IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT: 62 / 22

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

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REPLYING AFFIDAVIT

AM.
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I, the undersigned,

ANDREW DONDO MOGAJANE

do hereby make oath and state that:

1. I am the Director-General of the National Treasury, with offices situated at 40 Church Square, Pretoria, Gauteng.

2. I deposed to the founding affidavit in this application, and I am similarly, duly authorised to depose to this affidavit on behalf of the Minister of Finance ("**the Minister**"), who is the applicant.

3. The contents of this affidavit are, unless otherwise specified, within my personal knowledge and are, to the best of my belief, both true and correct. Where I use capitalised terms that I do not define, I ascribe the same meanings to those terms as those used in the founding affidavit.

4. It will be necessary for me to make submissions of law in this affidavit. I do so on the advice of the Minister's legal representatives, which I believe to be correct. My legal submissions are subject to expansion in written and oral argument.

OVERVIEW OF THIS AFFIDAVIT

5. I have read the answering affidavit of the first respondent ("**Sakeliga**"). Sakeliga contends that this application should be dismissed on a preliminary basis, or alternatively, it should be dismissed on its merits. I submit that the opposition lacks any merit.

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6. Sakeliga also advances a further alternative argument in the event that the Court agrees with the Minister that there is an unclarity that justifies the relief sought, the Court should delete the suspension order granted by the SCA.

7. I am advised that there is a simple answer to this contention by Sakeliga. If it wished to have the SCA order deleted or varied in any way, it ought to have cross-appealed against the SCA order of suspension. It has chosen not to do so and cannot do so now by piggy-backing on the Minister's application. No more need be said about this contention by Sakeliga.

8. Except for the deletion that Sekeliga seeks, its contentions in opposition may be summarised as follows:

8.1 The jurisdictional facts for the application of Rule 42 are not present.

8.2 Without expressly conceding that the declaration of invalidity remains suspended as per the SCA order, Sakeliga contends that the Minister has sufficient time to correct the Regulations before the lapse of the 12 months contemplated in the SCA order. But it avoids committing to whether footnote 28 in the minority judgment is correct or whether the Minister is correct that the period of suspension remains extant because of section 18(1) of the Superior Courts Act. Sakeliga does this to avoid the obvious confusion that the footnote has created in the face of section 18(1) of the Superior Courts Act and the silence of the majority judgment regarding the footnote and the question of remedy more generally. If the footnote is correct, then tenders awarded since 2017 when the Regulations are made and those finalised since November 2021 to-date remain vulnerable to

challenge. This is indeed the position that Sekeliga adopted in the correspondence referred to in the founding affidavit which I refer to below.

9. All that the Minister asks is for this Court to make it clear that despite the footnote in the minority judgment and the silence of the majority judgment regarding its correctness, on the basis of section 18(1) of the Superior Courts Act the suspension order of the SCA has not yet lapsed. The running of the 12 months' period of suspension under that order commenced running again when this Court handed down judgment on 16 February 2022. Failing this, there will be disputes in the courts on whether the declaration of invalidity applied objectively from 2017 when the Regulations were made, or the period of suspension lapsed in November 2021 as per the footnote in the minority judgment or the period of suspension is still effective. Providing such clarity is in the interests of justice and good order in state procurement. This case cries out for this clarity to be given.

10. I address Sakeliga's contentions thematically below. I leave out the deletion of the SCA suspension order that it seeks.

SAKELIGA'S SELF-CONTRADICTION SUPPORTS THE NEED FOR THE RELIEF SOUGHT

11. A key contention that Sakeliga advances is that the application is "*a proverbial storm in a teacup*",[1] because "*[t]he CC order is clear*".[2] The clear meaning of the order of this Court in the main case, so Sakeliga contends is that the Minister is

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1 Sakeliga AA at para 10.5.

2 Sakeliga AA at para 20.

AA.

