



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 085280/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 26 MAY 2026
SIGNATURE [REDACTED]

ECONOMIC FREEDOM FIGHTERS

Intervening Party

In the matter between:

LEKALINGA (RF) (PTY) LTD

Applicant

and

**THE MINISTER OF TRADE, INDUSTRY
AND COMPETITION**

First Respondent

**BOARD OF THE NATIONAL LOTTERY
COMMISSION**

Second Respondent

NATIONAL LOTTERY COMMISSION

Third Respondent

SIZEKHAYA HOLDINGS (RF) (PTY) LTD

Fourth Respondent

SCIENTIFIC GAMES ANDANI (PTY) LTD

Fifth Respondent

ITHUBA LOTTERY (RF) (PTY) LTD	Sixth Respondent
WINA NJALO (RF) PTY LTD	Seventh Respondent
RINGETA CONSORTIUM (RF) (PTY) LTD	Eighth Respondent
GIYA GAMES HOLDINGS (PTY) LTD	Ninth Respondent
UMBULELO LOTTERY SERVICES (RF) (PTY) LTD	Tenth Respondent

CASE NO: 108644/2025

ECONOMIC FREEDOM FIGHTERS	Intervening Party
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In the matter between:

ITHUBA LOTTERY (RF) (PTY) LTD	Applicant
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and

THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	First Respondent
NATIONAL LOTTERY COMMISSION	Second Respondent
SIZEKHAYA HOLDINGS (RF) (PTY) LTD	Third Respondent
BOSELE GAMING (RF) (PTY) LTD	Fourth Respondent
WINA NJALO (RF) (PTY) LTD	Fifth Respondent
RINGETA CONSORTIUM (RF) (PTY) LTD	Sixth Respondent
GAMES HOLDINGS (PTY) LTD	Seventh Respondent
LOTTERY SERVICES (RF) PTY LTD	Eighth Respondent
LEKALINGA (RF) (PTY) LTD	Ninth Respondent

Summary: *Leave to intervene in existing litigation in order to raise an issue of constitutional invalidity of a statutory provision – issue so closely related to remainder of subject matter as to constitute direct and substantive interest – other factors considered was the need to avoid multiplicity of actions, the fact that no other party, except the successful bidder in a set of applications for the review of the award of a licence, opposed the application and that there were no compelling interests of justice demanding that leave to intervene should be refused. The existing case managed proceedings in the main applications would not be disturbed if leave is granted and considerations of convenience and limited judicial resources also favoured the application for intervention. Leave granted. Costs to be costs in the cause.*

ORDER

1. The intervening party is granted leave to intervene in Case No 085280/2025 and case no 108644/2025 as the second applicant in each matter in order to pursue the issue of constitutionality of section 13(2)(b)(iv) of the Lotteries Act 57 of 1997, as delineated in the applications for intervention.
 2. Costs of the applications for intervention, shall be costs in the causes in the respective review applications.
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J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 26 May 2026.

DAVIS, J

Introduction

[1] On 28 May 2025 the Minister of Trade, Industry and Competition (the Minister) decided to award the Fourth Lottery Licence and Sports Pool Licence (the licence) to Sizekhaya Holdings (RF) (Pty) Ltd (Sizekhaya). The period of the licence is for eight years.

[2] In case no 085280/205 Lekalinga (RF) (Pty) Ltd (Lekalinga) launched an application for the review and setting aside of the award.

[3] In case no 108644/2025 Ithuba Lottery (RF) (Pty) Ltd (Ithuba) launched a similar application for the review of the award.

[4] In two other applications¹, two other unsuccessful bidders also launched review applications in respect of the award. All four review applications are to be heard simultaneously during the second week of this court's June/July recess. There are multiple respondents in each of the four applications, including the Minister and the National Lottery Commission (the NLC).

¹ Case no: 228028/2025 and Case no: 017623/2026

[5] The Economic Freedom Fighters (the EFF) seeks leave to intervene in the applications of Lekalinga and Ithuba. The basis for the relief is that the EFF wishes to raise issues relating to the constitutionality of section 13(2)(b)(iv) of the Lotteries Act² at the hearing of the review applications.

