

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2025-181893

In the matter between—

TREATMENT ACTION CAMPAIGN	1 st Applicant
MÉDECINS SANS FRONTIERES	2 nd Applicant
KOPANANG AFRICA AGAINST XENOPHOBIA	3 rd Applicant
and	
FACILITY MANAGER AT YEOVILLE CLINIC	1 st Respondent
FACILITY MANAGER AT ROSETTENVILLE CLINIC	2 nd Respondent
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	3 rd Respondent
ACTING MUNICIPAL MANAGER: CITY OF JOHANNESBURG	4 th Respondent
MEMBER OF THE MAYORAL COMMITTEE: HEALTH AND SOCIAL DEVELOPMENT, CITY OF JOHANNESBURG	5 th Respondent
MEMBER OF THE MAYORAL COMMITTEE: PUBLIC SAFETY, CITY OF JOHANNESBURG	6 th Respondent
MEMBER OF THE EXECUTIVE COUNCIL: GAUTENG DEPARTMENT OF HEALTH	7 th Respondent
HEAD OF DEPARTMENT: GAUTENG DEPARTMENT OF HEALTH	8 th Respondent
MINISTER OF HEALTH	9 th Respondent
DIRECTOR GENERAL, DEPARTMENT OF HEALTH	10 th Respondent
NATIONAL POLICE COMMISSIONER	11 th Respondent
PROVINCIAL POLICE COMMISSIONER: GAUTENG PROVINCE	12 th Respondent
STATION COMMANDER, YEOVILLE POLICE STATION	13 th Respondent

STATION COMMANDER, MOFFATVIEW POLICE STATION	14 th Respondent
STATION COMMANDER, BOOYSENS POLICE STATION	15 th Respondent
SOUTH AFRICAN HUMAN RIGHTS COMMISSION	16 th Respondent

FILING SHEET – APPLICANTS HOA

BE PLEASED TO TAKE NOTICE THAT the first, second, and third applicant hereby file their Heads of argument.

DATED AT **BRAAMFONTEIN** ON THIS THE **7TH** DAY OF **NOVEMBER 2025**.



SECTION27

Attorneys for the First, Second and Third Applicant
87 De Korte Street
Braamfontein
Tel: 011 356 4100
Email: info@section27.org.za

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

AND TO: **OFFICE OF THE STATE ATTORNEY - JOHANNESBURG**

Attorneys for the 7th to 15th Respondents

Per email: MMotsoko@justice.gov.za

Copy to: ophaahla@justice.gov.za

REF: 011/004937/2025/03/P45

AND TO: **SSM ATTORNEYS**

Attorneys for the 7th and 8th Respondents

Per email: info@ssmattorneys.co.za

REF: SSM/COJ.NC/GHG/00

AND TO: **THE SAHRC, GAUTENG PROVINCE**
16th Respondent
Per email: mhunter-parsonage@sahrc.org.za
Copy to: zmbeki@sahrc.org.za

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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2025-181893**

In the matter between:

**TREATMENT ACTION CAMPAIGN AND
OTHERS**

Plaintiff / Applicant / Appellant

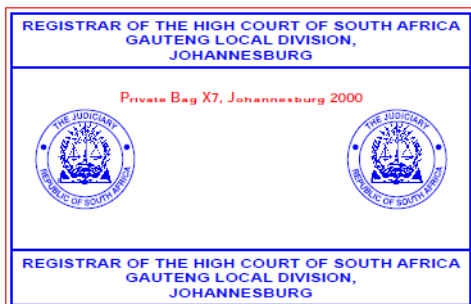
and

ROSETTENVILLE CLINIC

Defendant / Respondent

Heads of Argument

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ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

CASE NO: 2025-181893

STATION COMMANDER, MOFFATVIEW POLICE STATION	14 th Respondent
STATION COMMANDER, BOOYSENS POLICE STATION	15 th Respondent
SOUTH AFRICAN HUMAN RIGHTS COMMISSION	16 th Respondent

APPLICANTS' UPDATED HEADS OF ARGUMENT:

PART A URGENT APPLICATION

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INTRODUCTION

- 1 This is an urgent application for interim relief to restore safe and unhindered access to the Yeoville and Rosettenville clinics in Johannesburg.
- 2 There is no dispute that these public clinics are “hotspots” of xenophobic vigilante action.¹ Vigilantes are currently blocking patients from entering these clinics, unless they can produce South African identity documents.² As a result, migrants and undocumented patients are being denied access to essential healthcare services. They include including pregnant and lactating women and young children.³
- 3 The first to fifteenth respondents have a collective duty to ensure safe and unhindered access to healthcare. However, they have taken no meaningful and effective steps to protect access to these clinics, they have failed to implement any coordinated plans, and they have not responded to the applicants’ repeated demands for action.⁴
- 4 In their answering affidavits, the respondents engage in an exercise of collective buck-passing. They individually deny any obligation to address this problem and attempt to shift the blame to each other. National and provincial government blame the City of Johannesburg and the South African Police Service (SAPS). The SAPS, in turn, blames the victims for allegedly failing to report these unlawful acts. And the City has said nothing at all, as it has failed



¹ FA p 001-18 para 6; p 001-35 para 66 to p 001-36 para 69.

² FA p 001-18 para 6.

³ FA p 001-18 para 6.

⁴ FA p 001-18 para 9.

to file any answering affidavits. This reflects a shocking failure of cooperative governance and accountability.

- 5 The applicants bring this urgent Part A application for an interim interdict to compel the state respondents to act, collectively, to restore access to these two clinics, pending the final determination of Part B. In Part B, the applicants will seek final interdictory relief in respect of the two clinics, coupled with broader, structural relief to address vigilantism in other healthcare institutions across the Gauteng Province.



- 6 In what follows, we demonstrate the applicants' entitlement to urgent interdictory relief in Part A. We begin with the relevant factual and legal background before addressing urgency and the requirements for interim relief.

- 7 At the outset we highlight two key points.

7.1 First, there can be no dispute that the actions of vigilante groups at the two clinics are unlawful. In *Kopanang Africa Against Xenophobia and Others v Operation Dudula and Others Case*,⁵ handed down on 4 November 2025, Adams J confirmed that such xenophobic acts are in breach of fundamental constitutional rights and values.⁶ The court granted sweeping interdictory relief against Operation Dudula – one of the groups believed to be operating at these clinics – including orders prohibiting it from “[i]nterfering with the access of foreign nationals to health care services and/or their right to such access” and “from

⁵ *Kopanang Africa Against Xenophobia and Others v Operation Dudula and Others* (2023/044685) [2025] ZAGPJHC 1102 (4 November 2025).