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afforded "*sufficient time to correct the regulations before the period of 12 months contemplated in the order*" of the SCA "*will lapse*".[3]

12. This version advanced by Sakeliga is a recent construction, which I read with surprise, given that it is diametrically at odds with the version advanced by Sakeliga a matter of weeks ago. Sakeliga's previous version, which as I explained in my founding affidavit informed the launch of this application, was that the "*[t]he CC order [wa]s clear*" that all pending tenders had been invalidated, and that there was no period of suspension currently in operation:

> "*The purported reason for the advisory to organs of state not to process or advertise any tenders after 16 February 2022 is the alleged failure by the Constitutional Court to set aside the Supreme Court of Appeal's order, which allowed for a suspensive period of invalidity for the Preferential Procurement Regulations, 2017.*
>
> *Our client [namely,* ***Sakeliga] certainly does not share your interpretation of the Constitutional Court's judgment of 16 February 2022****. The Court declared that the Minister acted outside of the scope of his statutory powers by imposing conditions that he was not lawfully entitled to impose.* ***It is our client's position that not even the Constitutional Court can allow an unlawful regulation to survive, even for a suspensive period, as such an order would constitute an order authorising a party to flout the law and, more fundamentally, the principle of legality which is the cornerstone of our constitutional democracy*** *...*
>
> *Our client's position is that there is no reason for the Constitutional Court to have dealt explicitly with the order of the Supreme Court of Appeal, as the finding that regulations were ultra vires the Act implies that the regulations*

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[3] Sakeliga AA at para 10.4.

are incurably void and accordingly set aside on that basis. A suspensive period for regulations issued ultra vires of an act is not competent. ... ".[4]

(My emphasis).

13. Sakeliga goes on in the same letter to the Minister dated 28 February 2022 to record its "*position*" and that the threat of urgent proceedings is predicated on this "*position*", in the following terms:

> "*The Minister, alternatively National Treasury, is ... creating the impression that finalising tenders advertised before the 16 February 2022 judgment in terms of the* ***invalid*** *Preferential Procurement Regulations 2017 would be proper and lawful. In our client's view,* ***this is tantamount to a direction to organs of state to act unlawfully****.*
>
> *Our client's position is that the correct response to the 16 February 2022 judgment is to advise all organs of state to terminate any pending tender processes that rely on the Preferential Procurement Regulations of 2017 and to re-issue such tenders strictly in line with section 2 of the Preferential Procurement Policy Framework Act, 5 of 2000.*
>
> *Our client demands the* ***withdrawal of your 25 February 2022 direction [stating that the 2017 Regulations remain in effect until expiry of the suspensive period granted by the SCA]*** *by no later than 2 March 2022 at 12h00. Our client reserves the right to* ***approach the Court on an urgent basis*** *for an order to have the direction set aside if you fail to respond".*[5]
>
> (My emphasis).

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4 FA, Annexure DM3, paras 4 to 6.

5 FA, Annexure DM3, paras 4 to 6.

14. For Sakeliga now to advance the opposite version on oath, is for it to speak out of both sides of its mouth. The reasons for Sakeliga's about-face are not clear, as they are not explained in Sakeliga's answering affidavit.

15. Sakeliga simply does not take the Court into its confidence regarding why, outside of the court, it makes threats to interfere in procurement processes, but, when brought before the Court it swears otherwise.

16. Regardless of the reasons, however, I am advised and submit that the fact that (a) Sakeliga's own interpretation of the order of this Court in the main case could weeks ago mean the opposite of what it now seems to advance such that it though justified a threat of launching an urgent application in fact supports the Minister's respectful contention that the unclarity in the order of the Court, read with the judgment as a whole, justifies its further intervention. The judgment as a whole includes footnote 28 in the minority judgment because it is not contradicted by the majority.

SAKELIGA'S CONTENTIONS ON MOOTNESS ARE MISCONCEIVED

17. The Minister has already published draft regulations, which he did on 10 March 2022 ("**the new draft Regulations**").[6] Sakeliga contends that the existence of these draft regulations renders the "*whole issue*" of the variational, clarificatory or declaratory relief sought by the Minister "*academic and/or will become moot*".[7]

18. This contention is wrong in law and in fact.

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6 Sakeliga AA, Annexure C.

