IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No.: 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent

HEALTH FUNDERS ASSOCIATION Ninth Respondent

SAKELIGA NPC Tenth Respondent

In re:

Case No.: 2024-057449

SOLIDARITY TRADE UNION Applicant

And

THE MINISTER OF HEALTH AND OTHERS Respondents

And in re:

Case No.: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND ANOTHER Respondents

Case No.: 2024-111209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS Respondents

Case No.: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA Applicant

and

THE MINISTER OF HEALTH AND OTHERS Respondents

Case No.: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC Applicant

and

THE MINISTER OF HEALTH AND OTHERS Respondents

Case No.: 2025-083348

HEALTH FUNDERS ASSOCIATION Applicant

and

THE MINISTER OF HEALTH AND OTHERS Respondents

Case No.: 2025-134493

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM Applicant

and

MINISTER OF HEALTH Respondents

Case No.: 2025-147065

SAKELIGA NPC Applicant

and

MINISTER OF HEALTH AND OTHERS Respondents

FILING NOTICE

DOCUMENTS: **PRESIDENT'S ANSWERING AFFIDAVIT IN SAKELIGA'S COUNTER-APPLICATION**

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ENQ: MR R J SEBELEMETSA

DATED AT PRETORIA ON THIS 5th DAY OF DECEMBER 2024

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

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and

Y.A

THE MINISTER OF HEALTH AND OTHERS Respondents

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and

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HEALTH FUNDERS ASSOCIATION Applicant

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and

MINISTER OF HEALTH AND OTHERS Respondents

Y.A

PRESIDENT'S ANSWERING AFFIDAVIT
IN SAKELIGA'S COUNTER-APPLICATION

I, the undersigned,

GEOFREY MPHAPHULI

do hereby make oath and state that:

1. I am an adult male and am employed as the Principal State Law Advisor and currently acting as the Head of Legal and Executive Service in the Presidency, situated at Union Buildings, Government Avenue, Pretoria.

2. I am duly authorised to depose to this affidavit on behalf of the first respondent, the President of the Republic of South Africa ("**President**").

3. My authority to do so derives from my position as the Acting Head: Legal and Executive Services in the Presidency. In my position, I am responsible for the following:

   3.1. Management of all litigation matters involving the President in his[1] capacity as Head of State or Head of National Executive and the Office of the Presidency.

[1] Where male pronouns are used, this is to be taken as being in reference to the incumbent President.

Y.A

3.2. Instructing the State Attorney to brief counsel to represent the President and/or other officials employed by the Presidency department.

3.3. Processing all Executive Acts of the President.

4. The facts to which I depose herein are true and correct and are within my personal knowledge, except where otherwise expressly stated or where it is apparent from the context.

5. I have been involved with legal proceedings concerning all aspects of the litigation related to the National Health Insurance Act ("**NHI Act**")[2] and on 11 August 2025 deposed to the answering affidavit filed on behalf of the President in this application.

PURPOSE OF THE AFFIDAVIT

6. The President persists in his support for the application for the stay and consolidation of the various proceedings brought by "**the DOH**" (i.e. Minister of Health and Director-General of the National Department of Health) ("**Stay Application**"). The reasons for this are addressed in the answering affidavit deposed to on behalf of the President on 11 August 2025 and apply with equal force to Sakeliga's opposition to that application.

7. On 17 October 2025, Sakeliga NPC filed an answering affidavit in the Stay Application in which it sets out its grounds for opposition to the stay and consolidation application sought by the DOH. This was by agreement between

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2 National Health Insurance Act 20 of 2023.

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the parties given Sakeliga's late-entry into these proceedings and also pursuant to the directions in the case management process under Her Ladyship, The Hon. Madam Justice Nieukircher.

8. I further point out that as a consequence of Sakeliga being given leave to file the answering affidavit as foreshadowed above, the parties were also given leave to file further affidavits in response thereto as may be necessary.

9. Despite this, Sakeliga did not, as part of that process, foreshadow that it would be bringing a counter-application as ultimately transpired. Consequently, no provision was made for the parties to respond to said counter-application.