⁶ *Id* at paras 31, 41 and the order.

demanding that any private person produce her / his passport or other identity documents to demonstrate her / his right to be in the Republic.”⁷

7.2 Second, this application is about how the state responds to such unlawful conduct occurring in its public healthcare establishments, requiring the state to protect healthcare users and to restore safe and unhindered access to the two clinics.

THE FACTS

8 There are no genuine disputes of fact on the papers. The respondents who have filed answering affidavits to date – the seventh to fifteenth respondents – do not dispute the applicants’ detailed account of the conditions at the clinics, the unlawful actions of vigilante groups, and their impact on patients. What follows is a summary of the key facts relevant to Part A.



The clinics

9 The Yeoville and Rosettenville clinics are primary healthcare facilities that are owned, controlled and / or operated by the City of Johannesburg in terms of an assignment of functions from the provincial MEC.⁸

10 The clinics provide services that are essential for ensuring primary healthcare in the communities where they operate.⁹ These services include antiretroviral therapy (ART) for the management of HIV/AIDS; immunisations for young

⁷ *Kopanang* id order paras 2 and 3.

⁸ FA p 001-34 para 63.

⁹ FA p 001-35 para 64 - 65.

children; medication for the management of chronic diseases; and referral to provincial and national healthcare facilities, if necessary.¹⁰

Denial of access to these clinics

11 Since June 2025, the applicants have received growing numbers of reports of vigilante action in public healthcare establishments across the Gauteng Province. This activity has become more organised and more brazen, involving a wider array of vigilante groups and individuals.¹¹



12 The applicants and their attorneys identified the Yeoville and Rosettenville clinics as being among the worst affected by this vigilante action.¹²

13 From September 2025, the applicants visited the clinics repeatedly to monitor the conditions,¹³ and collected affidavits from migrant patients who were denied access to these clinics by vigilante groups.¹⁴ This monitoring revealed a pattern of unlawful activity:¹⁵

13.1 Unidentified individuals, in plain clothes, who are neither healthcare workers nor security personnel, are restricting access to the main gates of the clinics, often by controlling the gates from inside the clinic premises.

¹⁰ FA p 001-34 to 001-35 para 64.

¹¹ FA pp 001-35 to 001-41 paras 66-74; p 001-45 to 001-48 paras 88-93; FA p 001-61 paras 148 – 149; SA p 003-7 to 003-12 paras 17-23.

¹² FA p 001-18 para 6; pp 001-35 to 001-36 paras 66 - 69.

¹³ FA p 001-36 para 70; SA pp 003-7 to 003-12 paras 17-23.

¹⁴ FA pp 001-35 to 001-41 paras 66-74; FA pp 001-45 to 001-48 paras 88-93. The relevant affidavits appear as Annexures MSM3 – 5 (Yeoville patients) and Annexures MSM 6 – 11 (Rosettenville patients).

¹⁵ FA p 001-36 para 71; p 001-39 para 73.

13.2 These unidentified individuals are asking patients to present a South African identification document before allowing them access to the clinics.

13.3 Patients who cannot present a South African identification document are turned away from the clinics.

13.4 These incidents are occurring in full view of security staff, and even police officers, who have failed to intervene to stop these actions.¹⁶

13.5 Security staff have also been observed assisting or collaborating with the unidentified individuals.¹⁷



13.6 At times, vigilantes are seen operating within healthcare establishments, intimidating patients and healthcare workers.

14 This is an ongoing crisis. The applicants' repeated monitoring of visits to the clinics, as recently as 4 November 2025 at Rosettenville Clinic and 6 November 2025 at Yeoville Clinic, have confirmed that vigilantes are still operating with impunity.¹⁸

¹⁶ FA p 001-46 para 92.2.

¹⁷ See, for example, SA p 003-10 para 21.5.

¹⁸ For accounts of the monitoring that has occurred since the launch of this application, see: 14 October 2025 (Yeoville): SA p 003-7 to 003-8 para 18-18.2; 16 October 2025 (Yeoville): SA p 003-8 para 18.3-18.5; 16 October 2025 (Rosettenville): SA p 003-9 to 003-10 para 21; 17 October 2025 (Yeoville): SA p 003-8 to 003-9 para 19; 17 October 2025 (Rosettenville): SA p 003-10 to 003-11 para 21.4-21.6; 21 October 2025 (Yeoville): SA p 003-9 para 20; 21 October 2025 (Rosettenville): SA p 003-11 para 22; SA p 003-9 para 21; p 003-11 para 24; 3 November 2025 (Yeoville): RA p 007-21 para 21; 3 November 2025 (Rosettenville): RA p 007-11 para 007-11; 4 November 2025 (Yeoville): RA p 007-9 to 007-10 para 22; 4 November 2025 (Rosettenville): RA p 007-11 para 26; 6 November 2025 (Rosettenville): RA p 007-10 para 23-24.

The applicants' continued attempts to engage the respondents

15 After gathering evidence of the conditions at the Yeoville and Rosettenville clinics, the applicants first sought to engage with the respondents to find a solution.

16 The applicants sent urgent letters to the respondents on 17 and 19 September 2025, seeking undertakings, *inter alia*, that the respondents would take immediate action to restore safe and unhindered access to the Yeoville and Rosettenville clinics.¹⁹



17 On 22 September 2025, the applicants sent a further letter to the MEC repeating these demands.²⁰

18 The applicants requested a response to these letters of demand by 26 September 2025, and then extended this deadline to 30 September 2025, at the request of the office of the Minister of Health.²¹

19 At the time of filing this application on 6 October 2025, the respondents had not provided any meaningful response to these letters, nor did they provide the requested undertakings.²²

20 On 10 October 2025, after the papers were served, the Minister of Health delivered a letter in response to the applicants' letters of demand, in which he

¹⁹ FA p 001-42 to 001-44 para 75 – 80. Annexure MSM 12 p 001-119; Annexure MSM 13 p 001-126.

²⁰ FA p 001-45 para 87.

²¹ FA p 001-44 paras 81-84.

²² FA p 001-45 paras 86-87.

confirmed that all persons have a right of access to healthcare.²³ However, that letter neither condemned the unlawful acts by vigilantes nor provided any undertakings that his department would take proactive steps to protect patients' rights.²⁴

- 21 The applicants made continuing efforts to engage the respondents after launching this application. The initial deadline for the respondent's answering affidavit was Monday, 13 October 2025, but nothing was received by that date.²⁵ On Wednesday, 15 October 2025, the applicants wrote to the respondents inviting them to consent to the urgent interim relief sought in Part A of this application.²⁶ Once again, there was no response.²⁷



- 22 The applicants proceeded to file a supplementary affidavit, on Wednesday 22 October 2025, to provide the Court with the latest reports on the conditions at the clinics.²⁸
- 23 Part A was initially set down for hearing on the urgent Court roll on Wednesday, 29 October 2025, in the absence of any answering affidavits. On that date, Nthambeleni AJ granted an order by consent referring this matter to the Deputy Judge President for an urgent special allocation, directing the respondents to file their answering affidavits by 12h00 noon on 3 November 2025, and imposing appropriate anonymity protections for the applicants' deponents,

²³ SA p 003-4 para 8. Annexure SA1 p 003-14.

