IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 2024-148142

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	**INTERVENING PARTY**

NOTICE OF FILING

KINDLY TAKE NOTICE that the 1st Respondent hereby files its Heads of Argument.

DATED AND **SIGNED** AT PRETORIA ON THE 28th OF **MAY 2026.**

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SAKELIGA NPC	Applicant
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PROPERTY PRACTITIONERS REGULATORY AUTHORITY	First Respondent
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	Second Respondent

PPRA HEADS OF ARGUMENT

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A. INTRODUCTION

1. These Heads of Argument are filed on behalf of the First Respondent, the Property Practitioners Regulatory Authority ("the PPPRA" or "the Authority"), in opposition to an application brought by the Applicant, Sakeliga NPC ("Sakeliga" or "the Applicant"), in terms of section 172(1)(a)[1] of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), seeking a declaration that certain provisions of the Property Practitioners Act 22 of 2019 ("the Act") and certain regulations promulgated thereunder are unconstitutional and invalid.

2. The Applicant seeks constitutional invalidation of two aspects of the Property Practitioners Act 22 of 2019 (the Act)[2]:

   2.1. Paragraphs (a)(iv) to (e) of the definition of "property practitioner[3]" in section 1; and

   2.2. Section 50(a)(x), which provides that the Authority may not issue a Fidelity Fund certificate to a person who is not in possession of a valid BEE certificate[4].

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1 FA para 9, p8.
2 Applicants HoA para 1, p3.
3 FA para 11, p8.
4 FA para 10, p10.

3. The Applicant no longer persists with its challenge to Regulation 2 of the Property Practitioners Regulations, 2022. These heads therefore address the two remaining challenges only[5].

4. The application should be dismissed. The impugned provisions do not trench impermissibly upon section 22 of the Constitution[6]. They regulate participation in a sector of obvious public importance: the marketing, financing, management, letting, sale and purchase of immovable property. They are rationally connected to the Act's legitimate purposes, including consumer protection, professionalisation[7], transformation, accountability, and effective regulation of the modern property market. These government purpose is not challenged by the applicant[8]. The constitutional Court concluded where the

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5 Applicants HoA para 2, p3.

6 Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

7 South African Post Office Ltd V Van Rensburg And Another 1998 (1) SA 796 (E) On the issue of equality, as guaranteed by s 9 of the Constitution, the Court considered whether it could be said that the State, by way of the Act, was unfairly discriminating between the applicant and the respondent or any other subject wishing to conduct a postal service. The D Court assumed that this was indeed the case and then went on to consider whether the infringement was authorised by the terms of s 36 of the Constitution. (At 807C--D/E.) The Court held, however, that the limitation of the respondent's right to equality, as enshrined in s 9 of the Constitution, by the provisions of s 7 of the Act was reasonable and necessary, as permitting the activities of the respondent would be generally contrary to public interest. On the issue of the freedom to engage in economic activity the Court found that s 7 of the Act G provided that `the exclusive right to carry on such a trade throughout South Africa' was enjoyed by the applicant and that this, *prima facie*, infringed the respondent's right as guaranteed by s 22 of the Constitution. The respondent's right was, however, limited by the second sentence of s 22 and the Act was therefore, as authorised by the Constitution, through s 90A `regulating the carrying on of a postal service by law', if it was in the public interest to H allow such a service at all. The respondent's right had accordingly not been denied him and the limitation of the right was one sanctioned by the Constitution. In the circumstances it could not be found that the respondent's right to carry on a trade or occupation, as guaranteed by s 22 of the Constitution, was infringed by s 7 of the Act. (At 805A--C, 805I/J--J and 806B.) Counter-application dismissed and the respondent interdicted and restrained from conducting I a postal service in contravention of s 7(1)*(a)* of the Act. (At 810F--G/H.)

8 City of Cape Town VvAd Outpost (Pty) Ltd And Others 2000 (2) SA 733 (C) Constitutional law - Human rights - Right to choose trade, occupation or profession freely in terms of s 22 of Constitution of the Republic of South Africa Act 108 of 1996 - Section 22 enacted for protection of individual citizens and not for benefit of juristic bodies - Should not be extended to D regulation of economic intercourse undertaken by enterprises owned by juristic bodies.

government purpose it is not assailed it must be concluded that there is no challenge of that purpose. The same is the position here.

5. In Affordable Medicines Trust and Others v Minister of Health and Others 2006 (3) SA 247 (CC) para 22- 23 the CC said:

> [22] All this is common cause. The applicants do not dispute the stated government purpose. Nor its legitimacy. Instead, the applicants have sought to challenge the means used by the government to achieve its objective to increase access to medicines that are safe for consumption. They contended that the means used by the government to achieve its objective are either not rationally related to the stated objective or are not authorised by the empowering provisions of the Medicines Act. It will be convenient to deal with these contentions when considering the constitutional challenges.
>
> [23] Suffice it to hold at this stage that on the record, the respondents have demonstrated the existence of a government purpose sought to be achieved by the licensing scheme. That purpose is to increase access to medicines that are safe for consumption. And the legitimacy of this purpose cannot be gainsaid. The finding and the conclusion of the High Court in this regard cannot be faulted. The applicants did not contend otherwise in this Court.

6. The applicants do not dispute the fact that one of the objectives of the **transformation of the property practitioners' sector** as provided for in the PPPRA.

7. Considering the foregoing, the Applicant's case rests on three recurring errors.

7.1. **First,** it treats the Act as though it were merely a re-enactment of the old estate agency regime, confined to traditional estate agents who receive trust money. That is not what Parliament enacted. The Act deliberately replaced a narrower estate-agency statute with a broader regulatory framework for the property practitioner's sector.

