgment para 33

28 Judgment para 33. See also para 35

71. The High Court's approach is contrary to the requirements of PAJA[29], and in conflict with the principles recently affirmed by the Constitutional Court in *Corruption Watch*.[30]

72. It's finding that "*the consultation contemplated in [section 15A(2)] has happened*" [31] is insupportable. The process followed by the Department clearly prevented consultation in the substantive sense from occurring.[32]

73. There was no meaningful consultation on the proposed 2025 targets with the two categories of persons within the sectors who would be most directly and materially affected by the targets: employers and employees from the sectors.

Third Ground: Arbitrariness and failure to consider relevant factors

74. The facts before the High Court regarding the new method used to set the 2025 targets were not disputed. This new method had not been employed by the Department or the Minister to prepare the draft 2023 or 2024 targets.

Fixed percentage

75. The 2025 targets were set by adding a fixed, pre-determined percentage to the percentage of designated employees in the 2024 workforce profile. The pre-determined percentage increases were as follows: 6% for top management, 7% for

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29 See sections 3(1) & (2) and 4 of PAJA

30 *Corruption Watch (RF) NPC v Speaker* of the *National Assembly* and *Others* [2025] *ZACC 15*, para 1 & 36

31 Judgment para 34

32 *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* 2013 (3) SA 531 (WCC) para 72 (per Rogers J, as he then was)

senior employees; 8% for professionally qualified and middle management; and 9% for skilled or technical employees.

76. The fixed percentages were trimmed down in cases where the addition of the fixed percentage would cause the target to exceed the EAP.

77. Firstly, where the percentage for designated groups for either males or females exceeded the EAP, the percentage for that gender was reduced and the target for that gender was set at the EAP.

78. Secondly, where the 2024 workforce profile for one gender substantially exceeded the other gender, the greater portion of the fixed percentage increase was given to the other gender.

The targets for persons with disability set at 3%

79. While the targets for the occupational levels were increased, as a rule, *by* pre-determined percentages, the target for persons with disability was increased *to* a pre-determined percentage. The 2025 target for persons with disability in every sector was set at 3%.

No target below the 2024 workforce profile

80. The final part of the method was the rule that the total target set for designated groups could not be below the 2024 workforce profile.

81. In certain instances in several sectors, the downward adjustment to EAP for one of the genders was so dramatic, that even with the addition of the fixed percentage to



the other gender, the target would have been below the 2024 workforce profile. In those instances, the other gender would be increased in excess of the fixed percentage to ensure the target set was above the 2024 workforce profile. The targets for the Health and Human Sciences Sector discussed above provide an example.

Arbitrariness and failure to take into account relevant considerations

82. The targets are arbitrary, and fail to take into account relevant considerations,[33] because pre-determined percentage points are added and adjustments with reference to the national EAP were made, *irrespective of, and without taking into account*: (1) the nature of the sector; (2) the number of suitably qualified persons from designated groups that are available for employment in the sector; (3) the economic status of the sector; (4) the rate of growth in the sector, and whether there is sufficient growth to support new employment or promotion in the sector; and (5) the rate of natural attrition in the sector.

83. The above information is critical to whether the targets are reasonable, feasible, appropriate or achievable for designated employers in a sector. The Minister could not lawfully or reasonably set targets for the sectors without taking these factors into account.[34] But the method of setting targets precluded the Minister from taking the above factors into account. And the Minister and the Department failed to offer any explanation in the answering affidavit of how the above factors were taken into account when the method precluded it.

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33 See s 6(2)(e)(iii) and 6(2)(e)(vi) of PAJA

34 *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC) para 36 and 39

84. The High Court found that the targets were not arbitrary, reasoning that they were based on the EAP, informed by the advice of the Commission, and developed after consultation with sectors. It concluded that the Minister had followed a structured and reasoned process rather than acting on personal whim.[35]

85. The applicants submit that the High Court's judgment is clearly wrong. It is tantamount to saying that where a decision-maker consults and receives advice, or uses some published statistics the decision cannot ever be arbitrary.

Fourth Ground: Discrimination against women

86. The facts before the High Court have been set out above.

87. The High Court held that the targets themselves did not discriminate against women, reasoning that any disadvantage would arise only from the numerical goals set by individual employers in their employment equity plans, since the Minister is empowered to set targets and not goals. [36]

88. The High Court's reasoning is clearly wrong because it is section 20(2A), and in turn Regulations 9(7)(a) and 9(13), that oblige employers to comply with the Minister's targets when setting numerical goals in their employment equity plans.

89. The High Court then held that the targets did not discriminate against women because, in setting the targets, the Minister had acted on the advice of the Commission.[37] This reasoning is also clearly wrong, because the fact that the

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35 Judgment para 41. See also Judgment para 36

36 Judgment para 44

37 Judgment para 44

Minister may have acted on advice, does not alter the fact that the targets objectively discriminate against women.

90. Finally, the High Court held that the targets do not discriminate against women because employers can justifiably refuse to comply with the targets on the basis that they unfairly discriminate women.[38]

91. This reasoning inverts the constitutional scheme. It is the state's duty to make laws and regulations that are constitutional, and the private citizen's duty to comply with the laws and regulations made by the state. The state has no power to make regulations and laws that are unconstitutional.[39] The state can also not absolve itself from the duty to make constitutional laws and regulations by conferring a right on the private citizen to disobey laws if the private citizen believes they are unconstitutional.

Fifth Ground: The Minister's decision was irrational as to process

92. The scheme introduced by the Minister is designed to make every occupational level of every sector a mirror of the EAP. A number of the 2025 targets are already set at the EAP. The remainder are "*milestones towards*" the EAP.[40] This scheme is different to the Constitution's requirement that the economy or institutions should "*broadly reflect*" the demographic. The Minister's scheme is unprecedented in human history.

93. In order to rationally and lawfully introduce such a scheme, it was necessary for the Minister to first obtain and consider a comprehensive socio-economic impact

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38 Judgment para 46

39 s 1(c) of the Constitution

40 Regulation 9(8)

assessment of the social, economic, financial, cultural and human consequences of introducing such a scheme. [41]

94. None was provided. The respondents merely referred to a 2019 assessment ("*the 2019 SEIA*"), that had been done as part of the parliamentary process for the Employment Equity Bill - three years before the Amendment Act and six years before the 2025 targets were adopted. It therefore related only to proposed legislative amendments, not to the targets or regulations themselves.

95. No socio-economic impact assessment was conducted or considered regarding the 2025 targets and the scheme that the Minister sought to introduce, rendering the Minister's decision-making process irrational as to process. [42]

THE HIGH COURT'S ERRONEOUS FINDINGS ABOUT REMEDY

96. The High Court held that since the targets and impugned regulations had already been published, interdictory relief was not available.[43] The High Court held that the administrative action of 15 April 2025 remained valid until set aside by a competent court, and that compliance with it did not constitute unlawful conduct capable of being interdicted.

