IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION , PRETORIA

CASE NUMBER: 2024 - 148142

In the matter between:

SAKALIGA NPC	**APPLICANT**
[and]	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	**FIRST RESPONDENT**
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	**SECOND RESPONDENT**
MINISTER OF TRADE, INDUSTRY AND COMPETITION	**THIRD RESPONDENT**
NATIONAL PROPERTY FORUM NPO	**FOURTH RESPONDENT**

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DATED AT **PRETORIA** ON THIS **28TH** DAY OF **MAY 2026**

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 148142/2024

In the matter between:

SAKELIGA NPC	**APPLICANT**
[and]	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	**FIRST RESPONDENT**
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	**SECOND RESPONDENT**
MINISTER OF TRADE, INDUSTRY AND COMPETITION	**THIRD RESPONDENT**
NATIONAL PROPERTY FORUM NPO	**FOURTH RESPONDENT**

FOURTH RESPONDENT'S HEADS OF ARGUMENT

(ENROLLED FOR HEARING ON 5 JUNE 2026)

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A. INTRODUCTION

What the Property Practitioners Act seeks to achieve

1. These heads of argument are filed on behalf of the Fourth Respondent, the National Property Forum ("NPF"), in opposition to the relief sought by the Applicant ("Sakeliga") in respect of subsections (a)(iv) to (e) of the definition of "property practitioner" contained in section 1 of the Property Practitioners Act 22 of 2019 ("the Act"),[1] as well as section 50(a)(x) thereof.[2]

2. The Fourth Respondent submits that the impugned provisions are constitutionally compliant, rationally connected to legitimate governmental and regulatory purposes, and consistent with the broader constitutional framework governing transformation, economic regulation and consumer protection within the property sector.

3. The Fourth Respondent was not initially cited in these proceedings and subsequently applied for leave to intervene on the basis that it has a direct and substantial interest in the outcome of the application, particularly insofar as the relief sought implicates the regulation, transformation and operational functioning of the property sector. The application to intervene was granted and the Fourth Respondent was admitted as an intervening party in these proceedings.

[1] NOM para 1 caselines page 001-2.
[2] NOM para 2 caselines page 001-2.
.

4. The Fourth Respondent confines its submissions principally to:

4.1 the constitutionality of paragraphs (a)(iv) to (e) of the definition of "property practitioner" contained in section 1 of the Act; and

4.2 the constitutionality of section 50(a)(x) of the Act. Save insofar as expressly dealt with herein, the Fourth Respondent aligns itself with the submissions advanced by the First Respondent.

5. The enactment of the Property Practitioners Act introduced a deliberate and significant legislative shift from the narrower regulatory framework established under the repealed Estate Agency Affairs Act 112 of 1976 ("the repealed Act"). Whereas the repealed Act regulated estate agents in a limited and fragmented manner, the present Act establishes a broader and integrated regulatory framework directed at the modern property sector and the various participants operating within the property value chain.[3]

6. The Legislature consciously departed from the estate-agent-centred framework under the repealed Act and enacted a broader statutory regime intended to regulate functional participation within the property sector, including persons and entities who, for reward, participate in property-related transactions, financing arrangements, management functions, intermediary services and related commercial activities. The broader definition of "property

[3] Fourth Respondent AA, para 23; Caselines 003-8 to 003-9.

practitioner" was accordingly neither accidental nor incidental but formed part of a deliberate legislative expansion of regulatory oversight within the property sector.

7. The impugned provisions must accordingly be interpreted within the broader context of:

7.1 the Legislature's deliberate expansion of regulatory oversight within the property sector;

7.2 the need for consumer protection, accountability and market integrity within the modern property economy;

7.3 the prevention of regulatory fragmentation and circumvention within the sector; and

7.4 the constitutional imperative to advance transformation and meaningful participation within a sector historically characterised by exclusion and structural inequality.[4]

8. Section 50(a)(x) must similarly be understood within the broader constitutional and legislative framework governing transformation within the South African economy generally, and the property sector specifically. The property sector remains among the least transformed sectors of the economy notwithstanding

[4] Fourth Respondent AA, para 32; Caselines 003-11.

the constitutional commitment to substantive equality and remedial measures contemplated in section 9(2) of the Constitution. The inclusion of transformation-oriented regulatory measures within the Act must therefore be understood within the context of Parliament's broader constitutional obligations and legislative mandate.

9. The Fourth Respondent submits that the interpretation advanced by Sakeliga is inconsistent with:

9.1 the modern principles of statutory interpretation articulated by the Constitutional Court and the Supreme Court of Appeal;

9.2 the structure, purpose and context of the Act;

9.3 the integrated regulatory framework deliberately enacted by Parliament; and

9.4 the broader constitutional objectives underpinning the Act.

10. Properly interpreted, the impugned provisions serve legitimate constitutional, regulatory and transformative purposes, and do not amount to an arbitrary or unconstitutional limitation of any right protected under the Constitution.

