IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

SIGNATURE DATE: 4 December 2025

Case No. 2025-181893

In the matter between:

TREATMENT ACTION CAMPAIGN	First Applicant
MÉDECINS SANS FRONTIERES	Second Applicant
KOPANANG AFRICA AGAINST XENOPHOBIA	Third Applicant

and

FACILITY MANAGER, YEOVILLE CLINIC	First Respondent
FACILITY MANAGER, ROSETTENVILLE CLINIC	Second Respondent
CITY OF JOHANNESBURG	Third Respondent
ACTING MUNICIPAL MANAGER, CITY OF JOHANNESBURG	Fourth Respondent
MEMBER OF THE MAYORAL COMMITTEE FOR HEALTH AND SOCIAL DEVELOPMENT, CITY OF JOHANNESBURG	Fifth Respondent
MEMBER OF THE MAYORAL COMMITTEE FOR PUBLIC SAFETY, CITY OF JOHANNESBURG	Sixth Respondent
MEC FOR HEALTH, GAUTENG	Seventh Respondent

HEAD OF DEPARTMENT: GAUTENG DEPARTMENT OF HEALTH	Eighth Respondent
MINISTER OF HEALTH	Ninth Respondent
DIRECTOR GENERAL, DEPARTMENT OF HEALTH	Tenth Respondent
NATIONAL POLICE COMMISSIONER	Eleventh Respondent
PROVINCIAL POLICE COMMISSIONER, GAUTENG PROVINCE	Twelfth Respondent
STATION COMMANDER, YEOVILLE POLICE STATION	Thirteenth Respondent
STATION COMMANDER, MOFFATVIEW POLICE STATION	Fourteenth Respondent
STATION COMMANDER, BOOYSENS POLICE STATION	Fifteenth Respondent
SOUTH AFRICAN HUMAN RIGHTS COMMISSION	Sixteenth Respondent

Summary

The Constitution – socio-economic rights – overarching duty to take positive steps to eliminate barriers of access to healthcare services – duty infuses the apportionment of statutory roles.

Separation of powers – the decision in *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) applies to interim restraints on the exercise of the state's existing statutory powers. The decision does not apply to applications to compel the state to act on those powers.

JUDGMENT

WILSON J:

1 Xenophobia is one of the greatest threats to democracy and human rights we presently face. Leaving aside the fact that it feeds on that most toxic of human instincts: the hatred of the other; forgetting that it is animated by the fantasy that the presence of foreign nationals in South Africa immiserates the lives of its citizens; and overlooking that, in its practiced form, it is merely another kind

of racism (for White foreigners seldom have much to fear), the problem with xenophobia is its misdirection. If we can blame foreigners, we need not look to ourselves for the solutions to the poverty and inequality that scar our society. So long as foreigners are there to take unearned responsibility, the structures of violence, fear and deprivation which bedevil the constitutional project may be left unexamined.

The clinic blockades

2 The applicants are three organisations which work to expand access to healthcare and fight against xenophobia. They approach me on an urgent basis to obtain interim relief against the first to fifteenth respondents, who are various organs of state bearing responsibility to ensure access to healthcare services, to prevent crime and to promote public safety. The interim relief the applicants seek is, in substance, the development and implementation of measures which will prevent vigilante groups from blocking those who are not in possession of a South African identity document from using the services of two clinics in Johannesburg's inner city. The applicants seek this relief pending their application for a final order directing that such measures be put in place at all public healthcare facilities throughout Gauteng.

3 The applicants say that, since June 2025, they have received a growing number of complaints that vigilante groups have assembled at public healthcare facilities across Gauteng in an attempt to prevent foreign nationals from accessing those facilities. The applicants have investigated this phenomenon and have found that, at the Yeoville Clinic and the Rosettenville Clinic, groups of unidentified individuals have assembled and prevented

anyone who is unable to produce a South African identity document from seeking treatment at either clinic. Even undocumented foreign nationals have a right to primary healthcare, at state expense if need be. But the vigilante blockade also prevents individuals who are not citizens or permanent residents from seeking assistance at the clinics, whether or not they have the right to remain in South Africa on some other basis. It also means that South African citizens who do not happen to be in possession of an identity document may also be turned away.

4 It appears from the applicants' papers that those blocking access to the clinics rely on the passivity of the clinic staff. Security guards on duty do nothing to interfere with them, and the frontline staff and managers at the clinics have likewise done little or nothing to discourage their conduct. On the papers, it seems that those blocking access to the clinics have at times been allowed to operate from inside the clinics themselves, effectively taking over the security guards' access control function. The clinics have been closed to anyone who cannot produce a South African identity document on every occasion between early September and early November 2025 that the applicants have sent someone to check.