7.2. **Second,** it approaches section 22 as though all regulatory burdens affecting how a vocation is practised must satisfy the full proportionality standard under section 36. That is contrary to the Constitutional Court's decision in Affordable Medicines Trust and Others v Minister of Health and Others 2006 (3) SA 247 (CC), which holds that regulation of practice passes constitutional muster where it is rationally related to a legitimate government purpose and does not infringe another right in the Bill of Rights and;

7.3. **Third,** that transformation of the property practitioner sector is irrelevant and its therefore not a valid or legitimate government purpose.

8. The impugned provisions regulate the practice of property-related occupations. They do not prohibit citizens from choosing a trade, occupation or profession. To the extent that the provisions impose entry and compliance requirements for persons who render property-related services for gain, those requirements are rational and constitutionally permissible.

9. For instance, if anyone chooses to be an attorney in the comply with all the requirements for admission as an attorney in the wish to practice as sole proprietor or under incorporated business, they are required in terms of the Legal Practice Act to be in possession of a valid Fidelity Fund Certificate. The property practitioner is required to be BBEE compliant. That is not unconstitutional and it relates to a valid governmental purpose which is not challenged.

10. Thus, the PPPRA opposes the application in its entirety and submits that none of the impugned provisions are unconstitutional, invalid, or otherwise legally objectionable. The application constitutes an unwarranted attack on a comprehensive legislative scheme designed to protect consumers, professionalise the property sector, and advance the transformative imperatives of the Constitution. The impugned provisions are rationally connected to legitimate government purposes, fall squarely within the regulatory authority conferred by the Act, and are fully consistent with the State's constitutional obligations to promote broad-based black economic empowerment ("B-BBEE") and redress the lingering effects of systemic racial discrimination in the property sector.

11. The nature of these proceedings is exceptional. The Applicant invokes this Court's jurisdiction under section 172(1)(a[9]) of the Constitution, which empowers a court to declare that any law or conduct inconsistent with the Constitution is invalid to the extent of its inconsistency. This is a jurisdiction of the utmost gravity, to be exercised with due regard to the principle of constitutional subsidiarity and the fundamental tenets of the separation of powers. As the Constitutional Court has consistently emphasised, a declaration of constitutional invalidity strikes at the heart of legislative competence and should not be granted unless the constitutional infirmity is clearly established. In Economic Freedom Fighters v Speaker of the National Assembly and Others 2016 (3) SA 580 (CC) at para 57[10], the Court cautioned that unless legislation clearly violates constitutional provisions, it could not be struck down.

12. The Applicant bears the onus of establishing the constitutional invalidity of the impugned provisions on a balance of probabilities. The Constitution must be interpreted objectively and to find objective meaning with due regard to its context and the values that underlie it. The onus on an applicant seeking a declaration of invalidity is a heavy one, particularly where the impugned provisions serve transformative constitutional objectives and represent the culmination of extensive democratic deliberation and public consultation.

B. ISSUES FOR DETERMINATION

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9 FA para 9, p8.

10 Economic Freedom Fighters v Speaker of the National Assembly and Others 2016 (3) SA 580 (CC) at para 57

13. The issues as we see them from the papers are:

13.1. Whether the impugned parts of the definition of "property practitioner" unjustifiably limit section 22 of the Constitution or are otherwise irrational.

13.2. Whether section 50(a) (x) unjustifiably limits section 22 or is otherwise irrational.

13.3. Whether the Applicant's proposed relief is overbroad and inconsistent with the separation of powers; and

13.4. What costs order should follow.

14. The PPRA submits that the impugned definitional provisions are valid regulation of practice under section 22 and the BEE-certificate requirement is rationally related to the Act's transformation architecture and the licensing function performed by Fidelity Fund certificates. It is clear that the Applicant has not discharged the burden of showing that the impugned provisions have no rational connection to a legitimate governmental purpose, or that any limitation of rights is unjustifiable. In any event the relief sought would excise core components of the statutory scheme and produce regulatory gaps in a sector that Parliament deliberately chose to regulate comprehensively.

C. THE INTERPRETATION OF THE LEGAL AND CONSTITUTIONAL FRAMEWORK APPLICABLE

15. The PPPRA emphasise that the applicant's approach of isolating individual provisions and subjecting them to abstract constitutional scrutiny distorts the proper analytical framework. The question before this Court is not whether paragraph (a)(iv) or section 50(a)(x), considered in isolation, imposes a burden on certain economic actors. The question is whether the legislature's comprehensive regulatory scheme for property practitioners, which includes the impugned provisions as integral components, is consistent with the Constitution.

16. Statutory interpretation is a single integrated exercise rather than a sequence of separate textual and purposive inquiries, text–context–purpose are deemed a unitary exercise. In Natal Joint Municipal Pension Fund v Endumeni Municipality, 2012 (4) SA 593 (SCA) the Wallis writing for the Court said:

"The trial judge said that the general rule is that the words used in a statute are to be given their ordinary grammatical meaning unless they lead to absurdity. He referred to authorities that stress the importance of context in the process of interpretation and concluded that:

'A court must interpret the words in issue according to their ordinary meaning in the context of the Regulations as a whole, as well as background material, which reveals the purpose of the Regulation, in order to arrive at the true intention of the draftsman of the Rules.'