7 Sakeliga AA at para 28.

AD.
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18.1 First, the argument overlooks the content of the new draft Regulations. The new draft Regulations do not address pre-qualification criteria at all. They will not protect tenders awarded under the 2017 Regulations since they were promulgated and during the period pending the judgment of this Court and after 16 February 2022. Only an order of suspension or an order limiting the retrospective effect of the declaration of invalidity can protect such tenders from challenge on the basis only that the 2017 Regulations were invalid from the beginning. This is the effect of the doctrine of objective constitutional invalidity.

18.2 Secondly, the draft Regulations are intended to apply prospectively only from the date of their promulgation. That date is some time in the future and is not certain as the consultation process is still underway.

18.3 Thirdly, the argument misapprehends the concept of a material error of fact and/or law as a well-established and competent review ground under our administrative law.[8] Even if new draft Regulations were indeed retrospective in their import, I am advised and submit that this would have no bearing whatever on the question of whether, in relevant organs of state placing material reliance on the 2017 Regulations for the purposes of making their decisions, those organs of state committed a material error

[8] *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* 2010 (6) SA 182 (CC) at para 91; *Dumani v Nair* 2013 (2) SA 274 (SCA) at para 32; and *South Durban Community Environmental Alliance v MEC for Economic Development, Tourism and Environmental Affairs* 2020 (4) SA 453 (SCA) at para 23.

of law which, if established, will always be fatal to the lawfulness and validity of the procurement process placed under judicial scrutiny.

19. It follows that Sakeliga's assertion that the "*whole issue will become moot, if not already at the time of hearing*" could not be further from the truth: the truth is literally the inverse of what Sakeliga asserts.

20. In these circumstances, I am advised and respectfully submit that Sakeliga's contentions on mootness merit summary treatment, on the basis that they are patently without legal or factual foundation.

SAKELIGA'S CONTENTIONS ON URGENCY MISAPPLY THE APPLICABLE PRINCIPLES

21. In my founding affidavit, I set out the reasons why this application meets the requirements for urgency. In summary, I submitted as follows:

21.1 First, given *inter alia* –

21.1.1 "*the debilitating impact of the current regulatory uncertainty flowing from this Honourable Court's judgment and order in the main case on the functioning of the administration*";

21.1.2 "*the delivery of essential services to the public*"; and

21.1.3 "*the fulfilment of fundamental rights enshrined in the Bill of Rights*",

the proposition that "*the matter [wa]s one of quintessential urgency*" could not be gainsaid.

21.2 "*Certainly*", I continued, "*I am advised and submit that the central consideration for urgency, being that a party may not obtain substantial redress in due course, is clearly met or exceeded, on the present facts*".[9]

21.3 Second, I explained why it was submitted that the urgency inherent in the matter was not self-created. I am advised and submit this is evident from the following:

21.3.1 The Minister initially read the majority judgment and order, as the aspect of the judgment that was binding, and understood the silence of the order to mean that the suspensive period of the SCA's order of invalidity was re-engaged. I explained why I am advised and submit that the Minister's understanding was in fact correct.

21.3.2 I pause to mention that the Minister was at that time engaged in preparations for the national budget, which was delivered on 23 February 2022.

21.3.3 I explained that the Minister acted with all due speed, once footnote 28 of the minority judgment was brought to his attention, and once he had asked for and received legal advice on the available options. This is what led to National Treasury

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9 Minister FA at para 34.

AD.

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issuing its communiqué of 25 February 2022, which was the same day that legal advice was received.

21.3.4 Sakeliga, as I have conveyed further above, responded to the communiqué indicating that the consequence of this Court's order was clearly that the 2017 Regulations were void *ab initio* and stood to be disregarded going forward, and that it may launch urgent proceedings against the Minister and the National Treasury unless the latter agreed to withdraw their communiqué.

21.3.5 Sakeliga's previous understanding of the meaning of this Court's order was conveyed to the Minister on 28 February 2022. This application was launched days later, on 4 March 2022.

