IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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
SOLIDARITY	*Intervening Applicant*

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A. THE ISSUE

1. The Applicants approach this court for an order:

1.1. on an urgent basis[1]; and

1.2. interdicting and/or suspending the operation and implementation of:

1.2.1. the sectoral numerical targets published by the First Respondent (**"the Minister"**) in Government Notice No. 6124 in Government Gazette No.52514 on 15 April 2025 (**"the Sectoral Targets"**)[2]; and

1.2.2. the Regulations 9(1), 9(2), 9(5)(b), and 9(7) to 9(14) of the General Administrative Regulations published in Government Notice No. 6125 in Government Gazette No. 52515 on 15 April 2025 (**"the Administrative Regulations"**).[3]

2. The Respondents submit that there is no merit for any of these.

2.1. First, the Applicants fail to demonstrate urgency; and

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1 CL 001-3, NoM, prayer 1
2 CL 001-3, NoM, parayer 2.1
3 CL 001-3, NoM, parayer 2.2

2.2. Second, the Applicant has failed to satisfy the requirements for an interim interdict.

3. We shall endeavour to show each of these failures below, but, before going there, it is important to place this application in what we submit is its proper context.

B. CONTEXT[4]

(i) THE PURPOSE AND INTERPRETATION OF THE EMPLOYMENT EQUITY ACT

4. The purpose of the Employment Equity Act 55 of 1998 (**"the Employment Equity** 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

[4] Our Courts now accept Lord Steyn's remark, in **R v Secretary of State for the Home Department, ex parte Daly** [2001] 3 All ER 433 (HL) at para 28, that "in law context is everything". See **Minister of Home Affairs and Others v Scalabrini Centre and Others** 2013 (6) SA 421 (SCA) at para [89]; *Firstrand Bank Ltd t/a First National Bank v Seyffert and Another and Three Similar Cases* 2010 (6) SA 429 (GSJ) at para [15]; *FNB of SA Ltd t/a Wesbank v CSARS and Another; FNB of SA Ltd t/a Wesbank v Minister of Finance* 2002 (4) SA 768 (CC) at paras [63] et seq.

order to ensure their equitable representation in all occupational levels in the workforce.[5]

5. The 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 the Act or any other employment law; and

(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.[6]

(ii) <u>NECESSARY MEASURES TO ENFORCE COMPLIANCE WITH THE EMPLOYMENT EQUITY ACT</u>

6. Chapter II of the Employment Equity Act deals with Prohibition of Unfair Discrimination. Section 5 in Chapter II deals with elimination of unfair discrimination and provides that every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

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5 Section 2
6 Section 3

7. Section 6 deals with Prohibition of Unfair Discrimination. Section 6(1) provides that no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.

8. In terms of Section 6(2) it is not unfair discrimination to:

(a) Take affirmative action measures consistent with the purpose of the Act; or

(b) Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

9. Chapter III deals with affirmative action. Amongst others, it places certain duties on designated employers, in section 13, which provides as follows:

"13(1) Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.

(2) A designated employer must –

(a) consult with its employees as required by section 16;

(b) conduct an analysis as required by section 19;

(c) prepare an employment equity plan as required by section 20; and

(d) report to the Director-General on progress made in implementing its employment equity plan, as required by section 21.

10. Section 15 provides that:

"15(1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workplace of a designated employer.

(2) Affirmative action measures implemented by a designated employer must include –

(a) measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups;

(b) measures designed to further diversity in the workplace based on equal dignity and respect of all people;

(c) making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer;

(d) subject to subsection (3), measures to –

(i) ensure the equitable representation of suitably qualified people from designated groups in all occupational levels in the workforce; and

(ii) retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development.

(3) The measures referred to in subsection (2)(d) include preferential treatment and numerical goals, but exclude quotas.

(4) Subject to section 42, nothing in this section requires a designated employer to take any decision concerning an employment policy or practice that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups."

11. Section 15A provides that:

"15A (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."

12. Section 20 deals with Employment Equity Plans and provides that a designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce. It provides as follows:

"(2) An employment equity plan prepared in terms of subsection (1) must state –

(a) the objectives to be achieved for each year of the plan;

(b) the affirmative action measures to be implemented as required by section 15(2);

(c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;

(d) the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;

(e) the duration of the plan, which may not be shorter than one year or longer than five years;

(f) the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity;

(g) the internal procedures to resolve any dispute about the interpretation of implementation of the plan;

(h) the person in the workforce, including senior managers, responsible for monitoring and implementing the plan; and

(i) any other prescribed matter.

(2A) 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.

(3) For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's –

(a) formal qualifications;

(b) prior learning;

(c) relevant experience; or

(d) capacity or acquire, within a reasonable time, the ability to do the job.

(4) When determining whether a person is suitably qualified for a job, an employer must –

(a) review all the factors listed in subsection (3); and

(b) determine whether that person has the ability to do the job in terms of any one of, or any combination of those factors.

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience.

(6) An employment equity plan may contain any other measures that are consistent with the purposes of this Act."

13. Section 20(7) provides that the Director General may apply to the Labour Court to impose a fine in accordance with Schedule I, if a designated employer fails to prepare or implement an employment equity plan in terms of the section.

14. In terms of section 21(1) a designated employer must submit a report to the Director General once every year.

15. An employer that is not able to submit a report to the Director General within the period prescribed (1) must notify the Director General giving reasons for its inability to do so (section 21(4)(A)).