B. THE ISSUES TO BE DECIDED

11. According to the Fourth Respondent, the principal issues for determination by this Honourable Court are the following:

11.1 Whether paragraphs (a)(iv) to (e) of the definition of "property practitioner" contained in section 1 of the Property Practitioners Act 22 of 2019 ("the Act") should be declared unconstitutional and invalid;

11.2 Whether section 50(a)(x) of the Act should be declared unconstitutional and invalid;

11.3 Whether the interpretation advanced by the Applicant accords with the proper approach to statutory interpretation as articulated by the Constitutional Court and the Supreme Court of Appeal;

11.4 Whether the impugned provisions are rationally connected to legitimate governmental, regulatory and transformative purposes within the property sector; and

11.5 Whether the declaratory relief sought by the Applicant ought to be granted in the circumstances of this matter.

12. Before dealing with each of the issues in detail, it is necessary first to consider the applicable legal principles governing declaratory relief, constitutional

invalidity and the interpretation of legislation within the constitutional framework.

C. THE LEGAL PRINCIPLES GOVERNING DECLARATORY RELIEF

13. The Fourth Respondent accepts that this Honourable Court possesses the constitutional and statutory authority to grant declaratory and constitutional relief in appropriate circumstances. The present dispute, however, concerns whether the Applicant has established a proper constitutional basis for the far-reaching declaratory relief sought in relation to the impugned provisions.

14. The principles governing declaratory and constitutional relief are well-established. The Court's powers in this regard arise from:

14.1 section 38 of the Constitution, which empowers a court to grant "appropriate relief" where a right in the Bill of Rights has been infringed or threatened;

14.2 section 172(1)(b) of the Constitution, which empowers a court deciding a constitutional matter to make any order that is "just and equitable"; and

14.3 section 21(1)(c) of the Superior Courts Act 10 of 2013, which confers a discretionary power upon courts to grant declaratory relief.[5]

15. The correct approach to section 21(1)(c) of the Superior Courts Act has repeatedly been confirmed by the Supreme Court of Appeal. The legal principles governing the Court's powers to grant declaratory relief were recently restated in Khosa v Minister of Defence and Military Veterans,[6] where the Court reaffirmed that declaratory relief constitutes a discretionary remedy which must be exercised judicially and in accordance with the interests of justice, constitutional principle and the particular circumstances of each case.

16. In **Fose v Minister of Safety and Security**, the Constitutional Court (per Ackermann J) described the duty of courts to grant appropriate constitutional relief in the following terms:[7]

> *"In our context* ***an appropriate remedy must mean an effective remedy****, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced.* ***Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated****. The courts have a particular responsibility in this regard and are obliged to 'forge new tools and shape innovative remedies, if needs be, to achieve this goal." (Our emphasis.)*

[5] E.g., Langa v Hlophe 2009 (4) SA 382 (SCA) at para 28, citing Durban City Council v Association of Building Societies.
[6] Khosa and Others v Minister of Defence and Military Veterans and Others (21512/2020) [2020] ZAGPPHC 147 (15 May 2020) para 67
[7] Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) para 69.

17. The Fourth Respondent does not dispute the constitutional powers of this Honourable Court to grant declaratory and constitutional relief in appropriate circumstances. The issue, however, is whether the Applicant has established a proper constitutional basis for the declaratory relief sought in the present matter.

18. The Fourth Respondent submits that the declaratory relief sought ought not to be granted for the following reasons:

18.1 The interpretation advanced by the Applicant is inconsistent with the established principles governing the interpretation of legislation, particularly the modern contextual and purposive approach articulated by the Constitutional Court and the Supreme Court of Appeal.

18.2 The impugned provisions form part of an integrated statutory and regulatory framework directed at the regulation, transformation and oversight of the modern property sector, and are rationally connected to legitimate governmental, regulatory and transformative purposes.

18.3 The Applicant's interpretation artificially narrows the scope and purpose of the Act in a manner inconsistent with the broader legislative scheme deliberately enacted by Parliament.

18.4 The impugned provisions are capable of constitutionally compliant interpretation consistent with the broader objects and purposes of the

Act. In such circumstances, principles of constitutional avoidance and judicial restraint militate against the granting of declaratory relief invalidating the provisions concerned.

19. The Fourth Respondent accordingly submits that the Applicant has failed to establish a proper constitutional basis for the declaratory relief sought.

D. CONSTITUTIONALITY OF PARAGRAPHS (a)(iv) to (e) OF THE DEFINITION OF "PROPERTY PRACTITIONERS" IN SECTION 1 OF THE ACT

20. At a proper consideration of the Applicant's founding papers, the central dispute before this Honourable Court is not factual in nature, but rather concerns the proper interpretation of section 1 of the Property Practitioners Act 22 of 2019 ("the Act"), and the constitutional validity of the impugned provisions when interpreted within their proper statutory and constitutional context.

21. From paragraphs 23 to 48 of the founding affidavit, the Applicant's challenge is directed primarily at the breadth of the statutory definition of "property practitioner", particularly when compared to the narrower definition of "estate agent" contained in section 1 of the repealed Estate Agency Affairs Act 112 of 1976 ("the repealed Act"). The Applicant's constitutional challenge is therefore founded substantially upon an interpretive exercise concerning the scope and meaning of the impugned provisions.