21.4 I contended in my founding affidavit that the "*preliminary points of jurisdiction, direct access and urgency do not pose any controversy in this case*". Save to amend "*do not*" to "*should not*", I reiterate my respectful submission.

22. The fact that Sakeliga even seeks to take the point of urgency in the context of the present circumstances, especially given its about-face, is itself to be deprecated. I am advised and submit that Sakeliga's half-hearted contentions

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that the application is not urgent or alternatively that any urgency is self-created rise no higher than mere assertion:

22.1 Sakeliga contends that the urgency is self-created because it was the Minister that caused uncertainty amongst organs of state when he addressed the communiqué I attached to my founding affidavit, as annexure DM4. However, the communiqué explained that the Minister's understanding of the legal import of the judgment, with the intention being to mitigate the uncertainty. I have explained why I am advised and submit that the position expressed in the communiqué is legally correct. However, even if it were incorrect, I am advised and submit that it would not follow that the Minister caused uncertainty, as Sakeliga contends. I am advised and submit that the assertion stands to be rejected as a *non sequitur*.

22.2 Sakeliga goes further in its contention that the Minister "*caused*" uncertainty by referring to annexure DM5 to the Minister's founding affidavit and asserting that annexure DM5 "*contradict[s]*" the communiqué of 25 February 2022. However, I am advised and submit that no contradiction exists and, in any event, Sakeliga points to none.

23. Furthermore, even if none of the above were so, that is to say, even if the Minister could indeed be said to have completely sat on his hands (which, for the avoidance of doubt, is denied in the strongest terms), I would still respectfully submit that the urgency with which this application has been brought is justified.

24. Sakeliga's contentions to the contrary, I am advised and submit, appear to be premised on the notion that self-created urgency, if established, is fatal to an urgent application, *ipso facto*. Whereas I am advised and submit it is trite that is

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not the case. A "*delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent*".[10]

25. In the event that this Court were to hold that there is any self-created urgency despite my submissions, I respectfully submit that the matter remains urgent. If it is not entertained as a matter of urgency in the Court's discretion, there is a clear and present danger that the Minister and organs of state under his oversight will not obtain "*substantial redress*" in due course.[11]

26. As mentioned in the founding affidavit, there are cases already in which litigants contend that the declaration of invalidity applies retrospectively because nothing was said in this regard in this Court's judgment.

27. I am advised that one such case is *TMS Group Industrial Services (Pty) Ltd v Eskom SOC Ltd and others*.[12] This is a pending review application in the High Court (Johannesburg) which is set down for hearing on 25 April 2022, as one of three expedited review applications. Clarity by this Court is required urgently before courts interpret this Court's order in different ways, to the prejudice of the public interest.

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10 *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 at para 8.

11 *ST v SG and Others* [2022] ZAGPHHC at para 18; *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 at paras 6 to 7 (quoted with approval by Wepener J in *In re: Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (GSJ) at para 7); *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and Others* [2014] 4 All SA 67 (GP); *Luna Meubels Vervaardigers (Edms) Bpk v Makin t/a Makin Manufacturers and Another* 1977 (4) SA 135 (W).

12 Case number 00290/2022.

AD.
JM

SAKELIGA'S CONTENTION THAT THIS COURT LACKS THE REQUISITE JURISDICTION TO GRANT THE RELIEF SOUGHT BY THE MINISTER IS MISGUIDED

28. Sakeliga appears to contend that this Court lacks the necessary jurisdiction to grant the relief sought on the basis that, "*[i]nsofar as the application is brought in terms of Uniform Rule 42, the jurisdictional facts of Uniform Rule 42 are not present, as there are no ambiguities, errors or omissions in the CC's order*". I explained in my founding affidavit why the Minister very respectfully submits this is incorrect. In summary –

28.1 the required "*patent error*" is the statement in footnote 28 of the minority judgment, which is contrary on its face to section 18(1) of the Superior Courts Act; alternatively

28.2 the required "*omission*" is in the silence of the majority judgment as regards the statement in footnote 28, particularly in circumstances where the predicate of the majority judgment is that it records only that with which it does <u>not</u> agree (in the minority judgment);

