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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-107022**

In the matter between:

National Employers' Association of South Africa,Sakeliga NPC	Plaintiff / Applicant / Appellant
and	
Minister of Employment and Labour,Director-General of the Department of Employment and Labour,Commission for Employment Equity	Defendant / Respondent

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Replying Affidavit

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2025-107022

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

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FILING NOTICE

DOCUMENTS TO BE FILED:

- **REPLYING ARFFIDAVIT**
- **CONFIRMATORY AFFIDAVIT**

DATED AT PRETORIA ON 12 AUGUST 2025.

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2025-107022

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant

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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

REPLYING AFFIDAVIT

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I, the undersigned,

GERHARD PAPENFUS,

do hereby make oath and state:

1. I am the CEO of the first applicant. I depose to this replying affidavit on behalf of the first and second applicants.

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2. The facts in this affidavit are, unless clearly indicated otherwise, within my own knowledge or derive from documents under my control and are true and correct. Legal submissions are based on advice from the applicants' legal representatives.

3. For the sake of convenience, I will continue to use the abbreviations and other defined terms used in the founding affidavit.

THIS REPLYING AFFIDAVIT

4. This is the applicants' affidavit in reply to the respondents' answering affidavit.

5. The applicant's reply will be structured under the following headings:

   5.1 Clear unlawfulness established;

5.2 Irreparable harm established;

5.3 Balance of convenience not in favour of respondents;

5.4 Urgency;

5.5 Answer *seriatim*.

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CLEAR UNLAWFULNESS ESTABLISHED

6. The respondents' answering affidavit serves to confirm that the 2025 Targets and the impugned regulations are unlawful and invalid.

Reliance on the publication of the draft 2023 and 2024 targets

7. Section 15A(4) demands that a "*draft*" of any targets published by the Minister in terms of section 15A(2) "*must be published in the Gazette, allowing interested parties at least 30 days to comment thereon*".

8. There is no dispute that the draft 2025 Targets were not published in the Government Gazette or that interested parties were given 30 days to comment thereon.

9. On this basis alone, the 2025 Targets are clearly unlawful and invalid by reason of the Minister's failure to comply with section 15A of the Act.

10. The Minister's reliance on the publication of the draft 2023 targets and the draft 2024 targets is no answer because:

10.1 The 2025 Targets set on 15 April 2025 were entirely different to the targets proposed in the draft 2024 targets in February 2024, which were, in turn, different to the draft 2023 targets.

10.2 The 2025 Targets were also set according to a new method, and were based on information that did not exist in February 2024.

10.3 Interested persons therefore were not provided 30 days to comment on the draft 2025 targets (or the method according to which they were set or the information on which they were based) as required by section 15A(4) of the Act.

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11. The 2025 Targets are clearly unlawful and invalid on this ground.

Employees not consulted

12. The respondents do not dispute that the Minister did not consult with employees in the Sectors.

13. The respondents' say that in terms of sections 13, 16 and 17 of the Act, it is the employers' duty to consult with employees, and not the Minister's duty.

14. The applicants submit that this is clearly wrong:

14.1 Section 15A(2) of the Act empowers the Minister to set targets for the Sectors *after* consulting with the Sectors.

14.2 The Sectors comprise employers and employees. Both employers and employees must therefore be consulted with.

14.3 In terms of section 17 of the Act, the matters for consultation between employers and employees as contemplated by sections 13 and 16 include:

"(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."

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14.4 In the consultations between employers and employees, therefore, employees have no ability to comment on, or influence, the targets that will be set by the Minister.

15. The consultation between employers and employees provided for by sections 13, 16 and 17 of the Act is therefore no substitute for the statutory obligation imposed on the Minister to consult employees prior to setting targets in terms of section 15A(2) of the Act.

16. The 2025 Targets are clearly unlawful and invalid because the Minister failed to consult with employees before setting them.

Failure to consult meaningfully with employers from the Sectors

17. In order to show that the Minister consulted the Sectors before setting the 2025 Targets, the respondents refer to the "sector engagements" held by the Department and the EE Commission between June 2019 and November

2022. Evidence of the engagements is provided in the form of the schedule attached as "TM9".

18. The respondents' reliance on these sector engagements is misplaced:

18.1 There could be no consultation for the purposes of sections 15A(2) of the Act because section 15A(2) did not then exist. The Amendment Act was only assented to in April 2023.

