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IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: **2025-078807**

In the matter between:

ECONOMIC FREEDOM FIGHTERS Plaintiff / Applicant / Appellant

and

MINISTER OF FINANCE Defendant / Respondent

Answering Affidavit

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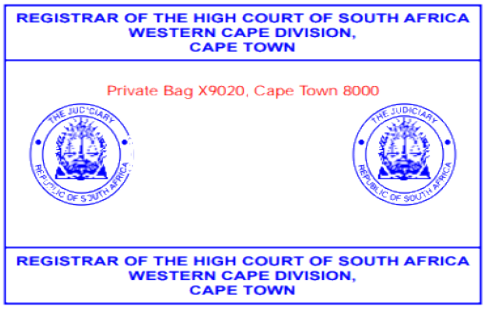

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IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DVISION, CAPE TOWN

Case Number:2025-078807

In the matter between:

ECONOMIC FREEDOM FIGTHERS	Applicant
and	
MINISTER OF FINANCE	First Respondent
COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent
CHAIRPERSON OF THE STANDING COMMITTEE ON FINANCE AND THE SELECT COMMITTEE ON FINANCE	Fifth Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT – PART A
(THE MINISTER OF FINANCE)

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I, the undersigned,

ENOCH GODONGWANA

do hereby make oath and state that:

INTRODUCTION

1. I am the Minister of Finance and the first respondent in this matter. I am also the executive authority of the National Treasury ("**Treasury**"), located at 40 Church Square, Pretoria.

2. Unless otherwise indicated by context, the facts deposed to in this affidavit are within my personal knowledge and are, to the best of my belief, true and correct.

3. I have read the founding affidavit of the applicant, the Economic Freedom Fighters ("**EFF**"), deposed to by The Hon. Omphile Maotwe, MP. The application is without legal merit and falls to be dismissed for the reasons set out below.

4. Where I make legal submissions, I do so on the advice of my legal representatives.

5. I returned to South Africa shortly before the filing of this affidavit, having been abroad on official business for the period 24 May 2025 to 1 June 2025. I got back in the early hours of the morning.

6. Although the application was dated earlier, proper receipt of the full set of papers only occurred on 29 May 2025. Once received, my officials initiated the necessary steps to brief legal representatives and prepare this response.

7. I was formally consulted by officials and my legal team on Sunday, 1 June 2025 at 13h00 in order to settle and finalise this affidavit under severe time pressure.

8. I address the delay in filing further below when dealing with urgency. Given the compressed timelines and the scope of the relief sought, I have confined this affidavit to what is strictly necessary.

9. For that reason, I do not respond to the applicant's rhetorical claims regarding my budgetary decisions being "anti-poor". That language is political. It is not legal argument. I demonstrate below why that framing is both inaccurate and irrelevant.

10. This affidavit is directed at the urgent relief sought in Part A of the notice of motion under Rule 6(12). Where appropriate, I deal with Part B to the extent necessary to explain why interim relief is neither competent nor justifiable.

11. In this affidavit I interchangeably refer to myself in the first person or in my *ex officio* capacity. This appears from the context.

EXECUTIVE SUMMARY – THE APPLICATION RESTS ON QUESTIONABLE PROPOSITIONS OF LAW, FAILS TO MAKE OUT A CASE OR MAKES THE WRONG ONE, AND IS BAD FOR FUTURE BUDGETS

12. The applicant's case is not urgent. But even if urgency were established, which it is not, the application is legally incompetent.

13. It is framed as a judicial review. Whether it purports to rely on PAJA or the principle of legality remains unclear. That lack of clarity is not merely academic. It is dispositive.

14. This application is, at its core, a complaint about the statutory power given to the Minister to increase the fuel levy.

15. But instead of challenging that scheme directly, the applicant sidesteps the real issue and brings review relief that is neither competent nor available.

16. The applicant does not allege irrationality or unlawfulness. It does not plead the infringement of a constitutional right. It invokes abstract constitutional principles without grounding them in any pleaded cause of action.

17. That is not permitted. Where a legislative framework exists, litigants must either use it or challenge it. The applicant does neither.

18. It avoids the statutory architecture, fails to challenge the empowering provision, and bypasses the hurdle of subsidiarity standing in its way.

19. The applicant's approach is not only doctrinally incoherent. It is structurally unsustainable.

20. It asks this Court to displace a lawful executive decision made under a valid Act of Parliament, not because the Act is invalid, but because it prefers a different fiscal process.

21. Our constitutional jurisprudence does not allow that. Courts do not substitute fiscal policy. They assess legality, rationality, and procedural integrity. This case advances no such basis.

22. On its own terms, the application discloses no *prima facie* right, no unlawful conduct, and no reviewable defect.

23. It proceeds on a misreading of section 77 of the Constitution and a disregard of section 48 of the Customs and Excise Act, 91 of 1964 ("**the Act**").

24. That is compounded by the fact that the relief sought cannot be granted within any known category of public law.

25. Even if a valid complaint were made, the remedy would lie in a frontal constitutional challenge, not in setting aside a Gazette notice under a valid statute.

26. The Minister could publish a new notice in the Gazette immediately after the Court ruled in the applicant's favour – either now during Part A or Part B. That conduct would continue to be lawful unless separately challenged each time.

27. There is also the problem that even if the applicant succeeds here, which it ought not to, it has a material non-joinder problem which means that under the *Oudekraal* principle, this relief would be rendered moot anyway.

28. That demonstrates that the applicant has chosen the wrong legal theory and the wrong remedy. That choice is fatal.

29. The applicant's case is also factually untenable. It alleges the decision is anti-poor. But the facts show otherwise.

30. The fuel levy was frozen for three years. The 2025 increase maintains its real value. That restoration funds essential public services, including public transport subsidies through a permissible and lawful mechanism.

31. If the relief sought is granted, the result would be a shortfall of at least R3.5 billion.

32. That would have to be recovered through further borrowing, additional taxes, or painful spending cuts. None of those options is benign. All would affect the poor.

33. The applicant is entitled to its economic views. It is not entitled to force them on the Executive by seeking to disable lawful fiscal instruments through tactical litigation.

34. What it seeks is not judicial oversight, but judicial endorsement of political substitution.

35. The role of this Court is not to adjudicate ideological disputes over tax policy. That is the domain of Parliament. The applicant has access to that forum. It chooses not to use it.

36. It claims to defend parliamentary sovereignty, yet asks this Court to prevent Parliament from fulfilling its role under section 48(6) of the Act.

37. That section expressly contemplates legislative oversight and potential rejection of the fuel levy notice.

38. The application thus undermines the very system of democratic accountability it claims to defend.

39. That context matters. Courts are constitutionally obliged to show deference in fiscal matters, especially where Parliament retains the power to correct or override the Executive's action.

40. The Constitutional Court has repeatedly held that interim relief against public finance measures is exceptional and must be refused unless clearly justified. No such case is made here.

41. The applicant has also delayed in launching this application. It waited five days before raising a complaint. But more than this. The fuel levy has been raised 7 times in the 10 years that the applicant has been in Parliament.

42. Not once has the applicant complained about, or done anything to undermine, the extant mechanisms through which the fuel duty can be increased.

43. That delay undermines its claim of urgency – the truth is that the applicant only woke up to this issue now and seeks to use it for political purposes.

