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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-147065**

In the matter between:

Sakeliga NPC	Plaintiff / Applicant / Appellant
and	
Minister of Health,Minister of Finance,President of the Republic of South Africa,Speaker of the National Assembly,Chairperson of the National Council of Provinces	Defendant / Respondent

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Notice in terms of Rule 16A

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ELECTRONICALLY SIGNED BY:

Registrar of High Court of South Africa , Gauteng Division,Pretoria

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-147065

In the matter between:

SAKELIGA NPC	Applicant
and	
MINISTER OF HEALTH	First Respondent
MINISTER OF FINANCE	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Fourth Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fifth Respondent

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GAUTENG DIVISION,
PRETORIA
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GAUTENG DIVISION,
PRETORIA

NOTICE IN TERMS OF RULE 16A

TAKE NOTICE that the above-named applicant intends to raise the following constitutional issues in this application:

Introduction – Section 27 of the Constitution

1. Section 27(1) (a) and (c) of the Constitution of the Republic of South Africa, 1996 ("**Constitution**") state that everyone has the right to have access to:

   1.1. health care services, including reproductive health care; and

1.2. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

2. Section 27(2) of the Constitution provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights, i.e. the rights included in sections 27(1) (a) and (c) of the Constitution.

The National Health Insurance Act

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3. The stated objective of the National Health Insurance Act, Act 20 of 2023 ("**NHI Act**") is that it *inter alia* seeks to pool public revenue to establish and maintain a National Health Insurance Fund ("**Fund**") funded through mandatory prepayment that aims to achieve universal access to health care services by:

3.1. Serving as the single purchaser and single payer of health care services in the Republic;

3.2. Ensuring the sustainability of funding for health care services;

3.3. Providing for equity and efficiency in funding by pooling of funds and strategic purchasing of health care services, medicines, health goods and health related products from accredited and contracted health care service providers.

4. In order to achieve this objective, the NHI Act provides that:

4.1. The Fund, in consultation with the Minister, must purchase health care services determined by the Benefits Advisory Committee, for the

benefit of users; (section 7(1))

4.2. A user must receive the health care services that he or she is entitled to under the NHI Act from a health care service provider or health establishment at which the user is registered for the purposes of receiving those health care services; (section 7(2)(a))

4.3. A user: (section 7(2)(d))

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4.3.1. Must first access health care services at a primary health care level as the entry into the health system;

4.3.2. Must adhere to the referral pathways prescribed for health care service providers or health establishments; and

4.3.3. Is not entitled to health care services purchased by the Fund if he or she fails to adhere to the prescribed referral pathways;

4.4. The administration, management, budgeting and governance of central hospitals must be made a competence of national government; (section 7(f)(iii))

4.5. If the Fund refuses to fund a health care service, the Fund must: (section 7(5))

4.5.1. Provide the user concerned with a notice of refusal;

4.5.2. Provide the user with a reasonable opportunity to make representations in respect of such refusal;

4.5.3. Consider the representations made; and

4.5.4. Provide adequate reasons for the decision to refuse the health care service to the user.

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4.6. The Fund must determine the nature of provider payment mechanisms. (section 41)

5. The NHI Act further:

5.1. centralises power in respect of the national health system and the Fund in the Minister and the National Department of Health (section 31)

5.2. irrationally and unreasonably regulates the provision of health care by health care providers in a manner which is contrary to the best interests of the patient and the autonomy of health care determined by health care providers; (section 39)

5.3. makes accredited health care providers beholden to the state for payment in respect of their services; (section 41)

5.4. imposes criminal and administrative sanctions on health care providers; (section 54)

5.5. affords the Minister of Health broad powers to make regulations and the Fund to make directives. (sections 55 and 56)

6. In order to secure the Fund's position as the single payer and single purchaser of health care services, the NHI Act:



6.1. establishes the NHI Fund; (section 9)

6.2. prohibits private competition with the Fund and provides that medical schemes may only offer complementary cover to services not reimbursable by the Fund; (sections 3(5) and 33)

6.3. provides that the chief source of income of the Fund will be: (section 48(a) and (c) and section 49)

6.3.1. General tax revenue, including the shifting of funds from national government departments and agencies and the provincial equitable share and conditional grants to the Fund;

6.3.2. Reallocation of funding for medical scheme tax credits paid to various medical schemes towards the funding of the NHI;

6.3.3. Payroll tax (employer and employee); and

6.3.4. A surcharge on personal income tax.

Overview of the constitutional issues raised and relief sought by the applicant

7. The state has failed to adequately model the impact of the NHI Act or to determine the cost implications of the NHI Act. The implementation of the NHI Act and the establishment of the NHI Fund is unaffordable for South Africa. For the aforesaid and the further reasons addressed by Sakeliga in its founding affidavit, the NHI Act is irrational and an unreasonable legislative measure. It will not improve or progress access to health care but will rather diminish access to health care for all South Africans in both qualitative and quantitative terms.

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8. The state has failed to make economically sound decisions and adopt policies that promote economic growth, and has failed to take reasonable governance measures to punish corruption and build capacity within the public sector, with the effect that the establishment of the NHI Fund is unaffordable and will result in deleterious economic consequences. The state has failed to comply with the Constitutional injunction in section 27(2) of the Constitution.

9. Moreover, the NHI Fund will be funded by national taxes and, necessarily and inevitably, take away funding from other national departments (sections 48(a), (c) and 49), thereby infringing the ability of the state to provide for other socio-economic rights, such as housing, police, education, and social security.