97. The High Court held further that interdictory relief was not appropriate because any harm that may be caused by the targets was "*self-inflicted*", and could be avoided

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41 *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC) para 36 and 39

42 *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC), par 34, and 36–39

43 Judgment para 15 and para 17

by employers' invocation of a reasonable ground as a justification for not complying with the targets.[44]

98. The High Court also held that it had no power to suspend the operation and implementation of the targets and impugned regulations under section 172(1)(b) of the Constitution for two reasons. First, because the application was not a constitutional matter.[45] And second, because the Minister had not acted "*unjustly or inequitably…or in breach of the EEA.*"[46]

99. In regard to the latter, it is correct that interim relief will not be granted where the review lacks reasonable prospects of success. However, for the reasons set out above, that is not the case in this instance. The remainder of the High Court's findings are clearly wrong:

99.1 The finding that the application is not a constitutional matter is contrary to section 167 of the Constitution and the decisions of the Constitutional Court.[47]

99.2 The finding that the court cannot interdict and restrain the operation and implementation of the targets and the impugned regulations pending the review is contrary to section 8(1)(e) of PAJA, and section 38 of the Constitution read with the Constitutional Court's decision in *Fose*.[48]

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44 Judgment para 18

45 Judgment para 21 and 23

46 Judgment para 21

47 *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) para 25; See also *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) para 107-110. See also idem para 30-44.

48 *Fose v Minister of Safety and Security* 1997 (3) 786 (CC) para 15 & 19

99.3 The finding that the court's power to grant "*any order that is just and equitable*" in constitutional matters in terms of section 172(1)(b) of the Constitution does not extend to orders restraining the operation of administrative action pending a review is not consistent with the Constitutional Court's decisions in *Ermelo*[49] and *Economic Freedom Fighters*.[50]

99.4 The finding that the harm is "*self-inflicted*" is clearly wrong. Section 20(2A) of the Act and Regulation 9(7)(a), 9(9) and 9(13) bind employers to adopt the 5-year targets set by the Minister, and to set annual targets towards reaching the 5-year targets.

99.5 The finding that irreparable harm may be avoided by using the reasonable ground defence is misconceived. The reasonable ground defence is only available to employers who are *unable* to comply with the targets.[51] The irreparable harm referred to in this application will result from the implementation of the targets by employers who are *able* to comply with the targets, and implement them because they are bound by section 20(2A) of the Act and Regulations 9(7)(a) and 9(13).

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49 *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (2) SA 415 (CC) para 97

50 *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) para 108-114

51 Regulation 16(5): "*Justifiable reasonable grounds for not complying with the targets are - (a) insufficient recruitment opportunities; (b) insufficient promotion opportunities; (c) insufficient target individuals from designated groups with relevant formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job, as contemplated by sections 20(3) to (5) of the Act; (d) the impact of a CCMA award or court order; (e) a transfer of a business; (f) mergers or acquisitions; and (g) the impact of economic conditions on the business.*"

IRREPARABLE HARM AND THE BALANCE OF CONVENIENCE

100. The irreparable harm to women arising from the implementation of the targets and impugned regulations has been detailed above. Comparable harm will be suffered by all persons, regardless of their gender or race, who will be denied employment or promotion as a result of these measures, and as a result of the implementation of the targets and impugned regulations.

101. For it is undeniable that if the targets and impugned regulations are implemented:

101.1 Employees and prospective employees will be appointed, denied appointment, promoted, or denied promotion on the basis of unlawful targets; and

101.2 Every designated employer will suffer permanent and irreparable harm, being compelled to alter workforces through appointments, promotions, or retrenchments to comply with the unlawful targets. These changes and the associated costs cannot be reversed or remedied later. Eight members and/or supporters of the applicants filed affidavits detailing the specific prejudice their businesses will suffer if the targets are implemented, none of which was disputed by the respondents.

101.3 Further, irreparable harm will be caused to the right to administrative justice. Implementation of unlawful administrative action for months or years pending the review and subsequent appeals will prejudice the review process itself and prevent the Court from granting effective relief.



102. By contrast, the harm to the Minister and the Department, if interim relief is granted, would not cause harm to the separation of powers.

103. The Minister and Department can continue exercising all statutory powers under the pre-amendment provisions of the Act, which already require employers to adopt and implement employment equity plans. All robust enforcement mechanisms remain available to the Minister and the Department. The interim relief sought does not prevent the Minister from withdrawing the impugned targets and setting new targets in a constitutionally compliant manner.

CONCLUSION

104. In all the circumstances, I respectfully submit that:

104.1 the application for interim relief is an exceptional one in which a strong case for interim relief has been made out[52]; and

104.2 the prospective appeal has reasonable prospects of success.

105. There are also compelling reasons why the appeal should be heard.

105.1 The High Court's interpretation of section 15A(2) - that the Minister is not required to consult with employees when consulting with sectors - has wide-ranging implications for the proper administration and implementation of the Act, and for the constitutional rights of employees. Section 15A(2) is capable of an alternative, reasonable interpretation in which a higher duty on the Minister to consult with employers and employees in the sectors, in addition to publication for comment by interested persons who may not be part of the

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52 *Economic Freedom Fighters* para 48

sectors[53] in terms of section 15A(4). According to the decision of the Constitutional Court in *Wary*, this interpretation must be preferred.[54]

105.2 The High Court's finding that a court lacks the power to interdict the implementation of regulations that have been published requires correction.

106. I therefore pray for the relief set out in the Notice of Motion.

GERHARD PAPENFUS

I hereby certify that the deponent has acknowledged that he:

(a) knows and understands the contents of this affidavit;
(b) has no objection to taking the oath;
(c) considers the oath to be binding on his conscience.

THUS signed and sworn to before me, at Pretoria on 10 November 2025, the Regulations contained in Government Notice No. R1258 of 21 July 1972 (as amended), having been fully complied with.

COMMISSIONER OF OATHS

JOHANNES JACOBUS VAN DER MERWE
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

53 Such as prospective employees, or persons and entities in other related sectors, who may have an interest in the targets set in a sector.

54 *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) SA 337 (CC) para 46

FA1

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 107022/2025

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

28 August 2025
DATE

SIGNATURE

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
and	
MINISTER OF EMPLOYMENT AND LABOUR	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

***Flynotes*: Interdict/suspension of an exercise of a statutory power. The exercise of statutory power had happened – interdict not a suitable remedy. Court lacks powers to suspend the statutory action of another arm of government – principle of separation of powers upheld. Section 172(1)(b) of the Constitution**

not applicable. Interdict *pendente lite* not available as a remedy. The requirements of irreparable harm not established. The available adequate remedy is that of judicial review. Costs – *Biowatch* principle discussed but not applied. Judicious discretion applied. Held: (1) Part A of the application is dismissed. Held: (2) Each party must pay its own costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] This is an opposed urgent application that was launched by the applicants in two parts. In the first part (Part A), the applicants are seeking interdictory reliefs pending the finalisation of declaratory and judicial review remedies (Part B). What came for determination is the Part A relief. Owing to that, this judgment shall direct its attention to the reliefs sought in Part A. The pertinent portions of the notice of motion read thus:

> "2 Pending the final determination of Part B, interdicting and/or suspending the operation and implementation of the following:
>
> 2.1 the sectorial numerical targets published by the first respondent in Government Notice No. 6124 in Government Gazette No. 52514 on 15 April 2025; and
>
> 2.2 Regulations 9(1), 9(2), 9(5), and 9(7) to 9 (14) of the General Administrative Regulations published in Government Notice No. 6125 in Government Gazette No. 5215 on 15 April 2025."