44. The applicant has pursued similar strategies before.

45. This case appears to form part of a broader attempt to litigate around the Budget as a whole and prevent its passage, with a view to imposing the applicant's will on the Executive and Parliament through judicial decree.

46. Unlike other cases, this one is clearly not a proper use of judicial process. Courts are not instruments for dismantling fiscal architecture by instalment.

47. The Constitution entrusts revenue policy to the Executive and oversight to Parliament. It does not authorise judicial intervention on ideological grounds.

48. The application also fails to meet any of the recognised requirements for interim relief.

49. There is *no prima facie* right, no irreparable harm, no balance of convenience, and a clear alternative remedy in the form of parliamentary process.

50. The ironies are obvious. The applicant claims to act in defence of the poor, but its relief would harm them. It claims to protect Parliament, but it seeks to override it. It claims to vindicate constitutional principle, but it avoids every mechanism the Constitution provides.

51. Respectfully, this is not a clear case. It is a case without legal merit, factual coherence, or doctrinal integrity. It should be dismissed.

52. It should also attract a punitive costs order, including the costs of two counsel. The application is not only without merit. It is an abuse of process, pursued in the full knowledge that the relief sought is not available.

53. I turn now to the applicant's pleaded case and explain in more detail why it is unsustainable.

THE PARTIES

54. The parties are as described in the founding affidavit. I am cited as the first respondent in my capacity as Minister of Finance. The second to fifth respondents have been joined on the basis of their alleged interest. No substantive relief is sought against them.

THE STRUCTURE OF THIS AFFIDAVIT

55. The remainder of this affidavit is structured as follows:

55.1. First, I set out material facts. In this I demonstrate the applicant's delay relating to its historical conduct, and also illustrate how it has unfairly and prejudicially truncated the timelines in these proceedings.

55.2. Second, I set out the insurmountable legal problems with the applicant's cause of action and relief. These are not technical issues but speak to the fundamental defects running through the applicant's case in both Parts A and B, and which not only renders its relief incompetent, but also creates a basis for the application to be dismissed on its merits (assuming the Court gets there). This includes material non-joinder, the confusion regarding its review, its legality review is incompetent, and crucially in a case like this: the separation of powers. There is, if the applicant's argument is correct, the problem that this matter may actually be one that falls in within the purview of the Constitutional Court.

55.3. Third, I set out the defences on the merits. What those defences illustrate is that even if the application can convince this Court that the

insurmountable problems are surmountable, the merits of this case are against it. That is because it misreads both the Constitution and the Money Bills Act it relies on (defined more fully below), it misunderstands the Budget as a policy statement and its relationship with a variety of other financial instruments that give effect to it, that Parliament is very much a part of the legislative process and retains its oversight powers.

55.4. Fourth, I demonstrate why the applicant cannot get an interdict, not least because it would breach the separation of powers. In demonstrating that it has not shown a prima facie right, that it will suffer irreparable harm, that the balance of convenience is against it, and that there is an alternative remedy available (in Parliament), the interdict should fail.

55.5. Fifth, I evidence that this application is not urgent having regard to the applicant's conduct in the last 10 years when it comes to fuel levy increases. The fact that the applicant on a previous occasion egged the Minister on to cut the fuel levy even further than was being done at the time means the applicant not only embraced the constitutional and legislative architecture about which it now complains, it also knew how this mechanism. The timing of this application, as I suggest below, is being brought for nakedly political objectives dressed up as constitutional concern.

55.6. Sixth, I respond seriatim, where necessary.

55.7. Seventh, I address why this is a hopeless case in a legal sense and also constitutes an abuse of process, falling outside the ordinary protection of no costs in constitutional litigation.

55.8. Lastly, I urge the Court in my conclusion to not grant the relief sought because of the long-term and far-reaching negative consequences that it will have for the Republic.

56. I turn to these topics below.

MATERIAL FACTS RELATED TO THIS APPLICATION

57. What follows is a summary of the material facts giving rise to this application and relevant to the assessment of urgency, service, and procedural fairness.

58. On 21 May 2025, I delivered the 2025 Budget Speech.

59. Among the fiscal measures announced was an increase to the general fuel levy: 16 cents per litre on petrol and 15 cents per litre on diesel. The present application is brought in response to that announcement.

60. Five days later, on 26 May 2025 at 21h00, the applicant delivered a final letter of demand to the Ministry Registry, the Director-General's Registry, and senior Treasury officials.

61. The letter was signed by The Hon. Omphile Maotwe MP and demanded that I withdraw the proposed fuel levy increase within 48 hours. Earlier versions of the letter had been withdrawn earlier that day.

62. A copy of the email correspondence is annexed as "EG1".

63. On 28 May 2025 at 22h28, the applicant's attorneys circulated an unsigned draft of its urgent application to a broad list of recipients, including the Ministry, the Director-General, SARS, Parliament, and legal representatives for other parties.

64. The version circulated was neither issued nor court-stamped. It had not been filed on Court Online and did not constitute formal service.

65. Formal filing occurred the following morning, on 29 May 2025 at 07h38, via the Court Online platform. This marked the first point at which the application became capable of valid service.

66. From approximately 07h48 to 08h32 on 29 May 2025, the Court Online-stamped version of the application was circulated to respondents by email.

67. At 13h10 on the same day, the Ministry's attorneys of record (the Pretoria Office of the State Attorney) received the Court Online-stamped version directly from the applicant's attorneys.

68. This constitutes the first point of formal service on the Ministry. The correspondence is annexed as "EG2".

69. Shortly thereafter, at 14h15, the Pretoria State Attorney transmitted the application to Treasury Legal Services. The Cape Town State Attorney, who later assumed the matter, had also received the papers and forwarded them to Treasury at 13h51 that same day.

70. The correspondence is annexed as "EG3".

71. On 31 May 2025, the State Attorney responded to the applicant's attorneys in writing. The letter recorded, among other matters, that:

71.1. The unsigned draft sent on 28 May 2025 did not constitute service.

71.2. Formal service was effected only at 13h10 on 29 May 2025 through the Ministry's attorney.

71.3. No service occurred through Court Online or Case Lines functionalities.

71.4. No agreement was reached on informal service, and no directive was sought from the Court.

71.5. I, together with the Director-General, was abroad at the relevant time. Consultation with counsel only took place on the evening of 30 May 2025, and counsel was appointed on that date.

71.6. The applicant's deadline of 17h00 on 30 May 2025 afforded just over one business day to respond.

71.7. The answering affidavit would be filed by midday on 2 June 2025, without prejudice.

71.8. While formal service via the Court Online-stamped version was accepted, the letter confirmed that it only occurred at 13h10 on 29 May 2025 and that the deadline imposed by the applicant was unreasonably compressed.

72. The record demonstrates that:

72.1. Five full days passed between the Budget Speech and the letter of demand.

72.2. A further two days elapsed before any version of the application was circulated.

72.3. Valid service only occurred after 07h38 on 29 May 2025.

72.4. Formal service on the Ministry through its attorneys took place at 13h10 on the same day.

72.5. The applicant imposed a response deadline of 17h00 the next day.

72.6. I am advised that, in the absence of agreement or directive, service requires more than circulation of an unsigned draft.