18.2 There could also be no consultation for the purposes of section 15A(2) of the Act on the draft 2025 targets because between June 2019 and November 2022, the draft 2025 targets did not yet exist (nor did the draft 2023 or 2024 targets).

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18.3 "TM9" shows that the engagement were not held with the employers and employees in the Sectors. "TM9" only shows engagements with isolated industry bodies or organisations. For example:

18.3.1 In the case of the "*Wholesale and retail trade; repair of motor vehicles and motorcycles*" sector, only the Consumer Goods Council and the Retail Motor Industry were consulted.

18.3.2 In the case of the "*Transportation and Storage*" sector, only the Road Freight Association was consulted;

18.3.3 In the case of the "*Water Supply, Sewerage , Waste Management and remediation activities*" sector, only Rand Water, Sedibeng Water and JHB Water, were consulted;

18.3.4 In the case of the "*Arts Entertainment and Recreation*" sector, only the South African Rugby Union, Ster-Kinekor Theatres, Nu Metros and Virgin Active were consulted.

19. There can therefore be no suggestion that the stakeholder engagements held between June 2019 and November 2022 went to satisfy the requirement that the Minister consult with the Sectors for the purpose of setting the 2025 Targets.

20. Therefore, the only consultations that could be relied on by the respondents were the virtual consultations held in February 2025.

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21. But in this regard, the respondents do not dispute the allegations in the founding affidavit that these consultations were inadequate. In particular, the respondents do not dispute that:

21.1 The virtual consultations held on MS Teams between 11 February 2025 and 19 February 2025 were the only time the Department consulted with employers about the proposed 2025 targets.

21.2 The Department only sent invitations addressed to "*CEOs & Senior EE Managers*" thus inviting only some designated employers to a virtual consultation to discuss the proposed sector numerical targets.

21.3 There was no consistency in sending out the invitations to registered employers, many did not receive the invitations.

21.4 The Department only provided employers with the proposed 2025 targets either one or two days before the meeting, or in the meetings as part of the presentation, or emailed it to them after the meetings.

21.5 Employers were unable to analyse the targets and meaningfully make representations on the targets during the meetings.

21.6 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.

21.7 The meetings were conducted like information sessions, and not consultations.

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21.8 The majority of the time was taken up by the Department's presentation and questions of an administrative nature.

21.9 Less than 20 employers out of the hundreds of employers who attended, had opportunity to speak in the meetings.

21.10 The Department avoided answering comments in the "chats" that commented on the substance of the proposed 2025 targets.

21.11 Between 4 and 8 working days were afforded to those attending the meetings to make submissions in writing. This time-period was inadequate.

22. The 2025 Targets are therefore clearly unlawful and invalid because the Minister failed to properly consult with employers before setting them.

Arbitrariness and discrimination against women

23. The respondents do not dispute the facts contained in the founding affidavit that form the basis of the applicants' claims that the 2025 Targets are arbitrary and discriminate against women.

24. In this regard:

24.1 The respondents do not contradict the applicants' description of the method according to which the 2025 Targets were set.

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24.2 The respondents fail to answer the claim that the Minister did not take into account the following information when setting the 2025 Targets for a Sector:

24.2.1 the nature of the Sector;

24.2.2 the number of suitably qualified persons from designated groups that are available for employment in the Sector;

24.2.3 the economic status of the Sector;

24.2.4 the rate of growth in the Sector, and whether there is sufficient growth to support new employment or promotion in the Sector; and

24.2.5 the rate of natural attrition in the Sector.

24.3 The bald allegations in paragraph 56(bis) of the answering affidavit that "*years of work*" were put in to determine the 2025 Targets and that "*the facts and circumstances are taken into account*" are not an answer to the case made in the founding affidavit that the 2025 Targets are arbitrary.

24.4 The respondents make no attempt at all to explain how the setting of targets by means of the application of the same fixed, pre-determined percentages to every one of the Sectors permitted and take into account "*the facts and circumstances*" unique to the Sectors.