[6] Of all the multiple parties involved, only Sizekhaya opposes the leave sought by the EFF. The basis of this opposition, as set out in Sizekhaya's heads of argument, was that the EFF's intervention "*... will complicate and prolong the resolution of the main application [by] inserting a constitutional challenge with all its attendant procedural steps in a case where no such challenge arises for decision in the main application*".

[7] It needs to be pointed out at this early stage of the judgment already that the EFF made it very clear that it does not seek to introduce new evidentiary material to that already delivered by the various other parties and what is contained in the record, but wishes to only advance legal argument in support of its contentions. It undertook to fall in with the case management directives already issued in respect of the exchange of heads of argument.

The test for leave to intervene

[8] Rule 12 of the Uniform Rules, which provides the mechanism whereby a party may seek leave to intervene in an already existing matter, provides as follows; "*Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may...apply for leave to intervene...The court may upon such application make such order, including any order as to costs and give such directions as to further procedure... as to it may seem meet*". By virtue of the provisions of Rule 6(14), this mechanism also applies to applications.

² 57 of 1997.

[9] Intervention is treated as a particular facet of joinder³.

[10] The customary test for intervention is that the party seeking to intervene must demonstrate a direct and substantial legal interest in the subject matter of the case and that it has some right which may be affected by the order that the court may grant in the main proceedings.⁴

[11] In *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom*⁵ it was stated that an applicant seeking intervention need not satisfy the court that it will succeed with the case it seeks to advance but that it is sufficient if it can indicate allegations which, if they are proven in the main application, would entitle it to succeed.

[12] In addition, in *Smyth v Investec Bank Ltd*⁶ the Supreme Court of Appeal, with reference to *Herbstein & Van Winsen – The Civil Practice of the High Courts of South Africa*⁷ stated that intervention is also competent on the basis of convenience.

[13] Both parties also referred to the judgment in *Gory v Kolver NO and Others*⁸ (*Gory*). Therein it was stated that “*in every case [a court] must ultimately decide whether or not to allow intervention by considering whether it is in the interests of justice to grant leave to intervene*”⁹. The judgment also confirmed that the considerations applicable to Rule 12 “*are not wholly appropriate to a case involving an order of constitutional validity of a statute...*”¹⁰. I shall deal with the parties’ opposing submissions based on this judgment later.

³ *United watch and Diamond Company (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C) at 415C.

⁴ *S A Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC).

⁵ [2020] 4 All SA 226 (KZP).

⁶ 2018 (1) SA 494 (SCA) at 511F.

⁷ Vol 1 5th Ed (2009) at 225-6.

⁸ 2007 (4) SA 97 (CC).

⁹ *Ibid* at par 13.

¹⁰ *Ibid* at par 12.

The subject matter of the main applications

[14] As already stated, the main applications are for the review of the Minister's decision to award the licence to Sizekhaya.

[15] In Ithuba's founding affidavit, reference was made to the Request for Proposals (RFPs) for the licence. The RFP stated that successful applicant was required to be an entity ring-fenced for the duration of the licence period for the sole purpose of operating the National Lottery and Sports Pools. Before awarding the license to any such applicant, the Minister was obliged to be satisfied that no political party or political office-bearer in South Africa had a direct or indirect financial interest in or is a significant shareholder in such an applicant. This was mentioned as a "*key consideration*" in par 2.4.1.4 of the RFP.

[16] Ithuba's attack on the award is, inter alia, that the Minister had failed to perform the required assessment in this regard and only attempted to do so after the fact. In fact, after having received and analysed the Minister's reasons delivered on 5 August 2025, Ithuba in a supplementary founding affidavit, referred to the following extract from the Minister's reasons: "*On 23 June 2025, which was after the licence was awarded, AmaBhungane reported that Ms Khumo Bogatsu, a director and co-owner of Bellamont Gaming, which is a shareholder of Sizekhaya, was the Deputy president's sister-in-law. It also claimed that two individuals involved in Sizekhaya, Messrs Zungu and Tembe, were closely connected to the Deputy President. On 24 June 2025, I instructed the NLC to investigate the matter to determine whether there was in fact a contravention of section 13(2)(b)(iv) of the Lotteries Act*".