[2] The applicants issued a notice in terms of rule 16A of the Uniform Rules of the High Court suggesting that a constitutional issue had arisen in Part A. Allegedly, such notice prompted Solidarity Union, to launch an application seeking to be admitted as an *amicus curiae* (friends of the Court). The application was opposed by the respondents. At the commencement of the hearing, this Court directed that the *amicus* application be heard first. After hearing it, this Court, in an *ex-tempore* judgment, dismissed the *amicus* application with no order as to costs. Counsel on brief for Solidarity Union remained in attendance on a watching brief instruction. It is

unnecessary to, in this judgment, augment the reasons already advanced *ex tempore* for refusing the *amicus* application.

Pertinent factual matrix

[3] Since this judgment concerns itself with Part A of the application, it is obsolete for this Court to punctiliously narrate all the facts appertaining the entire dispute between the parties. There are two applicants before me. The first applicant is the National Employers' Organisation of South Africa (*NEASA*). As the name suggests, NEASA is an employer's organisation, acting in the present application on behalf of its members, who mainly are employers. The second applicant is SAKELIGA NPC (*Sakeliga*). Sakeliga is a non-profit organisation, acting in the present application in the interests of its members, who mainly are businesses.

[4] The present application is launched against three respondents. Those are, the Minister of Employment and Labour (Minister); the Director-General of the Department of Employment and Labour (DG); and the Commission for Employment Equity (CEE).

[5] Effective 1 January 2025, section 15A of the Employment Equity Act (EEA)[1], became law in South Africa. Pertinent to the present application, section 15A endowed the Minister with certain powers. Amongst others, the Minister is empowered to *identify* and *set* numerical targets for any national economic sector. It is common cause that on 15 April 2025, the Minister identified 18 economic sectors and set numerical targets for them.

[6] Equally common cause is that on 12 May 2023, the Minister published a notice which proposed for the 18 economic sectors certain numerical targets. Again, on 1 February 2024, another draft of a similar nature was published. Although the applicants dispute the adequacy of the consultations held with the relevant sectors, it is common cause that for a period, sector stakeholder engagements had taken place.

[7] It is also common cause that effective from 1 September 2025, as required by section 20 of the EEA, designated employers must prepare and implement an

[1] Act 55 of 1988 as amended.

employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce. I pause to mention that the legal requirement to prepare and implement the employment equity plan has been there for designated employers for several years. Section 20(2A), which took effect from 1 January 2025, provides that the numerical goals set by an employer in the employment equity plans must comply with any sectorial targets in terms of section 15A that applies to that employer.

[8] For present purposes the designated employers in the 18 economic sectors, when complying with the old legal requirement in section 20(1) and (2) of the EEA, must comply with the numerical targets set in the notice of 15 April 2025. The NEASA and Sakeliga, took a view that the setting of the numerical targets is unlawful and the Minister ought to be interdicted for having set those numerical targets. Some months after the 15th of April 2025, on or about 28 July 2025, the present application was launched.

Analysis

[9] In opposing the present application, the respondents contended that the application falls to be struck off the roll for want of urgency. Urgency is regulated by rule 6(12) of the Uniform Rules of this Court. Two requirements ought to be established before an application could be entertained on an urgent basis. Those are (a) sufficient reasons why an urgent relief is required must exist; and (b) reasons why a substantial redress may not be achieved in due course must be advanced. The respondents submitted that the urgency claimed by the applicants is a self-created one. The applicants waited from 15 April 2025, and only launched the present application three months later, so went the submission. On the other hand, the applicants submitted that on 1 September 2025, which is around the corner, should an interdict not issue, designated employers would be compelled to comply with the unlawful and arbitrary exercise of public powers by the Minister.

[10] Hearing an application as one of urgency involves an exercise of judicial discretion. Having had regard to the circumstances of the present application and the

importance of the matter to these parties, this Court exercised its discretion in favour of hearing the application as one of urgency.

Issues arising out of the present application.

[11] Although the applicants submitted prolix heads of argument, as correctly pointed out by Mr D' Oliveira, appearing for the applicants, the present application fulcrums on three points. Those are (a) the alleged failure of the Minister to publish the proposed draft notice; (b) the alleged failure of the Minister to consult (with particular emphasis on the failure to consult employees) or appropriately consult with the relevant employers; (c) the alleged arbitrariness of the numerical targets set by the Minister (discriminating against women). In my view, these issues propel this Court to an interpretation exercise of section 15A of the EEA. Before attempting an interpretation of the section, it is apposite to deal first with the relief sought by the applicants.

Is an interdictory relief appropriate?

[12] In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* (*UDM*)[2], the following was stated by the Constitutional Court:

> "An interdict is an order by a court prohibiting or compelling the doing of a particular act for the purpose of protecting legally enforceable right, which is threatened by continuing or anticipated harm…
>
> In granting an interdict the court must exercise its discretion judicially upon consideration of all the facts and circumstances. An interdict is not a remedy for the past invasion of rights. It is concerned with the present and the future. The past invasion should be addressed by an action of damages. An interdict is appropriate only when future injury is feared."

[13] Counsel for the applicants conceded, correctly so, that the remedy of an interdict may be problematic, in an instance where the Minister has already exercised what the applicants consider to be unlawful exercise of statutory power. Thus, an interdict would necessarily call for the unscrambling of an egg, as it were. The proverbial horse has bolted. It was for that reason that the notice of motion was couched in such ambivalent

[2] (CCT) 39/21) [2022] ZACC 34 (22 September 2022) at para 47 and 48.

terms, by mentioning an interdict and or suspension. Clearly, the Minister has exercised statutory powers, lawfully or unlawfully, in April 2025 already. To my mind, this is a typical case of the past invasion. On the authority of *UDM*, an interdict is not an appropriate remedy. During argument, this Court enquired from counsel for the applicants as to what legally protectable rights are the applicants seeking to protect by way of an interdict. In retort, counsel stated that it is the right to judicial review and the rights allegedly mentioned in section 172(1)(b) of the Constitution.

[14] Regarding the right to judicial review, which I must emphasise is the only adequate and available remedy for the applicants, since the gripe about the exercise of statutory or public power is sharply raised. The Constitutional Court in the famous case of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[3], had the following to say:

> "Under the *Setlogelo* test, the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review… It is a right to which if not protected by an interdict irreparable harm will ensue.
>
> …Therefore, the harm that the applicants rely upon will not be caused by the past decisions they impugn in the review. There is a misalignment between the decision they seek to review and the source of the harm they fear.