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24.5 The respondents also fail to identify what factors were taken into account by the Minister, or explain in any way how they were taken into account in applying the new methodology in each Sector, despite that these facts fall peculiarly within the knowledge of the respondents.

24.6 The respondents do not deny that the 2025 Targets aim at reducing the number of women employed in various employment levels in various Sectors.

24.7 The respondents offer no justification for reducing the number of women in favour of men.

25. The applicants submit that these grounds of unlawfulness and invalidity are clearly established.

No socio-economic impact assessment on the scheme introduced by the 2025 Targets and impugned regulations

26. The respondents do not dispute that it was necessary for the Minister to obtain and consider a comprehensive socio-economic report.

27. The respondents claim that this requirement was satisfied by the socio-economic impact assessment conducted in 2019 ("*the 2019 SEIA*"). The respondents do not attach a copy of the 2019 SEIA. They only attach the socio-economic impact assessment sign-off form dated 24 July 2019, as annexure "TM8".

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28. The respondents' reliance on the 2019 SEIA is misplaced.

29. It is clear from "TM8" that the 2019 SEIA was conducted as part of the parliamentary process to approve the Employment Equity Amendment Bill.

30. The Bill or the Amendment Act are not the same as the 2025 Targets and the impugned regulations. The latter introduced a scheme that aimed at making the demographic of every employment level in every sector of the economy a mirror image of the EAP.

31. The 2019 SEIA was a socio-economic assessment of the proposed amendments to the Act which empowered the Minister to set targets.

32. The 2019 SEIA was not a socio-economic impact assessment of the radical scheme introduced by the Minister in the form of the 2025 Targets and the impugned regulations.

33. No socio-economic impact study was conducted to assess the feasibility and consequences of the 2025 Targets and impugned regulations.

34. If the 2019 SEIA assessed the feasibility and consequences of introducing the 2025 Targets and impugned regulations, the respondents would have attached it to the answering affidavit. The Court can draw an adverse inference from their failure to do so.

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35. The Minister's decision to set the 2025 Targets and publish the impugned regulations is therefore clearly irrational.

IRREPARABLE HARM ESTABLISHED

36. The respondents deny that any irreparable harm will be suffered if the 2025 Targets are not interdicted.

37. In paragraph 16 of the answering affidavit they allege that:

37.1 the applicants fail to identify who will suffer irreparable harm;

37.2 the applicants provide no evidence that the employers whose affidavits are attached to the founding affidavit will suffer harm.

38. The respondents are unable, however, to gainsay that:

38.1 On 1 September 2025, implementation of the 5-year 2025 Targets becomes compulsory. Every designated employer in every sector of the economy, is required to comply with the 2025 Targets.

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38.2 All designated employers will therefore have to reassess, re-examine and rewrite their employment equity plans based on the 2025 Targets. They will incur expenses in doing so. These expenses will not be recoverable if the 2025 Targets are set aside.

38.3 Employers will be required to implement their employment equity plans that must comply with the 2025 Targets. Employers will therefore make permanent changes to their workforce, based on the 2025 Targets. They will employ or not employ, promote or not promote, all based on 2025 Targets.

38.4 These permanent decisions will affect employers, businesses, employees and prospective employees across the country. Designated employers will have to take on the expense that this involves.

38.5 The changes made, the expense incurred, the impact on employers, employees and prospective employees will be irrecoverable and irreversible, if the 2025 Targets are set aside.

38.6 The rights of employers' and employees' and prospective employees' to dignity, equality and freedom of trade and profession, contained in sections 9, 10 and 22 of the Constitution will thus be infringed.

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39. The respondents could not have read the affidavits by the applicants' members that explain the impact that the implementation of the 2025 Targets will have on them.

40. In this regard:

40.1 In "FA7.1" Mr Van Heerden of ELB Equipment Holdings (Pty) Ltd explains the impact the targets will have in paragraphs 14 to 27, concluding that they may lead to the closure of the business.

40.2 In "FA7.2", Mr Schwartze of Cape Heat Exchanges (Pty) Ltd states in paragraph 11 that the company will be forced to shrink below 50 staff members.