22. The Fourth Respondent submits that the Applicant's approach impermissibly attempts to construe the present Act through the lens of the repealed Act, notwithstanding that the legislative purpose, structure and regulatory scope of the two statutes are materially different.

23. The repealed Act regulated estate agents in a comparatively narrow and fragmented manner. By contrast, the present Act introduced a broader and integrated regulatory framework directed at the modern property sector and deliberately expanded the scope of regulation to include persons and entities who, for reward, participate in property-related transactions, financing arrangements, intermediary functions, management activities and related commercial operations within the property sector.

24. The broader statutory definition of "property practitioner" accordingly reflects a deliberate legislative choice aimed at:

24.1 expanding regulatory oversight within the property sector;

24.2 promoting consumer protection, accountability and market integrity;

24.3 preventing regulatory fragmentation and circumvention within the sector; and

24.4 advancing the constitutional and legislative objectives of transformation within the property economy.

25. The Fourth Respondent accordingly submits that the interpretation advanced by the Applicant is inconsistent with the text, context, purpose and legislative history of the Act, whereas the interpretation advanced by the Fourth Respondent accords with the established principles governing statutory interpretation and constitutional compliance.

(i) NATIONAL PROPERTY FORUM'S SUGGESTED APPROACH TO INTERPRETATION

26. The proper interpretation of the impugned provisions must be undertaken within the framework of the modern purposive and contextual approach to statutory interpretation consistently endorsed by the Constitutional Court and the Supreme Court of Appeal.

27. The Appellate Division, as it was then known, recognised in **Rex v Detody**[8]that where legislation replaces or amends earlier legislation dealing with the same subject matter, regard must be had to the legislative mischief sought to be addressed by the new enactment. In that regard, the Court referred with approval to the well-known formulation in Heydon's Case, namely:

[8] *1926 AD 198 at p 202.*

> *The enquiry will be simplified by an application of some of the tests which were summarised by Lord HALSBURY as follows: "Among the things which have passed into canons of construction recorded in Heydon's case, we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason of the remedy." (Eastern Photographic Co. v Comptroller of Patents (1898, A.C., p. 573)).*

28. The relevance of **Detody** in the present matter is self-evident. It is not disputed that the repealed Act regulated estate agents in a comparatively limited manner and did not establish an integrated framework regulating the broader property sector and its various subsectors. The present Act was enacted precisely to address those deficiencies through the creation of a broader and more comprehensive regulatory framework governing functional participation within the property sector.

29. The Legislature's decision to replace the narrower concept of "estate agent" with the broader concept of "property practitioner" was accordingly neither accidental nor cosmetic. It reflected a deliberate legislative expansion of regulatory oversight within the property sector and an intention to regulate a wider range of participants operating within the modern property economy.

30. The proper interpretation of section 1 of the Act must therefore be approached within that broader legislative and constitutional context.

31. The general principles governing statutory interpretation were comprehensively restated by the Supreme Court of Appeal in **Natal Joint**

Municipal Pension Fund v Endumeni Municipality ("Endumeni"),[9] and further developed in **Bothma-Batho Transport (Edms) Bpk v Bothma & Seun Transport (Edms) Bpk ("Bothma-Batho").[10]** Those principles have repeatedly been endorsed by the Constitutional Court.[11]

32. In **Endumeni**, the Supreme Court of Appeal held:

> *Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors.[15] The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.*

33. In **Bothma-Batho** the Supreme Court of Appeal further explained:

> *"The process of interpretation does not stop at a perceived literal meaning of those words, but considers them in light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer occurs in stages but is "essentially one unitary exercise".[12]*

[9] 2012 (4) SA 593 (SCA).
[10] 2014 (2) SA 494 (SCA)
[11] See most recently: Airports Company South Africa v Big Five Duty Free (Pty) Limited and Others 2019 (2) BCLR 165 (CC) at para 29.
[12] Para 10.

34. The “unitary exercise” of interpretation therefore requires fidelity both to the text of the provision and to the broader statutory, commercial and constitutional context within which the provision operates. The proper approach to interpretation may accordingly be summarised as follows:

34.1 One must begin with the text of the provision and the ordinary grammatical meaning of the words employed;

34.2 The words used must then be read in the context of the legislation as a whole and in light of all relevant circumstances, including the circumstances giving rise to the enactment, the apparent purpose to which the legislation is directed and the material known to those responsible for its enactment; and

34.3 Preference must be afforded to an interpretation which avoids technical, impractical, unbusinesslike, fragmented or oppressive consequences, particularly where such interpretation would undermine the broader purpose of the legislation.

35. Section 1 of the Act must be interpreted accordingly. On the accepted principles articulated above, the Fourth Respondent submits that the interpretation advanced by the Fourth Respondent is the only interpretation consistent with:

35.1 the language of the section;

35.2 the broader legislative scheme established by the Act;

35.3 a sensible and commercially coherent regulatory framework; and

35.4 the purpose and constitutional objectives underpinning the Act.