[17] Ithuba further alleges that the investigation to this issue remains incomplete, despite the imminent commencement of the licence period and a Parliamentary question in this regard¹¹.

[18] Ithuba further complains that the record indicated a lack of assessment of indirect interests in Sizekhaya and that the Minister's own reasons indicate that the Adjudication Committee had only investigated direct interests and not also indirect interests.

[19] In its founding affidavit, Lekalinga expounded on the critical nature of this requirement as follows; *"It ensures the independence of the National Lottery, prevents political interference and safeguards the integrity of a public institution responsible for allocating funds for charitable and developmental purposes. Any financial benefit, however indirect, risks distorting this mandate and undermines public confidence in the operation of the licence"*.

[20] Despite the above considerations, Lekalinga complained that, prior to the award of the licence, media statements made on behalf of the Minister and probity checks performed by the NLC, only referred to direct interests and made no reference to indirect interests.

[21] The EFF's current application for intervention was already foreshadowed by the reference in Lekalinga's founding affidavit that, on the day the Minister had announced the award, The EFF had issued a media statement to the effect that the major shareholder in Sizekhaya was a company called Goldrush and that that company and two other individuals *"have connections to political parties"*. These concerns were echoed in other media publications at the time.

¹¹ No 5954 of 7 November 2025.

[22] In its supplementary founding affidavit, Lekalinga adopted the submissions made by the EFF in its application for leave to intervene regarding the Deputy President's "family connections" to Sizekhaya through Bellamont Gaming, other allegations made regarding the chronology of the registration of Bellamont Gaming and Sizekhaya, as well as the "inadequacy" of section 13(2)(b)(iv) of the Lotteries Act in addressing the issue of indirect political interests as required by the RFP.

Evaluation

[23] Relying on *Gory* the EFF submitted that it need not satisfy the "orthodox" substantial-interest-test, but because an application regarding constitutionality of a statute operates under section 172 of the Constitution¹² *in rem*, a "broader interests-of-justice overlay" applies. Whilst it is correct that *Gory* found that the interests of justice should play a role in the exercise of a court's broader discretion, it in fact found that such interests may trump an application for intervention, even where direct and substantial interest has been demonstrated.

[24] The stronger argument of the EFF is that it, as an opposition party, has the necessary standing to hold the executive accountable and to ensure that constitutional prescripts and the rule of law is upheld¹³. This will include the right to challenge the constitutionality of legislation involving political office bearers.

[25] Sizekhaya conceded the EFF's standing to challenge the constitutional validity of legislation, but argued that the issues of standing and rights to intervene should not be conflated. Sizekhaya was of the view that the EFF would be free to launch separate proceedings wherein it could raise the constitutional

¹² This section provides that a High Court may make an order that a statutory provision is inconsistent with the Constitution and therefore invalid. Such a declaration must, however be confirmed by the Constitutional Court before it becomes operative. Pending such confirmation, interim relief may be granted.

¹³ *Economic Freedom Fighters and Others v Speaker of the National Assembly* 2018 (2) SA 571 (CC) and *Democratic Alliance and Others v National Director of Public Prosecutions* 2012 (3) SA 486 (SCA).

validity or interpretation of the section sought to be impugned, but that such litigation should be kept separate from the review applications. This raises the issues of convenience and the preference of avoidance of multiplicity of actions.

[26] Lastly, the EFF contended that the judgment in *Democratic Alliance v President of the Republic of South Africa and Others (Economic Freedom Fighters intervening)*¹⁴ illustrates what the courts' approach should be to a matter of this nature. In that matter the DA sought a review of ministerial conduct, but without challenging the statutory framework. The court granted the EFF leave to intervene to raise constitutional issues not raised by the DA. The EFF argues that the same happened in *President of the Republic of South Africa v Office of the Public Protector and Others (Economic Freedom Fighters intervening)*¹⁵.