40.3 In "FA7.3", Mr Du Plessis of Atlas Organic Fertilizers (Pty) Ltd discusses the impacts in paragraph 22 to 30, stating that the company

will be forced to employ more staff and that the cost of doing so will place financial strain on the company.

40.4 In "FA7.4", Mr Dreyer of Zest Fruit (Pty) Limited states in paragraphs 24 to 25 that the targets will have major cost implications for the company.

40.5 In "FA9.2", Ms Boardman of CemAir (Pty) Ltd deals with the impacts of the targets in paragraphs 22 to 27, and states that the targets will lead to the diversification of resources in a manner that will devastate productivity and profitability, and benefit competitors who have the resources to employ persons from the limited pool of suitably qualified persons at a higher salary.

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40.6 In "FA9.4", Mr Stevens of Durban Overall (Pty) Ltd states in paragraphs 16 to 18 that the targets will lead to the downscaling of production and eventual closure of the business, which in turn will lead to huge job losses.

40.7 In "FA14", Mr Louw of Bird Machines (Pty) Ltd explains in paragraph 9 to 13 that the targets will result in the business downsizing and outsourcing functions to the extent necessary to reduce the number of employees below 50.

41. The respondents then state in paragraph 43 that the applicants have failed to show how many of the 15 687 designated employers referred to in the founding affidavit were registered before 1 April 2025. The answer to this is contained in the Department's own presentations: All 15 687 were designated employers before 1 April 2025.

42. The Department's presentations identified the number of designated employers who were already registered with the Department in 2024 in the following extract:

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> *"To reduce the regulatory burden on small business (those who employ 1-49 employees) – not to be regarded as designated employers from 1 January 2025.*
>
> *(A total of 29 269 covering 7 699 665 employees reported in 2024, which included 15 687 large employers (i.e. employers with 50 or more employees) covering 7 357 011 employees; and 13 582 small employers (i.e. employers with 1 to 49 employees) covering 342 654 employees."*

43. The respondents then suggest in paragraph 44 that the 2025 Targets will not be implemented from 1 September 2025 on the basis that the annual reporting period is between 1 September 2025 and 15 January 2026.

44. But the reporting period is irrelevant. The obligation to prepare employment equity plans and commence their implementation is contained in regulation 9(1) which states that "*Designated employers must prepare and implement an EE Plan for the period from 1 September 2025 until 31 August 2030.*"

45. Finally, the respondents' suggestion that irreparable harm is eliminated by the fact that employers are excused from complying with the 2025 Targets on reasonable grounds, is misconceived.

46. The 2025 Targets and the impugned regulations will oblige employers to make changes to their workforce, and employ or not employ, promote or not promote employees, all based on the unlawful and invalid 2025 Targets.

47. The fact that some employers will be able to justify their non-compliance with the 2025 Targets on reasonable grounds, will not prevent the employers *who do attempt to implement* the 2025 Targets or the employees and prospective employees *who are affected* in that process, from suffering irreparable harm and loss.

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BALANCE OF CONVENIENCE NOT IN FAVOUR OF RESPONDENTS

48. The respondents state that if interim relief is granted, "*measures intended to transform the labour market and address the past imbalances to uplift the most vulnerable groups*" will be delayed.

49. It may be true that if the interim relief is granted, the implementation of the 2025 Targets will be delayed.

50. But that does not mean that there will be no "*measures intended to transform the labour market and address the past imbalances to uplift the most vulnerable groups*".

51. The affirmative action measures provided for in Chapter 3 of the Act that are designed to address past imbalances and uplift vulnerable groups will continue to operate.

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52. Designated employers will remain obligated to prepare and implement employment equity plans, which must include numerical goals in terms of section 20(2)(c) as well as timetables for the achieving of such goals.

53. The robust enforcement measures contained in the Act remain available to the respondents to ensure that these affirmative action measures are implemented.

54. The granting of interim relief will therefore not "*entrench the inequalities of the past for years to come*". Nor is that the purpose of the application.

55. The granting of interim relief will serve to protect thousands of employers, millions of employees and prospective employees from suffering the irreparable harm and loss that will occur if the unlawful and invalid 2025 Targets and impugned regulations are implemented. The purpose of the application is to prevent such harm and loss.