Whilst this summary of the approach to interpretation was buttressed by reference to authority it suffers from an internal tension because it does not indicate what is meant by

the 'ordinary meaning' of words, whether or not influenced by context, or why, once ascertained, this would coincide with the 'true' intention of the draftsman. There were similar difficulties in the heads of argument on behalf of Endumeni. In one paragraph they urged us, on the basis of the evidence of the actuary who advised the Fund to adopt the approach, that the proviso was not intended to cater for 'a Maltman type of event' and in another cited authorities for the rule that the 'ordinary grammatical meaning of the words used must be adhered to' and can only be departed from if that leads to an absurd result. In view of this it is necessary to say something about the current state of our law in regard to the interpretation of statutes and statutory instruments and documents generally."

17. The PPPRA accordingly submit that the impugned provisions, properly understood as components of the Act's comprehensive regulatory architecture, satisfy all applicable constitutional standards. They are rationally connected to legitimate government purposes, they do not impair fundamental rights more than is necessary to achieve those purposes, and they represent a reasonable and justifiable legislative response to the challenges of property sector regulation in a constitutional democracy committed to transformation, equality, and economic inclusion. The application should be dismissed.

D. THE APPLICABLE LEGISLATIVE FRAMEWORK

18. The long title and preamble of the Act show a broad legislative purpose. The Act provides for the regulation of property practitioners; the continuation of the Estate Agency Affairs Board as the PPRA; transformation of the property practitioners sector; compliance and

enforcement; continuation of the Fidelity Fund; consumer protection; repeal of the Estate Agency Affairs Act 112 of 1976; and related matters: Property Practitioners Act 22 of 2019.

19. Section 2[11] provides that the Act applies to the marketing, promotion, managing, sale, letting, financing and purchase of immovable property, and to rights, obligations, interests, duties or powers associated with or relevant to such property.

20. Section 3 sets out the objects of the Act[12], which amongst others include the transformation of the property market and establishment of the Property Sector Transformation Fund; and structured interventions to facilitate property ownership by more South Africans.

21. Section 5 establishes the PPRA[13] as a national public entity. Section 6[14] requires the PPRA to regulate the conduct of property practitioners, ensure compliance with the Act, protect consumers from undesirable and sanctionable practices, educate consumers, provide training and development, and implement measures to ensure transformation of the property sector. The Act is therefore not only a fidelity-fund statute and not only an "estate agent" statute. It is a broader sector-regulation statute, combining professional regulation, consumer protection, market integrity, transformation, and enforcement.

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11 Section 2 of the PPPRA. This Act applies to the marketing, promotion, managing, sale, letting, financing and purchase of immovable property, and to any rights, obligations, interests, duties or powers associated with or relevant to such property.

12 Section 3 (i) (j) of the PPPRA promote meaningful participation of historically disadvantaged individuals and small, micro and medium enterprises in the property market; (j) provide for the transformation of the property market and the establishment of the Property Sector Transformation Fund;

13 Sec 5 of the PPPRA – establishment section.

14 Section of the PPPRA.

22. Section 1 defines **"property practitioner"** broadly. The Applicant challenges paragraphs **(a)(iv) to (e)**.

23. Paragraph (a) (iv) includes a person who, for gain and on the instructions of or on behalf of another person, provides, procures, facilitates, secures, obtains or markets financing for or in connection with the management, sale or lease of property or a business undertaking, including bridging-finance providers and bond brokers, but excluding persons contemplated in the definition of "financial institution" in the Financial Services Board Act, 1990.

24. Paragraph (a)(v) includes persons who act as intermediaries or facilitators with the primary purpose of effecting the conclusion of agreements to sell, purchase, hire or let property or a business undertaking, including a home ownership association where it performs those acts. It excludes, among others, persons who do not do so in the ordinary course of business, natural persons selling their own property in their personal capacity in the ordinary course of business, attorneys or candidate attorneys, and sheriffs acting as such.

25. Paragraph (a)(vi) includes persons rendering other services specified by the Minister on the recommendation of the Board by notice in the Gazette.

26. Paragraphs (b), (c), (d) and (e) extend the definition to persons who sell, market, promote or advertise interests in property developments; persons who manage property for

remuneration on behalf of another; certain trusts; and specified directors, members, trustees and employees for purposes of identified provisions.

27. Properly construed, those provisions respond to the modern property market, where property transactions are not confined to traditional estate agents. Modern transactions may involve bond brokers, bridging-finance providers, property-development marketers, managing agents, online platforms, intermediaries, franchise structures, juristic persons, trusts, employees and other market actors whose conduct may materially affect consumers and the integrity of transactions.

28. Section 35[15] provides that the Fund must be maintained and applied to reimburse persons who suffer pecuniary loss by reason of:

28.1. Theft of trust money committed by a property practitioner who possessed a Fidelity Fund certificate at the time of the theft; or

28.2. Failure by a property practitioner to comply with Section 54 (1) or (3).

29. PPPRA[16] requires property practitioners to apply for Fidelity Fund certificates; prohibits the rendering of services without a Fidelity Fund certificate; imposes trust-account and accounting-record obligations; and regulates circumstances in which property practitioners may receive remuneration. Section 50 sets disqualifications for the issue of Fidelity Fund

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15 Section 35 of the PPPRA.
16 Chapter 8 of the PPPRA Sec 47-59.

certificates. These include matters concerning honesty, fiduciary responsibility, tax compliance, unlawful discrimination, training, experience, prior contraventions, prior claims against the Fund, and the BEE certificate requirement in section 50 (a) (x).

30. The Applicant seeks to isolate the Fidelity Fund certificate from the Act's broader licensing and regulatory function. That is incorrect. A Fidelity Fund certificate is not merely evidence that a person may handle trust money. In the Act, it is also the central licence-like instrument by which the PPRA controls lawful participation in the regulated market, protects consumers, and ensures that persons seeking to practise as property practitioners meet statutory requirements.