72.7. None of the procedural requirements were followed. The response timeline imposed was neither realistic nor fair.

73. The result was compressed litigation under urgent conditions, where key Treasury officials were out of the country, and legal counsel had to be briefed and consulted within 24 hours of appointment.

74. That procedural history is not merely relevant to urgency. It reflects a pattern of delay by the applicant, followed by a deliberate attempt to manufacture urgency at the point of execution.

75. This is not the first time the general fuel levy has been increased. It has occurred repeatedly, including seven times over the past ten years, while the applicant has held seats in Parliament.

76. At no point during that period has the applicant objected to the statutory mechanism through which such increases are implemented, nor has it taken steps to challenge the legal framework it now seeks to displace.

77. That long-standing acquiescence, coupled with the procedural conduct detailed above, must count against the applicant.

78. In fact, in 2022, and when the previous Minister of Finance sought to decrease the fuel levy by implementing a cut to fuel duty, the applicant did not object to the constitutional and legislative architecture.

79. Instead, the applicant (through its then national spokesperson, Ms Leigh-Ann Mathys) asked for an immediate and <u>further</u> lowering of fuel prices.

80. The effect of this conduct (which the applicant was using as a political issue to campaign on at the time), in criticising the Minister for not going further, shows it supported the same constitutional and legislative architecture it now objects to when it was a cut – yet now it litigates when the levy is being restored.

81. This is highly relevant because apart from demonstrating that this particular applicant approbates and reprobates about what it now says is a serious constitutional defect, but also that this applicant embraced it when it was applied in the context of a cut.

82. It confirms that this application is not a principled response to a novel constitutional concern, but a belated and opportunistic attempt to use litigation for political effect.

83. On 1 June 2025, the Minister approved the amendment of Part 5A of Schedule No. 1 and Part 3 of Schedule No. 6 to the Act, and signed the requisite Notices to be published in the Government Gazette in due course.

84. The signed Notices are annexed as "EG4".

THE INCURABLE PROBLEMS WITH THE EFF'S CASE

85. The applicant's case suffers from a series of structural, doctrinal, and procedural defects.

86. None of them is curable. Each, on its own, would warrant the dismissal of the application. Taken together, they reveal a case brought in the wrong form, under the wrong principles, seeking the wrong relief.

87. In what follows, I deal with these problems in turn.

FIRST PROBLEM: THE MATERIAL NON-JOINDER OF THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY ("DMRE")

88. The applicant's failure to join the Department of Mineral Resources and Energy ("**DMRE**") is, in itself, a fatal defect in the application.

89. The DMRE plays a direct and indispensable role in implementing the fuel price adjustment, based in part on the levy increase gazetted by Treasury.

90. The applicant seeks relief which, if granted, would directly affect the DMRE's ongoing regulatory functions.

91. The process is as follows: once the levy adjustment is gazetted, the DMRE separately undertakes its own administrative action processes to apply that

adjustment to the regulated price of petrol, which they determine and publish in the monthly fuel price adjustment.

92. This occurs, for example, by the Minister for Mineral Resources and Energy announcing a new set of prices by a gazette notice in terms of section 2(1)(c) of the Petroleum Products Act, 120 of 1977, by effecting an amendment to the Regulations affecting petroleum products.

93. That process relies on a variety of inputs, of which the general fuel levy is only one.

94. The DMRE's determination triggers commercial and logistical consequences across the energy value chain. The applicant does not challenge that process, nor has it cited the DMRE as a party to these proceedings.

95. This omission is not merely procedural. It has substantive consequences.

96. Even if this Court were to grant relief against Treasury, the DMRE's administrative decision to implement the fuel price, based in part on the gazetted levy, would remain intact.

97. That decision would stand and not be automatically undone even if the applicant won its interdict application against the DMRE.

98. Treasury has no authority to instruct the DMRE to reverse or suspend its separate exercise of the DMRE's powers in terms of legislation that regulates the DMRE's powers and functions.

99. If the applicant seeks to interdict this fuel levy by practically stopping the price of fuel rising at the petrol pumps, then the relief it seeks fails to do this and the

consequence is that its interdict is defective, not only for non-joinder reasons but should also be refused because it would have no practical effect in respect of those prices.

100. The consequence is clear: the applicant seeks relief that is not capable of giving effect to the outcome it seeks. The application therefore fails on the ground of material non-joinder.

101. Moreover, this creates a layered legal problem of the kind identified in Oudekraal.

102. Where a downstream administrative act has already been taken in reliance on an upstream measure, a Reviewing Court must ask whether the invalidation of the first act would have legal consequences on the second.

103. Unless the second act is also challenged and set aside, it stands. Although this is not the Review Court but the Interdict Court, that position applies with even greater force here.

104. Unless the DMRE's decision is separately interdicted and/or reviewed, it will continue to operate, despite any potential relief against Treasury.

105. The applicant asks this Court to unwind a regulatory chain without naming or serving the functionary responsible for one of its key links and who, by fact and law, has a substantial interest in the outcome here.

106. That omission renders the relief incoherent and any order unenforceable.

107. This is not a technical objection. It is a jurisdictional failure. The DMRE has a direct and substantial interest in this litigation. The matter cannot be fairly or fully adjudicated in its absence.

108. The application should fail on this ground alone, not least because the applicant's attempts to stop the price increase at the fuel pumps is not contingent on the relief sought against me and will in any event happen because of its failure.

SECOND PROBLEM: REVIEW IS LEGALLY AND CONCEPTUALLY DEFECTIVE

109. The applicant has chosen to bring a review. That is the legal vehicle it has selected to challenge the decision in Part B. That choice has consequences.

110. To succeed now, even at the interim stage, it must demonstrate a *prima facie* right grounded in an arguable review case. It does not.

111. It pleads as though this is a review under the Promotion of Administrative Justice Act, 3 of 2000 ("**PAJA**"), while simultaneously invoking the language of legality.

112. But it does not identify the source of power it seeks to review, nor the grounds on which the exercise of that power is alleged to be unlawful. The applicant does not attack the Act.

113. To the extent it does, it says it is the Constitution. That approach is not compatible with the principles that govern legality review, nor does the applicant properly frame its case as a frontal constitutional challenge.

114. Despite its pleaded case, the choice of relief makes it clear that is not the case here.

115. The result is doctrinal confusion and legal incoherence. These are not abstract distinctions. It is settled that all public power is subject to constitutional review, but that not all public power is administrative action.

116. The two principal modalities (legality and PAJA) rest on different legal foundations and serve distinct purposes.

116.1. PAJA applies to administrative action as defined, and permits challenge on broader grounds, including procedural fairness and unreasonableness.

116.2. Legality applies to all public power, but its standard is narrower: lawfulness and rationality.

117. The applicant does not plead within either framework.

117.1. It makes no attempt to identify the conduct as administrative action or show that it falls within PAJA's definition.

117.2. It does not allege procedural unfairness, unlawfulness, or any factually supported ground of review.

117.3. Nor does it plead a rationality challenge with reference to the standard that governs it.

118. The Gazette notice issued under section 48 of the Act is not administrative action. It is an executive fiscal instrument, issued pursuant to statutory delegation, and forms part of a broader budgetary process.

119. It is subject to parliamentary override under section 48(6). It does not determine rights of the public in general per se, and it does not have the kind of direct, external legal effect that attracts PAJA review.