36. Section 1 of the Act provides that:

*"**property practitioner**"—*

(a) means any natural or juristic person who or which for the acquisition of gain on his, her or its own account or in partnership, in any manner holds himself, herself or itself out as a person who or which, directly or indirectly, on the instructions of or on behalf of any other person—

(i) by auction or otherwise sells, purchases, manages or publicly exhibits for sale property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas a seller or purchaser in respect thereof;

(ii) let's or hires or publicly exhibits for hire property or any business undertaking by electronic or any other means or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor in respect thereof;

(iii) collects or receives any monies payable on account of a lease of a property or a business undertaking;

(iv) provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or lease of a property or a business undertaking, including

a provider of bridging finance and a bond broker, but excluding any person contemplated in the definition of ''financial institution'' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(v) in any other way acts or provides services as intermediary or facilitator with the primary purpose to, or to attempt to effect the conclusion of an agreement to sell and purchase, or hire or let, as the case may be, a property or business undertaking, including, if performing the acts mentioned in this subparagraph, a home ownership association, but does not include—

(aa) a person who does not do so in the ordinary course of business;

(bb) where the person is a natural person and that person in the ordinary course of business offers a property for sale which belongs to him or her in his or her personal capacity;

(cc) an attorney or candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); or

(dd) a sheriff as defined in section 1 of the Sheriffs Act, 1986 (Act No. 90 of 1986), when he or she performs any functions contemplated in paragraph (a) of this definition, irrespective of whether or not he or she has been ordered by a court of law to do so; or

(vi) renders any other service specified by the Minister on the recommendation of the Board from time to time by notice in the Gazette;

(b) includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development;

(c) includes any person who for remuneration manages a property on behalf of another;

(d) includes a trust in respect of which the trustee, for the acquisition of gain on the account of the trust, directly or indirectly in any manner holds out that it is a business which, on the instruction of or on behalf of any other person, performs any act referred to in paragraph (a);

(e) for the purposes of sections 34, 46, 48, 59, 60, 61 and 65 includes—

(i) any director of a company or a member of a close corporation who is a property practitioner as defined in paragraph (a);

(ii) any person who is employed by a property practitioner as envisaged in paragraph (a) and performs on his, her or its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of that paragraph;

(iii) any trustee of a trust which is a property practitioner as envisaged in paragraph (d);

(iv) any person who is employed by a property practitioner as envisaged in paragraph (b) and performs on its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of paragraph (a); and

(v) any person who is employed by a property practitioner contemplated in paragraph (a) or (b) to manage, supervise or control the day-to-day operations of the business of that property practitioner;

How the phrase "on the instructions of or on behalf of any other person" is to be interpreted

37. The Applicant places considerable reliance upon the phrase "on the instructions of or on behalf of any other person" in support of its proposed interpretation of the definition.

38. Grammatically understood, the phrase contemplates circumstances in which a person acts in a representative, intermediary or facilitative capacity for another person within the context of property-related commercial activities.

39. The impugned provisions contained in section 1(a)(iv) to (e) are accordingly not to be interpreted in isolation, but within the broader context of:

39.1 the structure of the definition as a whole;

39.2 the integrated regulatory scheme established by the Act;

39.3 the Legislature's deliberate expansion of regulatory oversight within the property sector; and

39.4 the broader constitutional and legislative objectives underpinning the Act.

40. The definition of "property practitioner" is plainly composite in nature and extends beyond the narrow estate-agent-centred framework contained in the repealed Act. Paragraphs (b) to (e) specifically expand the regulatory scope of the definition to include additional participants operating within the broader property sector.

41. The purpose of section 1 is equally clear. The primary objective of statutory interpretation is to ascertain the intention of the Legislature, and the purpose of a statutory provision remains an important indicator of legislative intention where questions of ambiguity or scope arise.[13]

42. The Act expressly records that its purpose includes the transformation of the property practitioners' sector, the repeal of the Estate Agency Affairs Act 112 of 1976 and matters connected therewith. The phrase "on the instructions of or on behalf of any other person" must therefore be interpreted contextually and purposively within the broader objectives sought to be achieved by the Act.

[13] Public Carriers Association and Others v Toll Road Concessionaries (Pty) Ltd and Others 1990 (1) SA 925.

(i) SAKELIGA'S SUGGESTED APPROACH TO INTERPRETATION

43. From paragraphs 34 to 45 of its heads of argument, the Applicant advances an interpretive approach founded substantially upon narrow literalism and an artificially restrictive reading of the statutory definition.

44. Such an approach is inconsistent with the modern constitutional approach to statutory interpretation repeatedly endorsed by the Constitutional Court and the Supreme Court of Appeal.

45. In **Thoroughbred Breeders' Association v Price Waterhouse**,[14] the Court observed:

> *"The days are long past when blinked peering at an isolated provision in a statute was thought to be only legitimate technique in interpreting it if it seemed on the face of it to have a readily discernible meaning".*

46. The interpretive approach advanced by the Applicant is therefore inconsistent with:

46.1 the purposive and contextual approach articulated in Endumeni;

46.2 the "unitary exercise" approach endorsed in Bothma-Batho;

[14] *2001 (4) SA 551 para 12.*

46.3 the Constitutional Court's rejection of narrow literalism divorced from context and purpose; and

46.4 the broader constitutional framework governing statutory interpretation under section 39(2) of the Constitution.