E. CONSTITUTIONAL FRAMEWORK AND ITS IMPLICATIONS

i. The Section 22 Argument is misconceived

31. With the above in mind, Section 22 provides:

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

32. The controlling authority is Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3: 2006 (3) SA 247 (CC): 2005 (6) BCLR 529

(CC) (11 March 2005)[17]. The Constitutional Court held that section 22 protects both the right to choose a profession and the right to practise it. However, the Constitution distinguishes between **choice** and **practice**.

33. Where a law regulating practice, viewed objectively, negatively affects the choice of a profession, it limits section 22[18] and must be justified under section 36[19]. Where a law regulates only the practice of a profession and does not negatively affect the choice of that profession, the regulation passes constitutional muster if it is rationally related to a legitimate government purpose and does not infringe another right in the Bill of Rights.

34. In Affordable Medicines, the Court formulated the standard as follows:

34.1. Regulation of practice is permissible if rationally related to a legitimate government purpose[20].

34.2. Courts must not substitute their view of appropriate policy for that of Parliament; and[21]

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17 Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005)

18 Act 108 of 1996.

19 Act 108 of 1996.

20 Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005) para 56-67.

21 Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005) para 86.

34.3. Rationality is the minimum threshold, not proportionality or reasonableness in the section 36 sense, unless there is an actual limitation of choice or another right[22].

35. The Applicant has not shown that the impugned provisions prevent citizens from choosing a trade, occupation or profession. At most, the provisions require persons who choose to render specified property-related services for gain to comply with statutory standards, apply for certificates, observe a code of conduct, keep records where applicable, and comply with the Act's transformation and consumer-protection scheme. Those are classic regulations of **practice**, not prohibitions of **choice**.

ii. Rationality and legality argument is misconceived

36. The rationality standard is also settled. In Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (25 February 2000[23], the Constitutional Court held that the exercise of public power must be rationally related to the purpose for which the power is given. The enquiry is objective, but it remains a minimum threshold. It clarifies that while courts may not interfere merely because they disagree with a rational decision, they must intervene where the decision is

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22 Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005) para 73 – 95.

23 Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (25 February 2000) para 90.

objectively irrational, because such action is "inconsistent with the requirements of our Constitution, and therefore unlawful. It is not the case here.

37. As the Lawrence[24] case makes it plain, the Court sought to achieve a proper balance between the role of the legislature on the one hand, and the role of the courts on the other. The rational basis test involves restraint on the part of the Court. It respects the respective roles of the courts and the legislature. In the exercise of its legislative powers, the legislature has the widest possible latitude within the limits of the Constitution. In the exercise of their power to review legislation, courts should strive to preserve to the legislature its rightful role in a democratic society. It is this guiding principle that should inform the test for determining whether legislation that regulates practice but does not, objectively viewed, impact negatively on choice, passes constitutional scrutiny[25].

38. *Affordable* Medicines confirms that this standard applies to legislation regulating trades and professions. Parliament may not act capriciously or arbitrarily, but if there is a rational relationship between the legislative scheme and a legitimate governmental purpose, courts may not invalidate the law merely because they might have preferred a different regulatory model.

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24 S v Lawrence . S v Negal : S v Solberg (CCT38/96, CCT39/96, CCT40/96) [1997] ZACC 11; 1997 (10) BCLR 1348 (CC); 1997 (4) SA 1176 (CC) (6 October 19970 para 45.

25 Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005) para 86

39. In Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (25 February 2000[26]) the CC held that:

"It is a requirement of the rule of law that the exercise of public power by the executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the executive and other functionaries must, at least, comply with this requirement.[107] If it does not, it falls short of the standards demanded by our Constitution for such action."

40. The Applicant's burden is therefore not discharged by showing that Parliament could have regulated differently, or that the Act imposes compliance costs, or that hard cases may arise at the margins. It must show that the impugned provisions are objectively irrational or unjustifiably limit a right – being Section 22 of the constitution.

41. With the above in mind, the applicant challenges the impugned provisions of the Act on the basis that they are inconsistent with the Constitution of the Republic of South Africa, 1996 ("**Constitution**"), alternatively irrational serving no legitimate government purpose[27]. The impugned provisions relates to the definition of a property practitioner and

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26 Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (25 February 2000) para 85.

27 Applicants HoA para 2, p3.

the Section 50(a)(x), which requires that the applicant for a Fidelity fund certificate must be in possession of a valid B-BBEE certificate as provided for in the Broad Based Black Economic Empowerment Act No. 53 of 2005[28].

iii. PPPRA Section 50(a)(x) argument is a ruse

42. The PPPRA submits that section 50(a)(x) constitutionally sound and valid and invites no ambiguity. The applicant's premise—that the fidelity fund certificate serves only a consumer protection function—is demonstrably incorrect. The fidelity fund certificate is an integrated regulatory instrument that serves multiple legitimate regulatory purposes simultaneously: it functions as a mechanism of professional authorisation; as a gatekeeping device through which the Authority may ensure that only fit and proper persons engage in the property sector; as an enforcement tool that enables the Authority to monitor compliance with the Act and to impose conditions upon the practice of property practitioners; and, inter alia, as a vehicle for the protection of consumers' trust monies. The applicant's attempt to isolate the consumer protection function and to treat it as the sole purpose of the certificate is a caricature of the legislative scheme that finds no support in the text, structure, or objects of the Act.