²⁴ SA p 003-5 paras 8.1-8.5.

²⁵ SA p 003-5 para 9.

²⁶ SA p 003-5 para 10.

²⁷ Id.

²⁸ SA p 003-6 para 16.

patients and children.²⁹ The DJP subsequently granted a special allocation with further directions.

- 24 The respondents all proceeded to breach the order, by failing to file their answering affidavits in time.³⁰

THE STATE'S DUTY TO SECURE ACCESS TO THE CLINICS

- 25 The ongoing vigilante action at the Yeoville and Rosettenville clinics implicates a range of constitutional rights, including:



- 25.1 Section 27(1)(a) of the Constitution, which provides that “*everyone*” has a right to have access to healthcare services, including reproductive health care.
- 25.2 Section 27(3), which further provides that “*no one*” may be refused emergency medical treatment.
- 25.3 Section 28(1), which further guarantees to “*every child*” the right to “*basic health care services*”.
- 25.4 Section 28(2) of the Constitution, which requires the best interests of the child be given paramount importance in every matter concerning the child.

²⁹ Court order p 011-19.

³⁰ RA p 007-5 to 007-6 paras 11-12.

- 26 These rights are not qualified by nationality or documentation status. They are held by “everyone” in South Africa and “every child”.³¹ The Minister accepts this legal position in his recent letter, as he confirms that section 27 guarantees “accessibility of healthcare services to any person” and that “foreign nationals also have a right to such services”.³²
- 27 These constitutional rights require, at bare minimum, safe physical access to healthcare establishments, without obstruction or hindrance by unauthorised persons. Whether a patient is eligible to receive free or subsidised medical care within these establishments, after gaining access, is for healthcare workers to determine, based on medical knowledge and established laws and protocols. It is not for vigilantes to take the law into their own hands by barring access to the clinics.
- 28 Under section 7(2) of the Constitution, “the state” has a positive duty to protect these rights of access against external interference from private actors.³³
- 29 These constitutional rights and obligations are reinforced by the range of statutory instruments summarised in the founding papers, including the National Health Act 61 of 2003, national regulations and provincial legislation.³⁴
- We highlight three relevant sets of duties flowing from these instruments.



³¹ *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* [2004] ZACC 11; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC) at paras 42 and 47.

³² Minister's letter of 10 October 2025, Annexure SA 1 p 003-14 para 3.

³³ Section 7(2) provides that: “The state must respect, protect, promote and fulfil the rights in the Bill of Rights.”

³⁴ FA p 001-28 to 001-34 paras 39-62.

- 30 First, section 3 of the National Health Act, read with chapters 3, 4 and 5, impose shared obligations on national, provincial, and local government to provide healthcare services.³⁵
- 31 Second, section 4(3)(a) of the National Health Act imposes a specific statutory right and obligation to provide free healthcare services for all pregnant and lactating women and children below the age of six (who are not members or beneficiaries of medical aid schemes). In 2023, this Court handed down an order confirming that these statutory rights and obligations are not confined to South African citizens.³⁶
- 32 Third, the Norms and Standards Regulations under the National Health Act oblige health establishments to put in place security measures to protect patients and to report security incidents.³⁷ Regulation 17 specifically provides that:



³⁵ Section 3 provides:

- “(1) The Minister must, within the limits of available resources—
- (a) endeavour to protect, promote, improve and maintain the health of the population;
 - (b) promote the inclusion of health services in the socio-economic development plan of the Republic;
 - (c) determine the policies and measures necessary to protect, promote, improve and maintain the health and well-being of the population;
 - (d) ensure the provision of such essential health services, which must at least include primary health care services, to the population of the Republic as may be prescribed after consultation with the National Health Council; and
 - (e) equitably prioritise the health services that the State can provide.
- (2) The national department, every provincial department and every municipality must establish such health services as are required in terms of this Act, and all health establishments and health care providers in the public sector must equitably provide health services within the limits of available resources.”

³⁶ FA p 001-30 para 49; Order, Annexure MSM2 p 001-78 to 001-81.

³⁷ Norms and Standards Regulations Applicable to Different Categories of Health Establishments, 2017 promulgated by the Minister under the National Healthcare Act, GN 67 in GG 41419 of 2 February 2018.

- “(1) *The health establishment must have systems to protect users, health care personnel and property from security threats and risks.*
- (2) *For the purposes of sub-regulation (1), the health establishment must ensure that security staff are capacitated to deal with security incidents, threats and risks.”*

33 Under no circumstances may the state abdicate these constitutional and statutory duties by ceding control of health establishments to vigilantes. Such abdication is inconsistent with the rule of law. As the Constitutional Court has confirmed, “[n]o one is entitled to take the law into her or his own hands” as such action is “*inimical to a society in which the rule of law prevails*”.³⁸



URGENCY

- 34 The lawlessness that prevails at the Yeoville and Rosettenville clinics is depriving patients of access to medical care, creating a situation which is manifestly urgent.
- 35 Urgency is addressed in the **founding affidavit** at **pages 001-49 – 001-52 paras 95 - 114**, supported by the latest reports on the conditions at the clinic in the **supplementary affidavit** at **pages 003-7 – 003-12 paras 17 – 22** and in the replying affidavit at **pages 007-9 to 007-12 paras 21 – 28**.
- 36 We emphasise five points on urgency.

³⁸ *Chief Lesapo v North West Agricultural Bank and Another* [1999] ZACC 16; 2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 (CC) at para 11.

37 First, the ongoing denial of access to healthcare services is an inherently urgent matter, given the patients' needs for treatment.

37.1 Patients are currently being denied access to a range of essential medical services at these clinics, including antiretroviral therapy (ART); immunisations for young children; medication for the management of chronic diseases; essential medication; and referrals to provincial and national healthcare facilities.³⁹

37.2 The patients who rely on these clinics are poor and have no meaningful available access to alternative healthcare.⁴⁰ Without access to the clinics, they also cannot secure their patient files or transfer letters to allow them to be assisted elsewhere.⁴¹



38 Second, affected patients include pregnant and lactating women and young children,⁴² further contributing to the urgency.