47. In paragraph 48 of the founding affidavit, the Applicant further contends that the definition of "property practitioner" unjustifiably infringes section 22 of the Constitution.

48. The Fourth Respondent submits that this contention is without merit.

49. In **South African Diamond Producers Organisation v Minister of Minerals and Energy NO**,[15] the Constitutional Court summarised the test articulated in Affordable Medicines[16]in the following terms:

> *"If a legislative provision would, if analysed objectively, have a negative impact on choice of trade, occupation or profession, it must be tested in terms of the criterion of reasonableness in section 36(1). If, however, the provision only regulates the practice of that trade and does not affect negatively the choice of trade, occupation or profession, the provision will pass constitutional muster so long as it passes the rationality test and does not violate any other rights in the Bill of Rights."*[17]

[15] [2017] ZACC 26; 2017 (6) SA 331 (CC); 2017 (10) BCLR 1303 (CC).
[16] Affordable Medicines Trust v Minister of Health [2005] ZACC 3; 2005 (6) BCLR 529 (CC); 2006 (3) SA 247 (CC).
[17] South African Diamond Producers Organisation v Minister of Minerals and Energy N.O. [2017] ZACC 26; 2017 (6) SA 331 (CC); 2017 (10) BCLR 1303 (CC).

50. The impugned provisions regulate participation within the property sector and establish a coherent framework governing property-related commercial activity. They do not prohibit participation within the sector, nor do they extinguish the right freely to choose a trade, occupation or profession.

51. The broader regulatory scheme established by the Act serves legitimate governmental and constitutional purposes, including:

51.1 consumer protection;

51.2 regulatory accountability;

51.3 prevention of regulatory fragmentation and circumvention;

51.4 coherent oversight of the property sector; and

51.5 advancement of transformation within a historically untransformed sector of the economy.

52. Section 36(1)[18] of the Constitution requires a court to engage in a balancing exercise in determining whether any limitation is reasonable and justifiable in

[18] Section 36(1) provides:
"The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
(a) the nature of the right;
(b) the importance of the purpose of the limitation;
(c) the nature and extent of the limitation;
(d) the relation between the limitation and its purpose; and
(e) less restrictive means to achieve the purpose."

an open and democratic society based on human dignity, equality and freedom.[19] Such an enquiry is context-specific and requires a proportionality assessment conducted in light of the circumstances of each case.[20]

53. The impugned provisions are neither arbitrary nor disproportionate. On the contrary, they are carefully directed at the regulation and transformation of a historically fragmented and insufficiently regulated sector of the economy.

54. To the extent that the impugned provisions impose any limitation upon section 22 of the Constitution, such limitation is reasonable, justifiable and constitutionally permissible within the broader constitutional and regulatory framework governing the property sector.

E. CONSTITUTIONALITY OF SECTION 50(a)(x) OF THE NEW ACT

55. The Applicant's challenge to section 50(a)(x) of the Property Practitioners Act 22 of 2019 ("the Act") is founded substantially upon the meaning to be attributed to the phrase "valid B-BBEE certificate" as contemplated therein. The Applicant contends that the absence of a definition of that phrase renders the provision constitutionally invalid.

56. The Fourth Respondent submits that the Applicant's challenge is fundamentally misconceived and inconsistent with the established principles

[19] S v Manamela [2000] ZACC 5; 2000 (3) SA 1 (CC); 2000 (5) BCLR 491 (CC) at para 32.
[20] S v Makwanyane [1995] ZACC 3; 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at para 104.

governing statutory interpretation. The proper interpretation of section 50(a)(x) requires a contextual, purposive and unitary interpretive exercise undertaken within the broader legislative and constitutional framework governing Broad-Based Black Economic Empowerment ("B-BBEE") and transformation within the property sector.

57. The starting point remains the language of section 50(a)(x), read in the context of the Act as a whole, the purpose of the legislation and the broader statutory framework within which the provision operates. Section 50 of the Act provides, inter alia:

> ***Disqualification from issue of Fidelity Fund certificate***
>
> *The Authority may not issue a Fidelity Fund certificate to—*
>
> *(a) any person who—*
>
> *(i) is not a South African citizen and does not lawfully reside in the Republic;*
>
> *(ii) has, at any time in the preceding five years, been found guilty of contravening this Act, the Estate Agency Affairs Act, or any similar legislation in any other jurisdiction;*
>
> *(iii) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which such person has been sentenced to imprisonment without the option of a fine;*

(ii) is of unsound mind;

(v) has, at any time in the preceding five years by reason of improper conduct, been dismissed from a position of trust;

(vi) is an unrehabilitated insolvent;

(vii) is not in possession of a valid tax clearance certificate;

(viii) has been prohibited by any legislation, enacted in the Republic or elsewhere, from practicing as a property practitioner or from occupying a position of trust, including any juristic person to whom the disqualifications in subparagraphs (ii), (iii), (vi) and (vii) apply with the necessary changes;

(ix) has been found guilty by a competent tribunal or a court of law of unfairly differentiating, distinguishing or excluding directly or indirectly anyone on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;

(x) *is not in possession of a* ***valid BEE certificate;***

Interpretative factors to the phrase "valid BEE certificate"

58. It is common cause that the Act itself does not expressly define the phrase "valid B-BBEE certificate". That, however, does not render the provision vague, uncertain or constitutionally invalid. Statutory interpretation is not

undertaken in isolation, but within the broader legislative framework dealing with the same subject matter.