[15] Since the *Oudekraal*[4] decision, a principle exists in our law that an administrative action remains valid and is adorned with legal consequences until set aside by a Court of competent jurisdiction. Therefore, the administrative action of 15 April 2025 remains valid until set aside by a Court of competent jurisdiction. Complying with the decision of 15 April 2025 does not amount to an unlawful conduct, which is preventable by way of an interdict. In *Gool v Minister of Justice and Another* (*Gool*)[5], the following was stated:

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[3] (CCT 19/22) [2023] ZACC 24; 2023 (10) BCLR 1189 (CC); 2024 (1) SA 21 (CC) (12 July 2023)
[4] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* (41/2003) [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA) (28 May 2004).
[5] 1955 (2) SA 682 (CPD), which was cited with approval in *OUTA*.

"The present is however not an ordinary application for an interdict. In the first place, we are in the present case concerned with an application for an interdict restraining the exercise of statutory powers. In the absence of any allegations of *mala fides*, the Court does not readily grant such an interdict..."

[16] In *City of Tshwane Metropolitan Municipality v AfriForum and another* (*AfriForum*)[6], the Constitutional Court expressed itself in the following terms:

"Before an interim interdict may be granted, one of the most crucial requirements to meet is that the applicant must have a reasonable apprehension of irreparable and imminent harm eventuating should the order not been granted...

Within the context of a restraining order, harm connotes a common-sensical, discernible or intelligible disadvantage or peril that is capable of legal protection... And that disadvantage is capable of being objectively and universally appreciated as a loss worthy of some legal protection..."

[17] There can be no doubt that in the administrative action of 15 April 2025, the Minister did not act unlawfully. The law empowered the Minister to act accordingly as he so did on 15 April 2025. There are no allegations that in taking that action in the exercise of statutory power, the Minister acted with any *mala fides*. Regarding the harm, the applicants allege that from 1 September 2025, there will be untold mayhem, that will see employees in large scales being displaced or dismissed. Even if the alleged mayhem will unfold, such will have been as a direct consequences of the application of the law. Until that law is declared invalid constitutionally, the rule of law demands compliance. Allegedly, the mayhem will ensue when a designated employer sets numerical goals in compliance with the numerical targets already set by the Minister. The alleged mayhem is not only indiscernible or unintelligible, but it is also one that is not capable of legal protection. Generally no one is above the law. Thus, no one may be spared from the application of the law unless that law has been declared invalid. The majority of apartheid legislations were invalid, yet they were applied because they were valid in the eyes of the law at the time.

[6] 2016 (9 BCLR 1148 (CC) at para 55 and 56.

[18] On the applicants' version, the alleged mayhem will be caused by the setting of numerical goals as opposed to the setting of numerical targets. Numerical goals are set by the designated employers and not the Minister. The Minister only set numerical targets. He has already done so and no untold mayhem is alleged to have taken place. It is perspicuous that if any harm will occur, it is one which may be occasioned by the setting of numerical goals. The Minister has nothing to do with the employees of designated employers. The legal position as outlined in section 20(2A) is that an employer must comply with the 15 April 2025 administrative action. It must be so that the alleged untold mayhem harm will be a self-inflicted one. As it shall be demonstrated in due course, the alleged untold mayhem harm is avoidable by the selfsame designated employers. Statutory mechanism to do so exists.

[19] Until section 20(2A) is declared invalid, designated employers have no option but to comply with the action of 15 April 2025. Accordingly, for all the above reasons, an interdict is not an appropriate remedy, and it must be refused.

Is suspension of the administrative action appropriate?

[20] This Court was at a complete loss regarding the powers that the Court has to suspend an exercise of statutory powers. Particularly in an instance where the power was exercised many moons ago. On application of the doctrine of separation of powers, a Court is not empowered to, for the sake of what appears to be the convenience of a party, simply suspend powers lawfully exercised by another arm of the State. A temporary interdict pending the outcome of an action, or review is the only available relief[7]. The purpose of such an interdict is to ensure that pending a full investigation by the Court the wrong complained of should not be committed or continued[8]. The conundrum in the applicants' case is that application of the law is incapable of being considered a legal wrong. It may be a legal wrong in an instance where the law was exercised unlawfully. That stage has not been reached. In part B, the applicant is attempting to make a case of unlawfulness. To my mind, the prospects of success on the judicial review case is extremely weak. Since part B is still pending determination, it will be unwise for this Court to expatiate on why it takes a view that

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[7] *Bress Designs (Pty) Ltd v G Y Lounge Suite Manufacturers (Pty) Ltd and Another* 1991 (2) SA 455 (WLD) and *S.A.B Lines (Pty) Ltd v Cape Tex Engineering Works (Pty) Ltd* 1968 (2) SA 535 (CPD).
[8] See *S.A.B* case *supra* at 537E.

the pending judicial review is emaciated prospects wise. The case punted for by the applicants is not one of the clearest cases of unlawfulness. This Court was advised that a decision pends in this Court where the constitutionality of the law applied by the Minister is to be determined. Advisedly, this Court expresses no view on whether there are any prospects of success in the constitutionality challenge.

[21] In support of this suspension relief, reliance was placed on section 172(1)(b) of the Constitution. This Court disagrees with a submission that section 172(1)(b) finds application herein. In the first instance, the section only applies in an instance where a Court is deciding a constitutional matter. In this application there is no constitutional matter involved. The applicants are seeking an interdictory relief and no more. In terms of section 167(7) of the Constitution, a constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution. Section 172(1)(b) empowers a Court to make any order that is just and equitable. It cannot be just and equitable for a Court to suspend the exercise of statutory power by another arm of the state. In this instance, the Minister is not acting unjustly or inequitably. As it shall be demonstrated in due course, the Minister did not act in breach of section 15A of the EEA. That being the case, a Court is not entitled to use its powers to make a just and equitable order in this instance. Accordingly, for all the above reasons, this Court refuses to exercise suspension powers if it possesses such powers. In terms of section 165(2) of the Constitution, Courts are subject to the Constitution and the law. There is no law that empowers a Court to suspend a lawful exercise of statutory powers. According to section 2 of the Constitution, the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. Section 1(c) of the Constitution prescribes that supremacy of the Constitution and the rule of law are values upon which the Republic of South Africa is founded. One of the elements of a rule of law is the respect for the law. The Minister must respect the provisions of section 15A. The question whether section 15A is valid or invalid is *sub judice*. It must be emphasised that section 7(2) of the Constitution imposes a duty on the Minister as a State functionary to protect, promote and fulfil the rights in the Bill of Rights. This Court takes a view that in exercising powers emanating from section 15A the Minister is carrying out an obligation imposed by section 7(2) read with section 8(1) of the Constitution. It must

be remembered that in terms of section 62 of the EEA, the EEA binds the State. The Minister as a State functionary had no option but to comply with section 15A.