16. Every report prepared in terms of section 21 is a public document.

17. Section 27 deals with Income Differentials and Discrimination. In terms of section 27(1) every designated employer, when reporting in terms of section

21(1), must submit a statement, as prescribed, on the remuneration benefits received in each occupational level of that employer's workforce.

18. Where disproportionate income differentials, or unfair discrimination by virtue of a difference in terms and conditions of employment contemplated in section 6(4), are reflected in the statement contemplated in subsection (1), a designated employer must take measures to progressively reduce such differentials subject to such guidance as may be given by the Minister as contemplated in subsection (4) (see section 27(2)).

19. Chapter IV Establishes the Commission for Employment Equity and its functions are set out in section 30 as follows:

"30(1) The Commission advises the Minister on –

(a) codes of good practice issued by the Minister in terms of section 54;

(b) regulations made by the Minister in terms of section 55; and

(c) policy and any other matters concerning this Act.

(2) In addition to the function in subsection (1) the Commission may –

(a) make awards recognising achievements of employers in furthering the purpose of this Act;

(b) 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 the setting of numerical goals in various sectors; and

(c) perform any other prescribed function."

20. Chapter V deals with Monitoring, Enforcement and Legal Proceedings. Section 34 deals with Monitoring by Employees and Trade Union Representatives. Section 35 deals with Enforcement and provides for certain powers of labour inspectors. Section 36 deals with an undertaking to comply.

21. Section 42 deals with assessment of compliance. In determining whether a designated employer is implementing employment equity in accordance with the Act, the Director-General or any other person or body applying the Act may, in addition to the factors stated in section 15, take into account certain other factors including the extent to which suitably qualified people from and amongst the different designated groups, are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the National and Regional Economically Active population.

22. The DG and the Minister are given a discretion, which is not arbitrary, in that they have to take certain factors into account in assessing compliance.

23. In terms of section 42(2) the Minister, after consultation with NEDLAC, may issue a regulation in terms of section 55 which must be taken into account by any person who is required to determine whether a designated employer is implementing employment equity in compliance with the Act.

24. In terms of section 42(3), without limiting subsection (1)(a), the regulation made in terms of subsection (2) may specify the circumstances under which an employer's compliance should be determined with reference to the

demographic profile of either the national economically active population or the regional economically active population.

25. Section 42(4) states that in any assessment of its compliance with the Act or in any court proceedings, a designated employer may raise any reasonable ground to justify its failure to comply. (own emphasis). This is a safeguard against any alleged arbitrary action by the Minister, Director-General or any other official of the Department.

26. Section 43(1) provides that the Director-General may conduct a review to determine whether an employer is complying with the Act. The Act provides for checks and balances. The Director-General may approve a designated employer's employment equity plan or make a recommendation to an employer in writing, stating steps which the employer must take in connection with its employment equity plan or the implementation of that plan, or in relation to its compliance with any other provision of the Act (section 44(b)(i)).

27. The other checks and balances which the legislation provides is to give the Labour Court powers to determine any dispute about the interpretation or application of the Act, except where the Act provides otherwise. Section 50 deals with powers of the Labour Court and provides in 50(1) as follows:

"50(1) Except where this Act provides otherwise, the Labour Court may make any appropriate order including –

(a) an application by the Director-General in terms of section 37(6) or 39(6) making a compliance order an order of the Labour Court;

(b) subject to the provisions of this Act, condoning the late filing of any document which, or the late referral of any dispute to, the Labour Court;

(c) directing the CCMA to conduct an investigation to assist the Court and to submit a report to the Court;

(d) awarding compensation in any circumstances contemplated in this Act;

(e) awarding damages in any circumstances contemplated in this Act;

(f) ordering compliance with any provision of this Act, including a request made by the Director-General in terms of section 43(2) or a recommendation made by the Director-General in terms of section 44(b);

(g) imposing a fine in accordance with Schedule 1 for a contravention of certain provisions of this Act;

(h) reviewing an administrative action in terms of this Act on any grounds that are permissible in law;

(i) in an appeal under section 40, confirming, varying or setting aside all or part of an order made by the Director-General in terms of section 39; and

(j) dealing with any matter necessary or incidental to performing its functions in terms of this Act."

28. Section 53 deals with State Contracts and provides that every employer that makes an offer to conclude an agreement with any organ of State for the furnishing of supplies or services to that organ of State or for the hiring or letting of anything must, if it is a designated employer, comply with Chapters II and III of the Act, or if it is not a designated employer, comply with Chapter II of the Act. The employer must attach to that offer either a certificate in terms of subsection (2) which is conclusive evidence that the employer complies with

the relevant Chapters of the Act, or a declaration by the employer that it complies with the relevant Chapters of the Act, which, when verified by the Director-General, is conclusive evidence of compliance (section 53(1)(b)).

29. Section 53(6) provides that:

> *"(6) The Minister may only issue a certificate in terms of subsection (2) if the Minister is satisfied that –*
>
> *(a) the employer has complied with a numerical target set in terms of section 15A that applies to that employer;*
>
> *(b) in respect of any target with which the employer has not complied, the employer has raised a reasonable ground to justify its failure to comply as contemplated by section 42(4); (own emphasis)*
>
> *(c) the employer has submitted a report in terms of section 21;*
>
> *(d) there has been no finding by the CCMA or a court within the previous 12 months that the employer breached the prohibition on unfair discrimination in Chapter 2; and*
>
> *(e) the CCMA has not issued an award against the employer in the previous 12 months for failing to pay the minimum wage in terms of the National Minimum Wage Act, 2018 (Act No. 9 of 2018)."*

(iii) REMEDIAL MEASURES CONTEMPLATED IN THE CONSTITUTION

30. In part B of the Applicants application, the Applicants seek an order declaring sections 15A, 20(2A), 42(1)(aA), 53(6)(a) and 53(6)(b) of the Employment Equity Act unconstitutional and invalid. The Applicants further seek an order declaring the Sectoral Targets and Regulations 9(1), 9(2), 9(5)(b) and 9(7) to 9(14) unlawful, and reviewing and setting them aside.