5 The respondents do not place these facts in dispute. Nor do they deny that the conduct those facts disclose is unlawful, and that it is, generally, the responsibility of the state to prevent it. The first and second respondents, who are organs of the City of Johannesburg, which has direct responsibility for running and ensuring access to the clinic, initially opposed the application, but then withdrew that opposition. They have not filed an answering affidavit. Their

counsel, Mr. Nene, confirmed that he appeared on a watching brief, and could offer no principled opposition to the relief sought against the City and its organs. He relayed his instructions that the first to sixth respondents ask that no costs order be granted against them, but he said little more than that.

The respondents' duties

6 Mr. Mokhare, who appeared with Ms. Mamoepa for seventh to fifteenth respondents, who comprise the national and provincial health authorities and the police functionaries with responsibility for the areas the clinics serve, put up a principled and vigorous argument that no interim relief can be granted against his clients. The health authorities, he submitted, have no direct responsibility for or control over the clinics, and in any event have no interest at all in what goes on outside the clinics' gates. In other words, Mr. Mokhare submitted, if vigilantes gather outside state health facilities to block access to those facilities, the health authorities have no legal obligation to interfere. That obligation, Mr. Mokhare submitted, falls upon the police respondents, who can only be expected to act on complaints submitted to them.

7 This position is so extraordinary that I had to ask Mr. Mokhare to explain it to me twice. When I had come to grips with it, I was satisfied that it is wholly misguided.

8 In the first place, and leaving aside the undisputed evidence that at least some of the vigilantes are operating from inside the clinics' gates, the national and provincial health authorities plainly have a legal interest in what goes on both within and outside the clinics, at least insofar as it affects access to the clinics themselves. That interest emerges, in the first instance, from sections 27 (1)

(a) and (2) of the Constitution, 1996, which oblige the seventh to tenth respondents to take reasonable measures within their available resources to ensure access to healthcare services. That plainly embraces an interest in barriers of access to those services, including the presence of xenophobic vigilantes at the clinic gates. If authority for that proposition is required, it is to be found in *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) at paragraph 45, in which it is held that reasonable and effective measures to give effect to socio-economic rights entail the examination and removal of barriers of access to those rights. It stands to reason that the Minister of Health and his provincial counterpart have, at the very least, a duty to acquaint themselves with barriers of access to healthcare services and to take such reasonable and effective steps as are within their means to remove those barriers. This embraces, I think, a duty to examine, to plan for, and to eradicate the activities of xenophobic vigilantes seeking to block access to public healthcare facilities.

9 The Minister of Health's legal interest in ensuring access to the clinics also arises from sections 3 (1) (a) and (2) of the National Health Act 61 of 2003, which require the Minister and his department to "endeavour to protect, promote, improve and maintain the health of the population", to "determine policies and measures necessary to protect, promote, improve and maintain the health and well-being of the population", and to "establish such health services as are required" under the Act, ensuring that "all health establishments and health care providers in the public sector must equitably provide health services within the limits of available resources". The Minister's Director-General (the tenth respondent in these proceedings) is obliged under

section 21 (2) (l) of the National Health Act to "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". This amply embraces a duty to take the necessary steps to prevent xenophobic vigilantes from blocking access to public healthcare facilities.

10 The first question that might confront the national and provincial health authorities in taking these steps is why (as is presently undisputed on the papers), the clinics' own security staff appear to have ceded control of access to the clinics to the vigilantes. If the vigilantes have overwhelmed the security guards (there is little to suggest this on the papers), then security needs to be enhanced. If the security guards are actively assisting the vigilantes because they are sympathetic to the vigilantes' aims, steps must be taken to discipline or replace them. There are, of course, several other possibilities, but the first step the national and provincial health authorities are constitutionally required to take is to acquaint themselves with what is really happening and to formulate appropriate measures to prevent it. That is all the applicants ask.

11 Mr. Mokhare submitted that the national and provincial authorities have "outsourced" their constitutional and statutory duties to the City of Johannesburg in terms of a service level agreement between the provincial health department and the City which assigns responsibility for the clinics to the City and its organs. Assuming for a moment that such "outsourcing" would allow the national and provincial health authorities to absolve themselves of any responsibility to ensure access to the clinics (it would not), the service

level agreement upon which Mr. Mokhare relied does no such thing. The purpose of the agreement, as its preamble makes clear, is to provide a framework within which the City and the provincial department of health "co-operate to implement" the provisions of section 32 of the National Health Act, which deal with the assignment of "appropriate health services" to municipalities in terms of an agreement provided for in section 32 (2).