59. The Fourth Respondent submits that the phrase "valid B-BBEE certificate" must be interpreted harmoniously with:

59.1 the Broad-Based Black Economic Empowerment Act 53 of 2003 ("the B-BBEE Act");

59.2 the Generic Codes of Good Practice issued thereunder;

59.3 the Property Sector Transformation Code established in terms of section 9(1) of the B-BBEE Act; and

59.4 the broader constitutional framework governing transformation and substantive equality within the South African economy.

60. It is trite that statutes dealing with the same subject matter, or statutes which are in pari materia, must where reasonably possible be interpreted harmoniously and as part of a coherent and integrated legal system.

61. The Constitutional Court reaffirmed this principle in **Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others**,[21] where Theron J held:

[21] 2020(2) SA 325 (CC).

> *[38] It is a well-established canon of statutory construction that "every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature". Statutes dealing with the same subject matter, or which are in pari materia, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.*

62. The significance of this principle in the present matter is that section 50(a)(x) cannot be interpreted in isolation from the broader legislative framework governing B-BBEE compliance and transformation within the property sector.

(iii) PROPERTY SECTOR TRANSFORMATION CHARTER

63. The Property Sector Transformation Code was promulgated specifically to advance transformation within the property sector and to give practical effect to the objectives of the B-BBEE Act within that sector.

64. Section 4 of the Property Sector Transformation Code provides, inter alia:

OBJECTIVES OF THE AMENDED PROPERTY SECTOR CODE

4.1 This amended sector code aims to promote the objectives contained in the B-BBEE Amendment Act as these relate to the property sector and, in particular, but without limitation:

4.1.1 Promote economic transformation in the property sector in order to enable meaningful participation of Black people including women, the youth and people with disabilities;

4.1.2 Unlock obstacles to property ownership and participation in the property market by black people;

4.1.3 Promote development and investment in under-resourced areas which enhances basic infrastructure, encourages investment and supports micro and small enterprises;

4.1.4 Achieve a substantial change in the racial and gender composition of ownership, control and management and enhance the participation of Black people (including Black women) and designated groups in the property sector;

4.1.5 Promote the effective advancement of employment equity in the property sector and encourage diverse organisational cultures;

4.1.6 Increase the pool of intellectual capital amongst Black people, particularly black women, in the sector by focusing on attracting new entrants and developing appropriate curricula;

4.1.7 Address skills development in a manner that accelerates the advancement of black people (especially Black women and Black people with disabilities) with

increased investment in the skills development and training of new entrants;

4.1.8 *Enhance entrepreneurial development and increase the number of BBBEE firms and SMMEs providing services and products to the sector whilst promoting sustainable growth of such firms; 4.1.9 Increase the procurement of goods and services from B-BBEE compliant suppliers.*

4.1.10 *Facilitate the accessibility of finance for property ownership and property development;*

4.1.11 *Encourage good corporate citizenship amongst enterprises in the sector, including participation in corporate social investment projects and adherence to triple bottom line accountability;*

4.1.12 *Promote investment in and contribute to growth of the sector; and 4.1.13 Enhance uniformity and consistency in the application of the principles contained in the aligned sector code.*

65. The broader legislative and constitutional context within which section 50(a)(x) was enacted is therefore unmistakable. The provision forms part of an integrated transformative framework directed at:

65.1 promoting meaningful participation within the property sector;

65.2 addressing structural exclusion and historical imbalances;

65.3 encouraging compliance with B-BBEE measures applicable to the property sector; and

65.4 promoting uniformity and accountability within the sector.

66. In **Natal Joint Municipal Pension Fund v Endumeni Municipality**,[22] the Supreme Court of Appeal emphasised that interpretation requires consideration not only of the language used, but also of:

> *Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.*

67. The circumstances which gave rise to the promulgation of the Property Sector Transformation Code included persistent structural inequalities within the property sector, under-representation of black participants in ownership and management structures, unequal access to financing opportunities and limited participation within the broader property economy.

(iv) B-BBEE LEGAL SECTOR CODE OF GOOD PRACTICE

68. The B-BBEE framework itself contemplates the issuance of B-BBEE verification certificates by accredited verification agencies for purposes of measuring compliance with applicable sectoral and generic codes.

[22] Natal Joint Municipal Fund v Endumeni Municipality 2012 (4) SA 593 (SCA).

69. In this regard, the Legal Sector Code defines a "B-BBEE verification certificate" to mean "any certificate prepared and issued by a B-BBEE verification agency verifying compliance with the Legal Sector Code by the measured entity in terms of the provisions of the B-BBEE Act."

70. While the Property Practitioners Act does not itself define "valid B-BBEE certificate", the Legislature must be presumed to have enacted section 50(a)(x) with full knowledge of the existing B-BBEE legislative framework; the Generic Codes of Good Practice; the Property Sector Transformation Code; and the established regulatory mechanisms governing B-BBEE verification and compliance.