38.1 Section 28(2) of the Constitution provides that “[a] child’s best interests are of paramount importance in every matter concerning a child”. The state is obliged to ensure that children are accorded the protection contemplated by section 28.⁴³

38.2 The Constitutional Court in *Centre for Child Law v Director of Public Prosecutions, Johannesburg and Others*⁴⁴ held that “[t]he right of a child

³⁹ FA p 001-49 para 96.

⁴⁰ FA p 001-35 para 65; p 001-55 para 129.

⁴¹ FA p 001-56 para 129.

⁴² FA p 22 para 71 – p 27 para 74.4 (Caselines 001-36 to 001-41).

⁴³ *Treatment Action Campaign* at para 79.

⁴⁴ *Centre for Child Law v Director of Public Prosecutions, Johannesburg and Others* (CCT210/21) [2022] ZACC 35; 2022 (12) BCLR 1440 (CC); 2022 (2) SACR 629 (CC).

for her interests to be treated as being of paramount importance applies to all aspects of the law which affect the child".⁴⁵

39 Third, given these urgent healthcare needs, the applicants and the affected patients would be denied substantive redress if this application were heard in the ordinary course, in six months to a year's time.

39.1 While their healthcare needs differ, all of the patients who have been denied access to the clinics are at risk of worsening health.

39.2 Some patients who have been denied healthcare need access to chronic medication, some need primary healthcare to treat undiagnosed but serious conditions, and some need access to antiretroviral treatment.⁴⁶



39.3 Children need immunisations and essential primary healthcare treatments for childhood illnesses, which can prove fatal if not diagnosed and addressed in time.⁴⁷

39.4 This urgency is underscored by reports of the death of a child after he and his mother were denied access to care at the Alexandra clinic in Johannesburg due to similar vigilante action at that facility.⁴⁸

39.5 The denial or interruption of antiretroviral ART for patients with HIV/AIDS also has devastating consequences for the health of the individual, such as treatment resistance, opportunistic infections, and an increased risk of mortality. This also undermines the state's efforts to control the HIV

⁴⁵ Id at para 42.

⁴⁶ FA p 001-50 paras 97-100.

⁴⁷ FA p 001-49 to 001-50 paras 96 – p 36 para 102.

⁴⁸ FA p 001-45 para 89.

epidemic, as patients who are unable to take their ART as prescribed are more likely to transmit the virus to others, and those who stop treatment entirely often do not start again.⁴⁹

40 Fourth, this application was prepared and launched as soon as possible, following extensive efforts by the applicants to gather evidence on conditions at the clinics and to engage with the respondents, as outlined above.

40.1 The applicants wrote urgent letters to the respondents on 17, 19 and 22 September 2025, but received no meaningful response. This application was then finalised and launched within a week after the expiry of the deadline given to the respondents to provide written undertakings, by 30 September 2025.



40.2 Since launching this application, the applicants then invited the respondents to consent to Part A of this application, in a letter on 15 October 2025.

40.3 The respondents have had a further opportunity to reconsider their position, but their answering affidavits continue to deny any responsibility and provide no indication that they will take independent action,

41 The applicants cannot be faulted for attempting to exhaust all possibilities of engagement with the respondents before launching this litigation. In *South*

⁴⁹ FA p 001-50 para 101.

*African Informal Traders Forum v City of Johannesburg*⁵⁰ the Constitutional Court affirmed that such attempts at engagement are a “*prudent and salutary*” step before launching litigation, which should not count against an applicant in assessing urgency.

- 42 Fifth, the abridgement of timeframes and relaxation of the rules was proportionate to the urgency of the matter. The respondents have also been afforded ample opportunity to respond, despite the urgency:

42.1 The respondents had more than 15 court days to file answering affidavits by the date of initial set-down, on 29 October 2025.



42.2 The consent order granted on 29 October 2025 gave the respondents a further three court days to file their answering affidavits, by 12h00 noon on Monday 3 November 2025. The respondents failed to comply with that order. At the time of filing these heads of argument, not all respondents have filed answering affidavits, and the affidavits that have been received were either late or incomplete.

42.3 Accordingly, the respondents cannot claim to have suffered prejudice and they will have ample opportunity to file answering papers in the Part B application for final relief.

⁵⁰ *South African Informal Traders Forum v City of Johannesburg* [2014] ZACC 8; 2014 (4) SA 371 (CC); 2014 (6) BCLR 726 (CC) at paras 37-38.

INTERIM RELIEF IN PART A

43 Interdictory relief – either in mandatory or prohibitory form – seeks to protect a legally enforceable right which is threatened by continuing or anticipated harm.⁵¹ It plays an essential role in upholding the rule of law.⁵²

44 The requirements for interim relief are: a) a *prima facie* right, although open to some doubt; b) a well-founded apprehension of irreparable harm if interim relief is refused; c) the balance of convenience must favour the relief; and d) there are no suitable alternative remedies.⁵³ We now address these requirements in turn.



Prima facie right

45 In *OUTA*, the Constitutional Court held that “[i]f the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists”.⁵⁴ This is such a case.

46 Here, the rights invoked by the applicants are primarily sourced in the Constitution which provides that “everyone” and “every child” has the right to access healthcare. The existence of these rights “cannot be contested.”⁵⁵

⁵¹ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC) at para 47.

⁵² *Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another* [2022] ZACC 7; [2022] 6 BLLR 487 (CC); 2022 (7) BCLR 787 (CC); 2022 (5) SA 18 (CC) (Oak Valley) at para 18.

⁵³ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at para 41 (*OUTA*). See also: *Setlogelo v Setlogelo* 1914 AD 221 at 227.

⁵⁴ *OUTA* id at para 51.

⁵⁵ *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* [2022] ZACC 44; 2023 (5) BCLR 527 (CC); 2023 (4) SA 325 (CC) at para 292.

47 The applicants have presented ample evidence that there is an ongoing denial of healthcare rights at the Yeoville and Rosettenville clinics, due to the actions of unidentified vigilantes. None of these facts are disputed.

48 This engages the respondents' section 7(2) constitutional obligations, requiring the state to take "*reasonable and effective*" measures to protect the right of access to healthcare against external interference by vigilantes.⁵⁶ The state cannot remain passive when constitutional rights are under threat.⁵⁷

49 Reasonable measures to protect rights necessarily require co-operation and co-ordination across all three spheres of government, consistent with the  of cooperative governance.⁵⁸

49.1 Section 41(h) of the Constitution provides that all spheres of government and all organs of state within each sphere must –

"(h) co-operate with one another in mutual trust and good faith by—

...