[22] In seeking to advance, what respectfully appears to this Court as, a feeble case of this Court allegedly having powers to suspend exercise of statutory powers, counsel for the applicants, placed heavy reliance on the case of *Head of Department, Mpumalanga Department of Education and another v Hoerskool Ermelo and another* (*Ermelo*)[9]. Unfortunately, unlike in the present matter, the *Ermelo* case involved a legality review, where the school and its governing body sought a setting aside of a withdrawal of a function. The present part of the case does not involve a setting aside of the exercise of the statutory powers of the Minister, but the case seeks to suspend such exercise that has already occurred. Counsel for the applicants, drew the attention of this Court to paragraph 97 of *Ermelo*, which read:

> "It is clear that s172(1)(b) confers wide remedial powers on a competent court adjudicating a constitutional matter. The remedial power envisaged in s172(1)(b) is not only available when a court makes an order of constitutional invalidity of a law or conduct under s 172(1)(a). A just and equitable order may be made even in instances where the outcome of a constitutional dispute does not hinge on constitutional invalidity of legislation or conduct. This ample and flexible remedial jurisdiction in constitutional dispute permits a court to forge an order that would place substance over mere form by identifying the actual underlying dispute between the parties and requiring the parties to take steps directed at resolving the dispute in a manner consistent with constitutional requirements..."

[23] What sets this matter apart from *Ermelo*, is that there is no constitutional matter or dispute involved herein. In part B of this case, a constitutional matter or dispute is conspicuously present. Accordingly, what *Ermelo* did was to forge an order after a finding was made that the HoD acted improperly by withdrawing a function. The Court in *Ermelo* had structural interdicts and supervisory orders in mind. Such remedies are clearly impermissible in the present application.

The interpretation of section 15A

[9] 2010 (2) SA 415 (CC).

[24] This section came into operation as law applicable in South Africa on 1 January 2025. Before the section may be referenced, it is apposite to reference other relevant parts of the EEA. The first is the preamble of the Act. It states:

> "Recognising – that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws;
> Therefore, in order to – promote the constitutional right of equality and the exercise of true democracy; eliminate unfair discrimination in employment; ensure the implementation of employment equity to redress the effects of discrimination; achieve a diverse workforce broadly representative of our people; promote economic development and efficiency in the workforce; and give effect to the obligations of the Republic as a member of the International Labour Organisation."

[25] Regard being had to the above, it cannot be gainsaid that elimination of unfair discrimination in employment is at the forefront of the EEA. The second section to consider is section 2 of the EEA. It states:

> "**Purpose of this Act**
> **2**. The purpose of this Act is to achieve equity in the workplace by –
> (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
> (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce."

[26] Regard being had to the purpose of the Act, it cannot be doubted that its purpose is to ensure implementation of affirmative action measures. The implementation is purposed to ensure equitable representation in all occupational levels. The third section to consider is section 3 of the EEA. It states:

"**Interpretation of this Act**

3. This Act must be interpreted –

(a) In *compliance with the Constitution*;

(b) So as to *give effect to its purpose*;

(c) Taking into account any relevant code of good practice issued in terms of this Act or any other employment law;

(d) In *compliance with the international law obligations* of the Republic, in particular those contained in the International Labour Organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

[27] For completeness sake, section 7(2) of the Constitution, obliges the state to respect, protect, promote and fulfil the rights in the Bill of Rights. Section 8(1) provides that the Bill of Rights binds the legislature as well as the executive. Article 5(2) of the Convention concerning Discrimination in Respect of Employment and Occupation[10] (*Convention No. 111*) specifically provides that:

> "2. Any Member may after consultation with representative employers' and workers' organisations, where such exists, determine that other special measures designed to meet the particular requirements of persons, who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination."

[28] Undoubtedly, affirmative action measures suggested in sections 15 and 15A of the EEA, cannot be considered to be discrimination when compliance with the Convention No. 111 is considered.

[29] Having considered the above statutory provisions, I now turn to the provisions of section 15A of the EEA. Section 15A states the following:

> **15A Determination of sectoral numerical targets**
>
> (1) The Minister may, by notice in the *Gazette*, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard of all Economic Activities published by Statistics South Africa.

[10] Convention No.111 Convention concerning Discrimination in Respect of Employment and Occupation, 1958.

(2) The Minister may, after consultation with the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1).

(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within the sector or on the basis of any other relevant factor.

(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon."

[30] Commencing with subsection (1), the Minister is endowed with a power to *identify* national economic sectors. It is undisputed that the Minister has already exercised this power by identifying 18 sectors. Section 1 of the EEA defines a sector to mean an industry or service or part of any industry or service. The applicants contends that sector must include only an employer and employees. There is no merit in this contention because the legislature afforded the word sector a technical meaning. In *Canca v Mount Frere Municipality* (*Canca*)[11], the erudite Davis J expressed himself in the following sagacious manner:

"The question whether a word in a particular section of a statute should be given its statutory definition or the ordinary meaning has come up for decision in a number of cases... The principle which emerges is that the statutory definition should prevail unless it appears that the Legislature intended otherwise and, in deciding whether the Legislature so intended, the court has generally asked itself whether the application of the statutory definition would result in such injustice or incongruity or absurdity as to lead to the conclusion that the Legislature could never have intended the statutory definition to apply."

[31] Accordingly, in my view, for definitional purposes, reliance ought to be placed onto the statutory definition of the word *sector.* As a noun the word *industry* means an economic activity concerned with the processing of raw materials and manufacture of

[11] 1984 (2) SA 830 (Tk) followed in *Hoban V ABSA Bank Ltd t/a United Bank and others* [1999] 2 All SA 483 (SCA); *ABP 4x4 Motor Dealers (Pty) Ltd v IGI Insurance Co Ltd* 1999 (3) SA 924 (SCA) at paras [17]-[18]; and *University of the North and Others v Ralebipi and Others* [2003] 11 BLLR 1120 (LAC) at para [21].

goods in factories. *Service* means assistance or advice given to customers during and after the sale of goods. When regard is had to the dictionary meaning of the words *industry* and *service*, there is a clear reason why the word sector should not be defined in the manner suggested by the applicants. An industry or service cannot be confined to an employer and an employee only. There are various other stakeholders in an industry and service. Broadly, a sector must include those various stakeholders.

[32] The identification of the national economic sectors cannot happen whimsically. The Minister is impelled to have regard to a code independently developed and published by Statistics South Africa. Howbeit, it is not the case of the applicants that the identification (exercise of statutory power) was done whimsically by the Minister.

[33] Turning to subsection (2), the gripe of the applicants is that the Minister did not consult at all or consulted deficiently. As a departure point, the Minister is required to consult with the relevant sectors. As indicated above, a sector does not, in my view, necessarily include employees. It is, as defined, referring to industry or service. The word consultation has not been afforded any technical meaning in the EEA. Therefore, it must be given its ordinary grammatical meaning. The word *consult* means seek information or advice[12]. The word *consultation* means a process of seeking information or advice. The Constitutional Court in *Electronic Media Network Limited and others v E-TV (Pty) Ltd and others* (*E-TV*)[13], confirmed that a consultation is distinct from negotiations and it is not geared towards reaching an agreement. It is not a consensus seeking exercise. The duty to consult requires no more than that the views of interested persons be obtained. Regard been had to the text of the subsection, the envisaged consultation must precede the exercise of statutory power (setting of numerical targets). The numerical targets involved herein were set on 15 April 2025. Such must imply that a consultation must have happened before 15 April 2025. There was evidence of a consultation process since 2019. All of that preceded the setting of the numerical targets. The section does not prescribe as to when and how the envisaged consultation must happen. Of significance is that the exercise of statutory power (setting of numerical numbers) ought to happen after the consultation process.

