IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT CASE NUMBER: CCT 279/2026

REGISTRAR OF THE CONSTITUTIONAL COURT
PRIVATE BAG X1
CONSTITUTION HILL
22 SEP 2026
BRAAMFONTEIN 2017
GRIFFIER VAN DIE KONSTITUSIONELE HOF

In the matter between:-

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain, a common-law *universitas*)

REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as President and executive official of First Applicant)

and

PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE First Respondent

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE Second Respondent

SOUTH AFRICAN NATIONAL PARKS Third Respondent

CAPENATURE Fourth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Fifth Respondent

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IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT CASE NUMBER: **/2026**

In the matter between:-

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain, a common-law *universitas*)

REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as President and executive official of First Applicant)

and

PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE First Respondent

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE Second Respondent

SOUTH AFRICAN NATIONAL PARKS Third Respondent

CAPENATURE Fourth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Fifth Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicants intend to make application to this Court, on an urgent basis and subject to such directions as may be issued by the Chief Justice, for the following orders:

PART "A"

URGENT PRESERVATION, CONDONATION, RELATED-MATTER AND PROCEDURAL RELIEF

For clarity, references in this Notice of Motion to "High Court Part 'A'" and "High Court Part 'B'" are references respectively to Parts "A" and "B" of the Applicants' proceedings in the Western Cape Division under case number 2026-024184, and not to the Parts into which the present Notice of Motion is divided.

1. That, in terms of Rule 12 of the *Rules of the Constitutional Court* ("*the Rules*"), this application be dealt with as urgent and that the Court dispense with or abridge the ordinary forms, service requirements and time periods to the extent necessary to secure effective relief.

2. That, insofar as any relief sought in Part “A” is considered to constitute original relief requiring direct access to this Court rather than ancillary or interlocutory relief in support of the applications for leave to appeal contained in Parts “B” and “C” and the related companion application, the Applicants be granted direct access in terms of section 167(6)(a) of the *Constitution of the Republic of South Africa, 1996* (“*Constitution*”), read with Rule 18 of the Rules of this Court.

3. That the Court take notice that the Applicants are simultaneously instituting a separate companion application for leave to appeal directly to this Court against the judgment and order of Holderness J delivered on 25 February 2026 in respect of Part “A” of the proceedings in the Western Cape Division under case number 2026-024184 (“High Court Part ‘A’”).

4. That the present application and the companion application referred to in paragraph 3 *supra* be treated as related proceedings and, insofar as administratively and judicially appropriate —

    4.1. be allocated related Constitutional Court case numbers;

    4.2. be placed before the Chief Justice for coordinated directions concerning urgency, filing, further affidavits, records and determination;

    4.3. be managed and, where appropriate, considered together or in such sequence as this Court may direct; and

    4.4. remain procedurally distinct insofar as the companion application concerning the judgment of 25 February 2026 requires its own condonation enquiry, while the applications for leave to appeal against

the judgments and orders of 28 August 2026 contained in Parts “B” and “C” of this Notice of Motion seek only protective condonation under Rule 32, to the extent that their eventual lodgment occurs after expiry of the period prescribed by Rule 19(2), for the short delay explained in the Founding Affidavit.

5. That the institution of either Constitutional Court application shall not constitute the withdrawal, abandonment, waiver or peremption of any of the Applicants’ pending Applications for Leave to Appeal in High Court case number 2026-024184, and that the Applicants shall notify this Court promptly of any further directive, set-down or determination materially affecting those proceedings.

6. That, pending the determination of the matters identified in paragraphs 6.1 to 6.3 *infra*, the Third to Fifth Respondents be interdicted and restrained from taking, authorising, procuring or causing any materially irreversible step directed at the permanent relocation and confinement of the affected Cape Peninsula baboon troops in a sanctuary, including capture for that purpose, removal, transportation into permanent confinement, or the irreversible alteration of their status as free-ranging troops:

6.1. Parts “B” and “C” of this application;

6.2. the companion application referred to in paragraph 3 *supra*; and

6.3. where leave to appeal is granted, the resulting appeal or appeals, unless this Court directs otherwise.

7. That paragraph 6 *supra* shall not prohibit *bona fide* emergency veterinary or animal-welfare measures strictly necessary to prevent imminent death, serious

injury or suffering, provided that a contemporaneous written record of the factual basis, authority and action taken is preserved and furnished to the Applicants and the Registrar on request.