31. These are all however remedial measures contemplated in the Constitution.

32. Section 9 of the Constitution provides that:

> "*9. Equality*
>
> *(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*
>
> *(2) Equality includes the full and equal enjoyment of all rights and freedoms. 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.*
>
> *(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*
>
> *(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*
>
> (5) *Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."*

33. The test whether a restitution measure falls within the ambit of section 9(2) is threefold. The measure must:

(a) target a particular class of people who have been susceptible to unfair discrimination;

(b) be designed to protect or advance those classes of persons; and

(c) promote the achievement of equality.[7]

34. Once the measure in question passes the test, it is neither unfair nor presumed to be unfair. This is so because the Constitution says so. It says measures of this order may be taken.[8]

35. The impugned sections (including the Sectoral Targets and the Administrative Regulations) is a remedial measure as contemplated in section 9(2) of the Constitution and fits the purpose of the Employment Equity Act. For that reason, even if premised on any one or more of the stated grounds in section 9(3) of the Constitution, it cannot be unconstitutional, and *the Harksen test*[9] can

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7 **Minister of Finance and Another v Van Heerden** ("Van Heerden") 2004 (6) SA 121 (CC) at para 43

8 **Van Heerden** at para 33; **SAPS v Solidarity obo Barnard** ("Barnard") 2014 (6) SA 123 (CC) at paras 36-37

9 **Harksen v Lane NO and Other** 1998 (1) SA 300 (CC) – which presumes discrimination on a stated ground such as race or gender or disability to be unfair

find no application. This is so because the Constitutional Court has said so already.[10]

36. Likewise, the Minister's implementation of this remedial measure for purposes stated in section 2 of the Employment Equity Act cannot in law constitute unfair discrimination.

37. In **Minister of Finance and Another v Van Heerden** 2004 (6) SA 121 (CC) the Constitutional Court held that:

> "When a measure is challenged as violating the equality provision, its defender may meet the claim by showing that the measure is contemplated by s 9(2) in that it promotes the achievement of equality and is designed to protect and advance persons disadvantaged by unfair discrimination. It seems to me that to determine whether a measure falls within s 9(2) the enquiry is threefold. The first yardstick relates to whether the measure targets persons or categories of persons who have been disadvantaged by unfair discrimination; the second is whether the measure is designed to protect or advance such persons or categories of persons; and the third requirement is whether the measure promotes the achievement of equality."[11]

38. As regards the first yardstick, the main purpose of the impugned sections makes it quite clear that its purpose is to ensure equitable representation of suitably qualified people from designated groups. Section 6(2)(b) of the Employment Equity Act reinforces the purpose of the Act that is to achieve equality in the workplace by 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.

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10 **Van Heerden** at para 33; **Barnard** at paras 36-37

11 **Van Heerden**, para [37]; **Barnard** at para [36]

39. Whether the impugned sections are designed to protect or advance the persons or categories of persons from designated groups (the second yardstick) is a question that can be answered by reference to its contents. The methodology that has been chosen for determining sectoral amendment targets in advancing those persons or categories of persons from designated groups is based on the Minister having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa, consulting the relevant sectors and with the advice of the Commission. As appears from the Sectoral Targets, its design is to advance persons or categories of persons from designated groups according to the levels of representation in the equitable representation stakes.

40. As regards the third yardstick of whether the impugned sections promotes the achievement of equality, we must again consider how equitable representation is addressed.

41. As appears from the Sectoral Targets, its design is to advance persons or categories of persons from designated groups according to the levels of representation in the equitable representation stakes. We submit that it is done in a manner that remains true to the constitutional purpose of "promoting the achievement of equality"[12] and the Employment Equity Act's purpose of "ensur[ing] equitable representation in all occupational levels in the workforce"[13].

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12 Constitution, section 9(2)

13 Employment Equity Act, section 2(b) and section 15(1)

42. For these reasons which will be expanded upon at the hearing of Part B of the application, there can be no doubt that the impugned sections are a legitimate remedial measure or affirmative action measures within the scope of section 9(2) of the Constitution. That being so it cannot, by its contents, in law be unconstitutional.

43. The argument that the Sectoral Targets amount to quotas is without merit. The primary objective of the Employment Equity Act is to empower the Minister to regulate the sector employment equity targets after consultation with the sector stakeholders and on the advice of the Commission for Employment Equity.

44. Employers have the powers to set their own numerical goals annually in their employment equity plan. The numerical goals set by an employer must comply with the sectoral target but the employer may raise a reasonable ground to justify its failure to comply. Quotas on the other hand are mandatory outcomes that are rigid and must be achieved at all costs. By comparison, what the Employment Equity Act, the Sectoral Targets and the Administrative Regulations envisage are employment equity targets and allows for flexibility. This is not arbitrary or unconstitutional.