120. The applicant does not allege otherwise. However, even if I am wrong on this score, because of the parliamentary override which will finalise the conduct challenged here, this application is premature and review cannot be triggered.

121. Even under legality, the applicant does not properly plead a basis for review.

121.1. At its highest, the case amounts to an assertion that the decision was made contrary to section 77 of the Constitution.

121.2. That assertion is legally flawed and factually thin. It does not grapple with the existence of section 48 or the mechanism it creates.

121.3. The applicant wants a different system. It does not show that the existing one is unlawful.

122. Assuming the applicant had properly pleaded a review, the only two grounds available would be rationality and, under PAJA, reasonableness. Neither is made out.

122.1. Rationality requires a connection between the purpose of the power and the means employed to give effect to it. The Gazette notice satisfies that test. It is aimed at restoring the real value of the fuel levy

after three years of fiscal restraint. It forms part of the broader fiscal framework announced in the Budget. It is neither arbitrary nor misaligned with its statutory and fiscal purpose.

122.2. Reasonableness, had it been properly pleaded, requires more. It asks whether the decision falls within a range of lawful and permissible options available to a reasonable decision-maker in the circumstances. That standard too is met by the Minister. The fuel levy is a well-established and lawful mechanism. It was used here within the bounds of its authorising statute, and in a manner that balances fiscal needs with macroeconomic realities. The applicant does not challenge that logic. It simply disagrees with the choice.

123. The reason these standards are not met is because the applicant does not engage them. It does not say why the decision is irrational. It does not say why it is unreasonable. It does not even acknowledge the test. It substitutes ideological disagreement for legal argument.

124. Without conceding that the applicant has made out a review case, I reserve my right to challenge whether the impugned conduct constitutes administrative action under PAJA, or is otherwise subject to legality review.

125. The publication of a notice under section 48 of the Act does not bear the hallmarks of administrative action as recognised in our law.

126. It does not produce a direct, external legal effect in the sense contemplated by *Grey's Marine*,[1] nor does it operate within a structured framework of objectively determinable legal criteria against which lawfulness can be assessed, as explained in *Bhugwan*.[2]

127. In substance, it is a provisional fiscal instrument subject to legislative override.

128. On that basis alone, the review, whether under PAJA, legality, or as a disguised constitutional challenge, rests on no objectively reviewable standard.

129. It is a challenge brought in the air, and even at its highest, it is bad in law and in fact.

130. But the approach contended for by the applicant also approach ignores the discipline of deference.

131. Courts do not substitute fiscal policy. They do not impose preferred outcomes by litigants. The existence of other options is not enough to show that the one selected is unlawful.

132. The applicant pleads a review but fails to make it out. That failure infects both Part B and Part A.

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1 *Greys Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* (347/2004) [2005] ZASCA 43; [2005] 3 All SA 33 (SCA); 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA) (13 May 2005)

2 *Bhugwan v JSE Limited* (08/32943) [2009] ZAGPJHC 33; 2010 (3) SA 335 (GSJ) 2010 (3) SA 335 (GSJ) (31 July 2009).

133. Without reviewable conduct, without a legal ground, and without factual content to support either, there is no *prima facie* right. And without that, interim relief cannot be granted.

THIRD PROBLEM: THE SO-CALLED LEGALITY REVIEW MUST BE NON-SUITED

134. Even if the applicant's case is understood to rest on the principle of legality, it remains legally unsustainable.

135. The application does not satisfy the minimum requirements for a legality review and fails to engage the constitutional structure that governs such claims.

136. Two core problems arise: first, the applicant does not bring a frontal challenge to the empowering legislation; second, it disregards the doctrine of subsidiarity altogether.

137. Each flaw is dispositive. I deal with them in turn.

No frontal challenge

138. Even if the applicant relies on legality, as appears from its affidavit, the review remains defective.

139. A legality review requires the Court to assess whether the exercise of public power has a lawful source, whether the means employed are rationally connected to a legitimate purpose, and whether the exercise of power respects constitutional limits.

140. The Gazette is issued under section 48 of the Act. That provision is not challenged. The applicant does not plead that the statute is unconstitutional.

It does not ask for it to be declared invalid. Nor does it allege that section 48 does not authorise the Minister's conduct.

141. Instead, the applicant asserts that because the levy was announced in the Budget, it must have been introduced through a Money Bill under section 77 of the Constitution. That argument is flawed.

142. Section 77 regulates Bills. It does not regulate executive action taken under an existing statute or a notice issued thereunder. The Budget Speech is not a legislative act. It is policy expression.

143. Section 48 is one of the operative instruments that gives effect to the Budget. It authorises interim adjustments, subject to parliamentary oversight. The fuel levy falls within this framework.

144. The Constitution draws a distinction between legislative fiscal instruments and executive powers exercised within a defined statutory framework.

145. The applicant collapses that distinction. It treats all revenue-raising as requiring legislative origin, regardless of the statutory context. That is not the law.

146. The model under section 48 has been accepted by the courts and reaffirmed in practice over many years.

147. It is limited in scope, requires Gazette publication, and is subject to override by Parliament within a defined timeframe.

148. The existence of parliamentary override confirms that the measure is not final and legislative, but conditional and executive.

149. Where a statute authorises conduct and the statute is not challenged, a legality review cannot succeed. That is precisely the principle laid down by the Constitutional Court in cases involving executive action under statute.

150. Courts do not review such action as unlawful merely because it is contested on policy grounds. If the law is not attacked, and the conduct is within the scope of the law, then the exercise of power is presumptively lawful.

151. That is the position here. The applicant does not challenge the statutory foundation. It does not claim the power was exceeded. It simply disagrees with how the power was used.

152. That is not a basis for a legality review. It is not a basis for interim relief.

153. Because the applicant has pleaded a review in Part B, and seeks to interdict its effects in Part A, it must show that there is at least an arguable case for the review. There is none.

154. The foundational statute is not under challenge, and the relief sought cannot be sustained without such a challenge. Even if the applicant amended its case in future, that cannot assist it now. On the case pleaded, Part A must fail.

Subsidiarity

155. The applicant also fails to engage the subsidiarity principle. That failure is fatal.

156. Where legislation exists to give effect to a constitutional right or structure, a litigant must either rely on that legislation or challenge its constitutionality.

157. The Constitution does not permit direct reliance on its provisions where a legislative framework is already in place.

158. The applicant claims that the Minister's conduct offends section 77 of the Constitution. But it does not explain how, or why, the existing statutory framework under section 48 fails to comply with that provision.

159. It does not engage the structure of section 48. It does not address its terms. It does not allege inconsistency. It does not plead invalidity.

160. Instead, it asks the Court to bypass the statute and engage directly with the Constitution. That is impermissible.

161. Constitutional review must proceed through or against legislation enacted to give effect to the relevant function. That is the essence of subsidiarity.

162. The failure to follow that structure renders the case procedurally and conceptually flawed.

163. The Constitution does not operate in the abstract. It operates through laws. Where those laws are on the books, they cannot be ignored because a litigant prefers different ones. That is what the applicant seeks to do here.

164. Once again, that failure means the applicant cannot succeed in Part B. And because its interim relief in Part A depends on showing a prima facie right rooted in an arguable review, that relief must fall with it.

