



HEALTHCARE & LIFE SCIENCES

Courts Enforcing The Right Of Access To Healthcare In Gauteng

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The present dire state of public healthcare in the Gauteng Province has been widely publicised, with access to treatment being a central theme. In terms of section 27 of the Constitution of the Republic of South Africa, 1996 (Constitution), all persons have a right to access healthcare services, and the State is obliged to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. In other words, the State must take reasonable steps, within its available resources, to expand access to healthcare over time.

However, barriers to access in public healthcare facilities are rife, giving rise to two notable recent legal challenges in Gauteng. In both of these cases, the applicants sought to compel the State to take certain steps to protect and promote section 27 rights by way of positive (mandatory and structural) interdicts.

In particular, and just over a year ago, on 27 March 2025, the Gauteng Local Division of the High Court, Johannesburg, in *Cancer Alliance v Member of Executive Council for Health Gauteng Province and Others*^[1] (*Cancer Alliance*), granted an order which required the Gauteng Department of Health (GDoH) to devise and implement a plan to provide radiation oncology services to cancer patients on a backlog list at two Gauteng hospitals. Following the court order, however, and despite initial optimism regarding the impact of the ruling, the Supreme Court of Appeal (SCA) subsequently granted the GDoH leave to appeal the High Court's decision. As a result, the execution of the judgement and order in *Cancer Alliance* has been suspended pending the outcome of the appeal – an issue which itself became the subject of extensive legal debate between the parties.^[2]

Another recent instance in which the the Gauteng Division of the High Court, Johannesburg, was called upon to enforce the State's obligation to facilitate access to healthcare, by way of a positive interdict, was in the matter of *Treatment Action Campaign and Others v Facility Manager, Yeoville Clinic and Others*^[3] (*TAC v Facility Manager*). This matter, which was decided on 4 December 2025, arose as a result of the recent trend of vigilante groups blocking access to public clinics in the Johannesburg inner city by anyone not in possession of a valid South African identity document. The applicants in the matter sought an interdict compelling the provincial health authorities to develop and implement measures to prevent these groups from blocking access to the relevant clinics. This interim interdict was sought pending an application for a final order directing that the aforementioned measures be put in place throughout Gauteng.

In its decision, the court found that both the provincial health authorities and the South African Police Service (SAPS) had neglected to take action against the vigilante groups and to remove barriers to entry at the clinics. As a result, the court concluded that the authorities were failing in their constitutional and statutory duties.

Remarkably, the provincial health authorities argued that they had completely outsourced their constitutional and statutory responsibilities in respect of the relevant clinics to the City of Johannesburg (CoJ). The court, however, found that the service level agreement on which the authorities had sought to rely in this regard in fact provided for co-operation between the GDoH and the CoJ, and (as one would expect) did not permit the authorities simply to abrogate their responsibilities to promote access to healthcare in the province – responsibilities which arise from both section 27 of the Constitution and section 3 of the National Health Act No. 61 of 2003.^[4]

As a result, the court found that the requirements for an interim interdict were met in the circumstances.^[5] Ultimately, therefore, the court found that it was under a duty to grant effective relief to the applicants, and persons seeking access to the inner-city clinics, in order to remedy the State's shortcomings. The court, accordingly, ordered the provincial health authorities and SAPS to –

- take reasonable measures to ensure safe, unhindered access to the clinics;
- remove unauthorised persons obstructing access to the relevant clinics;
- station trained security personnel at access points to the clinics; and
- file a report with the court, within 10 court days of the order, setting out the actions taken to comply with the order.

The SAPS were, in turn, ordered to provide all necessary assistance to the clinics to ensure compliance with the order.

The *Cancer Alliance* and *TAC v Facility Manager* decisions demonstrate that mandatory and structural interdicts have the potential (when implemented) to be effective tools for safeguarding and enforcing the constitutional right to access to healthcare. In both cases, the courts recognised that where the State fails to take reasonable steps to fulfil its constitutional obligations, judicial intervention may be necessary to compel action. In both matters, the interdicts required the State to implement concrete measures to ensure access to healthcare. In this way, mandatory interdicts serve as a practical tool to transform the right to access to healthcare into tangible outcomes for vulnerable individuals who depend on the public healthcare system.

Whilst the developments in *Cancer Alliance* highlight some of the limitations of mandatory interdicts in compelling urgent state action (particularly in circumstances involving acute healthcare needs), the courts' willingness to grant positive interdicts in these recent cases nevertheless demonstrates a broader judicial obligation to ensure that the State's constitutional duty to provide access to healthcare is not rendered meaningless by administrative inaction.

[1] 2025 ZAGPJHC 136 (27 March 2025).

[2] In this regard, on 5 August 2025, Cancer Alliance lodged an urgent application, in terms of section 18 of the Superior Courts Act No. 10 of 2013, seeking an order that the High Court's decision in *Cancer Alliance* was interim in nature and, therefore, should remain operational and enforceable against the GDoH. This argument proved successful before Dippenaar J on 20 August 2025. The judgement was, however, appealed by the GDoH and ultimately overturned on 5 December 2025 by a full bench of the High Court. In its decision, the appeal court found that Dippenaar J *inter alia* –

- failed to deal meaningfully with the requirement to consider the prospects of success of the GDoH's pending appeal;
- erred in finding that the patients on the backlog list would suffer irreparable harm if the order was not granted; and
- erred in finding that the GDoH would *not* suffer irreparable harm if the decision were to be made immediately enforceable notwithstanding the pending appeal.

[3] 2025 ZAGPJHC 1256 (4 December 2025).

[4] The court further held that the SAPS was failing in its duties under section 205(3) of the Constitution to prevent crime and secure law and order, which required that the police play an active role in crime prevention beyond merely receiving and acting on complaints from the public – which the SAPS argued was the full extent of its responsibility in respect of the blockading of clinics by the vigilante groups.

[5] The court granted the interim interdict on the basis that –

- persons seeking healthcare services at the relevant inner-city clinics had a clear *prima facie* right to the final relief sought, which derived from the Constitution and statute;
- the harm posed by the vigilante groups to persons seeking healthcare services at the clinics was severe and ongoing;
- the balance of convenience favoured the applicants, as the provincial health authorities and SAPS did not argue that they were unable to address the harm but simply (and, according to the court, incorrectly) that they were under no obligation to do so; and
- the only suggested remedial alternative to the interdict sought – that is, reporting unlawful activity to the police – had not been successful.



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