IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 2023-132918

In the application between:

SAKELIGA NPC	**APPLICANT**
and	
VELENKOSINI HLABISA	**FIRST RESPONDENT**
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**SECOND RESPONDENT**
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	**THIRD RESPONDENT**
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	**FOURTH RESPONDENT**
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE	**FIFTH RESPONDENT**
THEMBI NKADIMENG	**SIXTH RESPONDENT**
MBULELO TSHANGANA	**SEVENTH RESPONDENT**
THINAYHYO SKOSANA	**EIGHTH RESPONDENT**
NKOSAZANA CLARICE DLAMINI ZUMA	**NINTH RESPONDENT**
THE PRESIDENT OF THE REPUBLIC OF SOUTH	**TENTH RESPONDENT**

KA

AFRICA

In re:

SAKELIGA NPC	*APPLICANT*
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	*FIRST RESPONDENT*
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	*SECOND RESPONDENT*
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	*THIRD RESPONDENT*
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE	*FOURTH RESPONDENT*
THEMBI NKADIMENG	*FIFTH RESPONDENT*
MBULELO TSHANGANA	*SIXTH RESPONDENT*
THINAYHYO SKOSANA	*SEVENTH RESPONDENT*
NKOSAZANA CLARICE DLAMINI ZUMA	*EIGHTH RESPONDENT*
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	*NINTH RESPONDENT*

FOUNDING AFFIDAVIT

A

I, the undersigned,

TOBIAS VIVIAN ALBERTS

do hereby make oath and state the following

1 A stated in the main application issued by the applicant under the above case number (the "Main Application"), I am an adult male legal officer employed as such by the applicant.

2 I am duly authorised to issue the current application and to depose to this founding affidavit on behalf of the applicant by virtue of a resolution of the applicant attached hereto, marked as annexure A1.

3 The facts deposed to herein fall within my personal knowledge, save where the contrary appears from the context hereof and are, to the best of my knowledge, true and correct.

4 Where I make legal submissions herein I do so on the strength of legal advice received, which advice I accept as both correct and good in law.

5 When I make use of headings in this affidavit, I do so for convenience only and I do not intend that anything stated under a particular heading to be limited only to the heading under which it appears, and I pray that this affidavit be read as a whole.

THE PARTIES

6 The applicant is SAKELIGA NPC, a non-profit company duly registered and incorporated in terms of the statutes of the Republic of South Africa under registration number 2012/043725/08, with its principal place of business at

Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

7 The first respondent is Mr VELENKOSINI HLABISA, a major male politician who has, since 3 July 2024, occupied the public office of the MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, with official work address at 87 Hamilton Street, Arcadia, Pretoria, Gauteng Province.

8 The second to tenth respondents are the first to ninth respondents as cited in the Main Application, in short:

8.1 The second respondent is the NATIONAL MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, in his official capacity as such, a public office currently held by the first respondent, but held by Ms THEMBI NKADIMENG when the Main Application was issued, with address at 87 Hamilton Street, Arcadia, Pretoria, Gauteng Province (the "Minister").

8.2 The third respondent is the NATIONAL DEPARTMENT OF CO-OPERATIVE GOVERNANCE, a department of the National Government of the Republic of South Africa, with its principal place of administration at 87 Hamilton Street, Arcadia, Pretoria (hereinafter referred to as the "Department").

8.3 The fourth respondent is the DIRECTOR GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE, with its principal place of administration at 87 Hamilton Street, Arcadia, Pretoria

8.4 The fifth respondent is the INFORMATION OFFICER IN THE NATIONAL DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, with its principal place of administration at 87 Hamilton Street, Arcadia, Pretoria

8.5 The sixth respondent is Ms THEMBI NKADIMENG, who was the Minister when the Main Application was issued.

8.6 The seventh respondent is Mr MBULELO TSHANGANA, who was the D-G of the Department when the Main Application was issued.

8.7 The eighth respondent is Mr THINAVHUYO SKOSANA, who was the Information Officer of the Department when the Main Application was issued.