43. The requirement operates in the following manner. When a property practitioner applies to the Authority for a Fidelity Fund certificate under section 47, the Authority must assess whether the applicant meets all the criteria for issuance, including the requirements of

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28 BBBEE Act No. 53 of 2005.

section 50. If the applicant does not possess a valid B-BBEE certificate or a sworn affidavit contemplated in the B-BBEE Act, the Authority is statutorily prohibited from issuing the certificate. Because section 48(1) prohibits any person from performing any act of a property practitioner without a valid Fidelity Fund certificate, and section 48(3) creates criminal liability for contravention, the practical effect of section 50(a)(x) is that non-compliant persons are barred from lawful practice as property practitioners.

44. It is important to note what section 50(a)(x) does not do. It does not prohibit persons from engaging in property-related activities that fall outside the statutory definition of "property practitioner." It does not restrict private property transactions. It does not apply to persons falling within the exemption provisions of paragraph (a)(bb), (cc), or (dd). It does not create a freestanding offence; rather, it operates as a condition precedent to the issuance of a Fidelity Fund certificate, which is itself the gateway to regulated practice. And it does not require any particular level of B-BBEE compliance beyond the possession of a valid certificate or affidavit in terms of the B-BBEE Act.

45. Section 50(a)(x) is rationally connected to a legitimate government purpose and is not arbitrary. The transformation of the property sector—one of the most racially skewed sectors of the South African economy—is a constitutionally mandated imperative. This Court has consistently recognised that the realisation of substantive transformative equality, as contemplated by Section 9 (2)[29] of the Constitution and given effect through the B-BBEE Act 53 of 2005[30], constitutes a legitimate and compelling objective of

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29 Act No. 108 of 1996.
30 Act No. 53 of 2005.

government policy[31]. The requirement of a B-BBEE certificate as a condition for obtaining a fidelity fund certificate is a rational means of advancing the transformation of a sector that has historically been, and remains, dominated by white-owned enterprises. The provision applies uniformly to all juristic persons, provides alternative compliance pathways (including the submission of an affidavit for small enterprises), and is fully integrated with the broader legislative framework established by the B-BBEE Act. There is accordingly a direct rational connection between the requirement and its purpose. The test is not whether is the best, but whether is rational.

46. The PPPRA submit that this integration is constitutionally permissible and, indeed, mandated by the transformative imperatives of the Constitution. The property sector has historically been, and remains, disproportionately concentrated in white ownership and control. The Act's B-BBEE requirement reflects the legislature's determination that participation in the regulated property sector should be conditioned upon compliance with the nation's transformative economic objectives, as articulated in the B-BBEE Act and given constitutional impetus by the equality guarantee in section 9 of the Constitution and the socio-economic rights provisions in sections 25(5)-(6), 26, and 27. This legislative judgment falls squarely within the scope of the legislature's discretion to regulate economic activity and professional conduct in pursuit of constitutionally legitimate objectives.

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31 Minister of Finance and Other v Van Heerden (CCT 63/03) [2004] ZACC 3; 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC) ; [2004] 12 BLLR 1181 (CC); (2004) 25 ILJ 1593 (CC) (29 July 2004) para 25-29.

47. In Masetlha v President of the Republic of South Africa and Another[32] (CCT 01/07) [2007] ZACC 20; 2008 (1) SA 566 (CC); 2008 (1) BCLR 1 (3 October 2007)

"The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."

48. In Chisuse and Others v Director-General, Department of Home Affairs and Another (CCT155/19) [2020] ZACC 20; 2020 (10) BCLR 1173 (CC); 2020 (6) SA 14 (CC) (22 July 2020 para 46-47[33] the Constitutional Court reiterated that "statutory provisions must be interpreted purposively and in context. The context of section 50(a)(x) is a comprehensive regulatory statute that expressly identifies transformation as one of its primary objects.

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32 Masetlha v President of the Republic of South Africa and Another (CCT 01/07) [2007] ZACC 20; 2008 (1) SA 566 (CC); 2008 (1) BCLR 1 (3 October 2007) para 80; Democratic Alliance v President of South Africa and Others (CCT 122/11) [2012] ZACC 24; 2012 (12) BCLR 1297 (CC); 2013 (1) SA 248 (CC) (5 October 2012) para 27……The Minister and Mr Simelane accept that the "executive" is "constrained by the principle that [it] may exercise no power and perform no function beyond that conferred . . . by law" and that the power must not be misconstrued. It is also accepted that the decision must be rationally related to the purpose for which the power was conferred.57 Otherwise the exercise of the power would be arbitrary and at odds with the Constitution. I agree.

33 Chisuse and Others v Director-General, Department of Home Affairs and Another (CCT155/19) [2020] ZACC 20; 2020 (10) BCLR 1173 (CC); 2020 (6) SA 14 (CC) (22 July 2020 para 46-47

Section 3[34] of the Act states that the objects of the Act include, inter alia, the transformation of the property sector, the promotion of equitable access to property practice, and the advancement of historically disadvantaged individuals. The fidelity fund certificate, as the statutory mechanism controlling entry to the profession, is rationally utilised as one instrument amongst many to advance these objects.

49. Clearly parliament intended to transform the property practitioners' sector by introducing measures (Sec 50 (a)(x)) which would force the market to transform and reflect the demographics of the South African population and society and the applicants are evidently constrained in having to explain this aspect both in the founding affidavit and in their heads of argument. The test for rationality as indicated in Masethla is fully met on the scheme of the Act. Moreover that's a legitimate government purpose.