(ii) assisting and supporting one another;

(iii) informing one another of, and consulting one another on, matters of common interest;

(iv) co-ordinating their actions and legislation with one another;

... " (emphasis added)

49.2 Further, section 154(1) of the Constitution imposes obligations on the national and provincial government to support and strengthen the capacity of local government to :

⁵⁶ *Glenister v President of the Republic of South Africa* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (*Glenister II*) at para 189: "*Implicit in section 7(2) is the requirement that the steps that the state takes to respect, protect, promote and fulfil constitutional rights must be reasonable and effective*". See *Kopanang* above 5 at para 19.

⁵⁷ *Minister of Safety and Security v Van Duivenboden* [2002] ZASCA 79; [2002] 3 All SA 741 (SCA); 2002 (6) SA 431 (SCA) at para 20; *Carmichele v Minister of Safety and Security* [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) at para 45.

⁵⁸ *Government of the Republic of South Africa and Others v Grootboom and Others* [2000] ZACC 19; 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC) at paras 39 – 40.

“The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.”

50 The South African Police Service (SAPS) has a specific duty under section 205(3) of the Constitution to support the other respondents in addressing lawlessness at the clinics. The SAPS is both constitutionally and statutorily obliged *“to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law”*.⁵⁹



51 The police are under a duty to act *“promptly and expeditiously”* and *“must take all “reasonable measures which are available to them in the circumstances”* to respond to and address unlawful conduct that threatens rights.⁶⁰

52 In August 2025, the National Commissioner responded to complaints from the South African Human Rights Commission, emphasising the need for coordinated action across all spheres of government to address healthcare vigilantism.⁶¹

“As you will appreciate, the responsibility to ensure the safety of persons, including at health establishments, is not the sole responsibility of the SAPS. It requires co-ordination and cooperation from various departments (albeit at national, provincial or municipal level) and other role players. Section 41 of the Constitution emphasises the need for government to co-operate and assist each other to inter alia, preserve the peace and secure the well-being of the people of the Republic.”

⁵⁹ Constitution, section 205(3) read with section 13 of the South African Police Services Act 68 of 1995 (SAPS Act).

⁶⁰ *AK v Minister of Police* [2022] ZACC 14; 2023 (2) SA 321 (CC); 2022 (11) BCLR 1307 (CC) at paras 3, 87 – 96.

⁶¹ Annexure MSM28 p 001-228.

- 53 The National Commissioner specifically emphasised the need for the national and provincial health departments to assist in coordinating a response:

“The Department of Health, both at national and provincial level, is a critical role player to create a stable environment at public health care. The safety of persons and accessibility of public health facilities are first and foremost the responsibility of hospital administrators and the relevant Provincial Department of Health. The SAPS supports the Department of Health and will continue to co-ordinate efforts to address the current situation.”⁶²

- 54 This National Commissioner attached a copy of Supplementary Instruction 01 to the NATJOINTS Instruction 27 of 2025,⁶³ issued in July 2025 by the National Joint Operational and Intelligence Structure of the SAPS (NATJOINTS), which ostensibly reflected these commitments:



“All PROVJOINTS [Provincial Joint Operational and Intelligence Structures of the SAPS] must address the following threats by compiling operational plans for:

- 2.1 The safety and security of all persons seeking medical attention at public health facilities, including non-nationals;*
- 2.2 Prevent and respond promptly to any unlawful activities, intimidation or harassment directed at non-nationals attempting to access healthcare services.*

...

- 2.4 Work with hospital administrators and relevant provincial departments to put in place appropriate measures to ensure that healthcare spaces remain accessible and free from intimidation.*

...

- 3.1 The success of this approach relies on the active participation of all stakeholders and accurate intelligence and the principle of cooperative governance. ...*

...

⁶² Id at p 001-229.

⁶³ Id at p 006-20 to 006-22 paras 25-29. A copy of that instruction appears at p 001-230.

3.3 *The Department of Health must also provide, amongst others a list with contact details, addresses and locations of all healthcare facilities which were affected by incidents of intimidation and violence where non-nationals were prevented access.*

55 Despite these commitments, there is extensive *prima facie* evidence that the respondents have breached their obligations by failing to take any reasonable, effective, and coordinated action to address the vigilante conduct at the Yeoville and Rosettenville clinics. We say this for the following reasons:

55.1 Since September 2025, the applicants have witnessed unchecked vigilante action at these clinics.



55.2 Unidentified individuals, in plain clothes, who are neither healthcare workers nor security personnel, are continuing to operate with apparent impunity, blocking and restricting access to these facilities.⁶⁴

55.3 These unidentified vigilantes have been observed operating in full view of security guards and even the police, who watch these incidents unfold without intervening.⁶⁵

55.4 The respondents have failed to provide any meaningful response to the applicants' urgent demands for action, after the applicants notified the respondents of this ongoing unlawful conduct.

55.5 In the month since this application was launched, the respondents have failed to take any meaningful action at the clinics, as is confirmed by the recent monitoring reports.

⁶⁴ FA p 001-36 para 71.1; p 001-39 to 001-41 para 74.

⁶⁵ FA p 001-36 para 71.4; pp 001-39 to 001-41 para 74. FA p 001-46 para 92.2.

55.6 In their answering affidavits, the respondents have failed to demonstrate that they are implementing any concrete and coordinated plans to address this ongoing vigilante action at the two clinics.

56 This is more than ample evidence to meet the *prima facie* threshold, on the test set out in *Webster* and *Gool*.⁶⁶

57 The respondents' various attempts to shift blame and responsibility for these failures are strictly a matter for determination in Part B. Nevertheless, these responses are unavailing and reflect an unsettling disregard for their legal obligations, for reasons that we will now address.



The City's breaches

58 There is no genuine dispute that the City of Johannesburg, represented by the first to sixth respondents, has statutory obligations and powers to ensure safety and security at the clinics by confronting and removing unauthorised vigilantes from its premises.

58.1 The duty to ensure security at the clinics is confirmed by Regulation 17 of the Norms and Standards.⁶⁷

58.2 Under the Control of Access to Public Premises and Vehicles Act 53 of 1985, the City, as the "owner" of the clinics,⁶⁸ has the express power to

⁶⁶ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189; *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 688B—F; *Simon NO v Air Operations of Europe AB and Others* 1999 (1) SA 217 (SCA) at 228G-H.

⁶⁷ See para 32 above.