8.8 The ninth respondent is the previous minister, Dr NKOSAZANA CLARICE DLAMINI ZUMA, a major female politician, who occupied the public office of the Minister from 30 May 2019 to 6 March 2023 (the "Previous Minister").

8.9 The tenth respondent is the PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA in his capacity as the head of the national executive and the head of Cabinet in terms of the Constitution 1996.

JURISDICTION

9 The above Honourable Court has the necessary jurisdiction to adjudicate this application by virtue of the fact that, amongst other things, this application is interlocutory to the Main Application.

A

PURPOSE AND STRUCTURE

10 This affidavit is deposed to by me in support of an application whereby the applicant seeks, in essence, that the First Respondent be joined as the Tenth Respondent in the Main Application.

11 As regards structure, this affidavit will be divided into the following parts:

11.1 firstly, providing background and context to the current application (i.e. providing background and context as to why the first respondent ought to be joined to the Main Application); and

11.2 secondly, setting out the grounds for the relief sought.

BACKGROUND AND CONTEXT

Events prior to the Main Application

12 For purposes of the current application, I am advised that it is not necessary to describe, in detail, the intricacies of the Main Application (that already being evident from the different affidavits filed in respect of the Main Application, and which can be made available to the first respondent upon requested).

13 Be that as it may, and in short, the background and context of the current application can be summarised as follows:

13.1 On 15 December 2020, the applicant submitted a PAIA request to the Department of Cooperative Governance and Traditional Affairs (COGTA).



13.2 The request sought access to all records informing the 2020 Covid-19 disaster management regulations issued by the then-Minister under the Disaster Management Act (DMA).

13.3 The applicant's aim was not to review or challenge the lockdown regulations, but to promote transparency, accountability, and public understanding of the decision-making process.

13.4 The applicant consistently received public complaints about the lockdown's arbitrary and opaque nature and sought records to clarify the factual and procedural basis for those decisions.

13.5 After extended delays, this Honourable Court granted an unopposed order on 9 November 2022, compelling the Minister, Department, D-G, and Information Officer to comply with the applicant's PAIA request within 30 days (the "Order").

13.6 The order required disclosure of all records, reasons, reports, findings, deliberations, communications, memoranda, and documents relied upon by the Minister in making the 2020 regulations.

13.7 Despite repeated notices and service of the Order (both electronically and via Sheriff), the respondents failed to comply meaningfully with the Order, to wit:

13.7.1 On 22 December 2022, the State Attorney uploaded 41 documents (approx. 626 pages) to CaseLines.

13.7.2 On 6 January 2023, eight lever-arch files (approx. 3,860 pages) were delivered, consisting almost entirely of the record from the Fair-Trade Independent Tobacco Association litigation, concerning only the tobacco sales ban from March–May 2020.

13.7.3 On 11 January 2023, a further 444 pages were emailed.

13.8 The applicant's review confirmed that the bulk of the record (over 75%) relates only to the tobacco ban, with little to no information on other significant 2020 regulations such as school closures, interprovincial travel bans, curfews, and alcohol restrictions.

13.9 The applicant pointed out that the total record received (approx. 5,100 pages) is grossly inadequate considering the scale and complexity of the Minister's regulation-making during 2020.

13.10 The Department's delivery omits critical categories of documentation explicitly requested: inter-departmental correspondence, expert reports, public consultation records, policy deliberations, and meeting minutes.

13.11 Initially, the State Attorney acknowledged that more documents existed and requested an indulgence to file an application to vary or rescind the Order.

13.12 No such application was ever filed.

13.13 On 23 February 2023, the respondents abruptly changed tack, claiming full compliance and warning that any contempt application would be opposed with a punitive costs request.

13.14 This reversal contradicts prior admissions and stands in stark contrast to the scope of the original request and court order.