(iv) APPROACH TO CONSTITUTIONAL INVALIDITY

45. Our quest to achieve equality must indeed occur within the discipline of our Constitution.[14]

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[14] **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others** 2004 (4) SA 490 (CC) at para 76

46. The exercise of all legislative power is subject to at least two constitutional constraints. The first is that there must be a rational connection between the legislation and the achievement of a legitimate government purpose,[15] in other words, when Parliament enacts legislation that differentiates between groups and individuals, it is required to act in a rational manner.[16]

47. In **New National Party of South Africa v Government of the Republic of South Africa and Others**[17], the Court held that the rational connection test is the standard for reviewing legislation. "The first of the constitutional constraints placed upon Parliament is that there must be a rational relationship between the scheme which it adopts and the achievement of a legitimate governmental purpose. Parliament cannot act capriciously or arbitrarily. The absence of such a rational connection will result in the measure being unconstitutional."[18]

48. The other constitutional constraint is the Bill of Rights. Legislation must not infringe any of the fundamental rights enshrined in the Bill of Rights.[19] The rights in the Bill of Rights may, however, be limited by a law of general application. Such limitation is limited by the limitations contained in section

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15 **New National Party of South Africa v Government of the Republic of South Africa and Others** 1999 (3) SA 191 (CC) ("New National Party") at para 19

16 **Prinsloo v Van der Linde and Another** 1997 (3) SA 1012 (CC) at para 25

17 **New National Party** at para 19

18 **New National Party** at para 19

19 **New National Party** at para 20 see also **President of the Republic of South Africa and Another v Hugo** 1997 (4) SA 1 (CC) at para 13; **President of the Republic of South Africa and Others v South African Rugby Football Union** and Others 2000 (1) SA 1 (CC) at para 148; **Affordable Medicines Trust and Others v Minister of Health and Another** 2006 (3) SA 247 (CC) at para 76

36(1) of the Constitution or elsewhere in the Bill of Rights.[20] Section 36(1) of the Constitution provides:

"Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose."

49. Courts do not review provisions of acts of Parliament on the grounds that they are unreasonable. They will do so only if they are satisfied that the legislation is not rationally connected to a legitimate government purpose. In such circumstances, review is competent because the legislation is arbitrary. If the legislation defining the scheme is determined to be rational, the act of Parliament cannot be challenged on the grounds of unreasonableness. The question would then arise whether the limitation is justifiable under the provisions of section 36 of the Constitution, and it is only as part of this section 36 enquiry that reasonableness becomes relevant.

50. We submit that the impugned provisions fits the purpose of the Employment Equity Act.

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[20] Section 7(3) of the Constitution provides: "The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill"

51. Turning to interpretation, in interpreting any statutory provision, one must start with the words, affording them their ordinary meaning, bearing in mind that statutory provisions should always be interpreted purposively, be properly contextualised and must be construed consistently with the Constitution.[21] This is a unitary exercise.[22] The context may be determined by considering other subsections, sections or the chapter in which the keyword, provision or expression to be interpreted is located.[23] Context may also be determined from the statutory instrument as a whole. A sensible interpretation should be preferred to one that is absurd or leads to an unbusinesslike outcome.[24]

(v) <u>THE CONSULTATIONS - SECTIONS 15A(2) AND (4) OF THE EMPLOYMENT EQUITY ACT</u>

52. Comprehensive and broad consultations were conducted in terms of sections 15A(2) and (4) of the Act by the Minister in conjunction with the Commission for Employment Equity (**"the Commission"**) as set out in paragraphs 34 to 40 of the answering affidavit.[25]

53. Since the inception of the Employment Equity Act, the Commission for noted with great concern that strategic decision-making positions (i.e. Top

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21 **Cool Ideas 1186 CC v Hubbard** 2014 (4) SA 474 (CC) at para [28]

22 **Chisuse v Director-General, Department of Home Affairs** 2020 (6) SA 14 (CC) at para [52]

23 **AfriForum v University of the Free State** 2018 (2) SA 185 (CC) at para [43]

24 **Natal Joint Municipal Pension Fund v Endumeni Municipality** 2012 (4) SA 593 (SCA) at para [18], cited with approval in, amongst others, **University of Johannesburg v Auckland Park Theological Seminary** 2021 (6) SA 1 (CC) at para [64]. See also **AmaBhungane Centre for Investigative Journalism NPC v President of the Republic of South Africa** 2023 (2) SA 1 (CC) at para [36]

25 CL 008-15 to 08-22

Management; Senior Management; and Professionally Qualified/middle management levels) are still White dominated as well as male dominated. The Black group, African and Coloureds in particular, is primarily dominant at the Semi- Skilled and Un-skilled levels, whilst females tend to be dominant at the Skilled Technical level (Junior Management) and the Semi-skilled levels. The representation of people with disabilities remained stagnant at 1% in almost all the annual reports released by the Commission since 2000 Employment Equity Reporting period. The pace of transformation in the labour market and the country as a whole did not make business sense.

54. Section 30 of the Employment Equity Act sets out the functions of the Commission.

55. In line with its functions, in 2016, the 4th Commission for Employment Equity embarked on consultative meetings with business leaders from various sectors of the South African economy. The Commission held Employment Equity Sectoral Engagements with stakeholders to understand the challenges affecting the implementation of the Employment Equity Act in organisations. The engagements produced vigorous debates from the participants and identified various factors, which contributed to the continued under-representation of the designated groups in decision-making positions in the workplace.

56. The stakeholders that participated in the engagements made a call and requested for the setting of Sectoral Employment Equity targets as benchmarks

and the promulgation of section 53 of the Employment Equity Act for the issuing of Employment Equity Certificates of compliance as a prerequisite for access to state contracts/doing business with any organ of the state.