12 The service level agreement is such an agreement, but it "outsources" nothing. It rather assigns management of the clinics to the City subject to provincial oversight. The scope of that oversight is very broad. The provincial health department sets the standard of service to be provided by the clinics, which is itself based on National Department of Health guidelines (clause 4.1.1); sets out the sites on which healthcare services are to be delivered, including the sites of the two clinics (clause 4.1.2); sets the "service targets" to be met by the City, including those targets to be met by the clinics (clause 4.1.3); and deals with the hours the clinics will operate. The service level agreement makes detailed provision for the management of pharmaceuticals, which the provincial department supplies (clause 5.3). It provides the provincial health department with extensive powers of monitoring and oversight (clause 9); it obliges the provincial department to "work jointly" with the City to produce primary healthcare plans for each district, including those served by the two clinics (clause 15); the clinics' services themselves are provided by provincial health department staff seconded to the City for that purpose (clause 16.3); the clinics' budgets must be submitted to the provincial health department for approval (clause 18.1); the provincial health department directly subsidises the clinics' work (clause 22.1); provincial health department staff sit on the

committees that oversee the clinics' work (clause 23.3); and complaints about what happens at the clinics may be resolved with the direct involvement of the provincial department (clause 24).

13 In sum, the service level agreement does not permit the national and provincial departments of health to renounce any interest in the way the clinics operate. The agreement in fact empowers and obliges the provincial health department to take a keen interest in how the clinics work. On any reasonable interpretation, the service level agreement embraces a role for the provincial department in stopping xenophobic vigilantes from preventing those without South African identity documents from using the clinics.

14 It is obviously for the national and provincial departments themselves to determine exactly how to address the particular barrier of access to the clinics that has arisen in this case. It is conceivable, for example, that the national department may exercise little more than an oversight function consistent with the Minister's statutory duties under section 3 of the National Health Act, while the provincial department goes no further than exercising its rights under the service level agreement it has concluded with the City. As long as the measures the national, provincial and municipal authorities take are reasonable and effective in removing the vigilante blockade, it is not for me to prescribe exactly what those measures should be, or how responsibility for implementing them should be apportioned between the three spheres of government. What I reject in this judgment, for the reasons I have set out, is the proposition that the national and provincial authorities bear no obligation at all to act to address the vigilante blockades of the two clinics. Their

obligations to take action are spelt out in the Constitution, the National Health Act and in the service level agreement.

15 I turn now to the responsibilities of the police respondents. The case for the police appears to be that their role is limited to responding to complaints from members of the public. On the facts established before me, that cannot be accepted. The police respondents are constitutionally 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” (section 205 (3) of the Constitution). This necessarily implies a role well beyond the passive receipt of complaints.

16 The police service has itself accepted as much. It has adopted what it calls a “national instruction” intended to “activate resources and co-ordinate plans and initiatives . . . to ensure the safety and security of all persons seeking medical attention at public health facilities, including non-nationals”. The instruction “aims to prevent and respond promptly to any unlawful activities, intimidation or harassment directed at non-nationals attempting to access such healthcare service" (paragraph 26 of the police respondents’ answering affidavit).

17 The police criticise the applicants for failing to set out what, other than the investigation of complaints and the adoption of the national instruction, they can be expected to do. The answer, it seems to me, is plain enough: wrest control of the clinics from the hands of the vigilantes, or show that it is beyond the capacity of the police – assisted, where necessary, by the other state

respondents – to do so. Once that is done, the police will have discharged their responsibilities.

18 The police say that they cannot address the vigilante threat alone. They state that "the responsibility to ensure the safety of persons, including at health establishments, is not the sole responsibility of the SAPS". Accepting for a moment the sincerity of that contention, it is not clear to me what objection the police respondents then have to being ordered to participate, with the other state respondents, in the formulation and implementation of steps which are reasonably capable of eradicating the activities of xenophobic vigilantes seeking to block access to the two clinics concerned in this application. Other than the contentions I have already dealt with, I did not understand Mr. Mokhare to identify any such objection.