50. The applicant's characterisation is not merely incomplete; it is legally consequential in its deficiency. By collapsing the certificate's functions into a single consumer protection purpose, the applicant creates a false benchmark against which to measure rationality. The proper question is not whether a B-BBEE certificate prevents trust money theft. The proper question is whether conditioning professional authorisation on transformation compliance is rationally connected to the legitimate government purpose of transforming the property sector. That question, as demonstrated below, admits of only one affirmative answer.

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34 Sec 3 of the PPPRA Act No. 22 of 2019.

51. The first respondent submits that even if the applicant's narrow characterisation of the fidelity fund certificate were accepted, it is not—the applicable standard of constitutional review remains one of rationality, and the threshold that the applicant must surmount is formidable. The Constitutional Court has consistently emphasised that rationality review, while important, is a "relatively low threshold" that affords the legislature significant discretion in choosing the means to achieve its policy objectives.

52. There must be a rational connection between the scheme and the legitimate government purpose it seeks to achieve. This is a relatively low threshold and that "courts will not test the efficacy of the means chosen by government to achieve its purpose nor will they inquire into the wisdom or soundness of government policy. The Fidelity Fund measures included as Section 50 (a) (x) measures must be reasonably capable of attaining the desired result[35].

53. The Constitutional Court reiterated that the Legislature has a broad discretion in choosing the means to achieve its legitimate purposes. The courts will not interfere with the means chosen unless they are manifestly inappropriate. The Legislature is entitled to enact comprehensive regulatory schemes that pursue multiple objectives simultaneously, and the rationality of such schemes must be assessed as a whole[36].

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35 Minister of Finance and Other v Van Heerden (CCT 63/03) [2004] ZACC 3; 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC) ; [2004] 12 BLLR 1181 (CC); (2004) 25 ILJ 1593 (CC) (29 July 2004) para 30 – 32; Prinsloo v Van der Linde and Another [1997] ZACC 5; 1997 (6) BCLR 759 (CC); 1997 (3) SA 1012 (CC) at para 31.

36 Van der Merwe v Road Accident Fund and Another (CCT48/05) [2006] ZACC 4; 2006 (4) SA 230 (CC); 2006 (6) BCLR 682 (CC) (30 March 2006 para 61.

54. The significance of these authorities for the present matter cannot be overstated. The applicant asks this Court to invalidate a legislative provision on the ground that the legislature has chosen a particular regulatory mechanism to advance a legitimate government purpose. The applicant's disagreement is not with the legitimacy of the purpose—transformation of the property sector is unquestionably a legitimate government purpose—but with the means chosen to achieve it. This is precisely the type of disagreement that rationality review is not designed to resolve.

55. The applicant's argument, in essence, is that the legislature should have chosen a different mechanism. It should have attached the B-BBEE requirement to some other aspect of the regulatory scheme, or it should have created a separate enforcement mechanism altogether. This argument, even if plausible as a matter of policy preference, does not establish irrationality. The Constitutional Court has made clear that rationality review does not empower courts to invalidate legislation merely because they would have chosen a different means to achieve the legislative purpose.

56. The Act represents a comprehensive legislative scheme that establishes a new regulatory architecture for the property sector. It creates the Property Practitioners Regulatory Authority, defines its powers and functions, establishes professional standards, creates the Fidelity Fund, mandates transformation, and provides for enforcement. The fidelity fund certificate is the central mechanism through which this scheme operates. The legislature's decision to utilise this mechanism as a point of intervention for transformation purposes

reflects a considered policy judgment about the most effective means of achieving the Act's statutory objects.

57. The judiciary is not vested with the power to make policy choices or to second-guess the wisdom of the policy choices made by the Legislature. This principle of institutional deference is not an abdication of judicial duty; it is a recognition that the Constitution entrusts different functions to different branches of government, and that the legislature enjoys democratic legitimacy and institutional competence in socio-economic policy-making that courts do not possess.

58. The first respondent submits that the rationality standard affords the legislature broad discretion to choose the means by which to advance its legitimate policy objectives. The legislature's choice to condition the fidelity fund certificate on B-BBEE compliance falls comfortably within that discretion. The provision is reasonably capable of advancing the desired result of transforming the property sector. It is not manifestly inappropriate. It is not irrational. The applicant's disagreement with the policy choice does not translate into a constitutional invalidity.

59. The PPRA submits that the applicant bears the onus of establishing that the impugned provisions are unconstitutional. It is trite that the power to declare an Act of Parliament invalid is a power that must be exercised with the utmost restraint. There is a strong presumption of constitutionality, and the party seeking to displace that presumption must

discharge the onus upon a standard of proof that is not lightly satisfied. The applicant has failed to do so.

iv. The definition of a property practitioner argument is without merit

60. We do not repeat the definition of a property practitioner in these Heads of Argument.

61. The PPPRA submits that the definition of "property practitioner" in section 1 is not overbroad. The definition contains extensive qualifying language— including the requirements that the activity be undertaken "for gain", "in the ordinary course of business", and "as a regular occupation"—which significantly narrows its application. Furthermore, the Act expressly exempts from its scope persons who sell their own property, attorneys practising in terms of the Attorneys Act, sheriffs, and other specified categories. The applicant has not demonstrated that the definition, properly construed in accordance with the principles of purposive interpretation mandated by section 39(2) of the Constitution, captures persons who ought not reasonably to be subject to regulation as property practitioners. The Authority submits that a proper construction of the definition, read in its context and having regard to the objects of the Act, reveals a carefully calibrated legislative scheme that is neither irrational nor overbroad.