10. The NHI Act seeking to establish and maintain the National Health Insurance Fund as the single purchaser and single payer of health care services in the Republic is neither rational nor a reasonable measure.

11. The state does not have the available resources to implement the NHI. The implementation of the NHI Act will be at the expense of the access to health care provided in the private sector, *inter alia*, funded through private medical schemes. Section 33 of the NHI Act effectively deprives the privately insured portion of the population and any other person that wishes to become part of a medical scheme, from contracting to obtain such benefits offered by the Fund.

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12. The limitations of rights by the NHI Act are not justifiable. There exist less restrictive means to achieve the purpose of the NHI Act.

13. Sakeliga contends that:

13.1. The NHI Act is not rationally connected to the purpose of the NHI Act, and accordingly irrational and unconstitutional;

13.2. The NHI Act is in breach of section 27 of the Constitution and unconstitutional in that:

13.2.1. the implementation of the NHI Act is not within the state's available resources;

13.2.2. the implementation of the NHI Act unjustifiably infringes:

13.2.2.1. other socio-economic rights such as the right to housing, water, social security and education;

13.2.2.2. the right of access to health care of those with medical schemes;

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13.2.3. the NHI Act is neither coherent and coordinated nor reasonably conceived and implemented, and is not a reasonable legislative measure as contemplated in section 27 of the Constitution;

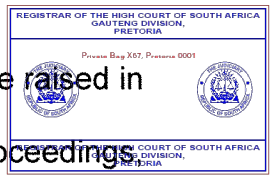
13.2.4. the implementation of the NHI Act results in a regression in access to health care services;

13.3. The state has failed to take reasonable economic and governance measures, within its available resources, to achieve the progressive realisation of access to health care as contemplated in section 27(1)(a) of the Constitution;

13.4. The NHI Act is inconsistent with sections 1, 2, 7, 8, 10, 12, 14, 18, 22, 25, 26, 27, 29 and 36 of the Constitution of the Republic of South Africa, 1996, and accordingly invalid and set aside.

14. In the circumstances, Sakeliga seeks orders that it be declared that the NHI Act is unconstitutional and invalid in its entirety;

15. In the alternative, Sakeliga seeks orders that sections 2, 3(5), 7, 9, 31, 33, 35, 39, 41, 48(a) and (c), 49, 54, 55, and 56 of the NHI Act, alternatively such sections of the NHI Act that the court finds to be unconstitutional, are declared to be unconstitutional and invalid.



TAKE FURTHER NOTICE that any interested party in a constitutional issue raised in this application may, with the written consent of all the parties to the proceedings (given not later than twenty days after the filing of this application), be admitted as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE FURTHER NOTICE that the written consent referred to above shall be lodged with the Registrar of this Court within five days of it being obtained and that the *amicus* shall, in addition to any other provision, comply with the times agreed upon for the filing of written argument.

TAKE FURTHER NOTICE that the terms and conditions agreed upon by the parties may be amended by this Court.

TAKE FURTHER NOTICE that if the interested party is unable to obtain the written consent as contemplated herein, he, she or it may, within five days of the expiry of the

twenty-day period prescribed as set out above, apply to the Court to be admitted as an *amicus curiae* in the proceedings. Such application shall -

(a) briefly describe the interest of the proposed *amicus curiae* in the proceedings;

(b) clearly and succinctly set out the submissions which will be advanced by the proposed *amicus curiae*, the relevance thereof to the proceedings and his, her or its reason for believing that the submissions will assist the Court and are different from those of the other parties; and



(c) be served upon all parties to the proceedings.

TAKE FURTHER NOTICE that any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae* shall file an answering affidavit within five days of service of such application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

SIGNED AT PRETORIA 27 AUGUSTUS 2025.

KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR THE PLAINTIFF
3rd Floor, Hb Forum Building
13 Stamvrug Street, Val De Grace
Pretoria

(T): 012 803 4719
(E): peter@kriekprok.co.za
liam@kriekprok.co.za
charne@kriekprok.co.za
REF: P Wassenaar/L Enslin/QB1179

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND TO: **MINISTER OF HEALTH**
FIRST RESPONDENT
Dr AB Xuma Building,
1112 Voortrekker Road,
Pretoria Townlands,
Pretoria



SERVICE BY SHERIFF

AND TO: **MINISTER OF FINANCE**
SECOND RESPONDENT
40 Church Street,
2nd Floor,
Old Reserve Bank Building, Pretoria

SERVICE BY SHERIFF

AND TO: **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
THIRD RESPONDENT
Union Buildings,
Government Avenue,
Pretoria

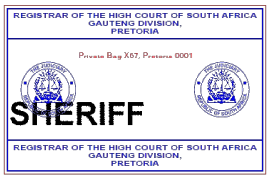
SERVICE BY SHERIFF

AND TO: **SPEAKER OF THE NATIONAL ASSEMBLY**
FOURTH RESPONDENT
Parliament Building,

Room E118,
Parliament Street,
Cape Town

SERVICE BY SHERIFF

AND TO: **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**
FIFTH RESPONDENT
Parliament Building,
Room S11,
Parliament Street,
Cape Town



SERVICE BY SHERIFF

AND TO: **STATE ATTORNEY, PRETORIA**
316 Salu Building,
Cnr Thabo Sehume and Francis Baard Street,
Pretoria,
Gauteng

SERVICE BY SHERIFF