⁶⁸ The section 1 definition of "public premises" in the Control of Access Act includes buildings or land "occupied or used by, or is under the control of, the State or statutory body, and to which a member of the public has a right of access, or is usually admitted or to which he may be admitted". The "owner of

control access to these facilities and to remove unauthorised persons from the premises.⁶⁹

58.3 Any vigilante obstructing access to the clinic premises or entering the premises without authorisation would be liable to face criminal charges.

any public premises or any public vehicle' means "the head of the department of State, divisional office or other body which occupies or uses those premises ... or is in charge thereof, as the case may be"
An "authorised officer" is defined as "any person authorized by the owner of any public premises or any public vehicle to act in terms of the provisions of section 2."

⁶⁹ Section 2 of the Control Access Act provides, in relevant part, that:

Section 2 of the Control of Access Act (Access to public premises and vehicles) provides, in relevant part, as follows:

- (1) *Notwithstanding any rights or obligations to the contrary and irrespective of how those rights or obligations arose or were granted or imposed, the owner of any public premises or any public vehicle may-*
 - (a) *take such steps as he may consider necessary for the safeguarding of those premises...as well as for the protection of the people therein or thereon;*
 - (b) *direct that those premises or that vehicle may only be entered or entered upon in accordance with the provisions of subsection (2)*
- (2) *No person shall without the permission of an authorized officer enter or enter upon any public premises or any public vehicle in respect of which a direction has been issued under subsection (1) (b)."*
- (3)
 - (a) *Where an authorized officer grants permission in terms of subsection (2), he may do so subject to conditions regarding the carrying or displaying of some form of proof that the necessary permission has been granted, the persons on or in the premises or vehicle with whom he may not come into contact, the part of the premises or vehicle which he may not enter upon, the duration of his presence on or in the premises or vehicle, the escorting of the person concerned while he is on or in the premises or vehicle, and such other requirements as he may consider necessary.*
 - (b) *Without prejudice to the provisions of the Trespass Act, 1959 (Act 6 of 1959), an authorized officer may at any time remove any person from any public premises or public vehicle if-*
 - (i) *that person enters or enters upon the premises or vehicle concerned without the permission contemplated in subsection (2);*
 - (ii) *that person refuses or fails to observe a condition contemplated in paragraph (a);*
 - (iii) *the authorized officer considers it necessary for the safeguarding of the premises or vehicle concerned or the contents thereof or for the protection of the people therein or thereon.*



These include offences under the Control Act,⁷⁰ the Trespass Act,⁷¹ and provincial health regulations.⁷²

59 Despite these extensive powers to control access, there is no evidence that the City has issued any instruction to the vigilantes to leave nor is there any evidence that the City has attempted to remove the vigilantes from the clinic premises. Those failures remain entirely unexplained, in the absence of any answering papers from the City.

The national and provincial government's breaches



60 In their answering affidavits, the representatives of the national and provincial health departments— the Minister of Health and Director General and the Gauteng MEC and Head of Department respectively – do not claim to have taken any proactive steps to address the vigilante conduct at the two clinics or

⁷⁰ Section 4 provides that:

“4 Offences
Any person who-
(a) contravenes the provisions of section 2 (2);
(b) for the purposes of this Act makes a statement or furnishes information which is false in a material particular, knowing it to be false;
(c) refuses or fails to observe any condition contemplated in section 2 (3) (a);
(d) holds himself out to be an authorized officer;
(e) obstructs, hinders, resists or interferes with an authorized officer in the performance of his functions,
is guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding two years or to both that fine and that imprisonment.”

⁷¹ Trespass Act 6 of 1959, section 1(1):

“(1) Any person who without the permission-
(a) of the lawful occupier of any land or any building or part of a building; or
(b) of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person,
enters or is upon such land or enters or is in such building or part of a building, shall be guilty of an offence unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building.”

⁷² See, for example, Regulation 3 of the Regulations Relating to Traffic Control and the Prohibition of the Disturbance of the Peace on Hospital Premises, promulgated under the Hospital Ordinance the Hospital Ordinance 14 of 1958.

at other healthcare establishments. Their affidavits are bereft of any condemnation of this xenophobic conduct, let alone words of sympathy for those who are affected.

61 Instead, the national and provincial respondents advance technical objections, seeking to shift all responsibility to the City and the SAPS. They go as far as to accuse the applicants of misjoinder,⁷³ alleging that:

61.1 The national and provincial government are not directly involved in the management and administration of the Yeoville and Roseville Clinics;⁷⁴



61.2 They have no power to intervene in the clinics' affairs, as to do so would allegedly be to "usurp" the City's powers.⁷⁵

61.3 "[T]here was no legal obligation for the provincial health respondents to take steps to secure the safety of persons who visit these clinics".⁷⁶

62 These arguments are ill-conceived, for three primary reasons.

63 First, the provincial and national departments disregard their constitutional obligations under section 7(2), section 41 and section 154 to take reasonable and coordinated action together with the City and SAPS and to offer necessary assistance and support where needed. As the National Police Commissioner emphasised in his letter to the SAHRC in August 2025, the provincial and

⁷³ National Department's AA p 006-11 para 29; Gauteng Department's AA 006-33 para 4.

⁷⁴ National Department's AA p 006-3 para 4.

⁷⁵ National Department's p 006-3 para 6; Gauteng Department's AA p 006-34 para 8.

⁷⁶ Province's AA p 006-39 para 21.

national health departments ought to play a key role in coordinating the response.⁷⁷

64 Second, they further disregard their obligations under the National Health Act. For example:

64.1 The Minister of Health is under a particular obligation under section 3(1)(a) of the Act to “endeavour to protect, promote, improve and maintain the health of the population” and to “determine the policies and measures necessary to protect, promote, improve and maintain the health and well-being of the population”.



64.2 The Director-General is duty-bound under section 21(2)(b) and (l) to “issue, and promote adherence to, norms and standards on health matters” and “co-ordinate health services rendered by the national department with the health services rendered by provinces and provide such additional health services as may be necessary to establish a comprehensive national health system.”

64.3 The MEC “must ensure the implementation of national health policy, norms and standards in his or her province”, in terms of section 25(1) of the Act.

64.4 The Head of Department is further required, under section 25(2) of the Act, to “(f) plan, co-ordinate and monitor health services and must evaluate the rendering of health services”; “(i) plan, manage and develop

⁷⁷ See paras 52 - 53 above.

human resources for the rendering of health services”; “(n) control the quality of all health services and facilities”; and “(q) consult with communities regarding health matters”.

64.5 Furthermore, the service level agreement concluded between the City and the province, in terms of section 32 of the National Health Act, specifically grants the provincial department extensive powers of monitoring and evaluation over the City’s healthcare facilities, including the right to inspect the facilities.⁷⁸



65 Third, the applicants ask for nothing more than that the national and provincial government exercise these obligations through reasonable measures to address vigilantism at the clinics, in a manner that respects the powers and competences of the City. The applicants do not seek an intervention under section 100 or 139 of the Constitution, but reasonable and effective efforts involving coordinated action and support.