62. The definition of "property practitioner" is the threshold provision through which the Act establishes its regulatory reach. It is a definitional provision of foundational significance,

for it determines which persons and which activities fall within the ambit of the statute and are accordingly subject to its regulatory requirements, including the Fidelity Fund certificate obligation, the trust account requirements, the code of conduct, and the disciplinary and sanctions framework. The definition must be understood in its full statutory context, including the exemptions it contains, the relationship it bears to section 2 (application of the Act), and the overall legislative purpose of comprehensive sectoral regulation.

63. The definition operates through a layered structure. Paragraph (a) addresses natural persons and defines the core activities that bring a person within the regulatory ambit: the sale, purchase, letting, and management of immovable property on behalf of others; the sale and marketing of property developments; and the marketing of timeshare and fractional title schemes. These activities are qualified by the requirements that they be performed "in the ordinary course of business and for gain," a formulation that excludes purely private or gratuitous property transactions while capturing commercial conduct. Paragraph (a)(aa) subjects directors and employees of juristic person property practitioners to the definition only if they are not disqualified under section 50. Paragraphs (a)(bb), (cc), and (dd) contain the exemptions for own-property sellers, attorneys, and sheriffs respectively.

64. The applicant challenges paragraphs (a)(iv) through (e) of the definition. This challenge encompasses the provisions extending the definition to property development sales and marketing (a)(iv)-(v), timeshare and fractional title schemes (a)(vi), juristic persons (b), trusts (c), property managers (d), and former practitioners for disciplinary purposes (e).

The applicant does not challenge paragraph (a)(i)-(iii) (conventional estate agency activities), the exemption provisions, or paragraphs (f) and (g).

65. The definition operates in conjunction with section 2 of the Act, which provides that the Act applies to all property practitioners and all property development transactions. Section 2 ensures that the definition has universal application within the Republic and that no person falling within the defined categories may escape the Act's requirements by operating in a particular jurisdiction or through a particular business structure. The definition and section 2 together establish the Act's comprehensive regulatory reach.

66. The respondents submit that the definition, properly understood, represents a legitimate and proportionate exercise of the legislature's authority to regulate economic activity and professional conduct. The expansion from "estate agent" to "property practitioner" reflects not an arbitrary enlargement of regulatory power but a necessary modernisation of the statutory framework to address the evolved structure of the property sector, the emergence of new business models, and the corresponding need for uniform consumer protection across all segments of the industry. The definition's categories are rationally related to these legitimate objectives, and the exemptions demonstrate a calibrated legislative judgment that avoids overreach while ensuring comprehensive coverage of regulated conduct.

F. SECTION 172(1) IS NOT ENGAGED ON THE PLEADED CASE

67. We know from the preceding paragraphs that transformation of the property practitioner sector is a legislative intent amongst a host of other intentions, the Property Practitioners Act No. 22 of 2019, seeks to achieve, therefore the applicant's reliance on Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others (CCT5/95) [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (6 December 1995)[37] is respectfully misplaced and of no moment for the fundamental reason that, the PPPRA does not oppose the declaration of constitutional invalidity based on subjective perceptions, but on an objective ground as inculcated in the transformative agenda of the Act itself and more particularly in the method adopted by the PPRA of making it a precondition for the issuance of a Fidelity Fund Certificate for such an applicant to be possession of B-BBEE certificate.

68. *Ferreira* is therefore not an authority for any of the propositions made by the applicant. On the contrary is an authority for the proposition that the transformative agenda of the act itself is an objective criteria and it is not under attack by the applicant, qua, the present application.

69. The engagement of section 172(1) is not automatic. Its triggering precondition is a judicial determination that the impugned law or conduct is "inconsistent with the Constitution." Until and unless such inconsistency is established, section 172(1) lies dormant. This Court possesses no power under that provision to declare any law invalid absent a prior finding of constitutional inconsistency – and none could be found in the context of the challenge

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37 Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others (CCT5/95) [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (6 December 1995)

by the applicant because of the clear transformative agenda of the property practitioner sector and that transformative agenda it is not assailed by the applicant.

70. Section 172(1)(a) is framed in the conditional mood. It imposes a mandatory duty of invalidation ("must declare") only after the predicate condition is satisfied--namely, that the court has determined that the law or conduct in question "is inconsistent with the Constitution." The Constitutional Court has consistently emphasised that the power to invalidate legislation is an extraordinary remedy, to be exercised with caution and with due regard to the principle of separation of powers.

71. The question before this Court is not whether the impugned provisions could have been drafted differently, or whether alternative regulatory models might have been preferable. The question is whether the provisions, as enacted by Parliament, are inconsistent with the Constitution. The PPPRA submits that they are not. Where a provision is rationally connected to a legitimate government purpose, where it does not arbitrarily limit any constitutional right, and where it falls within the Legislature's area of discretionary policy-making, there is simply no constitutional inconsistency to trigger section 172(1). The provision survives, and the Court's duty under section 172(1)(a) never arises.

72. There exists a strong presumption of constitutionality in favour of legislation duly enacted by Parliament. As the Constitutional Court has repeatedly held, the power to declare an Act of Parliament invalid is one that must be exercised with the utmost restraint. The party

seeking to displace the presumption of constitutionality must discharge the onus upon a standard of proof that is not lightly satisfied.

73. The Applicant's challenge rests upon a series of interrelated mischaracterisations of the Act, its objects, and the function of the fidelity fund certificate within the legislative scheme. Each of these mischaracterisations undermines the Applicant's ability to establish the threshold constitutional inconsistency required to engage section 172(1).

