



# SAKELIGA'S BEE LITIGATION IMPACT

## Protecting Businesses From Excessive Government Intervention

Sakeliga envisions a South African economy free from BEE and race-based hiring quotas, where businesses thrive based on value-creation and competitiveness. Through strategic litigation, Sakeliga has already achieved significant roll-back of BEE in a key court case and further wins in court will help create a healthy business environment, benefitting all businesses.

### SAKELIGA'S BEE LITIGATION STRATEGY

#### BEE IN PUBLIC PROCUREMENT

##### Stop Gov't From Excluding Tender Competition

SUCCESSFUL

PROBLEM

Government is a Major Buyer



R1.2T spent yearly on public procurement

2017 PPPFA Regulations Reduced Competition



Disqualifying bids based on BEE status not value

Less Competition = Higher Prices



±30% of gov't purchases are wasted

SOLUTION

Litigation Pursued



Sakeliga challenged Minister of Finance

Won Constitutional Court Victory



Allowed state entities to improve procurement

2017 PPPFA Declared Invalid



1st rollback of BEE regulations since 2004

#### BEE IN BUSINESS LICENSING

##### Remove Licensing Requirements to Operate Freely

IN DEVELOPMENT

PROBLEM

Property Practitioner (PP) & Telecom Licenses



Requiring a valid BEE certificate

BEE Certificate or Business Closure



Affecting 50K PPs in +R200B industry

Creates Onerous BEE Costs



Thousands at risk of losing their businesses

SOLUTION

Sakeliga's Legal Team Is Investing R2M and



800+ hours to challenge BEE licensing in court

Free Property & Telecom Businesses



From burdensome BEE licensing requirements

Help Businesses Grow Not Contract



A win in court would also protect other industries

#### RACE QUOTAS IN HIRING

##### Prevent Racial Hiring Mandates For Businesses

IN DEVELOPMENT

PROBLEM

EEAA Now Requires Race Discrimination



For every business w/50+ staff

Race-Based Quota System



Noncompliant businesses face fines and penalties

Jobs Will Be Negatively Impacted



Major disruptions to ±11M job market

SOLUTION

Sakeliga's Legal Team Needs to Invest R2M



In major legal battle

Reverse the EEAA or Render It Ineffective



Set powerful precedent in labour policy

Protect Businesses Ability to Create Value



Save hundreds of billions of Rands

#### BEE IN PRIVATE TRANSACTIONS

##### Regain Flexibility in Corporate Deals

IN DEVELOPMENT

PROBLEM

Competition Commission



Now imposes BEE criteria to M&A deals

Arbitrary "Public Interest" Applied To M&A Deals



Affects R551B of M&A per year

Expropriates Assets Indirectly



Deters deals and destroys value

SOLUTION

Sakeliga's Legal Team Is Preparing



Considering litigation options

Reverse "Public Interest" Requirements



To provide regulatory clarity

Restore Investor Confidence



Unlock tens of billions of Rands in value

### WHAT IS AT STAKE

IF SAKELIGA IS SUCCESSFUL BEYOND PPPFA?

#### PUBLIC SAVINGS

R120B

R120B each year could be saved if greater competition improved pricing by just 10% of the R1.2T annual tender purchases

#### INDUSTRY UPHEAVAL

R1.69T

The sectors currently facing licensing threats - property, communications, and financial services - generate R1.69T turnover annually

#### REGULATION SAVINGS

R1B

Abating licensing requirements would collectively save property practitioners alone R1B in BEE audits and opportunity cost each year

#### LABOUR DISRUPTION

11M

Severe disruptions and dislocations in the 11M formal jobs market due to unprecedented EEAA market interference

#### UNLOCK VALUE

R110B

A 20% improvement in M&A volumes would raise dealflow by over R110B per year, unlocking enormous additional benefit in value chains



# SAKELIGA'S BEE LITIGATION IMPACT

## A Closer Look at the Significance of the Public Procurement Win

Sakeliga's litigation team fought for all state organs and public entities to be able to award contracts based on value-for-money instead of diverting resources for BEE and local suppliers

Through the Preferential Procurement Policy Framework Act (PPPFA), the Minister of Finance used policies and local supplier requirements to undermine efficiency and effectiveness by relegating the importance of value. The Minister deviated from responsible procurement principles, stifled innovation, productivity, and economic growth, diverted valuable resources, and burdened businesses and government entities with compliance costs. Sakeliga challenged the Minister in the Constitutional Court on behalf of businesses across South Africa. After a five year legal battle, we won in May 2022.

### REPLACING A STREET LIGHT STORY AND THE PPPFA LUNACY

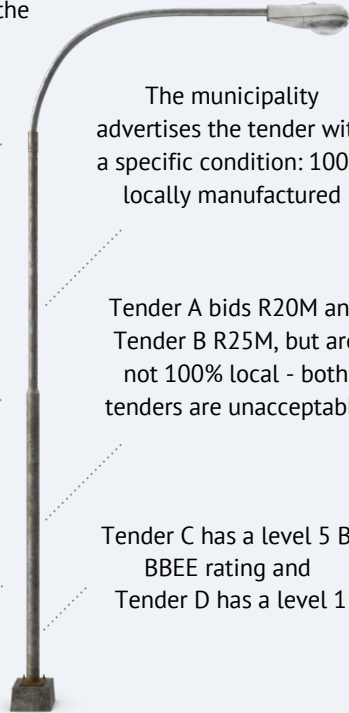
A municipality wants to replace a deteriorating street light

The local steel pole content threshold determined by the DTIC is 100%

The municipality receives 4 tenders from A, B, C, and D to supply the exact same quality of goods

Tender C bids R45M and Tender D R50M, both source 100% locally

Tender D is awarded the contract



The municipality advertises the tender with a specific condition: 100% locally manufactured

Tender A bids R20M and Tender B R25M, but are not 100% local - both tenders are unacceptable

Tender C has a level 5 B-BBEE rating and Tender D has a level 1

**The public would have to bear a premium in excess of 100% in the interest of local content and B-BBEE regulations**

### WITHOUT SAKELIGA

Tenders disqualified based on BEE and local content requirements

### COURT WIN ON PROCUREMENT

A broad loosening of BEE and local content regulations, both for businesses serving the government and those serving other businesses

### WHAT WAS AT STAKE

Public Procurement  
**R1.2T**  
annually

Limited Competition  
**BEE & local content**  
led to budget overruns, delays, and service delivery issues

PPPFA Regs Declared  
**Illegal**  
and unconstitutional by the Constitutional Court

Increase of  
**20k-40k**  
firms in the potential pool of state suppliers

### WHY IT MATTERED

Gov't Wastage  
**R400B**  
annually on public procurement

Bankrupt Municipalities  
**43**  
have collapsed and 151 are teetering on collapse

1st BEE  
**ROLLBACK**  
since its inception in 2004

Value for Money  
**R120B**  
could be saved by just a 10% improvement in procurement

### WHAT IT MEANT

State & Municipalities  
**PERMITTED**  
to award tenders based on BEE status and local content

Ensured  
**HIGH COSTS**  
by reducing the pool of competent suppliers that did not meet BEE requirements

Promotes  
**SAVINGS**  
by allowing state entities to expand the pool of suppliers in procurement

Created a  
**PRECEDENT**  
for municipalities to uphold independent procurement policies