URGENCY

56. The respondents contend in paragraphs 20 to 25 of the answering affidavit that the urgency of the application is self-created, and that the application is an abuse of process.

57. Neither contention is correct.

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58. No delay or dragging of the applicants' feet caused the matter to become urgent. The urgency stems from the obligation placed on employers by regulation 9(1) to prepare and implement employment equity plans complying with the 2025 Targets from 1 September 2025.

59. There are only 4 and-a-half months between 15 April 2025 and 1 September 2025. It is common knowledge that in the Gauteng Division, there is no reasonable prospect of opposed motion being launched, ripened, and heard on the ordinary opposed roll within that period of time.

60. A matter is urgent when an applicant cannot obtain adequate relief in a hearing in the ordinary course. The applicants self-evidently could not obtain adequate relief in a hearing in the ordinary course.

61. The applicants have provided a detailed account of the time that lapsed between the publication of the 2025 Targets and the EE Regulations and launching the application.

62. Nothing that occurred in that period caused the matter to *become* urgent.

63. Moreover, the account is reasonable. And nothing contained in that account is disputed by the respondents.

64. The application is not an abuse of process.

65. The time periods set for the filing of affidavits were aligned with the urgency and size of the matter.

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66. The respondents were originally afforded from 8 July 2025 to 28 July 2025 to answer Part A, a period of approximately three weeks.

67. The respondents ultimately took approximately five weeks to prepare their answering affidavit. They filed their answering affidavit on Friday 8 August 2025 at 15:29.

68. The respondents do not state that they were unable to properly prepare their answering affidavit because 5 weeks was too little time.

ANSWER *SERTIAM*

69. I shall now deal with the allegations in the answering affidavit *seriatim*.

70. In so doing, I will refrain from dealing with allegations already expressly or impliedly dealt with above. I will also refrain from dealing with allegations that constitute legal argument.

71. Any particular allegation that is not dealt with below is denied to the extent that it is inconsistent with what I have stated in the founding affidavit and in this affidavit.



Ad paragraph 15

72. The respondents are correct that steps taken towards the attainment of substantive equality must comply with the Constitution.

73. When the steps taken are not constitutionally compliant, it is in the public interest that such steps are challenged.

Ad paragraph 16

74. The respondents have not pertinently disputed any of the allegations in any of the affidavits deposed to by the members and supporters of the applicants.

75. These affidavits:

75.1 illustrate and explain how the setting of arbitrary targets, that ignore the circumstances of the sectors and businesses for which the targets are set, make those targets inappropriate and impossible to achieve.

75.2 describe how there was no meaningful consultation with employers during the virtual meetings.

75.3 identify the ways in which these employers will suffer irreparable loss if the 2025 Targets and impugned regulations are implemented.

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Ad paragraph 19

76. This application is not concerned with Part B. There is no prohibition in law preventing the applicants from also challenging the sections introduced into the Act by the Amendment Act. The applicants in any event do so on additional and different grounds.

Ad paragraph 27

77. The founding affidavit is replete with allegations that employers, employees and prospective employees will suffer irreparable loss and harm if the interim relief sought is not granted.

78. These allegations are re-stated concisely in paragraphs 322 to 324 in the section of the founding affidavit headed "*Prime facie right*".

79. The constitutional rights that will be infringed are expressly identified in paragraphs 306 to 307 of the founding affidavit.

80. It is also self-evident that financial loss incurred by employers (and employees) because they are obliged to comply with unlawful and invalid targets will infringe their right to property.

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Ad paragraphs 34.1 to 34.2.3

81. The respondents do not dispute that the draft 2023 targets and the draft 2024 targets are substantially and materially different from the draft 2025 targets presented to employers during the virtual consultations, and ultimately published as the final 2025 Targets.

82. They also do not dispute that the 2025 Targets were prepared according to a different methodology and were based on information that did not exist when the draft 2023 and draft 2024 targets were published.

Ad paragraph 35.2

83. The respondents provide no evidence of what the pace of transformation should be.

84. It is also not explained why the pace of transformation in the labour market and the country as a whole "*did not make business sense*"

85. In any event, the Constitutional Court has recently held that the need to urgently achieve a legitimate purpose cannot be invoked to undermine meaningful public participation. I am advised that this decision will be identified in the heads of argument filed on behalf of the applicants.