66 The national and provincial health departments do not suggest that they have made any effort to engage with the City and SAPS on the conditions at the two clinics nor have they offered any assistance or support. Instead, their answering affidavits express the clear intention to wash their hands of this crisis.

⁷⁸ See, for example, clause 9 p 006-57.

The SAP's breaches

67 The 11th to 15th respondents – the representatives of the SAPS – admit that they are obligated to combat crime and prevent criminal conduct.⁷⁹ They further confirm that *“those who operate as vigilante groups or in silos and prevent people from accessing healthcare services from Yeoville clinic and Rosettenville clinic are commit[ing] a criminal offence and should be arrested.”*⁸⁰

68 However, they argue that their hands are tied in acting against vigilantes. Unless the other respondents or members of the community report criminal activities to the police.⁸¹ That is a shockingly supine attitude in the face of widespread violence and unlawful conduct, that fails to show any appreciation for the SAPS' constitutional and statutory obligations to take proactive measures to prevent and combat criminal activities and their powers to do so.

69 The respondents fail to provide any explanation for the SAPS's failure to take action when unlawful and criminal conduct was committed in their presence. The undisputed evidence is that:

69.1 On 7 July 2025, a Congolese migrant with refugee status attempted to obtain healthcare at Rahima Moosa Hospital, after failing to gain access to Rosettenville Clinic. Unidentified individuals were preventing access to Rahima Moosa Hospital, and the SAPS was present but did not intervene to assist, they did not confront the vigilantes, they did not arrest

⁷⁹ SAPS AA at p 006-15 to 006-16 paras 7-8.

⁸⁰ Id at para 8.

⁸¹ Id at p 006-16 paras 8-10, p 006-19 paras 20-24.

any such individuals, nor did they take any further steps to restore order at the hospital.⁸²

69.2 On 26 September 2025, a member of the third applicant visited Yeoville Clinic and observed that unidentified individuals were preventing migrant patients from entering the clinic. She reported that members of SAPS were present but did nothing to prevent these unidentified individuals from acting in this unlawful manner.⁸³

70 The respondents' also fail to offer any explanation for their inaction in the face of this application, which provides detailed and undisputed evidence of unlawful conduct:



70.1 The SAPS does not deny that vigilantes are continuing to block access to the Yeoville and Rosettenville clinics.

70.2 Apart from two arrests on 7 August 2025 at an unnamed healthcare facility, the SAPS cannot point to any specific action taken against vigilante groups operating at the Yeoville and Rosettenville Clinics.⁸⁴

70.3 The SAPS has failed to provide any written undertaking to address the lawlessness at these clinics, despite the applicants' demands addressed to the National Police Commissioner and Provincial Police Commissioner on 17 and 19 September 2025;

⁸² Annexure MSM6 attached to the applicants' founding affidavit at p 001-96 paras 6-8.

⁸³ SFA at p 001-265 para 15.

⁸⁴ SAPS AA p 006-17 paras 12 – 16.

70.4 The SAPS provides no evidence of proactive action at these clinics after receiving the papers in this urgent application on 6 October 2025; and

70.5 The SAPS offers only the vaguest suggestion of possible future action, suggesting that it is “*currently initiating a plan(s) for the implementation of policy guidelines and instructions*”⁸⁵ without providing any specifics as to what this entails, when it will occur, who will be responsible, and whether it will specifically address the lawlessness at the Yeoville and Rosettenville Clinics.



71 In the circumstances, it is entirely artificial for the SAPS to insist on a formal police report, in circumstances where they have been repeatedly and specifically alerted to this ongoing unlawful conduct. It is also no answer for the SAPS to claim that vulnerable migrants and undocumented persons must formally report these incidents to the SAPS, in circumstances where many legitimately fear further victimisation, arrest, or detention.⁸⁶

72 All of this is further confirmation of a *prima facie* breach of the SAPS's obligations.

Irreparable harm

73 There is a reasonable apprehension of imminent and irreparable ongoing harm if interim relief is refused pending the determination of Part B. The factors that warrant an urgent hearing are equally applicable here.

⁸⁵ SAPS AA p 006-21 para 27.

⁸⁶ RA p 007-20 para 49.

- 74 The evidence of individual patients, summarised in the founding affidavit, reflects that if they do not receive access to the clinics, they will continue to face significant health risks.⁸⁷ The vast majority of the patients who rely on Yeoville and Rosettenville Clinic are poor and do not have meaningful access to other public healthcare establishments or private healthcare.⁸⁸
- 75 As previously emphasised, without access to their patient files and a transfer letter enabling them to be assisted elsewhere, continuity of care is effectively denied.⁸⁹ Even if alternative healthcare facilities are theoretically available, in practice patients face multiple obstacles that make such access at least unrealistic, and likely impossible. These include the distances to other healthcare establishments, the high cost of travel, and the expense of private healthcare – which is unaffordable for the vast majority of affected patients.⁹⁰
- 76 In these circumstances, patients – including children – are at ongoing risk of deteriorating health, illness, and even death. Such harms could not be repaired by any final relief sought in Part B.



Balance of convenience

- 77 The balance of convenience enquiry must be applied cognisant of the normative scheme and democratic principles that underpin the Constitution.⁹¹

⁸⁷ FA pp 001-35 to 001-41 paras 66-74; FA pp 001-45 to 001-48 paras 88-93. The relevant affidavits appear as Annexures MSM3 – 5 pp 001-82 to 001-93 (Yeoville patients) and Annexures MSM 6 – 11 pp 001-94 to 001-118 (Rosettenville patients).

⁸⁸ FA p 001-55 to 001-56 para 129.

⁸⁹ *Id.*

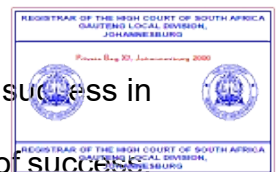
⁹⁰ FA p 001-55 to 001-56 para 129.

⁹¹ *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* [2020] ZACC 10; 2020 (6) SA 325 (CC); 2020 (8) BCLR 916 (CC) at para 40.

78 In this case, the balance of convenience strongly favours the granting of interim relief. If the interim interdict sought by the applicants is not granted, the affected patients will face serious and lasting health impacts.

79 By contrast, the respondents will face no significant negative impacts. The respondents are merely requested to fulfil their statutory and constitutional obligations by restoring safe physical access to the clinics, which patients previously enjoyed before the actions of vigilante groups.