FOURTH PROBLEM: SEPARATION OF POWERS

165. This application does not merely fail on its own terms. It draws the Court into institutional terrain that the Constitution assigns elsewhere.

166. By framing a fiscal dispute as a constitutional one, and by seeking relief that overrides both Executive discretion and pending parliamentary oversight, the applicant places the Court at the centre of a political and policy debate it is neither empowered nor equipped to resolve.

167. The result is a fundamental violation of the separation of powers. I address that violation across five interrelated topics set out below.

The Executive's constitutional role cannot be usurped by the Courts by the EFF's invitation

168. The Minister of Finance is the constitutional custodian of fiscal policy and the architecture through which it is implemented. This includes measures such as the fuel levy.

169. That function lies within the exclusive domain of the Executive and may not be second-guessed by the Judiciary because a litigant finds the measure politically unpalatable.

170. The applicant attempts to reframe a discretionary fiscal choice (made under valid statutory authority) as a constitutional wrong, inviting the Court to substitute its own assessment of what a fair or just revenue-raising measure might be. That framing is constitutionally flawed.

171. There is no justifiable "minimum core" socio-economic entitlement to fuel pricing that the Court is empowered to enforce.

172. There is no constitutional duty on the Minister to adopt the applicant's preferred macroeconomic model.

173. And there is no legal defect in increasing the fuel levy after three years of suspension. (I hasten to add that the adjustment is in line with inflation and not an increase in a punitive sense as the applicant seems to suggest)

174. A challenge that seeks to invalidate such measures by alleging they are "anti-poor" falls outside the reach of judicial review and would require the Court to make evaluative policy judgments it is neither designed nor permitted to do.

175. As an aside, and during consultations about the Budget, other stakeholders suggested that the fuel levy should be increased, and by even more than the increase at play here.

176. That demonstrates why the Court must be careful to take the applicant's invitation to stop/suspend the lawful execution of its mandate, and eventually invalidate it.

177. By its impact on the funding mechanisms for the Budget available to the Minister, which the applicant seems keen to remove by means of judicial review, the Court is not only impacting the procedural options available to the Minister, it is also shaping the substance.

178. That is not an ideal, and indeed in the Constitutional Court's own words, place for Courts to occupy.

The EFF's relief undermines Parliament's legislative and oversight role

179. The applicant's argument rests on the flawed premise that the Court should act now, before Parliament has exercised its oversight role under section 48(6) of the Act.

180. In doing so, it seeks to sideline Parliament, not empower it.

181. Section 48(6) provides for a post-promulgation override by Parliament. That means the measure challenged here (namely, the Minister's Gazette notice) is designed to operate subject to parliamentary approval, amendment, or rejection.

182. The 2025 version of the Tax Laws Amendment Bill gives full expression to that process.

183. Granting interim relief now would disable Parliament's oversight before it has exercised its powers. This is a paradigmatic breach of the separation of powers.

184. Parliament is entitled to speak first on matters of fiscal design and only thereafter, if constitutional principles have been violated, may courts intervene.

185. The applicant does the opposite: it seeks judicial intervention before legislative accountability has run its course. And it is trite that none of the exceptional circumstances that apply to pre-enactment challenges apply here, nor have they been cited by the applicant.

The EFF has an *OUTA* Problem

186. The applicant relies on *OUTA*,[3] but that reliance is misplaced.

187. In OUTA, the Constitutional Court overturned the very type of interim interdict granted here: a High Court order halting a national infrastructure and revenue programme absent any constitutional challenge to the enabling statute.

188. The Court held that, unless a law is impugned, Courts should not lightly intrude on executive powers in fiscal matters.

189. The Executive must be allowed to fulfil its statutory and budgetary responsibilities.

190. Judicial interference is only warranted in the clearest of cases, where there is no other remedy and the harm is both imminent and irreparable.

191. None of those criteria are met here. The enabling law is not challenged. The applicant's harm is ideological. The matter is pending before Parliament.

192. And the interdict would arrest a revenue measure without establishing that it is unlawful.

193. It is ironic that the applicant invokes OUTA when its case falls squarely within the category of constitutional harm that OUTA warns against.

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3 *National Treasury v Opposition to Urban Tolling Alliance* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (OUTA).

194. Respectfully, this High Court must avoid the error that the High Court in OUTA made, which the Constitutional Court reversed. This case presents even fewer constitutional merits than that one.

The EFF also have a *Gordhan* problem

195. The applicant cannot salvage its claim by relying on suspension instead of interdict.

196. The Constitutional Court in *EFF v Gordhan*,[4] made clear that suspension under section 172(1)(b) of the Constitution is granted on a just and equitable basis, not as a fallback when the interdict test fails.

197. A suspension order cannot be used to bypass the fundamental defect in the underlying challenge.

198. Here, the applicant has not demonstrated any breach of constitutional fidelity or any unlawfulness requiring correction. It simply prefers another process.

199. In *Gordhan*, the Court was at pains to distinguish suspension from interim interdicts, noting that even suspension requires a credible *prima facie* case, demonstrable prejudice, and factual justification.

200. The applicant does not meet any of those standards. Its legal theory is undeveloped, its remedy is unavailable, and its urgency is manufactured. A suspension order would not cure those defects.

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4 *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another V Gordhan And Others* 2020 (6) SA 325 (CC)

The EFF's interpretation of Section 77 creates an exclusive jurisdiction problem

201. The applicant argues that the measure ought to have been passed as a Money Bill under section 77 of the Constitution. That is wrong. But if it were right, their case belongs in the Constitutional Court.

202. Section 77(1) governs Bills – not executive action under existing statutes.

203. Its operation depends on section 75, which sets out the parliamentary procedure.

204. Only Parliament may adopt such a Bill.

205. If, as the applicant claims, this power is reserved for Parliament, then it is Parliament's constitutional role, not the Minister's, that has been breached.

206. In that event, the exclusive jurisdiction of the Constitutional Court is triggered.

207. A challenge that says Parliament improperly delegated its taxing authority, or that its exclusive constitutional power was usurped by the Executive, is a challenge to Parliament's failure to fulfil a constitutional obligation.

208. That falls within section 167(4)(e) of the Constitution and can only be determined by the Constitutional Court.

209. Yet the applicant has come to this Court. That choice only makes sense if the applicant does not seriously contend that section 77 is violated.

210. But if it concedes that point, its entire case collapses. If it insists on that point, this Court lacks jurisdiction to hear it. Either way, the claim is legally doomed.

THE MINISTER'S DEFENCES ON THE MERITS SQUARELY ANSWER THE APPLICATION

211. Even if the applicant had surmounted the procedural and doctrinal obstacles set out above, which it has not, its case would still fail on the merits.

212. The fuel levy adjustment is a lawful and constitutionally compliant exercise of delegated Executive authority.

213. It is rationally connected to its fiscal purpose, proportionate in effect, and embedded within an ongoing parliamentary process that preserves legislative oversight.

214. The applicant's reliance on the Money Bills framework is misplaced, both in law and in fact.

215. I deal with each of these aspects in turn. The defences here are, understandably, thin because the applicant's case on the merits is, with respect, concomitantly weak.