Ad paragraph 35.3

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86. The respondents provide no evidence of the alleged consultative meetings embarked on during 2016. It is also not explained who the "*business leaders*" from various sectors were.

87. The respondents further do not inform the Court about what the "*vigorous debates*" entailed. None of the "*various factors, which contributed to the continued under-representation of the designated groups in decision-making positions in the workplace*" are identified.

Ad paragraph 35.4

88. The stakeholders that allegedly "*made a call and requested*" for the setting of sector employment equity targets as benchmarks and the promulgation of section 53 of the Employment Equity Act for the issuing of employment equity certificates, are not identified.

89. This is not evidence that the Minister properly consulted with the Sectors prior to setting the 2025 Targets.

Ad paragraph 35.14 to 36

90. The respondents disclose in this paragraph that the Commission finalised the 2025 Targets on 3 March 2025.

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PRETORIA

91. This means that less than a week passed between the date when the last submissions were received on 24 February 2025 and the finalisation of the 2025 Targets. Moreover, it is common cause that these remained unchanged.

92. There is no evidence that the representations made by employers during or after the virtual meetings were considered and taken into account by the Minister, the Department or the EE Commission, before the 2025 Targets were set.

93. It is not even alleged that the representations made by employers were considered.

Ad paragraph 52 to 55

94. The founding affidavit states repeatedly that the irreparable harm and loss identified cannot be prevented by any means other than the interim interdictory relief sought.

95. The respondents do not identify the adequate remedy in due course that is available to the applicants.

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96. It is not correct that the transformation framework in the Act will be "*stop[ed] dead*".

97. The pre-existing affirmative action and enforcement provisions in the Act will continue to operate and be implemented.

Ad paragraph 56 to 60

98. The allegation that counsel was only briefed on 30 July 2025 is apparently untrue.

99. The application was originally served on the respondents on 8 July 2025 and an electronic copy of the application was delivered by WeTransfer on the same date.

100. On 22 July 2025, officials of the Department requested another copy of the WeTransfer link. In this request, both senior and junior counsel on brief for the respondents were copied in the email. In the request the Department specifically requested to share the link with "*counsels on brief*".

101. The applicants' attorney delivered a new WeTransfer link as requested, and copied the respondents' senior and junior counsel in the reply.

102. On 23 July 2025, the Department confirmed that they could successfully download the link and view the papers and that a follow-up will be made with "*Counsels on brief*". Counsel was copied in this email.

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103. Copies of the relevant emails are attached as "RA1". The confirmatory affidavit of Rohann Eloff will be filed evenly herewith.

104. I also point out that no confirmatory affidavit by the state attorney confirming the alleged late briefing of the respondents' counsel is attached to the answering affidavit.

Ad paragraphs 48.2 and 49.2

105. The applicants accept that there could permissibly be minor changes or isolated differences between targets published in draft form, and targets published in final form.

106. But it is impermissible for the Minister to set an entirely new set of targets that are substantially and materially different from any draft targets that were published, and were prepared according to a methodology that the public have not encountered before, without first publishing those targets in draft form for comment.

Ad paragraph 53.2 (*bis*)

107. "TM12" provides no proof that the four members of the applicants were sent invitations, still less invitations to the correct virtual meetings.

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108. "TM12" only contains employment equity reports.

WHEREFORE I pray that the Honourable Court grants the relief sought in Part A of 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 12 August 2025, the Regulations contained in Government Notice No. R1258 of 21 July 1972 (as amended), having been fully complied with.

COMMISSIONER OF OATHS

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GAUTENG DIVISION,
PRETORIA

ANRICH MALAN OTTO
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

RA1

From:	Given Mditshwa (HQ)
Date:	2025/07/23 08:52:42
To:	Rohann Eloff; Mulaudzi Vuledzani
CC:	Namhla Biyela (HQ); Mxolisi Yabo (HQ); farzanah@pabasa.co.za; fana@nalanesc.co.za; Lireze Day; Liam Enslin
Subject:	RE: NEASA and NPC Sakeliga vs Minister of Employment and Labour and 2 Others - Ref: R Eloff/L Enslin/QB1463
Attachments:	
Size:	155,68 KB

Noted with thanks Rohan

I was able to view and download the Court papers once more.