10. Accordingly this affidavit is necessitated by the need to address the counter-application and to respond to some of the allegations made by Sakeliga in its answering affidavit, in particular, *(i)* answer Sakeliga's conditional counter-application; and *(ii)* in doing so, to address certain gratuitous and unfounded allegations concerning the President's good faith. In summary, the President disputes the allegation of bad faith made against him and submits that Sakeliga has not made out a case for the relief sought in its conditional counter-application, namely an interim interdict.

11. In light of the limited scope of this affidavit, I do not respond *seriatim* to Sakeliga's answering affidavit and instead seek to respond to the contents thereof thematically. My failure to deal with averments set out therein ought not to be taken as an admission thereof. Any averments in Sakeliga's answering affidavit that contradict this affidavit, or my previous answering affidavit, ought to be taken to be denied.

Y.A

THE PRESIDENT'S GOOD FAITH

12. In a section titled 'The State's abuse of the processes of Court' Sakeliga suggests that the President is not acting in good faith.[3]

13. Sakeliga states that the President's conduct makes it "abundantly clear" he "has the singular purpose of raising every technical objection and hurdle to any judicial consideration of the NHI Act." [4]

14. In support of this contention, Sakeliga relies firstly on SAPPF's first answering affidavit (paras 23 to 34).[5] In those paragraphs, SAPPF state that the President did not file a record of decision[6] and instead filed a notice in terms of rule 6(5)(d)(iii) of the Uniform Rules of Court in respect of SAPPF and BHF's review[7] of the President's assent of and signature to the NHI Bill. Following a judgment by Twala J,[8] the President brought a conditional application for leave to appeal in the High Court and an application for direct leave to appeal and direct access in the Constitutional Court.[9] This is ostensibly the conduct of the President on which Sakeliga seeks to base its attacks on the President's bona fides in these proceedings.

15. At the outset it bears noting that these allegations relate to questions of law raised in different proceedings which do not involve Sakeliga. They therefore do not pertain at all to the stay and consolidation proceedings in which Sakeliga has belatedly intervened. Sakeliga's attempt to import such

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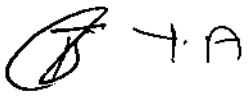
3 Sakeliga AA at (p 43) paras 106 to (p 45) para 113.
4 Sakeliga AA at (p 43) para 106.
5 SAPPF First AA at 05-11 para 23 to 005-15 para 34.
6 SAPPF First AA at 005-11 para 23.
7 SAPPF First AA at 005-11 para 23 and 005-12 para 25.
8 SAPPF First AA at 005-13 para 28.
9 SAPPF First AA at 005-13 para 29 to 32.

Y.A

allegations into these proceedings is therefore gratuitous and falls to be rejected, without more.

16. In any event, the President's question of law notice and the questions of law posed therein were not technical objections. They were substantive questions related to the merits of the challenge brought by SAPPF and BHF against the President. These challenges were novel: to my knowledge, no person has ever sought to review and set aside the President's unique conduct as Head of State, in assenting to and signing a Bill bringing it into existence as an Act, let alone in the High Court. A challenge such as this, goes to the heart of the President's exercise of his constitutional obligation and raises questions concerning not only the competency of the review (i.e. whether a review of this nature can be brought) but also the appropriate Court which has jurisdiction to determine such an issue, the procedural rights to which the challenger has (e.g. whether a rule 53 record of decision must be filed), as well as the corollary questions fundamental to our democratic system such as checks and balances and separation of powers. These have relevance beyond the proceedings in which they were raised.

17. That the President has sought to have these questions answered by a Court is not an attempt to create a hurdle to adjudication. To the contrary the President, as a litigant before the Court in his capacity as the Head of the State and Executive Branch of Government, is not only permitted but obliged to seek clarity on these questions which lie at the heart of our constitutional dispensation.



18. These are logically preliminary questions of law which would affect the conduct of the proceedings and which the Court would have been called upon to consider mero motu even if they had not been raised by the President and the Minister of Health in those proceedings. Moreover the answer to these questions will have an impact on the President's exercise of his constitutional obligations as Head of State in other contexts, as well as on any future incumbent of the Office. This speaks to the very way in which legislation is promulgated, the differing constitutional roles of the Legislature and the President, and the role of the Courts in holding such conduct accountable under the principles of constitutional scrutiny.