216. Suffice it to say, at its highest, what I set out below despatches with the applicant's relief.

The structure of the Budget and the role of the fuel levy

217. The annual Budget is a macroeconomic and fiscal planning instrument. It is not, in and of itself, law.

218. It reflects policy choices, revenue estimates, and anticipated spending. The instruments used to give effect to those proposals are sourced in existing legislation and follow statutory paths.

219. Within this structure, the fuel levy plays a particular role. It is not a new tax. It is a long-standing duty imposed under the Act, mentioned above.

220. The Minister of Finance is empowered under section 48(1) to amend Schedule 1 to the Act by notice in the Gazette. This is not an open-ended delegation. It is time-bound and structured.

221. Crucially, section 48(6) ensures parliamentary control. It is standard practice when this happens to, for example, have such a continuation clause in the annual Tax Laws Amendment Bill which is a mechanism through which the Budget is effected.

222. Any amendment to the Schedule lapses unless Parliament enacts a law to confirm or substitute it.

223. This is the mechanism by which the Minister's action in publishing the notice is checked. It is not a unilateral act. It is the beginning of a legislative override process.

224. There has been no challenge to this framework. The constitutionality of this model has been affirmed, most recently by the Constitutional Court in *Nu*

Africa,[5] which confirmed that section 48 is a valid form of subordinate fiscal law-making, subject to legislative oversight.

225. That is the regime under which this matter falls.

226. Unless and until the Act is struck down, the Minister is bound to apply it. That is what occurred here. The adjustment was announced as a matter of fiscal policy in the Budget, but lawfully implemented through the section 48 process.

227. It was not introduced by a Bill, and there is no legal requirement that it must be.

Rational and reasonable use of a lawful fiscal tool

228. The fuel levy has been a feature of South Africa's tax architecture for decades. It has been adjusted on multiple occasions in the past ten years. The applicant has never challenged this practice before.

229. For the past three years, the levy was frozen. The 2025 adjustment represents an adjustment to maintain the real value of the levy. It does not create a new tax instrument. It restores an existing one.

230. The amount at stake is material. R3.5 billion in revenue is expected. This money funds municipalities, including for public transport, and other essential expenditure. If this relief is granted, that amount becomes a shortfall.

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5 *Nu Africa Duty Free Shops (Pty) Ltd v Minister of Finance and Others* (CCT 29/22; CCT 57/22; CCT 58/22) [2023] ZACC 31; 2023 (12) BCLR 1419 (CC); 2024 (1) SA 567 (CC) (3 October 2023).

231. That shortfall amount must be recovered because the current Budget (of which 3 months of the relevant financial year have passed) assumes that amount is available within the Government's planned overall public expenditure.

232. The practical options are cuts to services, increased borrowing, or raising alternative taxes that are unsustainable and may, if implemented, cause further difficulties like capital flight.

233. Those options are regressive because it threatens the overall sustainability of the Budget which, in its present form, is aggressively pro-poor.

234. From a legal perspective, none of this is determinative. It simply shows that the applicant's attack on the measure is not supported by facts.

235. The adjustment has a clear statutory basis. It serves a legitimate fiscal purpose. It falls within the range of rational and reasonable options available to the Minister.

236. A Court does not substitute its view for that of the Executive. It does not require the "best" policy choice. It requires a lawful and rational one. That standard is met.

237. No irrationality is pleaded. No evidence is offered to show that the choice was arbitrary, disproportionate, or incoherent. Ideological disagreement does not meet the threshold.

The parliamentary process is ongoing

238. The Gazette notice is not the final act in this fiscal measure. Under section 48(6), the amendment will lapse unless confirmed by Parliament. This mechanism is not symbolic. It is legally effective.

239. In *Nu Africa*, the Constitutional Court held that this form of delegation is not unlawful. It is not an abdication of legislative authority. It is a structure designed for fiscal responsiveness, subject to full parliamentary scrutiny.

240. In that case, the Court made clear that a provisional amendment of a tax Schedule, followed by ratification or rejection by Parliament, is constitutionally permissible.

241. The Minister cannot make permanent law. That power remains with Parliament. What the applicant wants is to stop this process before it unfolds.

242. That is the clearest intrusion into the separation of powers. Parliament is seized with the matter. The Taxation Laws Amendment Bill, tabled annually, is the legislative vehicle through which it will exercise its control.

243. This Court is being asked to interrupt that process, not because the law is unconstitutional, but because the applicant prefers that Parliament not have the opportunity to act.

244. That request should be refused.

The Money Bills Act does not apply

245. The applicant invokes the Money Bills Amendment Procedure and Related Matters Act, 9 of 2009 ("**Money Bills Act**"). It says that because the levy was announced in the Budget, it must be implemented through a section 77 Bill.

246. This is wrong. The Money Bills Act governs how Parliament considers and amends national budget instruments.

247. It does not apply to administrative or executive action taken in terms of other valid statutes. It is directed at the legislative process, not the exercise of pre-existing delegated powers.

248. Section 7(2)(d) of the Money Bills Act obliges the Minister to announce "*other revenue proposals*" in the Budget. The fuel levy falls within that phrase.

249. The Money Bills Act thus anticipates that not all revenue measures will be introduced through a Money Bill.

250. Section 77(1) of the Constitution is also limited. It applies to "Bills" that impose taxes, appropriations, or change national revenue structures. A Gazette notice under a valid statute is not a Bill. Section 77 does not apply.

251. If the applicant believes that this violates the Constitution, its recourse is to challenge the Act. It does not.

252. The relief sought simply ignores the statutory scheme in favour of an incorrect constitutional interpretation. That is not legally competent. It also triggers subsidiarity concerns that have been addressed elsewhere.

253. In sum: the Act permits the Minister to act. I have acted within that framework. Parliament retains oversight. The mechanism is lawful. The measure is rational.

254. The relief sought undermines the constitutional structure and offends established principles of public law.

THE INTERDICT CANNOT BE GRANTED

255. For all the reasons set out above, the applicant is not entitled to interim relief.

256. Its case is procedurally defective, doctrinally incoherent, and fatally flawed on the merits.

257. It advances no arguable cause of action, identifies no reviewable conduct, and fails to engage the applicable legal framework. The application must therefore fail in limine.

258. But even **if** the Court were to entertain its merits, the applicant does not meet the requirements for an interdict on its own pleaded version. I deal briefly with each element in turn.

No prima facie right

259. The applicant has failed to plead any right, let alone a *prima facie* one capable of supporting interim relief.

260. It asserts that the rule of law is at stake and that the fuel levy should have been introduced via a Money Bill. But it offers no legal basis for that assertion.

261. It does not identify a statutory or constitutional right that is said to be infringed. Nor does it allege facts that would support such an inference.

262. Instead, it invokes abstract constitutional ideals (transparency, public participation, fiscal accountability) without connecting them to any actionable entitlement. The result is a pleading devoid of legal content.

263. The claim is framed as a review, but it fails to identify a reviewable act, does not challenge the enabling statute, and rests on an interpretative theory that collapses under its own contradictions.

264. In *OUTA*, the Constitutional Court made clear that litigation does not become urgent simply because a litigant alleges that the rule of law is threatened.

265. The Court cautioned that reliance on constitutional principle, without grounding in an established legal right, cannot sustain interim relief.

266. The applicant here finds itself in the same position. It asserts urgency, invokes legality, and demands that the Court intervene: all without a right to anchor its application.