[12] South African Concise Oxford Dictionary Oxford University Press 2005.
[13] [2017] ZACC 17 (8 June 2017).

It matters not as to when and how the consultation happens, as long as the exercise of power happens after the consultation process. Then and in that event, the section would have been complied with. The purpose of the consultation is to ensure that the equitable representation of suitably qualified people from designated groups at the occupational levels in the workforce is taken care of.

[34] The purpose of consultation is achieved if the equitable representation of suitably qualified people is realised. Suitably qualified people refer to persons with formal qualifications, prior learning, relevant experience, or capacity to acquire, within reasonable time, the ability to do the job or the combination of these factors (sections 20(3) and (4) of the EEA). It is not the applicants' case that the undisputed consultation process did not achieve its purpose. The applicants have a view that consultation must take the similar form of public participation envisaged in certain provisions of the Constitution and Municipal legislations. It cannot be so. This Court is satisfied that the consultation envisaged in the subsection has happened. The consultation contemplated in this subsection must be considered within the context of subsection (4) as well. The publication contemplated in subsection (4) is another form of consultation[14]. In *E-TV*, it was confirmed that publishing of a draft policy by notice in the Gazette also satisfies the duty to consult.

[35] Given the meaning and purpose of a consultation, it is difficult for a Court to emerge with a finding that a consultation process is not adequate. What a Court is required to determine is whether consultation as a process happened or did not happen. The question of adequacy will be close to equating consultation with negotiations. The subsection did not prescribe the form a consultation with the relevant sectors must take. All that is required is to ensure that voices are heard during a consultation process. This Court takes a view that even if the word sector does not necessarily refer to employers and employees, the process contemplated in subsection (4) provides employees, as interested parties with an opportunity to

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[14] See *Maqoma v Sebe NO and Another* 1987 (1) SA 483 (Ck); *Tlouama and others v Speaker of the National Assembly and others* 2016 (1) SA 534 (WCC); and Central African Road Services v The Minister of Transport and Another (62873/2014) [2019] ZAGPPHC 56 (28 February 2019).

comment. The employees as interested parties ought to respond to the invitation to comment or give input by speaking exhaustively when given such an opportunity.[15]

[36] Subsection (3) refers to "a notice" as opposed to "any notice". Clearly it refers to a notice setting the numerical numbers as contemplated in sub-section (2). In the present instance, it refers to the 15 April 2025 notice. The subsection endows the Minister with a wide discretion as to how the setting of numerical targets should happen. Of significance, the Minister may set the numerical targets on the basis of any other relevant factor. This, in my view, puts paid to the nitpicking exercise engaged in by the applicants. Counsel for the applicants was at pains to compare upward, and downward percentages of targets set by the Minister in the various notices. This is unnecessary because the Minister within his or her discretion may set the numerical targets on the basis of any relevant factor. Taking into account that the setting of numerical targets is supported by the advice of the relevant sectors and the Commission for Employment Equity (CEE) before being set by the Minister, it is difficult to accept that the suggested numerical targets would escape the hawk eye of the CEE and all 18 economic sectors. Clearly, in setting the numerical targets, the Minister does not roam freely or have unfettered discretion. First, the Minister must consult. Secondly, the Minister must obtain advice of the CEE. Thirdly, in identifying the sectors regard must be had to the relevant code, not only issued, but published by Statistics South Africa. With all the above statutory safety pins, it is difficult to fathom arbitrariness in the process of setting numerical targets.

[37] Subsection (4) specifically refers to a draft of any notice as opposed to a draft of a notice. The argument that the notice of 15 April 2025, in the final form it took, ought to have been published within the contemplation of this subsection is without merit. It is a submission that is in conflict with the clear language and the purpose of this subsection. It is common cause that in 2023 and 2024, the Minister published notices which contained numerical targets proposed for the 18 sectors already identified after what appears to be a rigorous process. Taking into account the fact that the drafts seek to source comments of interested parties, the notice of 15 April 2025 did not require to still undergo a comment process. After 2023 and 2024, it must axiomatically

[15] *E-TV* para 43.

follow that interested parties were allowed an opportunity to comment. Allow, does not mean compel or even consult *per se*. Allow, means permit to do something. As indicated earlier an employee in the sector qualifies to be an interested party. A comment is a remark expressing an opinion or reaction. Since there is no dispute that in 2023 and 2024 the proposed drafts were published, it must also axiomatically follow that interested parties were permitted to remark or express an opinion or reaction. The 30 days period was, on the uncontested facts, without any doubt permitted by the Minister. The view that the thirty-day period ought to be reckoned from the day the 15 April 2025 notice is published in a draft form, which it is common cause did not happen, is rejected by this Court. It must be reckoned from the 2023/4 publications.

[38] To the extent that the numerical targets set on 15 April 2025 are different from those set out in 2023 and 2024, this Court agrees with the Minister that they are bound to differ. The 2023/24 numbers are proposed and not cast in stone. Logic dictates that the process of permitting remarks and expression of opinion must lead to change of data. This Court is not bemused by the change of numbers after the 2023/4 notices; it was bound to happen. It serves as proof of permitting remarks and expression of opinions. The 2023/4 notices qualify as drafts of any notice within the contemplation of the subsection.

[39] Given the above interpretation, this Court comes to an irresistible conclusion that the Minister did not fail to consult or publish as required by the law set out in section 15A of the EEA. Accordingly, there is no legal basis to interdict nor suspend the actions of the Minister. The application for an interdict or suspension falls to be dismissed. Before this Court concludes, it must pertinently deal with the arbitrariness allegation and the issue of the targets discriminating women. I pause to remark that this issue snugly fits in part B as opposed to part A. However, since it was argued before this Court, it must deal with it despite the preliminary view of its relevance at this stage.

The alleged arbitrariness and discrimination of women

[40] The power of the Minister is to set numerical targets and not numerical goals. Numerical targets are numbers that the Minister aims for in any sector. Numerical goals are numbers that a designated employer aims to achieve. By way of example,

a Minister may aim for the appointment of 10 managers over a period of 5 years in a particular sector. A designated employer may aim to achieve the appointment of 2 of the 10 managers every year for a period of 5 years. Section 20(1) of the EEA obligates a designated employer to prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity. The employment equity plan must state the objectives to be achieved for each year, the affirmative action measures to be implemented, and identify by numerical goals to achieve the equitable representation of suitably qualified people from the designated groups and the timetable within which to achieve the numerical goals set by an employer.