I will just follow up with Counsels on brief and ascertain if they were able to, from their side.

Your assistance in this matter is highly appreciated.



Regards
Mr. Given Mditshwa
DEL- Legal Services Unit (HQ)
Contact Nos: +27 12 309 4535 | +27 72 670 3771

From: Rohann Eloff <rohann@kriekprok.co.za>
Sent: Tuesday, 22 July 2025 17:23
To: Given Mditshwa (HQ) <Given.Mditshwa@LABOUR.gov.za>; Mulaudzi Vuledzani <vumulaudzi@justice.gov.za>
Cc: Namhla Biyela (HQ) <Namhla.Biyela@LABOUR.gov.za>; Mxolisi Yabo (HQ) <Mxolisi.Yabo@labour.gov.za>; farzanah@pabasa.co.za; fana@nalanesc.co.za; Lireze Day <lireze@kriekprok.co.za>; Liam Enslin <liam@kriekprok.co.za>
Subject: RE: NEASA and NPC Sakeliga vs Minister of Employment and Labour and 2 Others - Ref: R Eloff/L Enslin/QB1463

Good day Given

Your e-mail below refers.

As requested, please find a new WeTransfer link to download the papers:

[LINKSHIELD PROTECTED] we.tl/t-YQULY8FyHgoriginal-text:d2UudGwvdC1ZUVVMWThGeUhn;

Please note that the link expires within 3 days. We however, record that the Department have been served with the papers and that an electronic copy has already been provided and presumable downloaded. In this regard we attach the confirmation e-mail received. We further record that the profile of vumulaudzi@justice.gov.za has full access to the CourtOnline file and can download a copy of the issued papers as well.

We await the respondents' answering affidavit by 28 July 2025.

Yours faithfully

ROHANN ELOFF
rohann@kriekprok.co.za

Senior Associate / Senior Assosiaat Kriek Wassenaar & Venter Inc

2012/030418/21
(+27) 12 803 4719
Third Floor, HB Forum Building,

13 Stamvrug Street, Val de Grace, Pretoria

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GAUTENG DIVISION,
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

From: Given Mditshwa (HQ) <Given.Mditshwa@LABOUR.gov.za>
Sent: Tuesday, 22 July 2025 15:07
To: Rohann Eloff <rohann@kriekprok.co.za>; Lireze Day <lireze@kriekprok.co.za>; lim@kriekprok.co.za
Cc: Namhla Biyela (HQ) <Namhla.Biyela@LABOUR.gov.za>; Mxolisi Yabo (HQ) <Mxolisi.Yabo@labour.gov.za>; farzanah@pabasa.co.za; fana@nalanesc.co.za; Mulaudzi Vuledzani <vumulaudzi@justice.gov.za>
Subject: RE: NEASA and NPC Sakeliga vs Minister of Employment and Labour and 2 Others - Ref: R Eloff/L Enslin/QB1463
Importance: High

Dear Rohan, Lireze and Lim

The telephone call to your offices this afternoon refers.

We are tyring to share the link enclosing the Court papers with the Counsels on brief and have been advised that same has expired. On the other hand, the attachment is too big to be emailed.

Will you kindly once more reply to this email with an active link to enable our Counsels to download the document.

Your understanding and assistance in this matter is highly appreciated.

We look forward to hearing from you.

Regards

Regards

Mr. Given Mditshwa

Chief Director: Legal Services

Dept. of Employment and Labour

Laboria Building, 215 Francis Baard Street

Pretoria, 0001

Contact Nos: +27 12 309 4535 | +27 72 670 3771

Email: Given.Mditshwa@labour.gov.za

employment & labour
Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



From: Rohann Eloff < rohann@kriekprok.co.za >
Sent: Tuesday, 08 July 2025 16:09
To: Namhla Biyela (HQ) < Namhla.Biyela@LABOUR.gov.za >
Cc: Given Mditshwa (HQ) < Given.Mditshwa@LABOUR.gov.za >; Lireze Day < lireze@kriekprok.co.za >
Subject: RE: NEASA and NPC Sakeliga vs Minister of Employment and Labour and 2 Others - Ref: R Eloff/L Enslin/QB1463

Good day

The e-mail below refers.

