

Background and facts: NHI : President's decision

5.2.2026

Just over a year ago and leading to the national elections, on 15 May 2024, the President of South Africa assented to and signed the National Health Insurance (NHI) Bill into law, a move that was met with significant opposition from various stakeholders, including the Board of Healthcare Funders of Southern Africa NPC (BHF) and the South African Private Practitioners Forum (SAPPF). These parties, among others, raised concerns about the Bill's constitutionality, the lack of detail regarding its implementation and funding, and the adequacy of public consultation during the legislative process. Despite numerous petitions and submissions urging the President to refer the Bill back to Parliament, the President proceeded to sign it into law.

In response, BHF and SAPPF instituted proceedings in the Gauteng High Court, seeking to review and set aside the President's decision to assent to and sign the NHI Bill, and to declare the Act invalid.

Issues for determination

The court was called upon to determine several preliminary issues:

Jurisdiction: whether the High Court had jurisdiction to adjudicate the matter, or whether it fell within the exclusive jurisdiction of the Constitutional Court under section 167(4)(e) of the Constitution.

Reviewability: whether the President's decision to assent to and sign the NHI Bill was reviewable by the courts.

Production of the Record: whether the President was obliged to produce the record of the decision under Rule 53 of the Uniform Rules of Court. Court's Decision and Reasoning

Re: Jurisdiction

The court held that the High Court did have jurisdiction to entertain the matter. It found that the President's role in assenting to and signing a Bill is part of the legislative process and not an agent-specific constitutional obligation that would trigger the exclusive jurisdiction of the Constitutional Court. The obligation to scrutinise the constitutionality of a Bill before assent is shared with other branches of government and does not, by itself, raise sensitive political questions or implicate the separation of powers in a manner that would oust the High Court's jurisdiction.

Re: Reviewability of the President's decision

The court held that the President's decision to assent to and sign the NHI Bill is reviewable. The court explained that the exercise of public power by the President, even when derived directly from the Constitution, is subject to the principle of legality and the rule of law. The President's powers under section 84(2) and section 79 of the Constitution are not exempted from judicial scrutiny. The court emphasised that the President must act rationally and lawfully, and that his decision-making process in assenting to and signing a Bill must be open to review to ensure compliance with constitutional requirements.

Re: Significance of producing the record

Central aspect of the judgment was the requirement for the President to produce the record of the impugned decision under Rule 53. The court found that the production of the record is essential for both the applicants and the court itself, as it provides insight into the decision-making process and enables a thorough and informed review. The court rejected the argument that the President is exempt from this obligation, stating that to hold otherwise would place the President above the law and undermine the rule of law. The court further noted that, even if Rule 53 did not strictly apply, it would exercise its inherent powers under section 173 of the Constitution to order the production of the record in the interests of justice.

Conclusion

The Gauteng High Court's judgment affirms the principle that all exercises of public power, including those by the President in the legislative process, are subject to judicial review for legality and rationality. The decision underscores the importance of transparency and accountability in executive decision-making, particularly in matters of significant public interest such as the NHI. The requirement to produce the record of decision ensures that courts can effectively fulfil their constitutional mandate to review executive action, thereby upholding the rule of law and the supremacy of the Constitution.