[41] Undoubtedly, numerical goals are set out by an employer in an employment equity plan, which is required to be a product of consultation with employees (section 16, 17 and 20 of the EEA). In developing an employment equity plan, an employer seeks to achieve reasonable progress towards employment equity. The purpose of setting numerical targets is to ensure the equitable representation. Owing to the rigorous process that precedes the setting of numerical targets, this Court rejects the argument of arbitrariness. The numerical targets were not and could not have been whimsically set by the Minister. Something is done arbitrarily, if it is based on random choice or personal whim rather than any reason or system. The relevant code published by Statistics South Africa, informs the setting of numerical targets. The advice of the CEE is factored in when numerical targets are set. Consultation with the relevant sectors also informs the setting of numerical targets.

[42] Regarding the discrimination of women, the case in the founding affidavit is that the arbitrariness of the 2025 targets is shown in a particular way in those sectors in which women will be substantially disadvantaged by the 2025 targets. What appears to be the gripe of the applicants is that in their own interpretation of the numerical targets in particular sectors women will be disadvantaged. For the purpose of part A, what requires determination is whether the Minister acted outside the parameters of the enabling section, to a point that the Minister's action is to be interdicted and or suspended. Discrimination does not necessarily equate disadvantage. Section 9(3) of the Constitution specifically provides that the State may not unfairly discriminate.

Impliedly, the discrimination, even if named disadvantaged in another name, must be one that is unfair[16].

[43] Of greater significance, section 9(2) provides that equality includes the full and equal enjoyment of all rights and freedoms. In order to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. In disputing the allegations of arbitrariness, the respondents testified that the setting of sectoral numerical targets was not a mere thumbsuck as the applicants seem to suggest. This Court agrees with the contention by the respondents that this Court cannot be called upon to make a determination as to whether the calculations so employed by the Minister are arbitrary. More importantly, owing to the fact that the legislature chose the Minister as a functionary to set the numerical targets, this Court cannot determine a specific sectoral numerical target that should apply. Such would equate judicial overreach and a disrespect of the separation of powers doctrine.

[44] This argument of arbitrariness that disadvantages women clearly ignores the fact that what the Minister is statutorily empowered to do is to set numerical targets as opposed to goals. It will be the setting of numerical goals, which is the statutory function of an employer, that may lead to a disadvantage of women. It is for that reason that section 15(3) of the EEA, specifically permits numerical goals and exclude quotas. It can only be in the process of setting numerical goals that a designated employer may include consciously or unconsciously quotas[17]. Another aspect that seems to escape the contentions made with regard to arbitrariness is that section 30(2)(b) of the EEA empowers the CEE to research and report to the Minister on any matter relating to the application of this Act, including appropriate and well-researched norms and benchmarks for setting of numerical goals in the various sectors. The provisions of section 30(2)(b) underscore the need of an advice from the CEE when the Minister sets numerical targets. Clearly, it must be accepted that the CEE would advise the Minister accordingly, if the numerical targets to be set by the Minister disadvantages women to a point of unfair discrimination. It is not the case of the applicants that the

[16] *Harsken v Lane NO and others* 1997 (11) BCLR 1489 (CC) at para 43.
[17] *South African Police Services v Solidarity obo Barnard* (2014) ILJ 2981 (CC).

CEE did not dispense with an advice or dispensed with a deficient one. Thus, this Court must accept that, as an expert in the field, the CEE provided an appropriate advice.

[45] Last but not least, section 42(1)(aA) of the EEA, provides that in determining whether a designated employer is implementing employment equity in compliance with the Act, a factor as to whether the employer has complied with a sectoral target set out in terms of section 15A applicable to that employer, may be taken into account. In turn, section 42(4) specifically provides that in any assessment of its compliance with this Act, a designated employer may raise any reasonable ground to justify its failure to comply. In terms of section 53(6)(b), a Minister will issue a certificate of compliance to any employer who has raised a reasonable ground to justify its failure to comply as contemplated by section 42(4).

[46] Where an employer, in setting numerical goals choses not to comply with the numerical targets set by the Minister in terms of section 15A because such will discriminate against women, such a ground is reasonable to justify failure to comply. Therefore, with such valid alternative remedy, this Court cannot exercise its powers to issue a discretionary remedy of an interdict. There is simply no basis for an irreparable harm to be suffered by employers in the circumstances where a justification may be hoisted to save it from the non-compliance wrath by the Minister.

The issue of costs

[47] When it comes to costs, a Court possesses a very wide discretion. Counsel for the applicants argued that when deciding the issue of costs this Court must apply the *Biowatch*[18] principle. A debate ensued as to whether the principle of *Biowatch* finds application or not. Counsel for the respondents submitted that the present application does not seek to enforce a constitutional right guaranteed in the BoR, therefore the principle must not be applied, and its application is being abused by the applicants. I chose not to resolve that dispute but apply my judicious discretion in deciding the issue of costs. Given the importance of this matter, particularly because the same parties

[18] *Biowatch Trust v Registrar Genetic Resources and Others* (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) (3 June 2009).

may lock horns in due course when dealing with part B of this matter, I take a view that an appropriate order to make is for each party to pay its own costs.

Conclusions

[48] In summary, this Court concludes that an interdictory relief is not appropriate in the circumstances of the present case. A suspension of the exercise of statutory powers is inappropriate and the provisions of section 172(1)(b) of the Constitution finds no application. This Court is not in a position to examine whether the numerical targets set by the Minister (exercise of statutory power) are lawful or not. A Court of review is better placed to conduct such an examination, when considering the rationality or otherwise of the exercise of the statutory powers. This Court disagrees with a contention that the numerical targets set by the Minister are arbitrary and discriminatory of women. Regarding costs, the appropriate order is that of each party paying its own costs.

Order

[49] Because of all the above reasons, I make the following order:

1. **The application is heard as one of urgency.**
2. **Part A of the present application is dismissed.**
3. **Each party must bear its own costs.**

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 28 August 2025.*

APPEARANCES:

For the Applicants:	AJ D' Oliviera with N Fourie
Instructed by:	Kriek Wassenaar & Venter Inc, Pretoria.
For the Respondents:	F Nalane SC with F Karachi
Instructed by:	State Attorney, Pretoria
Date of Hearing	15 August 2025
Date of judgment:	28 August 2025

FA2

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 107022/2025

PRETORIA 28 AUGUST 2025

BEFORE THE HONOURABLE MR JUSTICE MOSHOANA

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
and	
MINISTER OF EMPLOYMENT AND LABOUR	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

HAVING HEARD counsel(s) for the parties and having read the documents filed the court reserved its judgment.

THEREAFTER ON THIS DAY THE COURT ORDERS

JUDGMENT

1. The application is heard as one of urgency.
2. Part A of the present application is dismissed.
3. Each party must bear its own costs.