57. In June 2019, the Department and the Commission, started the process of consultation with each of the 18 identified economic sectors. The consultation process undertaken was in parallel with the Parliamentary process of the Employment Equity Amendment Bill. The intention was to avoid the delay in the implementation of the amendments after promulgation. The purpose of consultation with each economic sector separately was to strive to reach consensus on the setting of sector specific Employment Equity targets for the designated groups at the top four occupational levels (Top Management; Senior Management; Professionally Qualified and Skilled Technical), including for people with disabilities.

58. On 14 July 2019, the Socio-Economic Impact Assessment was signed off.

59. Sector stakeholder engagements ran from June 2019 to October 2022.

60. The process of consultation, including follow-up meetings with stakeholders in the 18 economic sectors was concluded in November 2022.

61. On 14 April 2023, the President assented to the Amendment Act.

62. The draft Sector Targets were finalised and approved by the Commission on 23 March 2023 and published in May 2023 for public comment for 30 days.

63. The Proclamation Notice on the commencement date of the Amendment Act was signed by the President of the Republic of South Africa on 12 November 2024 and subsequently published in the Government Gazette. Sections 1, 8, 14 15A, 16, 20, 21, 27, 36, 37, 42, 53, 64A and Schedule 4 came into operation on 1 January 2025.

64. After receiving public comments, and with the advice of the Commission, the term “designated groups” was used in line with the Amendment Act. The notice was thereafter republished for further public comment for 90 days in February 2024.

65. Further consultations were held in February 2025.

66. On 3 March 2025, the Commission confirmed to the Minister that the Commission finalised the two sets of the Employment Equity Regulations (that is the Sector Targets and the Administrative Regulations) and that they were aligned with the provisions of the Amendment Act.

67. On 15 April 2025, the Minister, under section 55(1) of the Employment Equity Act, and on the advice of the Commission for Employment Equity, published the Sector Targets and Administrative Regulations.

68. To the extent that the Applicants argue that the sector engagements could not take place prior to the Amendment Act being assented to, they are wrong. There was no premature exercise of power.

69. There is a contrary intention from the legislation, a power or duty contained in any legislation that has been passed, may be exercised or carried out before the date of operation of that legislation provided the exercise of the power or the carrying out of the duty is necessary to bring that legislation into effect.[26]

70. In any event further engagements took place after April 2023.

71. Furthermore, we submit that section 14 of the Interpretation Act 33 of 1957, allows the exercise of powers conferred by a law between the time it is passed and the time it comes into operation. Section 14 provides:

> "14. Exercise of conferred powers between passing and commencement of a law.
>
> Where a law confers a power—
> (a) to make any appointment; or
> (b) to make, grant or issue any instrument, order, warrant, scheme, letters patent, rules, regulations or by-laws; or
> (c) to give notices; or
> (d) to prescribe forms; or
> (e) to do any other act or thing for the purpose of the law,
> that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof: Provided that any instrument, order, warrant, scheme, letters patent, rules, regulations or by-laws made, granted or issued under such power shall not, unless the contrary intention appears in the law or the contrary is necessary for bringing the law into operation, come into operation until the law comes into operation."

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[26] **Mulaudzi v Minister of Human Settlements and Others** (22/12774) [2022] ZAGPJHC 270 (22 April 2022) at para [37]-[38]

72. There are therefore pragmatic reasons for this.

73. The Respondents submit that there was no failure by the Minister to comply with sections 15A(2) and 15A(4) as alleged. The Minister, after consulting the relevant sectors and with the advice of the Commission, by notice in the Gazette set the numerical targets.

74. Furthermore, to the extent that the Applicants allege that the Minister had to consult employees, the relevant sections of the Employment Equity Act provides that:

> "13. Duties of designated employers.
>
> (1) Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.
>
> (2) A designated employer must—
>
> (a) consult with its employees as required by section 16;
>
> (b) conduct an analysis as required by section 19;
>
> (c) prepare an employment equity plan as required by section 20; and
>
> (d) report to the Director-General on progress made in implementing its employment equity plan, as required by section 21."

> "16. Consultation with employees.
>
> (1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17 -
>
> (a) with a representative trade union representing members at the workplace; or
>
> (b) if no representative trade union represents members at the work-place, with its employees or representatives nominated by them.

(2) The employees or their nominated representatives with whom an employer consults in terms of subsection (1) (a) and (b), taken as a whole, must reflect the interests of—
(a) employees from across all occupational levels of the employer's workforce;
(b) employees from designated groups; and
(c) employees who are not from designated groups.

(3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a work-place forum on any of the matters referred to in section 17 of this Act."

"17. Matters for consultation.

A designated employer must consult the parties referred to in section 16 concerning -
(a) the conduct of the analysis referred to in section 19;
(b) the preparation and implementation of the employment equity plan referred to in section 20; and
(c) a report referred to in section 21."

75. It is employers who are obliged to consult with employees and not the Minister with employees. The Minister did not fail to comply with what the law requires.

76. To the extent that the Applicants allege that the consultations were not "meaningful", "meaningful" consultation does not mean that the Minister is required to obtain the approval or acquiescence of the relevant sectors. All it means is that the Minister must be open to persuasion.

77. In **Electronic Media Network Limited and Others v eTV (Pty) Limited and Others** 2017 (9) BCLR 1108 (CC) ("Electronic Media Network") the Court held:

"[42] Section 3(5) requires no more than that the views of interested persons be obtained. This is to be done by publishing the text of the draft policy by notice in the Gazette. Interested persons are to submit written submissions "in the manner specified in such notice in not less than 30 days from the date of the notice". This is a procedure a Minister must follow when she initiates a policy development process in terms of the ECA. It would be a misinterpretation of section 3(5) and a

misunderstanding of the concept of consultation if one were to approach it as if it is intended to allow parties to exhaustively discuss or iron out divergent views until some mutually acceptable basis to proceed from, is found. e.tv and other interested persons only have the right to ensure that their voices are heard during the consultation period before a final policy determination is made."