8. That the Third to Fifth Respondents be directed, within one Court day after service of the order, or within such period as this Court directs, to file a joint or separate affidavit stating —

8.1. whether any affected baboon has since 12 September 2026 been captured, removed, transported or confined for sanctuary relocation;

8.2. whether any capture or relocation operation has been scheduled;

8.3. the proposed date and location thereof; and

8.4. the identity of the authority, contractor and decision-maker responsible for implementation.

9. That, in relation to the transcripts:

9.1. the Registrar of the Court *a quo* be directed to preserve the official audio recording of the proceedings before Holderness J on 28 August 2026 pending finalisation of the appellate processes;

9.2. the Registrar of the Court *a quo* be directed to take all necessary steps to procure the preparation, on an expedited basis, of the required official transcripts of the judgments delivered and proceedings conducted on 28 August 2026 and, immediately upon completion, cause such transcripts to be furnished to the Registrar of this Court and the Applicants;

9.3. pending receipt of the official transcripts referred to in paragraph 9.2 above, the Applicants be permitted, for urgent purposes, to rely provisionally upon their affidavit-verified working transcripts, subject to correction against the official audio recording and/or official transcripts once available; and

9.4. if any Respondent disputes the accuracy of a passage in the Applicants' working transcripts, such Respondent identify the precise timestamp, impugned wording and proposed correction, without prejudice to this Court's power to obtain or direct production of the official recording or transcript.

10. That the Chief Justice issue such further directions under Rules 12, 18 and 19 as may be necessary for the urgent and effective determination of the matters referred to in this Part, including, where appropriate, directions concerning the mode of hearing.

11. That, to the extent that the applications for leave to appeal contained in Parts "B" and "C" are lodged outside the period prescribed by Rule 19(2), condonation be granted in terms of Rule 32 for such non-compliance, for the reasons set out in the Founding Affidavit.

PART "B"

APPLICATION FOR LEAVE TO APPEAL: RECUSAL JUDGMENT OF 28 AUGUST 2026

12. That leave be granted in terms of section 167(6)(b) of the *Constitution*, read with Rule 19, to appeal directly to this Court against the whole of the judgment and order delivered *ex tempore* by Holderness J on 28 August 2026 dismissing the Applicants' recusal application, including the adverse costs order made therein.

13. That the appeal be upheld and the recusal judgment and order of 28 August 2026 be set aside.

14. That Holderness J be recused from further substantive proceedings in High Court case number 2026-024184; alternatively, that the recusal question be remitted or otherwise regulated in accordance with directions issued by this Court before any further substantive adjudication by Holderness J.

15. That the order for costs made in the recusal application be set aside and substituted with no order as to costs; alternatively, that the question of costs be reserved for determination by a differently constituted Court after final determination of the recusal appeal.

16. That the recusal appeal be determined anteriorly to any appeal or further substantive adjudication whose validity depends upon the continued competence of Holderness J, insofar as this Court considers such sequencing necessary in the interests of justice.

PART “C”

APPLICATION FOR LEAVE TO APPEAL: COSTS JUDGMENT AND RESTRAINT UPON FURTHER PROSECUTION OF THE HIGH COURT PROCEEDINGS

17. That leave be granted in terms of section 167(6)(b) of the *Constitution*, read with Rule 19, to appeal directly to this Court against the whole of the separate costs judgment and order delivered *ex tempore* by Holderness J on 28 August 2026, arising from the urgent interim proceedings originally brought as High Court Part “A”, including —

    17.1. the punitive and/or personal *de bonis propriis* costs consequences imposed pursuant thereto; and

    17.2. the consequential order restraining the Applicants from proceeding with High Court Part “B” until the costs arising from High Court Part “A” have been paid or otherwise satisfied.

18. That the appeal be upheld and the costs judgment and order referred to in paragraph 18 *supra* be set aside.

19. That the costs arising from High Court Part “A” be reserved for determination together with the final outcome of the substantive High Court proceedings; alternatively, that there be no order as to costs in High Court Part “A”; further alternatively, that the question of those costs be remitted for determination *de novo* by a differently constituted Court.

20. That the order preventing, staying or restraining the Applicants from prosecuting High Court Part “B” until payment or satisfaction of the costs arising from High Court Part “A” be set aside.

21. That, to the extent necessary, it be declared that nothing in the judgments or orders delivered on 28 August 2026 precludes the lawful case-management, enrolment or determination of —

    21.1. the Applicants’ pending Rule 28(4) application concerning their proposed amendment of High Court Part “B”; or

    21.2. High Court Part “B” itself, subject to the outcome of the pending appellate processes and any competent judicial direction.