267. At best, what the applicant has is the right to bring a case. But that is not a right capable of interim protection. The right to litigate does not justify an interdict, particularly one that would disable a revenue measure authorised by statute and still pending before Parliament.

268. In our law, where no *prima facie* right is established, the other interdict requirements (irreparable harm, balance of convenience, and lack of alternative remedy) must be overwhelmingly strong. That is not the case here.

269. Each of those elements fails independently. Together, they collapse entirely.

270. The conclusion is therefore not that the applicant's claimed right is open to doubt. It is that the applicant has no right at all. Its application must be dismissed for that reason alone.

No irreparable harm

271. The applicant has not demonstrated that it, or anyone else, will suffer irreparable harm if interim relief is refused. Its pleaded harm is abstract and speculative.

272. It says the rule of law is at stake, that Parliament will be undermined, and that Members of Parliament will be unable to perform their functions. None of these assertions withstand scrutiny.

273. First, the very mechanism that the applicant seeks to disrupt (the Gazette notice issued under section 48) remains subject to parliamentary override. Parliament is already seized with the matter.

274. Taxation Laws Amendment. If Parliament rejects or amends the measure, included in the Taxation Laws Amendment Bill when tabled, it will fall away or change. That is a legally sufficient remedy.

275. No harm can be said to be irreparable when it is capable of being undone by ordinary legislative means.

276. Second, the applicant's attempt to recast its parliamentary rights as the basis for irreparable harm is misplaced.

277. Members of Parliament are not deprived of their role by the publication of a Gazette notice. To the contrary, section 48(6), read with the "continuation clause" of the annual Tax Laws Amendment Bill (which is standard practice), ensures that they retain the final say.

278. If anything, the interim relief sought would pre-empt Parliament's function, not protect it.

279. Third, the Constitutional Court has held (expressly in *OUTA*) that the interdicting of lawful executive action in fiscal matters is presumptively impermissible, especially where the measure is necessary to give effect to the national budget.

280. The Court warned against intervening on the basis of broad constitutional claims in the absence of clearly established, irreversible harm. That warning applies directly here.

281. Fourth, the applicant cannot point to any personal or institutional prejudice that is concrete, imminent, or incapable of correction.

282. Its entire case rests on the assumption that the Gazette notice is unlawful. But it is not.

283. As I have shown, it is lawful, rational, and within the Minister's powers. Even if the applicant were ultimately successful, the levy could be adjusted again. There is no permanent prejudice.

284. Fifth, the true harm lies in granting the relief. The fuel levy accounts for R3.5 billion in revenue. If that is withheld, the State must compensate elsewhere

(by cutting spending, raising unsustainable alternative taxes, or increasing borrowing). All three options carry consequences. None are neutral.

285. And the burden of these consequences, especially the adverse ones, will fall disproportionately on the most vulnerable.

286. In that respect, the applicant's claim is doubly ironic. It purports to act in defence of the poor. Yet it asks this Court to create a fiscal shortfall that would directly undermine service delivery, public infrastructure, and subsidised transport.

287. That is not a defence of constitutional rights. It is a disruption of very mechanisms designed to give them effect.

288. In the result, there is no irreparable harm to the applicant if relief is refused. The only risk of irreparable harm arises if relief is granted. That risk weighs against the granting of the interdict. The requirement is not met.

The balance of convenience does not favour the EFF

289. The balance of convenience decisively favours refusing relief.

290. The applicant faces no tangible prejudice if interim relief is withheld. The Gazette notice remains subject to parliamentary oversight, and any perceived flaws in the underlying process can be addressed through that mechanism or via properly constituted legal challenge in due course. (For the reasons advanced above, however, that is unlikely to succeed)

291. In contrast, the harm to the Executive and the broader public interest if the relief is granted is immediate, structural, and profound.

292. The fuel levy is not a standalone regulatory action. It is a key component of the national fiscal framework, integrated into pricing systems, revenue estimates, and expenditure planning.

293. An interdict, even on a temporary basis, would disrupt the legal certainty required for coherent tax administration and downstream compliance by other State entities, including the DMRE.

294. It would also open the door to judicial interference in other fiscal mechanisms, thereby destabilising budgetary execution as a whole.

295. The Constitution does not authorise Courts to police fiscal preferences or substitute their view of what a more equitable revenue measure might be.

296. The separation of powers exists not just as a constitutional theory but as a practical safeguard against precisely this form of judicial encroachment.

297. If the Court grants the relief, it will not only halt a lawful and fiscally necessary instrument, it will also displace Parliament's role in deciding whether to confirm, amend, or reject, the measure through the Taxation Laws Amendment Bill once tabled in Parliament.

298. The applicant urges the Court to act pre-emptively, before Parliament has spoken and without any established constitutional breach.

299. That places the Judiciary in the position of both arbiter and substitute for the Legislature.

300. The institutional harm flowing from that posture cannot be overstated. It would mark a shift in the Court's constitutional function, from adjudication to intervention. That is not a role the Constitution assigns to the Courts.

301. The correct comparison is not between the Executive and the applicant. It is between the speculative harm the applicant alleges, and the systemic disruption the interdict would cause.

302. If the interdict is granted, the Executive's ability to implement the Budget and maintain public finance stability would be materially impaired.

303. Where, as here, there is no *prima facie* right, no irreparable harm, and no identifiable legal defect, the public interest must prevail.

304. That interest lies in fiscal stability, institutional comity, and adherence to constitutional roles.

305. The balance of convenience therefore weighs heavily against the relief sought. This requirement, too, is not satisfied.

The EFF has an alternative remedy

306. The applicant has a clear and effective alternative remedy: the parliamentary process. It is a party represented in Parliament.

307. Its members participate in the Standing Committee on Finance. It will have a full opportunity to debate, amend, or reject the measure when the Taxation Laws Amendment Bill is tabled in Parliament.

308. That is not a theoretical remedy. It is the very remedy the statute provides.

309. Section 48(6) of the Customs and Excise Act expressly anticipates that the Minister's notice will be subject to legislative scrutiny. It does so when coupled with the continuation clause in the annual Taxation Laws Amendment Bill, as is standard practice.

310. That is the appropriate constitutional process for resolving disagreements over tax measures.

311. It allows elected representatives, including the applicant's own MPs, to hold the Executive accountable. What the applicant cannot do is bypass that forum and ask the Court to pre-empt its outcome.

312. The Constitutional Court has made clear that courts must not intervene in incomplete political processes unless there is no effective remedy and the harm is irreversible. Neither threshold is met here.

313. When the Taxation Laws Amendment Bill is tabled in Parliament (which usually occurs in October of every year), the alleged harm can be addressed politically, and, if necessary, challenged in proper constitutional terms once the process is complete.

314. This Court is not the proper forum for premature disputes about fiscal design, particularly when the legislative remedy remains open and has not yet been exercised.

315. The availability of that remedy is fatal to the applicant's claim for interim relief. This final requirement, too, is unsatisfied.

THE APPLICATION IS NOT URGENT

316. To avoid repetition, the case on urgency is synthesized here from what is stated in this affidavit. Given the arguable delay from truly being when the EFF entered Parliament, I ask the Court to consider this first and separately to the merits.