71. In **Liesching and Others v S and Another,[23]the Constitutional Court** reaffirmed that statutory definitions must be interpreted contextually and consistently within the broader legislative framework. The Court held:

> *[33] "Where a word is defined in a statute, the meaning ascribed to it by the Legislature must prevail over its ordinary meaning. The definition makes plain that the word "appeal" would only bear the meaning ascribed to it by the Legislature if the context so requires. If, however, there are compelling reasons, based on the context, to disregard the ascribed meaning then the ordinary meaning of the word must be used. If a defined word or phrase is used more than once in the same statute it must be given the same meaning unless the statutory definition would result in such injustice or incongruity or absurdity as to lead to*

[23] (CCT245/15) [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC) (15 November 2016).

the conclusion that the Legislature could never have intended the statutory definition to apply.

72. The Fourth Respondent accordingly submits that when the relevant legislative instruments are interpreted harmoniously and as part of a coherent legislative framework, a "valid B-BBEE certificate" within the context of the Property Sector Transformation Code means a certificate prepared and issued by a duly accredited B-BBEE verification agency verifying compliance with the applicable provisions of the Property Sector Transformation Code established in terms of section 9(1) of the B-BBEE Act.

73. The relevant definition is contained principally within the applicable sectoral codes and subordinate legislative framework promulgated pursuant to the B-BBEE Act. It is settled law that subordinate legislation derives both its validity and interpretive coherence from its empowering legislation.[24] The relevant Sector Codes must therefore necessarily be interpreted within the broader framework and purpose of the B-BBEE Act itself.

74. In **Independent Community Pharmacy Association v Clicks Group Ltd and Others**,[25] Rogers J reaffirmed that statutory interpretation constitutes a holistic and unitary exercise in which text, purpose, context and legislative scheme must all be considered together. The Court stated:

> *[239] The first judgment criticises my judgment for starting with the interpretation of regulation 6 rather than section 22A. This is said to be putting the cart before the*

[24] Minister of Finance v Afribusines NPC 2022 (4) SA 362 (CC) paras 41 and 43.
[25] 2023 (6) BCLR 617 (CC).

horse. The metaphor, in my respectful view, is inapt. Interpretation, as I have just said, is a unitary exercise in which all relevant factors are considered holistically. I have considered all relevant factors holistically, including section 22A. An exposition of multiple factors has to be set out sequentially. The exposition is the end-product of having wrestled with all the relevant factors and settled upon an interpretation. When I start, as I do, with the purpose and text of regulation 6(d), I already know what I think about the role that section 22A plays in the process of interpretation.

[240] To this I must add that this case is ultimately about the interpretation of regulation 6. The issue is whether the conduct of Retailers' community pharmacies and Unicorn's manufacturing pharmacy falls foul of that regulation. Section 22A is part of the broader context within which regulation 6 must be interpreted. In assessing that aspect of context, one has to grapple with the interpretation of section 22A itself.

[241] With this caveat, I start the holistic exercise of interpretation by considering the purpose of regulation 6 and the implications for that purpose of adopting one interpretation or the other. I do so because, for reasons I set out later, a "beneficial interest" in a pharmacy business is, semantically and in its context, reasonably capable of meaning an interest by way of shareholding in a company that owns a pharmacy business. Purpose can thus be expected to play a vital role.

75. Section 50(a)(x) is the provision ultimately requiring interpretation in the present matter. The Fourth Respondent submits that, consistently with the jurisprudence cited above, the interpretation advanced by the Fourth Respondent constitutes the proper "unitary" interpretation because the Property Sector Transformation Code; the B-BBEE Act; the Generic Codes of Good Practice; and the broader legislative transformation framework, must all

be interpreted harmoniously as interconnected parts of the broader legislative scheme governing B-BBEE compliance within the property sector.

76. The interpretation advanced by the Applicant improperly isolates section 50(a)(x) from the broader legislative framework within which it operates and is accordingly inconsistent with the modern constitutional approach to statutory interpretation.

77. The sensible, businesslike and constitutionally compliant interpretation of the phrase “valid B-BBEE certificate” is therefore that it refers to a certificate prepared and issued by a duly accredited B-BBEE verification agency confirming compliance with the applicable provisions of the Property Sector Transformation Code established in terms of section 9(1) of the B-BBEE Act.

78. Properly interpreted, section 50(a)(x) serves legitimate constitutional, regulatory and transformative purposes and is accordingly constitutionally valid.

F. CONSTITUTIONAL AVOIDANCE AND JUDICIAL RESTRAINT

79. It is trite that where legislation is reasonably capable of an interpretation consistent with the Constitution, a court should prefer such interpretation over one resulting in constitutional invalidity.

80. The Constitutional Court has repeatedly emphasised that courts should, where reasonably possible, avoid constitutional invalidity through constitutionally compliant interpretation consistent with the text, purpose and structure of the legislation concerned.

81. The principle of constitutional avoidance is particularly important in matters concerning socio-economic and regulatory legislation enacted by Parliament within the framework of its constitutional and policy-making responsibilities.