COMMON RELIEF

22. That no adverse costs order be made against the Applicants in this constitutional and public-interest litigation; that, if the Applicants obtain substantial success, their reasonable and proven disbursements and expenses actually incurred in prosecuting these proceedings be reimbursed insofar as legally permissible for self-represented litigants; alternatively, that costs be reserved; and, in the event of opposition found to be frivolous, vexatious or constitutionally inappropriate, that such costs order be made as this Court considers just.

23. Further and/or alternative relief.

TAKE NOTICE FURTHER that the Applicants will use the Founding Affidavit of REYNO DAWID DE BEER, the confirmatory affidavit of MARISKA GELDENHUYS, and the annexures thereto in support of this application.

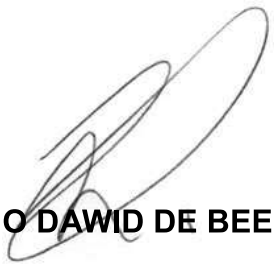
TAKE NOTICE FURTHER that the relief in PARTS “B” and “C” is sought under Rule 19 and that the Applicants disclose that applications for leave to appeal against the same decisions were delivered in the High Court on 8 September 2026 and remain pending. Those High Court applications are not withdrawn or abandoned.

TAKE NOTICE FURTHER that, to the extent the actual lodgment of PARTS “B” and “C” occurs after expiry of the period contemplated in Rule 19(2), the Applicants seek condonation in terms of Rule 32, as more fully set out in the Founding Affidavit.

TAKE NOTICE FURTHER that in terms of Rule 19(4), any Respondent may, within 10 days from the date upon which the Rule 19 application is lodged, respond in writing indicating whether the application is opposed and, if so, the grounds of opposition, subject to any abridged timetable directed under Rule 12.

TAKE NOTICE FURTHER that the Applicants consent to electronic service at reyno@libertyfighters.org and debeerreyno@gmail.com and nominate, for purposes of the requirement of an address within 25 kilometres of the office of the Registrar, c/o Ms Patience Mavuso, Unit 46 Carlswald View, 8th Road, Noordwyk, Midrand, while requesting that electronic service be preferred for prompt and reliable receipt.

SIGNED at **CAPE TOWN** on this **20TH** day of **SEPTEMBER 2026**.



REYNO DAWID DE BEER

Second Applicant *nomine officio* and President of First Applicant

Appearing in person and for First Applicant as its authorised officer

Monkey Valley Resort, 1 Mountain Road, Noordhoek, Cape Town

Address within 25km of this court for service: c/o Ms Patience Mavuso

Unit 46 Carlswald View, 8th Road, Noordwyk, Midrand

Mobile: +27 (0)67 735 7288

Email(1): reyno@libertyfighters.org

Email(2): debeerreyno@gmail.com

[Electronic service preferred at the email addresses stated above]

TO: **REGISTRAR OF THE CONSTITUTIONAL COURT**

JOHANNESBURG

AND TO: **PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE**

First Respondent

c/o STATE ATTORNEY

Ref: 354/25/P40 - Hoosain Aayesha

Email: AHoosain@justice.gov.za

AND TO: **WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE**

Second Respondent

c/o STATE ATTORNEY

Ref: 354/25/P40 - Hoosain Aayesha

Email: AHoosain@justice.gov.za

AND TO: **SOUTH AFRICAN NATIONAL PARKS**

Third Respondent

c/o MKHABELA HUNTLEY ATTORNEYS INC.

Email(1): mkhabela@mhalaw.co.za

Email(2): refiloe@mhalaw.co.za

Email(3): mmasetshaba@mhalaw.co.za

Email(4): kamohelo@mhalaw.co.za

Reference: SAN2-0038 / Mr L Mkhabela /

Correspondent: c/o MASERUMULE ATTORNEYS

Email(1): glen@maserumulecpt.co.za

Email(2): jamie@maserumulecpt.co.za

Email(3): ophelia@maserumulecpt.co.za

Reference: Mr Glen Cassells

AND TO: **CAPENATURE**

Fourth Respondent

c/o FAIRBRIDGES ATTORNEYS

Per: DEIRDRE OLIVIER

Ref: DO/AA/10144964

Email(1): deirdre.o@fairbridges.co.za

Email(2): celani.m@fairbridges.co.za

AND TO: **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**

Fifth Respondent

c/o FAIRBRIDGES ATTORNEYS

Per: DEIRDRE OLIVIER

Ref: DO/AA/10144964

Email(1): deirdre.o@fairbridges.co.za

Email(2): celani.m@fairbridges.co.za

SCHEDULE A – ORIGINAL HIGH COURT PARTIES TO BE SERVED FOR NOTICE ONLY

The following parties were cited in the High Court proceedings under case number 2026-024184. They are not cited as Respondents in this application because no substantive coercive relief is presently sought against them, but the Applicants intend to serve them with the complete application for notice and procedural transparency and to afford any party claiming a direct and substantial interest an opportunity to approach this Court for appropriate directions.