317. The applicant's claim of urgency is without legal foundation. It is self-created, factually disingenuous, and legally unsustainable.

318. The proposed increase to the fuel levy was announced publicly on 21 May 2025. Yet the applicant waited five days (until 21h00 on 26 May 2025) to send its letter of demand, and a further two days before circulating a draft application. Annexure "EFF2" to its own founding papers confirms this timeline.

319. This delay is unexplained in the affidavit. It is particularly striking given the applicant's prior conduct.

320. The fuel levy has been increased on multiple occasions in the past decade (at least seven times). The applicant never objected.

321. More than that: the applicant has engaged directly with the fiscal framework through its submissions to Parliament, and as recently 2022, mentioned above, the applicant relied on the structure to support a fuel duty cut.

322. That assumed and adopted the continued operation of the very mechanism it now challenges. That factual history cannot be ignored.

323. It confirms that the applicant knew exactly how the levy works, accepted the underlying statutory architecture, and chose to act only once it became politically expedient to do so.

324. That is not urgency. It is opportunism. It reflects a deliberate tactical delay, followed by a compressed and unrealistic deadline imposed on the State, in circumstances where the applicant had ample opportunity to act earlier, and chose not to.

325. In law, urgency is not established by delay followed by insistence. It requires a demonstration that the harm to be avoided is imminent, irreparable, and incapable of being addressed through ordinary legal or political processes.

326. That is not the case here. The fuel levy notice is subject to legislative override under section 48(6) of the Act. In compliance with section 48(6), the Taxation Laws Amendment Bill will be tabled in Parliament later in 2025.

327. The applicant and its members have full access to that process and remain entitled to seek amendment, rejection, or substitution of the measure in that forum.

328. That is the remedy the Constitution contemplates: a political remedy to a political disagreement. There is no irreparable harm. There is no structural urgency. And there is a full and effective remedy available in due course.

329. In these circumstances, the test for urgency is not met. The application should be refused on this ground alone.

AD *SERIATIM*

AD PARAGRAPHS 1 TO 4

330. Save to state that the fuel levy is a tax measure governed by the Act, I admit the contents of these paragraphs.

AD PARAGRAPHS 5 TO 8

331. I deny the contents of these paragraphs.

332. The Minister acted under section 48 of the Customs and Excise Act. Section 77 of the Constitution does not apply. The levy adjustment is not a Money Bill.

AD PARAGRAPHS 9 TO 10

333. The decision and power to adjust the fuel levy is based in the Minister's legislated power.

AD PARAGRAPH 11

334. The Value Added Tax increase is distinguishable from the fuel levy adjustment. The challenges between that case and this one materially differs.

AD PARAGRAPH 12

335. I am advised that the applicant's inability to demonstrate prospects of success in Part B is fatal. On the applicant's own version, it is unable to set out the nature of Part B.

AD PARAGRAPHS 13 TO 15

336. I deny the contents of these paragraphs.

337. The applicant delayed without justification. Its first formal objection came only on 26 May 2025, despite long-standing awareness of the fuel levy mechanism.

338. The application is politically driven, not legally grounded. The levy is neither novel nor unlawful, and withholding it would cause fiscal and economic disruption.

AD PARAGRAPHS 16 TO 22

339. The Value Added Tax increase is distinguishable from the fuel levy adjustment. The challenges between that case and this one materially differs.

AD PARAGRAPH 23 TO 24

340. I admit the contents of these paragraphs.

AD PARAGRAPHS 25 TO 27

341. The applicable legislative process in the circumstances is as set out in the Act. For this reason, there are no valid grounds in law to suspend and interdict the Ministry decision to implement the fuel levy.

AD PARAGRAPH 28 TO 31

342. I deny the contents of these paragraphs.

343. Suspension is governed by the interests of justice. On the facts here, that standard is not met. The applicant shows no prospects of success in Part B, which rests entirely on a flawed interpretation of section 77.

344. If that claim fails, both Part A and B collapse. The levy adjustment is authorised by statute, and allegations of illegality have no basis. Blocking it would harm governance and service delivery.

AD PARAGRAPH 32

345. I admit the contents of these paragraphs.

AD PARAGRAPH 33 TO 39

346. I deny the contents of these paragraphs.

347. The fuel levy takes effect on 4 June 2025, but that does not establish irreparable harm.

348. The applicant offers no proof beyond assertion, and its anti-poor claim is both factually and legally unsubstantiated.

349. The adjustment is lawful, authorised by statute, and unchallenged on that basis. The real harm lies in not implementing it.

AD PARAGRAPH 40

350. Save to add that the fewer the prospects of success are in Part B, then the more reluctant the Court should be to grant the Order in Part A, the contents of this paragraph are admitted.

AD PARAGRAPH 41 TO 49

351. I deny the contents of these paragraphs.

352. The Minister is lawfully authorised to adjust the fuel levy under the Act. The applicant's case is politically motivated and legally baseless.

353. If it had a case, it could obtain relief in due course. But it does not.

354. Suspending the levy now would cause real fiscal harm, disrupt service delivery, and undermine government functionality. The public, particularly those reliant on social support, would bear the cost.

AD PARAGRAPH 50 TO 52

355. I deny the contents of these paragraphs.

356. The OUTA standard does not govern suspension, but even under the interest of justice, the applicant's case fails. Granting relief would cause greater harm to the public and the fiscus. The balance of convenience favours implementation. There is no legal basis to halt the fuel levy adjustment.

AD PARAGRAPH 53 TO 56

357. This is denied for the reasons above.

AD PARAGRAPH 57 TO 61

358. This is denied for the reasons above.

AD PARAGRAPH 62 TO 64

359. This is denied for the reasons above

AD PARAGRAPH 65 TO 68

360. This is denied for the reasons above.

COSTS

361. The applicant's conduct in this matter does not warrant protection from an adverse costs order.

362. While constitutional litigation often attracts a more lenient approach, that principle applies only where the case is brought in good faith, raises genuine constitutional questions, and is neither abusive nor hopeless.

363. This application satisfies none of those requirements.

364. The applicant approbated and reprobated over time, accepting the statutory scheme for years, proposing fiscal amendments within it, and objecting only when politically expedient to do so.

365. It now advances a procedurally defective and doctrinally incoherent case, without a pleaded right, and with full awareness of the parliamentary remedy it deliberately avoids.

366. The case is hopeless in law and reckless in its societal consequences.

367. It has also been prosecuted in a manner calculated to compress time frames and prejudice the Minister's ability to respond.

368. In these circumstances, the application also constitutes an abuse of process.

369. A punitive costs order, including the costs of two counsel, is warranted.

CONCLUSION

370. For all the reasons set out above, the application is legally untenable, procedurally flawed, and constitutionally unsound.

371. It identifies no right, establishes no harm, and seeks extraordinary relief without legal basis. It must be dismissed with punitive costs.

WHEREFORE the Minister of Finance prays that the application be struck off the roll for a lack of urgency and/or dismissed on the merits with costs, such costs being on an attorney-and-client scale including the costs of two counsel where so employed.

DEPONENT

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SIGNED AND SWORN TO BEFORE ME AT Alberton **ON THIS** 2 **DAY OF** June **2025, THE DEPONENT HAVING ACKNOWLEDGED IN MY PRESENCE THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.**

COMMISSIONER OF OATHS

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