28.3 as a result of the patent error and simultaneous omission, there is an ambiguity in that, as I have shown above, the Court's judgment and order is capable of a range of interpretations, from Sakeliga's interpretation of this Court's order as expressed on 28 February 2022, at the one extreme,

AA.
JM

to the interpretation Sakeliga has now ascribes to this Court's order, in its answering affidavit; and

28.4 the variation relief sought by the Minister would require no more than mere clerical edits to one paragraph and to a footnote in the judgment and would thus not require this Honourable Court to alter the "*the sense and substance*" of its judgment and order,[13] nor would the clarificatory or declaratory relief do so.

29. It follows that Sakeliga's contention that the Court lacks the requisite jurisdiction to grant the relief sought should be dismissed.

SAKELIGA'S CONTENTIONS REGARDING THE ALTERNATIVE DECLARATORY RELIEF SOUGHT ARE NOT CORRECT

30. While Sakeliga expressly concedes that "*direct access to the CC may be required in respect of a Uniform Rule 42 application", it contends that "that principle does not apply to the declaratory orders sought*",[14] and that direct access should be declined because, in this application, the Minister seeks to "*vary the CC order in order to deal with fresh issues*" which "*are all issues that were not before the CC (or even the SCA)*".[15]

31. I am advised and submit that all these contentions are incorrect and stand to be rejected:

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13 *Mostert NO v Old Mutual Life Assurance Co (SA) Ltd* 2002 (1) SA 82 (SCA) at para 5.

14 *Sakeliga* AA at para 10.2.

15 *Sakeliga* AA at para 23.

JM

31.1 The contention that it is only a court other than this Court that may grant a declaratory order interpreting the meaning of an order of this Court misconceives the hierarchy of our appellate Courts. Indeed, I am advised and submit that this Court is the only Court which has such a power.

31.2 That this Court, as the apex Court in all matters, is in fact the only Court with such declaratory powers, I am advised and submit, is congruent with what I am advised is the doctrine of precedent as it applies in our law (*stare decisis et non quieta movere*),[16] being the rule that a court is bound by the previous decisions of a higher court and by its own previous decisions in similar matters.[17]

31.3 I am advised and submit that there can be no dispute that this Court is the sole Court with the power to grant such relief of its own motion (*suo motu*). I am advised that the power arises both under the Uniform Rules and from the Court's inherent constitutional power to regulate its own process.[18]

31.4 Indeed, I am advised that this Court recently rescinded its own judgment on its own motion, and it did so, unanimously, in its judgment in *Barnard*.[19] Sakeliga proffers no reason why the same principle should not apply in the present application, by parity of reasoning.

31.5 The issues in respect of which the Minister seeks relief are not "*issues that were not before the CC (or even the SCA)*". The issues are concerned

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16 *Gcaba v Minister of Safety and Security* 2010 (1) SA 238 (CC) at para 58.

17 *Gcaba v Minister of Safety and Security* 2010 (1) SA 238 (CC) at para 58.

18 Section 173 of the Constitution.

19 *Barnard Labuschagne Incorporated v South African Revenue Service and Another* ZACC 8 [2022] at para 1.

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with the exercise of the Court's remedial discretion. They were squarely raised before the SCA, such that the SCA determined the issue of remedy, and concluded that the order of invalidity would be suspended. The same issue was before this Court. It is an issue that is necessarily incidental to the issues determined by this Court, in that a finding of invalidity, necessarily triggers a consideration of the question of remedy, as a matter of course.[20]

31.6 I reiterate my respectful submission that this is a *par excellence* case for the exercise of this Court's discretion to grant direct access on the basis that "*it would be inappropriate for any other court to entertain*" an application of this nature, concerning, as it does, an application "*pertaining to an order made by this Court*".[21]

32. Moreover, even if it were not the case that (*a*) the alternative declaratory relief sought fell squarely within the direct-access jurisdiction of this Court; and (*b*) even if it were not so that the present facts place the relief sought in this application safely within what I am advised and submit is the hierarchy delineated by this Court in *Zuma*,[22] I would still submit that this Court has the requisite jurisdiction.