The interim relief

19 For all these reasons, it seems to me that there has been no credible opposition put up to the interim relief the applicants seek. In order to grant such relief I must be persuaded that the applicants have a *prima facie* right to the order they seek in their application for final relief, which will be enrolled in due course. There is room for me to entertain some, but not "serious", doubt about that right, while still granting the relief (*Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189). The applicants, or those in whose interests they act, must have suffered, or reasonably apprehend, irreparable harm if the interim relief is not granted, and there must be no effective remedy other than an interim interdict to prevent or ameliorate that harm.

20 Finally, the balance of convenience must favour the grant of an interim interdict. It has long been held that the stronger the *prima facie* right, the less the balance of convenience need tilt in the applicant's favour. In other words, a relatively weak *prima facie* right may be compensated for by a balance of convenience firmly in the applicant's favour, and a very strong *prima facie* right can make up for a balance of convenience adverse to the applicant. This is little more than common sense. Apparently weighty cases in the main claim ought to be heard out even if it puts the opposing parties to a great deal of trouble. Even weak but still arguable cases ought nonetheless to be entertained if they cause relatively little trouble to those who have to defend them (*Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton* 1973 (3) SA 685 (A) at 691E-G).

21 Where an interim interdict is sought in restraint of the exercise of statutory powers by an organ of state, the balance of convenience inquiry takes on a slightly different character. In that instance, a court is bound to weigh what has been called "separation of powers harm". Weighing this harm involves recognising the need to allow the state to continue to exercise its powers and functions, unless "the clearest of cases" has been made out that they are based on an illegality (*National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) ("*National Treasury")* at paragraph 47).

22 In this case, the applicants have a very strong *prima facie* right to the final relief they seek – the adoption of effective measures to eradicate the activities of xenophobic vigilantes seeking to block access to public healthcare facilities across Gauteng. Whatever steps have been taken to achieve this goal, the

facts of this case demonstrate that they have been completely ineffective, at least at the two clinics in respect of which interim relief is claimed. The apprehension of harm is likewise clear. It is undisputed on the papers that the harm is severe and ongoing. The balance of convenience plainly favours the applicants. Those of the state respondents who have opposed the application do not suggest that they are unable to do more to address the harm of which the applicants complain. They say only that they are under no legal obligation to do so. I have rejected that contention.

23 There is no effective remedial alternative to the interdict the applicants seek. As was made clear in *Hotz v University of Cape Town* 2017 (2) SA 485 (SCA), at paragraph 36, only the presence of an alternative legal remedy would allow a court to deny interdictory relief. The only alternative that has been suggested is the diligent reporting of unlawful activity to the police. On the papers, that alternative, such as it is, has not worked. The vigilantes are reported. They are not prosecuted. The blockades of the clinics carry on. Either the wrong individuals are being reported, or the evidence necessary to prosecute is not collected, or the prosecutorial service is failing in its duties. None of these possibilities provides a basis for the refusal of interdictory relief.

24 Finally, the decision in *National Treasury* does not apply in this case. The applicants do not seek to restrain the exercise of constitutional or statutory powers. They seek to press the state to act on the powers it has. In any event, *National Treasury* (at paragraph 90) recognises that a transgression of fundamental rights may well justify interfering with the exercise of the state's ordinary powers. Here the state has failed to prevent a breakdown in the rule

of law itself, with the effect that those who do not have a South African identity document cannot access the two clinics at issue in this application. The extent of the breach of their rights of access to healthcare services plainly justifies any interference with the state's ordinary powers the interim relief sought in this case entails.

25 It was suggested during argument that the interim relief sought would interfere with the constitutional and statutory delineation of powers and obligations between the various state respondents. That argument sat in obvious tension with the proposition that some of the state respondents have no obligations at all in respect of the clinics. In any event, I do not think the interim relief has that effect. The relief merely requires the state respondents to exercise the constitutional and statutory powers they do have to take reasonable and effective measures to free the clinics of the vigilantes blockading them. To the extent that the order I will grant places obligations on "the first to fifteenth respondents" generally, it is obviously not to be understood as requiring any one of the respondents to exercise a power that properly lies within another respondent's competence. What it requires is that all of the respondents co-ordinate their approaches in order to achieve the same objective: the lifting of the vigilante blockade of both clinics.