78. So too, we submit that it would be a misinterpretation of section 15(A)(2) and (4) and a misunderstanding of the concept of consultation if one were to approach it as if it is intended to allow parties to exhaustively discuss or iron out divergent views until some mutually acceptable basis to proceed from, is found. There is no legal entitlement to insist on a negotiated settlement on the Sectoral Targets.

79. The following principles were laid down in **Electronic Media Network**:

79.1. The duty to consult "requires no more than that the views of interested persons be obtained. This is to be done by publishing the text of the draft policy by notice in the Gazette."

79.2. It is not *"intended to allow parties to exhaustively discuss or iron out divergent views until some mutually acceptable basis to proceed from"* is agreed on.

79.3. The parties who must be consulted *"only have the right to ensure that their voices are heard during the consultation period before a final policy-determination is made."* Those interested parties ought to respond to the invitation to give input by speaking exhaustively when given the opportunity.

79.4. It was made clear that the key question is whether interested parties were afforded the opportunity to be heard. It is not required that they avail themselves of this opportunity.

C. REQUIRMENTS FOR AN INTERIM INTERDICT NOT MET

80. The requisites for an interim interdict are well-known and were set out already in 1914 in **Setlogelo v Setlogelo**:[27]

80.1. a *prima facie* right;

80.2. a well-grounded apprehension of irreparable harm if the interim relief is not granted;

80.3. that the balance of convenience favours the granting of an interim interdict;

80.4. that the applicant has no other satisfactory remedy.

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[27] 1914 AD 221, 227

81. It is pertinent to highlight what the Constitutional Court held in **National Treasury and Others v Opposition to Urban Tolling Alliance and Others**[28]

> "[44] The common law annotation to the Setlogelo test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for that relief has been made out. Beyond the common law, separation of powers is an even more vital tenet of our constitutional democracy. This means that the Constitution requires courts to ensure that all branches of Government act within the law. However, courts in turn must refrain from entering the exclusive terrain of the Executive and the Legislative branches of Government unless the intrusion is mandated by the Constitution itself.
>
> [45] It seems to me that it is unnecessary to fashion a new test for the grant of an interim interdict. The Setlogelo test, as adapted by case law, continues to be a handy and ready guide to the bench and practitioners alike in the grant of interdicts in busy Magistrates' Courts and High Courts. However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our Constitution. This means that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.
>
> [46] Two ready examples come to mind. If the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists. Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.
>
> [47] The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of Government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm. It is neither prudent nor necessary to define "clearest of cases". However one important consideration would be whether the harm apprehended by the claimant amounts to a breach of one or more fundamental rights warranted by the Bill of Rights. This is not such a case."

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[28] 2012 (6) SA 223 (CC) ("OUTA") at 237, para [44]-[47]

82. The Applicants aver that its members and all persons affected by the Sectoral Targets and the Administrative Regulations, have a clear right to just administrative action and executive action that is legally valid and complies with the Constitution.

83. To establish a *prima facie* right, it is not sufficient for an applicant to claim the right to approach a court in order to review an administrative decision. "It is a right to which, if not protected by an interdict, irreparable harm would ensue."[29] Thus, the *prima facie* right is inextricably linked to irreparable harm, the apprehension of which must be determined objectively.

84. Justice Binns-Ward J in **City of Cape Town v South African National Roads Agency Ltd and Others** 2015 (6) SA 535 (WCC) at para [77] held that:

> "In a matter like the current case, in which the interim relief is sought *pendentelite*, the right in question is bound up in the substantive remedy sought in the principal proceedings, which, as counsel were agreed, is not to be confused with the mere right to approach the court for substantive relief in the principal proceedings. Thus the existence of the prima facie right, and the extent to which its certainty is open to doubt, fall to be determined with reference to the applicant's prospects of success in the principal proceedings - as far as it is possible at this stage to assess them. The mere existence of the right falls to be determined by considering the facts as set out by the applicant together with any facts set out by the respondent which the applicant cannot dispute, and deciding whether, with regard to the inherent probabilities, the applicant should on those facts obtain final relief in the main case. The degree to which the existence of the right is open to doubt falls to be weighed by the court with the considerations affecting the balance of convenience in exercising its discretion whether to grant or refuse interim relief; the more certain the prospects of success (i.e. the stronger the case), the more inclined the court will be to grant the interim remedy; the less certain, the greater the weight that will be attached to the balance of convenience – an approach that has as its logical conclusion that if the right is certain the balance of convenience becomes irrelevant and an entitlement to final relief is established."

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[29] **OUTA**, at para [50]

85. In the matter at hand, we are concerned with measures towards the attainment of substantive equality in terms of the Constitution. Equitable representation of designated groups pursuant to the Employment Equity Act is a measure by which the right to equality is justifiably limited with a view to addressing the effects of unfair discrimination of the past.