Should the attachment have been too large we also provide a WeTransfer link with which the Department can download the papers:

[LINKSHIELD PROTECTED] [LINKSHIELD PROTECTED] we.tl/t-aLbHVJ81oX original-text:d2UudGwvdC1hTGJlVko4MW9Y;original-text:W0xJTktTSElFTEQKIFBST1RFQ1RFRF0gd2UudGwvdC1hTGJlVko4MW9YPHNwYW4gc3R5bGU9ImZvbnQtc2l6ZToxLjBwdCI+IG9yaWdpbmFsLXRleHQ6ZDJVdWRHd3ZkQzFoVEdKSVZrbzRNVzlZOzwvc3Bhbj4=;

Kindly confirm receipt of same.

Yours faithfully

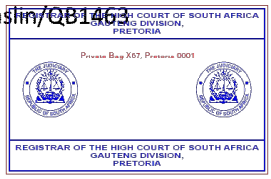
ROHANN ELOFF
rohann@kriekprok.co.za

Senior Associate / Senior Assosiaat Kriek Wassenaar & Venter Inc

2012/030418/21
(+27) 12 803 4719
Third Floor, HB Forum Building,

13 Stamvrug Street, Val de Grace, Pretoria

From: Rohann Eloff
Sent: Tuesday, 08 July 2025 16:01
To: 'Namhla Biyela (HQ)' < Namhla.Biyela@LABOUR.gov.za >
Cc: Given Mditshwa (HQ) < Given.Mditshwa@LABOUR.gov.za >; Lireze Day < lireze@kriekprok.co.za >
Subject: RE: NEASA and NPC Sakeliga vs Minister of Employment and Labour and 2 Others - Ref: R Eloff/L Enslin/QB1463



Good day

We refer to your e-mail below and note that the Department has received our clients' application.

As per your request, please find attached an electronic copy of the application for your convenience.

Kindly confirm receipt of same.

Yours faithfully

ROHANN ELOFF
rohann@kriekprok.co.za

Senior Associate / Senior Assosiaat Kriek Wassenaar & Venter Inc

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2025-107022

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

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ROHANN ELOFF

do hereby state under oath as follows:

1 I am adult male attorney at Kriek Wassenaar & Venter Inc ("**KWV**"), 3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria.

2 The facts set out in this affidavit fall within my personal knowledge, save where the context indicates otherwise and are to the best of my knowledge true and correct.

3 KWV is the applicants' attorney of record in the application in the above Honourable Court.

4 I have read the replying affidavit of **GERHARD PAPENFUS** and I confirm the correctness of the contents of the affidavit as far as it relates to me and KWV.

ROHANN ELOFF

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

I hereby certify that the deponent has declared that the deponent understands and knows the contents of this affidavit and that to the best of the deponent's knowledge and belief it is the truth, which affidavit has been signed and sworn to before me at Pretoria on this 12th day of August **2025**, and that the provisions of the Regulations contained in Government Notice R 1258 of the 21st July, 1972, (as amended) and Government Notice R1648 on the 18th August 1977 (as amended) have been complied with.

COMMISSIONER OF OATHS

ANRICH MALAN OTTO
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

12/8/2025-12:56:31 PM

From: Rohann Eloff
Date: 2025/08/12 12:53:00
To: vumalaudzi@justice.gov.za; Phalatse Ngakana; Modiselle Suzan; Niekie Venter; Monique Joubert
CC: Lireze Day
Subject: URGENT APPLICATION - 15 AUGUST 2025: NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA & SAKELIGA NPC / MINISTER OF EMPLOYMENT AND LABOUR & OTHERS - CASE NUMBER: 2025-107022
Attachments: Filing Notice - Replying Affidavit & Confirmatory Affidavit - 2025-08-12.pdf;
Size: 1446,38 KB

Good day

We refer to the above matter and deliver herewith the following:

- Filing Notice: Replying Affidavit & Confirmatory Affidavit

Kindly confirm receipt of same in writing.

Yours faithfully



ROHANN ELOFF
rohann@kriekprok.co.za

Senior Associate / Senior Assosiaat

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