26 It was also submitted that the relief is incompetent because it interferes with the separation of powers. Those concerns ought to be put to rest by the observations I have made about the *National Treasury* decision. But it seems to me necessary to repeat what was first said in the *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (CC) almost a quarter of

a century ago: “South African courts have a wide range of powers at their disposal to ensure that the Constitution is upheld. These include mandatory and structural interdicts. How they should exercise those powers depends on the circumstances of each particular case. Here due regard must be paid to the roles of the legislature and the executive in a democracy. What must be made clear, however, is that when it is appropriate to do so, courts may – and if need be must – use their wide powers to make orders that affect policy as well as legislation” (paragraph 113).

27 In this case, I had to go no further than to direct the relevant organs of state to do what they are plainly obliged to do within existing legislation and policy. The overarching obligation enforced in the relief I will grant lies on all the state respondents to act in a co-ordinated way to ensure access to the two clinics. That obligation infuses their separate and delineated statutory roles. I have already pointed out that the decision in *Grootboom* requires no less of the state when it acts to enforce socio-economic rights. It is, in my view, a great pity that litigation was required to address what has happened at the clinics in this case. The weakness of the state’s response to a direct and apparently well-organised attack on its efforts to secure basic healthcare for some of the most vulnerable people in our society is of grave concern. As *TAC (No. 2)* makes clear, I am under a duty to grant effective relief to remedy that shortcoming.

The order

28 There was no quarrel with the proposition that costs should follow the result in the event that the applicants prevailed. Mr. Nene asked me not to order costs

against the City, but I do not think the City deserves a costs shield simply because it ultimately decided not to oppose the relief sought. As an organ of state, the City has the duty to assist and protect the courts and ensure their independence and effectiveness (section 165 (4) of the Constitution). Even if it planned to abide my decision, the City was the organ of state best placed to explain what is happening at the clinics. It ought to have filed an affidavit explaining the situation and its position. I may fairly infer from the City's silence that it has done nothing to address the vigilante blockade at the clinics, but that does nothing to justify its silence. It will be jointly and severally liable for the applicants' costs. Given the importance of the matter, the costs of two counsel may be taxed on scale "C".

29 I make the following order –

29.1 Non-compliance with the forms, service and time periods provided for in the Uniform Rules of Court is condoned, and it is directed that this matter is heard as one of urgency in terms of Uniform Rule 6 (12).

29.2 Pending the final determination of the application in Part B –

29.2.1 The first to fifteenth respondents are directed, forthwith, to take all reasonable measures to ensure safe and unhindered physical access to the Yeoville and Rosettenville clinics for all persons seeking health services.

29.2.2 The first to fifteenth respondents are directed to confront and take all reasonable steps to secure the removal of any

unauthorised persons from the clinics' premises or immediate surrounds who are hindering or obstructing physical access to and the provision of health services within the clinics.

29.2.3 The first to fifteenth respondents are directed to ensure that adequate numbers of trained security personnel are stationed at all access points to the clinics to ensure compliance with this order.

29.2.4 The first and second respondents are directed, within 5 days of this order, to post notices at all public access points to the clinics stating that:

> "No unauthorised person may obstruct or hinder physical access to this clinic or the provision of healthcare services within the clinic. Any person violating this instruction will be removed from the premises and its surrounds and reported to the police."

29.2.5 The first and second respondents are directed to report all incidents and unauthorised persons contemplated in paragraph 29.2.2 to the South African Police Service and, for that purpose, to take all reasonable steps to ascertain the identities of the unauthorised persons.

29.2.6 The South African Police Service is directed to provide all necessary assistance to ensure compliance with this order, including taking all reasonable steps to respond to and investigate the reports in paragraph 29.2.5 above.

29.3 The first to fifteenth respondents are directed to file a report, on affidavit, within 10 court days of this order, detailing the actions taken to comply with the interim order in paragraph 29.2 above.

29.4 The applicants are granted leave to approach this court on the same papers, duly supplemented to the extent necessary, for any further relief necessary to enforce this order.

29.5 The applicants are granted leave to file supplementary affidavits for purposes of the Part B relief, by no later than 30 January 2026.

29.6 The costs of this Part A application are to be paid by the third, seventh, ninth and eleventh respondents, jointly and severally, the one paying the other to be absolved, including the costs of two counsel. Counsel's costs may be taxed on Scale C.

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 4 December 2025.

HEARD ON:	25 November 2025
DECIDED ON:	4 December 2025
For the Applicants:	Chris McConnaiche R Krüger T Malusi J Hunter-Parsonage Instructed by Section 27

For the First to Sixth Respondents:	M Nene Instructed by SSM Attorneys
For the Seventh to Fifteenth Respondents:	W Mokhare SC S Mamoepa Instructed by the State Attorney