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20 *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2013] ZACC 42 at para 45.

21 *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28 at para 49.

22 Id.

AD.

JM

33. The nature of the declaratory relief sought is clearly intertwined with and necessarily incidental to the variational and clarificatory relief, in respect of which this Court's direct-access jurisdiction is common cause.[23]

***SERIATIM* RESPONSE**

34. I now turn to respond to the allegations Sakeliga's answering affidavit *seriatim*. To avoid prolixity, I shall do so only to the extent that I am advised is strictly necessary.

35. To the extent that I omit to address any particular averments, they are denied insofar as they are inconsistent with my submissions above, and with the submissions contained in my founding affidavit.

36. **Ad paragraphs 8 to 9**

36.1 I admit that Sakeliga sent correspondent to the Minister on 14 March 2022.

36.2 Save as aforesaid, the content of this paragraph is denied.

36.3 Without derogating from the generality of the foregoing, the Minister specifically denies that the letter –

36.3.1 constituted a good-faith attempt to avoid "*entering the fray*", as contended, but rather constituted an attempt to make a virtue out of Sakeliga's own self-interest and the interest of its

[23] In this regard, see, for example, *Bid Industrial Holdings (Pty) Ltd v Strang* 2008 (3) SA 355 (SCA), read with section 39(2) of the Constitution; *King N.O. and Others* [2021] ZACC 4 at paras 42 to 55, and the authorities there cited.

AD.
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members, as an organisation that has been reported to perceive black economic empowerment as being "*racist*";

36.3.2 Sakeliga's reported public statements include that its intention is to "*get rid of BEE*" in the Republic, and that it "*will not accept BEE*".[24] Indeed, the deponent to Sakeliga's answering affidavit himself has published an article trumpeting this Court's judgment invalidating the 2017 Regulations, misguidedly, as being Sakeliga's achievement of the "*first significant ConCourt roll-back of BEE*".[25]

36.3.3 I note that, in the letter purportedly magnanimously sent by Sakeliga, Sakeliga says nothing about its about-face in regard to the meaning of this Court's order, nor does it say anything about its threat of bringing an urgent application. Thus, by Sakeliga's omission, Sakeliga sought to solicit the withdrawal of the Minister's urgent application under false pretences, namely, under the pretence of Sakeliga's prior assertion that the 2017 Regulations were void *ab initio*.

36.3.4 It was only when Sakeliga deposed to its answering affidavit that it changed its story, and correctly (albeit implicitly) accepted that its prior, diametrically opposed interpretation of

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[24] "Sakeliga announces new pro-growth, anti-racist campaign" https://rationalstandard.com/sakeliga-announces-new-pro-growth-anti-racist-campaign/ (accessed 19 March 2022).

[25] "Sakeliga achieves first significant Concourt Roll-back of BEE" https://sakeliga.co.za/en/sakeliga-achieves-first-significant-concourt-roll-back-of-bee/ (accessed 1 March 2022).

AD.
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this Court's judgment and order is, and always has been, 'clearly' wrong.

36.4 In my respectful submission, the contention that Sakeliga was in some manner "*required*" to "*oppose the [Minister's urgent] application*" in the "*public interest*"[26] must be viewed through the lens of Sakeliga's express interests and its expressed intentions. To contend that it is in the "*public interest*" for Sakeliga to oppose the clarification sought in this application is respectfully farcical. In my respectful submission, this fact should have an adverse bearing for Sakeliga on the question of the party to these proceedings who should bear the costs.

CONCLUSION

37. For all the reasons set out above and in my founding affidavit, the Minister persists in seeking the relief set out in the notice of motion.

38. As to costs, I respectfully submit that Sakeliga's opposition to this application is spurious on its merits, and clearly motivated by the potential commercial gain of its members. As such, I submit that there is no reason why costs should not follow the result.

ANDREW DONDO MOGAJANE

The deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before

[26] Sakeliga AA at para 9.

AD
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me at PRETORIA on **22 MARCH 2022**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

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