86. What is remiss of the Applicants' argument is that it fails to appreciate that restitution or affirmative measures are steps towards the attainment of substantive equality. Steps so taken within the limits that the Constitution imposes are geared towards the advancement of equality. This is what the Sectoral Targets seek to achieve. It seeks to level the fields and ensure equal opportunities. The argument of the sort raised by the Applicants further fails to appreciate what the Constitutional Court held in **Solidarity and Others v Department of Correctional Services and Others 2016 (5) SA 594 (CC)** at paras 40-47:

> "[40] In my view the application of the Barnard principle is not limited to White candidates. Black candidates, whether they are African people, Coloured people or Indian people are also subject to the Barnard principle. Indeed, both men and women are also subject to that principle. This has to be so because the transformation of the workplace entails, in my view, that the workforce of an employer should be broadly representative of the people of South Africa. A workplace or workforce that is broadly representative of the people of South Africa cannot be achieved with an exclusively segmented workforce. For example, a workforce that consists of only White and Indian managers and, thus, excludes Coloured people and African people or a senior management that consists of African people and Coloured people only and excludes White people and Indian people or a senior management that has men only and excludes women. If, therefore, it is accepted that the workforce that is required to be achieved is one that is inclusive of all these racial groups and both genders, the next question is whether there is a level of representation that each group must achieve or whether it is sufficient if each group has a presence in all levels no matter how insignificant their presence may be. In my view, the level of

representation of each group must broadly accord with its level of representation among the people of South Africa.

[41] It would be unacceptable, for example, for a designated employer to have a workforce of five hundred employees fifty of whom occupy senior management positions but only five of those senior management positions are held by African people when twenty are held by White people, fifteen by Coloured people and ten by Indian people despite the fact that in the population of South Africa, African people are by far the majority. Such a workforce could not conceivably be said to be broadly representative of the people of South Africa.

[42] Why do I say that a designated employer is required to work towards achieving a workforce that is broadly representative of the people of South Africa? I say so because, upon a proper construction of the EE Act read with the relevant provisions of the Constitution, the Public Service Act and the Correctional Services Act, that is what is required. Section 9(2) of the Constitution provides:

> "(2) Equality includes the full and equal enjoyment of all rights and freedoms. 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."

…

[46] Nobody can justifiably dispute that, although under apartheid and racial discriminatory laws and practices all Black people suffered hardships, the greatest hardships were suffered by the African people. Indeed, this much was recognised by the High Court in Motala and by the Labour Court in this case. Therefore, any corrective measure, such as an employment equity plan or an affirmative action programme, cannot succeed in reversing the imbalances of the past if it is based on the notion that Black people would be equitably represented in a workforce or in a particular occupational level if there are enough Coloured people or Indian people even if there are no African people or there are only a few African people.

[47] The EE Act is a legislative measure contemplated in section 9(2) of the Constitution."

87. We submit that for all the above reasons, the Applicant has not demonstrated a *prima facie* right. Turning to a well-grounded apprehension of irreparable harm, the Applicants allege that from 1 September 2025, employers, their business, employees, and prospective employees will suffer irreparable harm. This they argue is that some 15687 employers will be required to reassess, re-

examine and rewrite their employment equity plans before 1 September 2025. These employers will allegedly have to *"restructure their business to avoid financial and other sanctions. Permanent decisions will be made whether individual employees and prospective employees will be employed or not employed and promoted or not promoted"*.

88. Regulation 9(1) and (2) of the Administrative Regulations however provides that:

> "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."

89. The Applicants do not allege whether these 15687 employers are designated employers prior to 1 April 2025. This is relevant because only designated employers prior to 1 April 2025 must prepare and implement an employment equity plan from 1 September 2025 until 31 August 2030. Employers who became designated employers after 1 April 2025 are only required to submit their first reports in the following reporting cycle.

90. Furthermore, designated employers may submit the reports manually by hand or electronically. Electronic submissions are to be made between 1 September 2025 and 15 January 2026.

91. As regards the allegation that employers must “restructure” their businesses, the Applicants fail to provide any evidence to support this allegation.

92. Designated employers were always required in terms of the Employment Equity Act to draft their employment equity plans and set their own numerical targets annually. With the introduction of the Sector Targets and the Administrative Regulations, this has not changed. All that is required is that a designated employer will be required to set numerical targets in line with the applicable Sectoral Targets over a 5 year period. Designated employers who cannot comply can justify why they unable to comply for any given period.

93. There is therefore no well-grounded apprehension of irreparable harm. The alleged *“potential liability and exposure to harsh sanctions, loss of contracts and exclusion from any dealings with the State”* is unfounded and void of any merit.

94. No attempt is made whatsoever by the Applicants to address the requirement of the absence of an alternative remedy. The Respondents submit that the remedy open to the Applicants does not lie in running to court on an urgent basis and seeking an interdict on issues that have been in the public domain since April 2025. It ought to comply with legislation that has been passed months ago and where it is unable to do so to justify its reasons why.

95. This court is with respect being dragged to stop dead the transformation framework envisaged by the Employment Equity Act.

96. The Minister has acted lawfully and the court with respect should be astute not to stop dead the exercise of this power.

97. The Applicants allege that the harm to the Minister and the Department, if part A relief is granted, will be inconsequential. However, all that this application seeks to do is to entrench the inequalities of the past for years to come. By preserving the status quo until the finalization of the Part B review and any appeals thereafter, the measures intended to transform the labour market and address the past imbalances to uplift the most vulnerable groups will be further delayed. This is not inconsequential.

98. We submit that the Applicants have not made out a case for the relief they seek and that all the above factors militate against the court granting an interdict.

D. NO URGENCY

99. The lack of urgency is a relevant consideration in demonstrating that the Applicants' conduct, in launching this application in the manner and timing that they did, demonstrates a clear abuse of Court process.