13.15 The applicant became aware that a new Minister was appointed on 6 March 2023.

13.16 On 1 June 2023, KWV addressed detailed letters to the new Minister, D-G, Information Officer, and the State Attorney, formally putting them on notice of non-compliance and offering a final opportunity to comply.

13.17 The correspondence also enclosed a comprehensive index of all records received to date, enabling the new Minister to review and remedy any shortfall.

13.18 On 14 August 2023, the State Attorney confirmed the new Minister's decision to adopt the same stance as her predecessor, asserting that the records already delivered constitute full compliance.

13.19 This entrenched refusal to provide further records, despite clear evidence to the contrary, leaves the applicant with no option but to seek contempt relief.

13.20 The respondents, including both the former and current Ministers, the Department, the D-G, and the Information Officer, have:

13.20.1 Failed to comply with a binding order.

13.20.2 Misrepresented compliance with the Order.

A

13.20.3 Engaged in delay tactics and provided contradictory justifications over several months.

13.20.4 Ignored multiple invitations to comply and avoid contempt proceedings.

The Main Application

14 On or about 13 December 2023, the applicant issued a contempt application (defined herein above as the "Main Application").

15 The Main Application was opposed by the respondents on or about 8 February 2024.

16 On 22 July 2024, and some 4 months late, the first to seventh respondents served their answering affidavit.

17 To date, no condonation application has been issued, let alone granted, for the late service and filing of the answering affidavit in the Main Application.

18 It goes without saying that the applicants can no longer indulge the relevant respondent and shall, in order to move the Main Application along, serve and file a replying affidavit more or less contemporaneously herewith.

19 This application, which is inherently an exercise out of an abundance of caution, is motivated by a line of contentions contained throughout the answering affidavit in the Main Application that the applicant is not entitled to the relief sought owing to the fact that the correct parties are not before the above Honourable Court insofar as the Main Application is concerned. Accordingly, this application seeks

to ensure that all incumbents be joined in their personal capacities and, more particularly, be serve with the order and the pending application.

20 The crux of these contentions are as follows:

20.1 At the time of deposing the answering affidavit, the Department had no Minister due to the change in administration following the President's inauguration on 19 June 2024.

20.2 The applicant seeks imprisonment of the sixth to eighth respondents in their personal capacities but has failed to establish any factual basis for a finding of wilful disobedience of a court order. The answering affidavit argues that these respondents are cited without specific allegations or supporting evidence, rendering the application for their committal fundamentally flawed.

20.3 There is a discrepancy between the parties cited in the original unopposed application that resulted in the Order, and those cited in the Main Application. The Order was directed at:

20.3.1 The Minister of Cooperative Governance (then Dr. Dlamini Zuma).

20.3.2 The National Department of Cooperative Governance.

20.3.3 The Department's Information Officer.

20.3.4 The President of South Africa.

20.4 The D-G was not a cited party, nor was Minister Nkadimeng (the subsequent officeholder) or the current Information Officer. Thus, the current respondents were neither parties to the original application nor bound by the resulting Order.

21 The applicant held, and continues to hold, the view that these contentions are bad in law, in essence, because of the fact that:

21.1 The coercion to comply with a court order lies in the sanction that court may possibly impose.

21.2 Should this Honourable Court exercise its discretion to grant as sanction for the contempt an order for imprisonment (and it does not matter whether it is suspended or not) the individuals who hold at that point in time the office of Minister or the Director General or the Information Officer of the department are liable to undergo the sentence imposed.

21.3 It is wrong to allege that the successors of the previous Minister, the previous D-G and erstwhile Information Officer are not liable to comply with a court order directed at them in their official capacities. Such an interpretation would exonerate all government officials from contempt the moment they are replaced by another official and/or employee (something that is a regular occurrence within state departments).

21.4 The Order was directed at specifically the second respondent, the third respondent, the fourth respondent and the fifth respondent. It was directed at whomever may hold those offices at the time of the issuing of the Order, and until compliance with the Order. Should any of those

A

persons vacate the office, whilst the Order has not been complied with or fully complied with, the successor who steps into the shoes will be liable to ensure that the court order is complied with. If not, that specific successor is in contempt of the order.