80 This assessment is bolstered by the applicants' strong prospects of success in securing final relief in Part B. The stronger the applicant's prospects of success, the less the need for the balance of convenience to favour the applicant.⁹²



81 This is not a case where the separation of powers concerns highlighted by the Constitutional Court in *OUTA* weigh against the granting of interim relief,⁹³ for the following reasons:

81.1 The applicants do not seek to restrain state power, but instead seek to restore that power by compelling the respondents to take back control of public facilities from private vigilantes.⁹⁴

81.2 Moreover, the “*clearest of cases*” test postulated in *OUTA* is satisfied where, as in this case, “*the harm apprehended by the claimant amounts*

⁹² *Olympic Passenger Services v Ramlagan* 1957 (2) SA 382 (D) at 383C-G; *Cipla Medpro (Pty) Ltd v Aventis Pharma* 2013 (4) SA 579 (SCA) at paras 40, 61.

⁹³ *OUTA* at para 47.

⁹⁴ *Id.*

to a breach of one or more fundamental rights warranted by the Bill of Rights".⁹⁵

No suitable alternative remedy

82 The applicants have no suitable alternative remedy, having repeatedly attempted to engage with the respondents with no result. The non-litigious remedies available to the applicants have not been effective.

83 Interdictory relief against the unidentified and amorphous vigilante groups would not be a suitable alternative remedy, for the following reasons:



83.1 Interdictory relief is permissible only in respect of identifiable individuals who can be linked to specific unlawful conduct.⁹⁶ The applicants are not able to identify the vigilantes operating at the Yeoville and Rosettenville clinics and, even if their identities could be established, they are likely to be replaced by further, unknown individuals.⁹⁷

83.2 Only the respondents have the means and legal authority to demand that the vigilantes identify themselves, and to take effective action to remove them from their premises.

83.3 Moreover, the difficulties in pursuing interdictory relief against vigilante groups are illustrated by this Court's judgment in *Kopanang*.⁹⁸ While the

⁹⁵ *Id.*

⁹⁶ *Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another* (CCT 301/20) [2022] ZACC 7; [2022] 6 BLLR 487 (CC); 2022 (7) BCLR 787 (CC); 2022 (5) SA 18 (CC) (Oak Valley) at paras 26 - 45; *Rhodes University v Student Representative Council of Rhodes University* [2016] ZAECHGHC 141; [2017] 1 All SA 617 (ECG) at paras 132-142.

⁹⁷ FA p 001-57 para 133.

⁹⁸ FA p 001-60 paras 142 – 147. NOM at Annexure MSM 23 p 001-182.

interdictory relief against Operation Dudula is welcome, that order is not binding on other vigilante groups or collections of individuals who may be currently operating at the Yeoville and Rosetenville clinics. The amorphous nature and shifting structure of these groups also defy easy detection and identification of their leaders and members.⁹⁹

84 The potential for criminal charges against these vigilantes is also not an alternative remedy that precludes interdictory relief. As this Court recently confirmed in *Kopanang*,¹⁰⁰ criminal proceedings will rarely, if ever, preclude interdictory relief because criminal proceedings are slow, backward-looking, and are not a remedy in the hands of the victim.¹⁰¹



85 As Adams J further held in *Kopanang*,¹⁰² interdictory relief and future criminal proceedings are complementary, not mutually exclusive. The interdictory relief seeks to restore order, while criminal proceedings against vigilante groups may unfold. It also provides the SAPS with necessary guidance on their obligations.

REMEDY

86 We submit that the applicants are entitled to the interim relief sought in Part A, pending the final determination of Part B.

87 In prayer 2.1 of the order, the applicants seek a mandatory interdict against the first to fifteenth respondents, requiring them to take all reasonable measures to

⁹⁹ FA p 001-61 para 149.

¹⁰⁰ *Kopanang* above n 5 at para 45. See also *Hotz v University of Cape Town* 2017 (2) SA 485 (SCA).

¹⁰¹ *Hotz* id at paras 36 ; 78 at fn 11 citing Rogers J in *Berg River Municipality v Zelpy* 2065 (Pty) Ltd 2013 (4) SA 154 (WCC) at paras 46 - 51:

¹⁰² *Kopanang* above n 5 at para 45.

ensure safe and unhindered access to the Yeoville and Rosettenville clinics. There is nothing in that order that would require the national or provincial departments to impermissibly usurp municipal functions. As is repeatedly emphasised above, reasonable measures necessarily require coordinated measures that are respectful of the constitutional division of functions.

88 In prayers 2.2 and 2.3, the applicants seek orders requiring the respondents, acting collectively and in a coordinated manner, to confront and remove any unauthorised persons hindering access to the clinics and to ensure the provision of adequate numbers of security personnel at the clinics. The City, as owner of the clinics, has the primary statutory power to confront and remove the vigilantes from its facilities. However, this will necessarily require the involvement of the SAPS and the support, assistance and oversight of the other respondents, should the City lack the resources or will to take effective action.



89 Prayers 2.4 and 2.5 are directed at the clinic's facility managers, requiring that they post necessary warnings against vigilantism and that they report all incidents to the SAPS. Further, the interdict sought would direct the SAPS to assist the other respondents in complying with the order.¹⁰³

90 In line with this Court's broad powers to order just and equitable relief in cases where constitutional rights are infringed or threatened,¹⁰⁴ the mandatory interdict sought by the applicants would also include a reporting requirement.

¹⁰³ NOM, Part A p 001-3 prayer 2.

¹⁰⁴ Section 38 and section 172(1)(b) of the Constitution, as discussed *Fose v Minister of Safety and Security* [1997] ZACC 6; 1997 (3) SA 786 (CC) at para 19; *Pheko and others v Ekurhuleni Metropolitan Municipality* [2016] JOL 36302 (CC) at paras 1, 23.

The respondents would be ordered to file a report detailing their compliance with the Court order within 10 days.

- 91 This reporting order is necessitated by the respondents' apparent failure to take any meaningful action to date, coupled with their lack of responsiveness and transparency. The respondents' delays and unseemly blame-shifting in their answering papers do not inspire confidence, warranting closer judicial scrutiny of their efforts to comply.

CONCLUSION



- 92 For these reasons, we submit that the applicants are entitled to the relief sought in Part A of the notice of motion, including the costs of two counsel, on Scale C, to be paid by the respondents opposing this application.
- 93 If the applicants are unsuccessful in any respect, there should be no order of costs against them considering the *Biowatch* principle.¹⁰⁵

CHRIS MCCONNACHIE

RUTH KRÜGER

THAMSANQA MALUSI (PUPIL)

JONATHAN HUNTER-PARSONAGE (PUPIL)

**Applicants' counsel
Chambers, Sandton
7 November 2025**

¹⁰⁵ *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) at paras 21 – 25.