100. The fact that the Applicant wants the issues resolved urgently does not render the matter urgent.

101. This, with respect

101.1. is discourteous towards the Court which needs to prepare for and hear a considerable number of urgent matters in a day;

101.2. fails to comply with Rule 6(12)(b) of the Uniform Rules;

101.3. fails to comply with this Division's Practice Manual on urgent enrolment; and

101.4. an urgent Court is not geared to deal with.[30]

102. The explanation given by the applicant regarding the delay is contrary to all principles developed by our Courts in considering urgent matters.

103. The Court's processes and rules must be respected, and urgency is not there merely for the asking.

104. The conclusion is inescapable that this application was far from urgent. That being so, this Court should express its displeasure with an appropriate costs order as the Practice Manual of this division prescribes.

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30 See **In Re: Several Matters on the Urgent Court Roll 2013 (1) SA 549 (GSJ**), especially paras [2]-[3], [5]-[8] and [15]-[20]

E. CONDONATION

105. We respectfully submit that the Honourable Court exercise its discretion judicially upon a consideration of the degree of lateness and the explanation therefore, the prospects of success and the importance of the case.

F. SOLIDARITY'S APPLICATION TO BE ADMITTED AS *AMICUS CURIAE*

106. The role of an *amicus curiae* is to draw the attention of the court to relevant matters of law and fact to which attention would not otherwise be drawn. In return for the privilege of participating in the proceedings without having to qualify as a party, an *amicus curiae* has a special duty to the court. That duty is to provide cogent and helpful submissions that assist the court.

107. The participation of solidarity as *amicus curiae* in these proceedings do not assist the court. The submissions sought to be advanced by Solidarity are neither cogent nor helpful, they have no merit and have not been adequately raised. Solidarity woefully fails to meet the requirements for admission as *amicus curiae*.

108. In the exercise of its discretion whether or not to admit a person as an *amicus* this Court will have regard to the principles that govern the admission of an amicus. These principles are whether the submissions sought to be advanced are relevant to the issues before the court, will be useful to the court and are different from those of the other parties.

108.1. Solidarity seeks to allege that the Respondents are in contempt of a court order made by the Labour Court, these proceedings are however irrelevant to these proceedings. Further, this clearly demonstrates an alternative remedy insofar as Solidarity's participation in these proceedings are concerned.

108.2. As regards, the Race and Impact Study it seeks to place before this Court, the study was conducted by Solidarity itself, it is an opinion piece and nothing more. The Respondents cannot be expected to engage with this Study in urgent court.

108.3. As regards the contemplated comprehensive constitutional review application it is yet to bring, this too is irrelevant to the granting of relief in this application and again demonstrates the lack of urgency in the matter at hand.

108.4. As regards Solidarity's argument that the principle *lis pendens* applies with full force, Solidarity appears to conflate the principle. No case is made out why this Court should suspend the Sectoral Targets and Administrative Regulations pending the Labour Court proceedings and/or contemplated review proceedings to be brought by Solidarity in due course;

108.5. Finally as regards the allegation that Solidarity and its members are expected to consult with employers on revised employment equity plans in terms of the Sectoral Targets and Administrative Regulations that may

be declared unconstitutional and which allegedly creates confusion and procedural absurdity, Solidarity does not explain why it failed to bring an urgent application sooner to suspend the Sectoral Targets and Administrative Regulations nor does Solidarity demonstrate any irreparable harm. Designated employers were always required in terms of the Employment Equity Act to draft their employment equity plans and set their own numerical targets annually. With the introduction of the Sectoral Targets and the Administrative Regulations, this has not changed. All that is required is that a designated employer required to set numerical targets in line with the applicable Sectoral Targets over a 5 year period. Designated employers who cannot comply can justify why they unable to comply for any given period. There is no confusion or procedural absurdity. Accordingly no designated employer will suffer any irreparable harm.

109. We emphasis what was stated by the Constitutional Court in **National Treasury and Others v Opposition to Urban Tolling Alliance and Others** 2012 (6) SA 223 (CC),

> "14. The Democratic Alliance says it is entitled to be admitted as amicus because in *Democratic Alliance v President*,[11] the Supreme Court of Appeal recognised its interest and standing in pursuing public interest litigation. That may be so. But, I do think that there is a distinct difference between a political party litigating to advance public interest in its own name, on the one hand, and propping itself up as a friend of the court, on the other. Here the Democratic Alliance has made common cause with the respondents and has strenuously urged us to dismiss the appeal. It is plainly the fifth wheel of the respondents. Its overall partisan position is better suited to a litigant than a friend of the court.
>
> 15. The avowedly political nature of what the Democratic Alliance calls its "interest" in this case makes it inappropriate to seek admission as an amicus rather than as an intervening party. Moreover, its "interest" could

find full expression in the National and Provincial Legislatures and Municipal Councils where it says it is widely represented. It would therefore be inappropriate to permit the Democratic Alliance to advance a sectarian interest under the guise of amicus curiae."

G. CONCLUSION AND APPROPRIATE RELIEF

53. The Constitutional Court has recognised that

"…our Constitution differs from other constitutions which assume that all are equal and in so doing simply entrench existing inequalities. Our Constitution recognises that decades of systematic racial discrimination entrenched by the apartheid legal order cannot be eliminated without positive action being taken to achieve that result . . . The effects of discrimination may continue indefinitely unless there is a commitment to end it"[31]

54. The Employment Equity Act and the Sectoral Targets are an honest, *bona fide* and constitutional commitment to end the effects of decades of systematic racial discrimination entrenched by the apartheid legal order.

55. We submit that the appropriate relief is that the application for interim relief as well as the application brought by Solidarity be dismissed with costs, such costs to include the costs of two counsel on scale C.

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31 **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others** 2004 (4) SA 490 (CC) at para [74]