19. That these are necessary questions to be asked and answered by the Constitutional Court is buttressed by the fact that BHF and SAPPF's approach, and the High Court's Judgment, stand in contrast with long-established principles from the Constitutional Court concerning its own exclusive jurisdiction.

20. It is telling that the Constitutional Court itself has determined that these are matters in respect of which it seeks the written submissions of the parties (thus indicating that it will hear the applications for leave to appeal), and that both BHF and SAPPF have, in their answer to the President's application for leave to appeal, agreed that this is a matter that ought to be determined by the Constitutional Court. Contrary to Sakeliga's allegations, the President's decision to seek direct leave to appeal to the Constitutional Court (rather than to persist with the High Court application for leave to appeal if the Constitutional Court decides to grant the rule 19(2) application or to seek leave

to appeal to the Supreme Court of Appeal) is evidence of the President's good faith.

21. In contradiction of Sakeliga's assertion, these are not *"Stalingrad tactics"*[10] employed for *"ulterior purposes"* and is insupportable.[11] In favour of speedy finality, the President has not pursued appeals in the High Court and to the Supreme Court of Appeal.

22. In further support of the allegation of bad faith, according to Sakeliga, is the contention that this is evidenced by the fact that both the Minister and the President have opposed the challenges brought against them. Sakeliga submits that the President ought to have been left to oppose the applications brought by BHF and SAPPF and the Minister oppose the substantive challenges.[12]

23. This position is at odds with the constitutional obligation placed on public officials and SAPPF and BHF's pleaded applications. Both the President and the Minister are cited and our courts have repeatedly held that it is necessary and desirable that responsible Organs of State are present and participate in appropriate proceedings. I am advised that public officials bear heightened obligations in these circumstances.

24. It is for this reason, presumably, that the applicants in their various pleadings themselves cited both the Minister and the President. In respect of the constitutionality challenges, the President is always cited.

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10 Sakeliga AA at (p44) para 110.
11 Sakeliga AA at (p44) para 111.
12 Sakeliga AA at (p 43) paras 108 and 109.

24.1. Solidarity cited the President *"because he assented to the NHI Bill and has proclaimed the commencement date of the NHI Act, and by consequence of the powers which the President enjoys in terms of section 79 of the Constitution"*.[13]

24.2. HASA cites the President *"in his capacity as the head of the national executive and as the person empowered in terms of section 59 of the NHI Act to bring the Act into effect by notice in the gazette."* [14]

24.3. SAMA states that it cites the President *"to bring Cabinet before Court."* [15]

24.4. HFA cites the President *"for his interest in the matter as the head of the national executive"* and states that the President *"is empowered by section 59(1) of the NHI Act to fix the date on which the NHI Act will take effect by issuing a proclamation"*.[16]

24.5. Sakeliga cites the President *"in his official capacity as the head of the national executive"*.[17]

25. Thus, all the parties cite the President and in so doing, intimate an interest he may have in the NHI Act, separate to that of the Minister.

26. Indeed, I stated in my answering affidavit to this Stay Application that the NHI Act *"is an ambitious and critical attempt to address the structural inequities in South Africa's healthcare system and fulfil the constitutional guarantee of the*

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13 Solidarity FA at 02-32 para 34.
14 HASA FA at (p14) para 27.
15 SAMA FA at (p 14) para 20.
16 HFA FA at (p 6) para 13.
17 Sakeliga FA at (p 4) para 8.

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progress realisation of the right of equal access to health." [18] As Head of State and Head of the Executive, it is only appropriate that the President participates.

27. Having regard to the roles played by the Minister and President (and the interests acknowledged by the parties in their citing of both) it bears repeating that the President conducts himself in good faith in relation to the implementation of the NHI Act. The President, for instance, has supported the Minister's section 33 undertaking. He will ensure that he does not introduce sections of the NHI Act in terms of section 59(2) that conflict with the Minister's undertaking. The Minister has made it clear that he will not request the President to commence any provision effecting changes to the Medical Schemes Act in line with the undertaking he has given in relation to section 33 and section 57(4) does not require the passing of any statute during phase 1 or phase 2. The President will not commence any provision effecting changes to the Medical Scheme Act without the Minister's request. He will, in any event, have regard to section 57 in determining the commencement of various sections of the NHI Act.

