THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL OF HEALTH	Second Applicant
and	
THE PRESIDENT OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS SA	Fifth Respondent
SA PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SA	Seventh Respondent
TSA MEDICAL ASSOCIATION	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

HFA'S ILLUSTRATION OF POSSIBLE STAY

---

1 This is not a prediction of the duration of the stay. It is an illustration of its possible duration.

2 Phase 1: Pending Constitutional Court Applications for Leave to Appeal

2.1 Pending the outcome of the President and Minister's applications for leave to appeal to the Constitutional Court, the stay will operate in terms of prayers 2.1 and 2.2 of the notice of motion.

2.2 The Constitutional Court originally set those applications down for hearing on 26 February 2026. However, in terms of directions issued on 9 February 2026, the Court has postponed the applications *sine die*, while it hears and determines the public participation challenges brought by the Board of Healthcare Funders and the Western Cape Government.

2.3 The public participation challenges have now been set down from 5 to 7 May 2026.

2.4 As HASA notes in its answering affidavit, many Constitutional Court judgments on important issues are only delivered 6 to 12 months after the hearing.[1]

2.5 Assuming, generously, that the Court delivers judgment in the public participation challenges 6 months after the hearing, the judgment will be handed down in November 2026.

2.6 In the event that the public participation challenges fail, the Court will set down the President and Minister's applications for direct leave to appeal against the judgment of Twala J. Assuming that the matters are

[1] HASA AA, p006-39, para 72.

set down in the next court term, they will be set down during the February/March 2027 term.

2.7 Assuming that the Court delivers judgment in the applications for leave to appeal 6 months after the hearing, the judgment will be handed down around September 2027.

3 Phase 2: High Court Leave to Appeal

3.1 If the Constitutional Court dismisses the applications for direct leave to appeal, and declines to entertain BHF's and SAPPF's challenges by way of direct access, then this Court, per Twala J, will be called upon to consider the applications for leave to appeal lodged by the President and the Minister.

3.2 In terms of prayer 2.8 of the notice of motion, the stay will continue to operate pending the adjudication of those applications for leave to appeal.

3.3 We assume it will take Twala J a further month to adjudicate the applications for leave to appeal from when the Constitutional Court hands down its judgment, and so this period of the stay would endure until about October 2027.

4 Phase 3: Petitioning the Supreme Court of Appeal

4.1 If Twala J refuses the applications for leave to appeal, the President and the Minister may seek leave to appeal from the Supreme Court of Appeal.

4.2 In terms of prayers 2.8 and 2.9, the stay would continue to operate pending the adjudication of the application for leave to appeal and the appeal itself.

4.3 Assuming that the Supreme Court of Appeal grants leave to appeal:

4.3.1 it would likely take the Supreme Court of Appeal approximately two months to issue an order granting leave to appeal (i.e. by around December 2027);

4.3.2 it would thereafter take a period of 6.5 months for the parties to deliver the record and exchange heads of argument (i.e. by around August 2028);[2]

4.3.3 the matter would likely be set down for hearing, at the earliest, 2 terms after the heads of argument are filed (i.e. in the February 2029 term);

4.3.4 based on the four most recent Supreme Court of Appeal judgments, we estimate that it will take the Supreme Court of Appeal a further four months to adjudicate an appeal (i.e. to June 2029).[3]

---

[2] In terms of the SCA rules: the notice of appeal must be lodged within one month of the granting of leave to appeal; the record must be delivered within three months of lodging the notice of appeal; the appellants' heads of argument must be delivered six weeks after the filing of the record; and the respondents' heads of argument must be delivered one month after the appellants' heads of argument.

[3] *Moloi v Road Accident Fund (333/2024) [2026] ZASCA 13 (6 February 2026)* was heard on 18 November 2025; *Matsi and Another v South African Legal Practice Council (Gauteng Province) (184/2024) [2026] ZASCA 12 (6 February 2026)* was heard on 15 September 2025; *Lutzkie v Commissioner for the South African Revenue Service (1135/2023) [2026] ZASCA 11 (6 February 2026)* was heard on 22 August 2025 and *Lewis Stores Proprietary Ltd v Pepkor Holdings Ltd and Others* (CCT316/25) [2026] ZACC 4 (30 January 2026) was heard on 7 November 2025.

5 Phase 4: Appeal to the Constitutional Court

5.1 If the Supreme Court of Appeal dismisses the appeal, the President and the Minister may seek leave to appeal from the Constitutional Court.

5.2 In terms of prayers 2.8 and 2.9, the stay would continue to operate pending the adjudication of this application for leave to appeal, and the appeal itself.

5.3 Assuming that the Constitutional Court hears the matter:

5.3.1 it would likely take the Constitutional Court not less than 3-4 months to issue directions for the exchange of heads of argument (i.e. until October 2029);

5.3.2 the matter would likely be set down for hearing in the term after such directions are issued (i.e. in the February 2030 term); and

5.3.3 assuming that the Court delivers judgment six months after the hearing, the judgment will be handed down in August 2030.

6 The stay may accordingly endure until approximately August 2030. This is a stay of four years and six months from today.

7 Phase 5: Resumption of the reviews

7.1 If the President and the Minister ultimately fail in their appeals to the Supreme Court of Appeal and Constitutional Court, they will be back before this Court for the resumption of the review applications.

7.2 The Minister suggests in paragraph 50.4 at page 001-216 of his founding affidavit that he will then seek a further stay pending the determination of the review.

7.3 Such a stay would operate pending the adjudication of the review applications, and any further interlocutory applications in those matters, including, for example, concerning the reasonably anticipated dispute about the content of the Rule 53 record and whether it should contain all legal advice furnished to the President. Those interlocutory disputes may take several years to be finally adjudicated.[4]

7.4 As pointed out by the SAPPF in paragraph 88.6 at page 005-31/2 of its answering affidavit, for the reviews to be ready to be heard, a Rule 53 record must be filed. SAPPF and the BHF would need to supplement their founding papers. The respondents would have to file their answering papers. SAPPF and the BHF would then be entitled to reply. The parties would need to file written submissions.

7.5 On the most optimistic timetable, assuming compliance by all parties with the timelines in the Uniform Rules and no interlocutory disputes,

[4] The Constitutional Court's final decision concerning the delivery of the Rule 53 record in *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) was granted three years and seven months after the High Court granted judgment on this issue.

these steps would take approximately four and a half months, after which a hearing date may be applied for. The most recent lead time for hearing dates for opposed motions published by this Court is 17 weeks. Assuming that this Court delivers judgment six months after the hearing, this Court will grant judgment in November 2031.

7.6 After this Court adjudicates the reviews, the unsuccessful parties may seek leave to appeal to the Supreme Court of Appeal. If their applications for leave to appeal are dismissed by the High Court, and they petition the Supreme Court of Appeal, the Supreme Court of Appeal would likely deliver judgment not less than 16 months from the date of the petition, in around March 2033.

7.7 The unsuccessful parties may then seek leave to appeal from the Constitutional Court. If the Constitutional Court sets the matter down for hearing, it would likely deliver judgment not less than 14 months after the application for leave to appeal, in around May 2034.

8 This is a stay of eight years and three months from today.

9 Although one cannot make the prediction with any certainty, in our experience predictions regarding the duration of litigation invariably fall far short of its actual duration.

Wim Trengove SC
Michael Mbikiwa
Daniel Sive
Counsel for the HFA
11 February 2026