[27] Similarly, in the present matter, the EFF seeks leave to raise a constitutional issue not initially raised by the applicants in the review applications. It contends that this issue might impact on this court's determination of the lawfulness of the Minister's conduct, should the statutory framework be found to have been inconsistent with the Constitution.

Conclusion

[28] Having considered all of the above, I am of the view that the EFF should be granted leave to intervene. In reaching this conclusion, I have taken the following factors into account: firstly, any order granted in the review applications which may be taken without the consideration of the constitutional validity of the section in terms of which the Minister has exercised his decision, might impact on the rights of the EFF to challenge executive conduct. This would particularly be the case in the event where the reviews may be unsuccessful, which would entrench a position which might then remain unchallenged for a

¹⁴ [2020] 3 All SA 747 (GP).

¹⁵ [2018] 1 All SA 576 (GP).

period of eight years. In that sense, I find that the EFF has sufficiently demonstrated a direct and substantial interest in the subject matter described earlier and that it has some right which may be adversely affected by an order which may be granted in the review applications.

[29] Secondly, once the EFF's legal standing to challenge legislative provisions involving political office bearers is acknowledged, as I think it must, then it will be more convenient to allow the ventilation of such challenges within an existing factual framework in already pending litigation, particularly when refusing to do so will result in a multiplicity of actions and possibly duplication of usage of scarce judicial resources.

[30] The issue of convenience must, of course be subject to practicalities. In the present instance however, all that would procedurally be added to the present litigation, would be the presentation of legal argument in addition to that which will in any event otherwise feature before this court in the reviews themselves. There would be no further procedural delays and no separate hearings of the disputes would be necessary.

[31] A further factor which I took into account was that none of the other parties opposed the intervention. In fact, as indicated above, Lekalinga even adopted some of the EFF's contentions. That being the case, it would be inimical to deprive the EFF of participation in the main matter/s and to prevent it from advancing those contentions itself.

[32] Lastly, there are no interests of justice factors which militate against granting leave to intervene, as there may have been in *Gory*. In fact, I consider the position to be the opposite.

[33] Having reached the above conclusions and, having regard to the nature of the points raised by the EFF, I do not consider it necessary to order the joinder of other parties as initially proposed by the EFF in its notice of motion. Counsel for the EFF also readily conceded this. In respect of the constitutional point raised, Rule 16A will however still to be complied with. The burden is on the EFF to do so.

Costs

[34] Sizekhaya argued that, should leave to intervene be granted, that the *Biowatch*-principle should apply and that it should not be ordered to pay the costs of the application. The EFF argued that the opposition to its application was frivolous and demanded costs. In the exercise of the court's discretion, I find that the costs of the application for leave to intervene, should follow the success of the relief sought by the EFF in the main applications, now that it has been joined.

Order

[35] In the premises, the following order is granted:

1. The intervening party is granted leave to intervene in Case No 085280/2025 and case no 108644/2025 as the second applicant in each matter in order to pursue the issue of constitutionality of section 13(2)(b)(iv) of the Lotteries Act 57 of 1997, as delineated in the applications for intervention.
2. Costs of the applications for intervention, shall be costs in the causes in the respective review applications.


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 14 May 2026

Judgment delivered: 26 May 2026

APPEARANCES:

Case no: 085280/2025

For the intervening party:	Adv M Ka-Soboto together with Adv T Masvikwa
Attorney for the intervening party:	England Slabbert Attorneys Inc. c/o Lautenberg Morris Attorneys, Pretoria

For the Applicant:	No appearance
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For the Fourth Respondent:	Adv F Snyckers SC together with Adv I Currie
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Attorney Fourth Respondent:	Cliffe Dekker Hofmeyr, Johannesburg c/o Asger Gani Attorneys, Pretoria
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Case no: 108644/2025

For the Applicant:	No appearance
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For the Third Respondent:

Adv F Snyckers SC together with
Adv I Currie

Attorney for the Third Respondent:

Cliffe Dekker Hofmeyr, Johannesburg
c/o Asger Gani Attorneys, Pretoria