28. All of this demonstrates that the President's conduct, far from being bad faith, is the most responsible course of conduct available to him where challenges are brought in various courts to various aspects seminal legislation.

29. To this end, this Court ought to take further note of the fact that in the interests of expedition and orderly conduct of the litigation including the preservation of judicial resources, it was the President and DOH that sought case

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18 President First AA at 002-19 para 22.

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management of the myriad of challenges to the Act in order to ensure efficient and speedy determination of the issues including managing the procedural timetables applicable thereto. This is a further expression of the rule of law and a responsible and good faith approach to determining the challenges.

30. Sakeliga, by its own account, entered the constitutional fray in 2025, well after the NHI Act had been signed in 2023, and after multiple challenges were already pending before various courts. Yet, it now seeks to frame its own matter as urgent, singular, and deserving of procedural insulation. If this position is permitted it would reward delay and elevate procedural disruptiveness over institutional comity.

31. The President, by contrast, has approached the matter in a structured, transparent, and coordinated manner. His support for the Minister and Director-General's application to stay and consolidate proceedings does not arise from any desire to defer adjudication but from a recognition that simultaneous, uncoordinated, constitutional litigation raises the risk of fragmented Judgments, inconsistent legal standards, and significant duplication of judicial and Governmental resources. This is especially so where several challenges implicate overlapping questions of constitutional principle, legislative competence, institutional design, and factual framework: these questions, which if decided differently in separate fora or on staggered timelines, may cause uncertainty of legal outcome or even constitutional incoherence.

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32. In supporting a unified judicial approach (such as structured case management), the President acts not only within the bounds of procedural propriety but in defence of constitutional functionality.

33. Sakeliga's characterisation of this approach as obstructionist overlooks that it is not the President who has multiplied proceedings or introduced variance in scope: that fragmentation lies with the challengers, and the President's support for consolidation is a principled answer to that procedural fact. This conduct, properly viewed, reflects constitutional fidelity, not evasiveness.

SAKELIGA'S CONDITIONAL COUNTER-APPLICATION

34. By way of conditional counter-application, Sakeliga seeks an order interdicting the President and Minister from implementing the NHI Act in the event that the Court grants a stay to the constitutionality challenges.[19]

35. Sakeliga does so based on the facts *"canvassed by the parties in the affidavits filed to date."*[20] Sakeliga neither identifies the affidavits nor the facts in such an affidavit on which reliance is placed.

36. I am advised that this is an impermissibly broad and indeterminate manner in which to seek interdictory relief. It is highly prejudicial to the respondents who are not in a position to determine the precise basis on which relief is sought. On this basis alone the relief Sakeliga may seek in its "conditional" counter-application should be refused. It is required to set out the facts and evidence of the relief it seeks in its own affidavit. It has failed to do so. Moreover, it

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19 Sakeliga AA at (p45) para 114.
20 Sakeliga AA at (p45) para 115.

does not even advised the Court or the other parties of where these facts and evidence may be found.

37. Sakeliga seeks an interim interdict. The requirements for such relief are well-established in our law. I am advised that those requirements have, in recent years, been further developed to have regard to the impact of a restraining order on the constitutional and statutory powers and duties of state functionaries or organs of state against whom it is sought. The Court must, in those circumstances, bear in mind the "separation of powers harm". This is binding authority recognised by the Constitutional Court itself.

38. Sakeliga's approach deprives the President of his right to justice so that he knows the case he is called upon to meet and fairness such that he is placed in a position to meet such a case. It also deprives the Court of the means by which to realise justice to the parties by exercising its constitutional duty of adjudicating disputes before it. Without facts or evidence, the Court simply cannot make a determination in relation to the relief sought from it. Furthermore, without those facts, it cannot consider the separation of powers harm about which it has been warned to be mindful.

39. The same prejudice lies in respect of Sakeliga's mention of a "structural order".[21]

40. For these reasons, the President submits that the relief sought by Sakeliga in its conditional counter-application ought to be dismissed.

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21 Sakeliga AA at (p 47) para 121.

