

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT:

In the variation application between:

MINISTER OF FINANCE

Applicant

and

**SAKELIGA NPC
(PREVIOUSLY KNOWN AS AFRIBUSINESS NPC)**

First Respondent

RULE OF LAW PROJECT

Second Respondent

ECONOMIC FREEDOM FIGHTERS

Third Respondent

In re the matter CCT 279/20 between:

MINISTER OF FINANCE

Applicant

and

AFRIBUSINESS NPC

Respondent

and

RULE OF LAW PROJECT

First Amicus Curiae

ECONOMIC FREEDOM FIGHTERS

Second Amicus Curiae

and

FIDELITY SERVICES GROUP (PTY) LIMITED

First Intervening Party

**THE SOUTH AFRICAN NATIONAL SECURITY
EMPLOYERS ASSOCIATION**

Second Intervening Party

NOTICE OF MOTION

TAKE NOTICE THAT the applicant ("**the Minister**") hereby applies in terms Rules 12(1), 18 and 29 of the Rules of the Constitutional Court, read with Rule 42 of the Uniform Rules of Court and (to the extent necessary) section 167(6)(a) of the Constitution, for an order:

1. Enrolling this application as an urgent application and, insofar as may be necessary, dispensing with the procedures prescribed by the Rules of the Constitutional Court, and directing that the application be heard as one of urgency under Rule 12(1) thereof;
 2. Granting the Minister direct access to the Constitutional Court in terms of section 167(6)(a) of the Constitution.
 3. Varying the order of the Constitutional Court in the matter CCT 279/20 ("**main case**") to make clear:
 - 3.1 that the operation of the period of suspension in paragraph 2(a) of the order of the Supreme Court of Appeal was suspended pending the Constitutional Court's decision of the appeal in the main case, and recommenced from 16 February 2022, being the date of the Constitutional Court's order; and
 - 3.2 that tender processes conducted by organs of state under the Preferential Procurement Regulations, 2017, are not affected until the expiration of the suspension period,
- and by:

- 3.2.1 inserting appropriate sub-paragraphs to the order of the majority judgment of Madlanga J; and
- 3.2.2 to the extent necessary, excising the second sentence of footnote 28 from the minority judgment of Mhlantla J.
4. In the *alternative* to, or together with, the relief sought in paragraph 3 above, clarifying that the import of the judgment and order of the Constitutional Court in the main case is what is set out in 3.1 and 3.2 above.
5. In the *further alternative* to the relief sought in paragraphs 3 and 4 above, granting declaratory relief to the effect that the import of the judgment and order of the Constitutional Court in the main case is what is set out in 3.1 and 3.2 above.
6. In the *further alternative* to paragraphs 3, 4 and 5 above, by declaring that the declaration of invalidity shall operate prospectively only from the date of this Court's judgment.
7. Ordering any of the respondents who oppose the application to pay the Minister's costs, including the costs of two counsel, on a joint and several basis with any other respondent who opposes the application.
8. Granting further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **DONDO MOGAJANE** including the annexes thereto, will be used in support of the application.

TAKE NOTICE FURTHER that the Minister has appointed the undermentioned address of their attorney for the service upon them of any pleadings or other documents in this application.

TAKE NOTICE FURTHER that if any of the respondents intend to oppose the relief sought in this application, such respondent is required:

- (a) to notify the Minister's attorneys in writing on or before Tuesday, **8 March 2022** and in such notice to appoint an address within 25 kilometres of the office of the Registrar of this Honourable Court at which the respondents will accept notice and service of all process in these proceedings;
- (b) to deliver its answering affidavit, if any, within **seven (7) days** of the aforementioned notice of intention to oppose; and
- (c) the Minister will deliver replying papers, if any, within **five (5) days** thereafter.

PLEASE ENROL THE MATTER FOR URGENT HEARING ACCORDINGLY

DATED AT PRETORIA ON THIS 4th DAY OF MARCH 2022



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Applicant's Attorney
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**TO: THE REGISTRAR OF THE CONSTITUTIONAL COURT
BRAAMFONTEIN**

AND

TO: KRIEK WASSENNAR & VENTER INC.

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AND

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