74. The second sentence of section 22 is critical. It expressly authorises the regulation of the practice of any trade, occupation, or profession by law. The right protected by section 22 is the freedom to choose a profession; it does not confer an entitlement to practise a profession free from regulation. This distinction between "choice" and "practice" is well-established in the jurisprudence of the Constitutional Court. where a law regulates only the practice of a profession and does not negatively affect the choice of that profession, the regulation passes constitutional muster if it is rationally related to a legitimate government purpose and does not infringe another right in the Bill of Rights. The Court confirmed that courts must not substitute their view of appropriate policy for that of Parliament, and that rationality is the minimum threshold--not proportionality or reasonableness in the section 36 sense--unless there is an actual limitation of choice or another right.

75. The Applicant's entire constitutional challenge to section 50(a)(x) rests upon a foundational premise that is demonstrably false: the assertion that the fidelity fund certificate serves no purpose other than consumer protection (specifically, reimbursement for theft of trust

monies). This characterisation is legally untenable, textually unsupported, and inconsistent with the established principles of statutory interpretation commanded by section 39(2) of the Constitution.

76. As this Court is aware, a proper reading of the Act reveals that the fidelity fund certificate, regulated in sections 47 to 58, serves at least four distinct but interrelated statutory functions:

76.1. Section 35 establishes the Property Practitioners Fidelity Fund, the purpose of which is to reimburse persons who suffer loss of trust money. The fidelity fund certificate operates in this context as a mechanism ensuring that only persons who contribute to and are covered by the Fidelity Fund may practise. This consumer protection function is real and important, but it is not exclusive.

76.2. Section 48(1) provides that "[a] person may not act as a property practitioner unless that person is the holder of a valid fidelity fund certificate." Section 48(3) creates criminal liability for contravention. The fidelity fund certificate is therefore the statutory gateway to lawful practice as a property practitioner. This is not ancillary to consumer protection; it is a distinct regulatory function.

76.3. Section 50 enumerates no fewer than eleven separate disqualifications from receiving a fidelity fund certificate, each reflecting a distinct legislative judgment about the fitness of a person to practise. The Applicant does not contend--nor could

it--that each of these disqualifications must be rationally connected to consumer protection as narrowly conceived. A person's mental incapacity, a previous conviction for an offence unrelated to property practice, or a failure to pass a professional examination bear no direct connection to the risk of trust money theft. Yet the legislature has rationally determined that these factors are relevant to the broader question of whether a person should be authorised to practise as a property practitioner. The B-BBEE certificate requirement in section 50(a)(x) is no different in principle.

76.4. Sections 52-54 create a structured system of entry, maintenance, and exit that the Authority uses to ensure ongoing compliance with the Act's requirements. This enforcement function extends to all conditions of eligibility, including transformation compliance.

77. The Applicant's attempt to reduce the fidelity fund certificate to a mere consumer protection device ignores this statutory reality. The question is not whether a B-BBEE certificate prevents trust money theft. The proper question is whether conditioning professional authorisation on transformation compliance is rationally connected to a legitimate government purpose. That question admits of only one affirmative answer.

78. Section 3 of the Act gives statutory expression to this constitutional imperative. Its objects include the transformation of the property sector (section 3(j)), the promotion of meaningful participation of historically disadvantaged individuals and SMMEs (section

3(i)), and the facilitation of property ownership by a broader cross-section of South Africans (section 3(k)). These are not aspirational addenda; they are integral to the Act's design and purpose.

79. For all the reasons set out above, the Authority respectfully submits that:

79.1. Section 172(1) of the Constitution is not engaged in this matter because the impugned provisions are not inconsistent with the Constitution.

79.2. The impugned provisions regulate the practice of property-related occupations, not the choice of trade, occupation or profession, and therefore fall comfortably within the second sentence of section 22.

79.3. Section 50(a)(x) is rationally connected to multiple legitimate government purposes, including the transformative objectives that are central to the Act's statutory scheme and constitutionally mandated.

79.4. The definition of "property practitioner" is not overbroad but rather represents a rational and proportionate means of achieving the Act's legitimate purposes of consumer protection, market integrity, professionalisation, transformation, and effective enforcement.

79.5. The Applicant has failed to discharge the onus of establishing constitutional invalidity on a balance of probabilities

G. IF SECTION 36 IS REACHED, THE LIMITATION IS REASONABLE AND JUSTIFIABLE

80. In the alternative, if this Court finds that any impugned provision limits section 22--a proposition that the Authority does not accept--such limitation is reasonable and justifiable under section 36 of the Constitution. The nature of the right is important, but section 22 itself contemplates regulation of practice. The purposes served by the Act are pressing and substantial: consumer protection in high-value property transactions; market integrity; professional standards; accountability of persons who influence property transactions; transformation of a historically distorted property market; and effective enforcement.

81. The extent of any limitation is moderate. The Act imposes licensing, conduct, record-keeping and compliance obligations. It does not impose a blanket ban on any profession. The relation between means and purpose is close. Regulating persons who perform property-transaction, property-management, property-financing and property-marketing functions is directly connected to the Act's purposes.

82. Less restrictive means would risk avoidance and fragmentation. A narrower definition confined to old-style estate agents would not regulate the actors Parliament rationally identified as relevant to modern property transactions. A purely voluntary transformation-

reporting system would undermine the Act's statutory design and the Authority's ability to monitor and implement transformation measures.

H. CONCLUSION AND COSTS

83. In the above premises, the First Respondent, the Property Practitioners Regulatory Authority, prays for an order dismissing the application in its entirety, directing the Applicant to pay the costs of this application;

Adv. W.R. Mokhare SC

Adv. M R Maphutha

First Respondent's counsel

Chambers, Sandton

28 May 2026