41. Sakeliga is alone among the challengers in seeking interdictory relief as part of its response to the stay and consolidation application. Even BHF and SAPPF (whose challenges were the subject of the High Court judgment now under appeal before the Constitutional Court) have declined to seek similar execution relief pending the final determination of its challenges. That they have not done so illustrates that Sakeliga's attempt to procure what is in substance a "freeze" order is misplaced. It underscores that the conditional counter-application is opportunistic and ultimately abusive.

42. Sakeliga fails to meet the substantive requirements for interim interdictory relief. In particular, it makes no effort to demonstrate the balance of convenience or the prospect of irreparable harm: omissions that are fatal in themselves. This failure is compounded by the factual assurances already given by the President and the Minister regarding the lengthy and phased implementation of the NHI Act. Courts have already declined to interdict similar preparatory measures, recognising that where no permanent or irreversible consequences flow, there is no basis to override the separation of powers through judicial restraint of the executive's lawful preparatory actions.

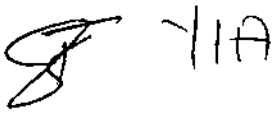
43. The cumulative effect of these deficiencies confirms that Sakeliga's counter-application does not merely fall short on form or evidence, it is constitutionally inappropriate. It invites the Court to issue sweeping relief against Organs of State, on contested legal grounds, without a clear factual foundation, and in direct conflict with the coordination and sequencing objectives sought by the DOH. The counter-application should be dismissed with finality

4.A

44. In addition, Sakeliga's counter-application compounds the procedural disarray it accuses others of causing. It seeks interdictory relief on a broad and unspecified factual basis, with no coherent legal foundation, and does so while rebuffing attempts at coordinated judicial sequencing. The interdict it seeks would not clarify the legal position of the NHI Act pending final adjudication; rather, it would inject further legal uncertainty by effectively prejudging merits disputes under the guise of procedural relief, and in circumstances where no evidence of urgency, harm, or irreversibility has been adduced.

45. The timing of the interdict application, brought nearly two years after the Act's signing, also calls into question Sakeliga's bona fides. Interim relief, especially where sought against Organs of State, must meet a high threshold. Yet Sakeliga not only fails to identify that threshold, it fails even to explain why its rights are rendered vulnerable in the absence of an interdict now, when it has waited so long to act. This undermines any claim of urgency or necessity.

46. To the extent needed, I also point out to the Court that Sakeliga has failed to explain this two year delay for bringing the in effect urgent interdict application it seeks. This defect is fatal to the application in its present form. Equally absent is any explanation at all from Sakeliga as to why it seeks this relief by means of counter-application rather than as an applicant for such relief in its own and independent right. This is conspicuous given what is shown above: Sakeliga goes much further than all the other parties in seeking such interdictory relief and impermissibly expands the issues in contest beyond what is the true focus of these proceedings.



47. The relief sought would also and in any event directly interfere with the President's constitutional and statutory obligations under section 59 of the NHI Act. The President has already undertaken (publicly and through conduct) not to proceed with proclamations that would trigger constitutional harm or legislative confusion. He has deferred to the Minister's assurances and made clear that any activation of the NHI Act will be consistent with judicial and legislative integrity. In the face of this conduct, to impose an interdict would not safeguard the separation of powers, it would transgress it by judicially directing the exercise of discretion that has not been abused, threatened, or misused.

48. Ultimately, Sakeliga offers no principled reason why its challenge must proceed in isolation. It demonstrates no prejudice that would arise from adjudication within a coordinated structure. Its counter-application, far from ensuring orderly adjudication, seeks to entrench the very procedural fragmentation that the Court's case management powers are designed to prevent. It should not be countenanced.

49. To the extent necessary, the President seeks condonation for the late filing of this affidavit. There is no prejudice to any of the parties caused either by the sequence of filing of this affidavit or its contents.

CONCLUSION

50. The President has not, in exercising his rights as a litigant before the Courts, acted in bad faith and Sakeliga has not made out a case for (therefore ought to be denied) its conditional counter-application.

Y.A

51. In the above circumstances, the President persists in his support for the relief prayed for by DOH.

DEPONENT

I certify that the deponent stated that the deponent knows and understands the contents of this affidavit, which the deponent signed and swore to before me at Pretoria on this the 05 day of December 2025 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.

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PRESIDENTIAL PROTECTION SERVICE
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