21.5 In this respect, this Court will note that the declaration of contempt, as per prayer 1 of the notice of motion, is sought against the second up to the eighth respondents. The order for imprisonment, should this Court exercise its discretion to grant such order, is directed at the persons who hold the offices. Compliance with court orders is an inherent responsibility taken up by those who hold the office in question.

22 However, and out of an abundance of causation, the applicant applies herein that the "current" Minister, in his personal capacity, be joined to the Main Application as the tenth respondent (to the extent that such joinder is necessary and/or to the extent that the tenth respondent has a direct and/or substantial intertest in the relief sought).

BASIS FOR THE RELIEF SOUGHT

23 I am advised that in terms of rule 10(3) of the Uniform Rules of Court (the "Rules"):

> *"Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action".*

A

24 I am further advised that rule 10 of the Rules does not deal with, nor does its provisions affect, the so-called common-law rules relating to the joinder of parties.

25 According to my understanding, the applicant is obliged to join all parties to the Main Application which will have "direct and substantial" interest in the subject matter of the litigation.

26 As set out herein above, it is the applicant's respectful contention that it has done so.

27 Be that as it may, and apart from the obligatory joinder of a party who has a direct and substantial interest in the subject matter of the litigation, a respondent may be joined under the common law on grounds of convenience, equity, the saving of costs and the avoidance of multiplicity of actions.

28 Turning to the matter at hand, the current application is issued as a result of the second to ninth respondents' (misguided) contention that it is necessary to join the first respondent in his personal capacity.

29 In order not to delay the proceedings any further, and for grounds of convenience, equity and the avoidance of multiplicity of actions, the applicant accordingly applies to the above Honourable Court to join the first applicant – thereby removing any uncertainty as to whether or not the relief sought in the Main Application can be granted against the parties before the above Honourable Court.

KA

CONCLUSION

30 In the premise, I am advised that the applicant has made out a proper case for the relief sought.

31 As set out in the notice of motion, the applicant prays that the cost of the application be cost in the cause (unless the application is opposed, in which event the applicant prays that the cost be paid by such opposing party/ies).

32 WHEREFORE the applicant prays for an order in terms of the notice of motion.

DEPONENT

SIGNED and SWORN to at Pretoria on this the 8th day of August 2025 in my presence after the deponent acknowledged that the deponent has read the affidavit, that the deponent knows and understands the contents thereof, that the deponent has no objection to taking the prescribed oath and that the deponent regards the oath as binding on the deponent's conscience.

COMMISSIONER OF OATHS

Herman Kelderman
Commissioner of Oaths
Practicing Attorney
A Wolmarans Inc. Attorneys
Practice No: 26077
2nd Floor, Building B, Loftus Office Park
402 Kirkness Street, Arcadia, Pretoria
Tel: 012 534 3002, Fax: 086 620 0551

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

I the undersigned

PIETER JACOBUS LE ROUX

being duly authorised, hereby delegate to **TOBIAS VIVIAN ALBERTS**, the following powers and authority:

1) the authority to authorise and/or to institute on behalf of Sakeliga, such further legal proceedings, which may include urgent proceedings, against the **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** ***and such further parties as may be necessary***, which includes but is not limited to contempt of court proceedings and/or appeals and/or reviews of any matter related thereto, and/or the right to have Sakeliga appear, argue, act, support and/or oppose any matter before any state authority or judicial body in furtherance of this delegation. This delegation and authority implies a broad authority to institute, oppose and/or participate in litigation on behalf of Sakeliga.

2) the authority to represent Sakeliga in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of Sakeliga as its lawful representative.

3) the authority to incur costs on behalf of Sakeliga and to appoint, instruct and direct attorneys, experts and/or consultants to assist Sakeliga with any matters relating to paragraph 1) above;

Signed at Stellenbosch **on** 23/02/2023

PIETER JACOBUS LE ROUX – CEO