82. In the present matter, the impugned provisions are plainly capable of an interpretation consistent with the language of the Act; the broader statutory framework governing the property sector; the constitutional objectives of transformation and substantive equality contemplated in section 9(2) of the Constitution; the legitimate governmental purposes of consumer protection, accountability and market regulation; and the Legislature's deliberate expansion of regulatory oversight within the modern property sector.

83. The interpretation advanced by the Applicant, by contrast, artificially narrows the scope and operation of the Act in a manner inconsistent with the broader legislative scheme deliberately enacted by Parliament.

84. In such circumstances, considerations of constitutional avoidance, judicial restraint and due regard for legislative policy choices militate strongly against the granting of the declaratory relief sought by the Applicant.

G. THE RATIONALITY OF THE IMPUGNED PROVISIONS

85. The impugned provisions form part of an integrated regulatory and transformative framework governing the modern property sector.

86. The broader definition of “property practitioner” serves legitimate governmental and regulatory purposes, including consumer protection; market accountability and integrity; coherent oversight of property-related commercial activities; prevention of regulatory fragmentation and circumvention; regulation of functional participation within the property sector; and advancement of transformation within the property economy.

87. Section 50(a)(x) similarly serves a legitimate constitutional and regulatory purpose by promoting compliance with the transformation framework governing the property sector and encouraging meaningful participation within the sector.

88. The impugned provisions accordingly bear a rational connection to legitimate governmental, regulatory and constitutional objectives and cannot properly be characterised as arbitrary, irrational or constitutionally invalid.

89. The limitations imposed by the impugned provisions, to the extent that any limitation arises, are proportionate, reasonable and justifiable within the broader constitutional and regulatory framework governing the property sector.

H. CONCLUSION

90. The Applicant's constitutional challenge is founded upon an interpretive approach which is inconsistent with the modern principles of statutory interpretation articulated by the Constitutional Court and the Supreme Court of Appeal.

91. Properly interpreted, the impugned provisions form part of a broader and integrated regulatory framework deliberately enacted by Parliament to regulate the modern property sector, promote consumer protection and accountability, prevent regulatory fragmentation and advance transformation within the property economy.

92. The Fourth Respondent has demonstrated that:

92.1 the Legislature deliberately departed from the narrower framework established under the repealed Estate Agency Affairs Act 112 of 1976;

92.2 the broader definition of "property practitioner" serves legitimate governmental, regulatory and constitutional purposes;

92.3 section 50(a)(x) must be interpreted within the broader legislative framework governing B-BBEE and transformation within the property sector;

92.4 the impugned provisions are rationally connected to legitimate governmental and constitutional objectives; and

92.5 the impugned provisions are reasonably capable of constitutionally compliant interpretation consistent with the text, purpose and structure of the Act.

93. Section 172 of the Constitution empowers courts, when deciding constitutional matters, to declare legislation invalid only to the extent that such legislation is inconsistent with the Constitution.

94. The Fourth Respondent submits that the Applicant has failed to establish any constitutional inconsistency warranting the declaratory relief sought.

95. In the circumstances, the application falls to be dismissed with costs, including the costs consequent upon the employment of two counsel, where so employed.

Motebang Ramaili SC

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Sipiwe Mutemwa

Counsel for Fourth Respondent

Chambers, Sandton

26 May 2026

LIST OF AUTHORITIES

LEGISLATION	
1.	Constitution of the Republic of South Africa, 1996
2.	Property Practitioners Act 22 of 2019
3.	Estate Agency Affairs Act 112 of 1976
4.	Superior Courts Act 10 of 2013
5.	Broad-Based Black Economic Empowerment Act 53 of 2003
6.	Property Sector Transformation Code issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003
7.	Generic Codes of Good Practice issued under the Broad-Based Black Economic Empowerment Act 53 of 2003
8.	Legal Sector Code issued under the Broad-Based Black Economic Empowerment Act 53 of 2003
CASE LAW	
1.	Affordable Medicines Trust and Others v Minister of Health and Others 2006 (3) SA 247 (CC)
2.	Bothma-Batho Transport (Edms) Bpk v Bothma & Seun Transport (Edms) Bpk 2014 (2) SA 494 (SCA)
3.	Fose v Minister of Safety and Security 1997 (3) SA 786 (CC)
4.	**I**ndependent Community Pharmacy Association v Clicks Group Ltd and Others 2023 (6) BCLR 617 (CC)
5.	Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others 2020 (2) SA 325 (CC)

6.	Khosa and Others v Minister of Defence and Military Veterans and Others (21512/2020) [2020] ZAGPPHC 147 (15 May 2020)
7.	Langa v Hlophe 2009 (4) SA 382 (SCA)
8.	Liesching and Others v S and Another (CCT245/15) [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC)
9.	Minister of Finance v Afribusiness NPC 2022 (4) SA 362 (CC)
10.	Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)
11.	Public Carriers Association and Others v Toll Road Concessionaries (Pty) Ltd and Others 1990 (1) SA 925 (A)
12.	Rex v Detody 1926 AD 198
13.	South African Diamond Producers Organisation v Minister of Minerals and Energy NO 2017 (6) SA 404 (CC)
14.	Thoroughbred Breeders' Association v Price Waterhouse 2001 (4) SA 551 (SCA)