BY THE COURT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA
Private Bag X67, Pretoria 0001
2025 -09- 02
GD-PRETORIA020
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

REGISTRAR
CVZ

Attorney:

FA3

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 107022/2025

PRETORIA 16 OCTOBER 2025

BEFORE THE HONOURABLE JUSTICE MOSHOANA

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	1ST	APPLICANT
SAKELIGA NPC	2ND	APPLICANT
AND		
MINISTER OF EMPLOYMENT AND LABOUR	1ST	RESPONDENT
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	2ND	RESPONDENT
COMMISSION FOR EMPLOYMENT EQUITY	3RD	RESPONDENT

HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of record

IT IS ORDERED THAT

The matter is dismissed with no order as to costs.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
2025 -11- 05
GD-PRET-086
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

BY THE COURT

REGISTRAR

HG
ATT: KRIEK WASSENAAR & VENTER INC

FA4

OFFICE OF JUDGE MOSHOANA

HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

HIGH COURT BUILDING, 4 TH FLOOR, ROOM 4.8, TEL.: (012) 492 6752
EMAIL: LMckenzie@judiciary.org.za

05 November 2025

THE REGISTRAR- MS M MAHLANGU

REQUEST FOR EX TEMPORE JUDGMENT TRANSCRIPT: NESA VS MINISTER OF EMPLOYMENTAND LABOUR -CASE NUNMBER: 107022/25

JUDGES- MOSHOANA J
ROLL- APPLICATION FOR LEAVE TO APPEAL
COURT- 8 A(12h00)
DATE- 16 October 2025

Your assistance herein will be much appreciated.

Regards

L MCKENZIE

From:	Leonora Mckenzie
Date:	2025/11/05 10:37:57
To:	Mbali Mahlangu
CC:	Lireze Day; Rohann Eloff; Gideon Swart
Subject:	REQUEST- EX TEMPORA JUDGMENT
Attachments:	LETTERHEAD- Transcript MOSHOANA 5 Nov NESA.pdf;
Size:	165,77 KB

Dear Mbali

Kindly find the above request.

Kind Regards
Leonora

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From:	Leonora Mckenzie
Date:	2025/11/05 10:29:22
To:	TypistPTA; Hantie H. Grobler
CC:	Gideon Swart; Rohann Eloff; Lireze Day
Subject:	Request for Signed and Stamped Order
Attachments:	
Size:	64,41 KB

Dear Hantie /Typist

Kindly assist the client in typing and uploading the order as per the below endorsement

LTA 16 0CTOBER 2025 IN COURT 8A

NESA VS MINISTER OF EMPLOYMENTAND LABOUR
CASE NUNMBER: 107022/25

16 Oct. 2025- MOSHOANA J- Dismissed with no order as to costs. Leonora

Kind Regards
Leonora

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR

FA5

NO. 6125

15 April 2025

REPEAL OF EMPLOYMENT EQUITY REGULATIONS, 2014

I, **Nomakhosazana Meth**, Minister of Employment and Labour, in terms of Section 55(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, hereby repeal the Regulations made in terms of the Employment Equity Act, 55 of 1998, published under Government Notice No. 37873 of 1 August 2014. This Notice will be effective from the date of publication.

MS. NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 10 April 2025

DEPARTMENT OF EMPLOYMENT AND LABOUR

EMPLOYMENT EQUITY REGULATIONS, 2025

I, **Nomakhosazana Meth**, Minister of Employment and Labour, hereby under section 55(1) of the Employment Equity Act, 1998 (Act 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, publish the Employment Equity Regulations in the Schedule, which regulations will be effective from the date of publication.

MS. NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 10 April 2025

(b) **EEA9**, which contains a description of occupational levels.

(6) A designated employer must record on the **EEA12** template whether it is using the national or regional EAP as a basis for conducting its analysis in terms of section 19 of the Act.

9. **Duty to prepare and implement an Employment Equity Plan (EE Plan)**

(1) Designated employers must prepare and implement an EE Plan for the period from 1 September 2025 until 31 August 2030.

(2) Employers who become designated employers, after 1 April 2025, must prepare an EE Plan for the remainder of the period until 31 August 2030.

(3) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act when preparing an EE Plan contemplated in section 20 of the Act.

(4) The EE Plan must contain, at a minimum, all the elements contained in the **EEA13** template of these regulations.

(5) When developing EE Plans and setting annual numerical targets in their workplaces in terms of Section 20(2) of the EEA, designated employers must take into account -

(a) their workforce profile,

(b) the relevant 5-year sectoral numerical targets; and

(c) the applicable EAP.

(6) In addition to the factors listed in sub-regulation (5), a designated employer may take into account any of the following to the extent that they are consistent with the purpose of the Act –

(a) the inherent requirements of a particular job;

(b) the pool of suitably qualified persons;

(c) the formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job, as contemplated in sections 20(3) to (5) of the Act;

(d) the rate of turnover and natural attrition within the workplace; and

(e) recruitment and promotional trends within a workplace.

(7) A designated employer must –

(a) comply with the numerical targets set in terms of section 15A(3) for the economic sector in which they operate;

(b) refer to the Ministerial notice issued in terms of section 15A and **EEA17** to the regulations to determine the sector they operate in; and

(c) if it operates in more than one sector, apply the numerical targets for the sector in which the majority of their employees are engaged.

(8) The 5-year sectoral numerical targets set in terms of section 15A(2) of the Act are key milestones towards achieving the equitable representation of the different designated groups

within the four upper occupational levels in an employer's workforce in relation to the demographics of the applicable EAP, and for persons with disabilities.

(9) When determining their Annual EE targets towards achieving the 5-year sectoral numerical targets, a designated employer must set numerical targets for all designated groups in each of the four upper occupational levels in relation to the applicable sector targets and EAP, and for persons with disabilities.

(10) A designated employer must avoid perpetuating the over-representation of any group if their representation exceeds the applicable EAP in a particular occupational level.

(11) A designated employer that has exceeded the numerical target set for a particular designated group at an occupational level should continue to set targets that maintain compliance with the EAP.

(12) Designated employers must set numerical goals and annual EE targets at the semi-skilled and unskilled occupational levels in their EE Plans in terms of Section 20(2) of the EEA, taking into account the applicable EAP.

(13) Designated employers' compliance will be assessed against their annual targets set towards meeting the relevant 5-year sectoral numerical targets.

(14) A designated employer will incur no penalty or any form of disadvantage if there are reasonable grounds to justify its failure to comply with any target, as contemplated by section 53(6)(b), read with section 42(4), of the Act.

(15) A designated employer must retain their EE Plan for a period of five years after the expiry of the EE Plan.

(16) A designated employer must refer to the **EEA9** in the regulations for guidance on how to differentiate between the various occupational levels.

10. **Duty to report**

(1) A designated employer must submit a report to the Director-General in terms of section 21 of the Act annually–

(a) by hand delivery of a completed **EEA2** form as specified in regulation 10(2) together with the **EEA4** form in terms of regulation 12; or

(b) electronically by using the online reporting system available on the Department's website: **www.labour.gov.za**.

(2) A designated employer that submits its report by hand must do so by delivering a completed **EEA2** form and **EEA4** form, which are signed by the Chief Executive Officer/ Accounting Officer of the employer–

(a) to the Head Office of the Department for assistance to immediately capture the report into the system and receive feedback; and

(b) in the period from 1 September until the first working day of October.

(3) A designated employer may submit a report electronically using the online reporting EE System from 1 September until 15 January of the following year.