A1. SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE

c/o Mr André le Roux (Senior Legal Adviser)

Email: aleroux@WCPP.GOV.ZA

A2. OFFICE OF THE COMMISSIONER FOR THE ENVIRONMENT

(a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, presently vacant)

c/o First and Second Respondents

Service through the State Attorney at the contact details stated above.

A3. CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE

c/o Mr Robert McGaffin

Civic Centre, Podium Block, Fifth Floor

Email(1): cpbmjtt@capetown.gov.za

Email(2): cpbmjtt@sanparks.org

Email(3): cpbmjtt@capenature.co.za

Senior Legal Advisor: Ms Emlyn Williams

Email: Emlyn.Williams@capetown.gov.za

A4. JUDITH ANNE SOLE

Email(1): judy@monkeyvalleyresort.com

Email(2): traxdb@gmail.com

A5. WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA

c/o Administrator and Coordinator: Ms Megan Carr

Email: administrator@wapfsa.org

A6. BABOON ADVISORY GROUP

c/o Tom Cohen, Chris Hart, Garth Kew, and Simon's Town Civic Association

Email(1): waldohelives@icloud.com

Email(2): chrisjonllo@gmail.com

Email(3): krok@mweb.co.za

Email(4): stcamail@gmail.com

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CCT CASE NUMBER: **/2026**

In the matter between:-

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain, a common-law *universitas*)

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(cited *nomine officio* as President and executive official of First Applicant)

and

PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE First Respondent

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE Second Respondent

SOUTH AFRICAN NATIONAL PARKS Third Respondent

CAPENATURE Fourth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Fifth Respondent

FOUNDING AFFIDAVIT

IN SUPPORT OF URGENT RELIEF UNDER RULE 12, ALTERNATIVE DIRECT ACCESS UNDER RULE 18, CONDONATION UNDER RULE 32 AND TWO APPLICATIONS FOR LEAVE TO APPEAL UNDER RULE 19

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I, the undersigned,

REYNO DAWID DE BEER

declare under oath as follows:

INTRODUCTION

1. I am **REYNO DAWID DE BEER N.O.** ("De Beer"), an adult male, cited *nomine officio* as the President and executive official of **LIBERTY FIGHTERS NETWORK** ("LFN"), a voluntary association without gain and common-law *universitas*. I am accordingly the Second Applicant in my aforesaid official capacity, and LFN is the First Applicant. LFN and I are collectively referred to as the "Applicants". I presently reside at Monkey Valley Resort, 1 Mountain Road, Noordhoek, Cape Town, with my further contact details appearing from the Notice of Motion.

2. For purposes of compliance with the requirement to provide an address for service within 25 kilometres of the seat of this Court, the Applicants nominate c/o Ms Patience Mavuso, Unit 46 Carlswald View, 8th Road, Noordwyk, Midrand. Ms Mavuso is presently outside Gauteng attending to family responsibilities. The address is nevertheless nominated for purposes of the Rules, while the Applicants request that service, insofar as permissible and unless otherwise directed by this Court or the Registrar, preferably be effected electronically at the email addresses provided in the Notice of Motion so as to ensure prompt and reliable receipt.

3. I am personally and directly affected by the decisions delivered by Holderness J on 28 August 2026 because the recusal judgment concerns the judicial

treatment of me and the subsequent costs judgment imposed, or purported to impose, personal *de bonis propriis* consequences upon me and restrained further prosecution of High Court Part "B".

SUMMARY AND BACKGROUND

4. This is an urgent application to the Constitutional Court arising from pending proceedings under case number 2026-024184 in the Western Cape Division, Cape Town, and engages the *Constitution of the Republic of South Africa, 1996* ("*Constitution*"). Urgency is not a feature newly introduced in these proceedings.

5. In short, the underlying proceedings concern the highly contested management of the Cape Peninsula baboons by **SOUTH AFRICAN NATIONAL PARKS** ("SANParks"), **CAPENATURE** ("CapeNature") and the **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY** ("City"), collectively referred to as the "Implementing Respondents". The impugned management measures include capture, removal from established natural home ranges, permanent confinement and, in defined circumstances, lethal management. The Applicants challenge the legality, constitutionality and environmental propriety of allowing irreversible implementation to overtake the constitutional and other processes which they invoked.

6. The immediate question is obvious: if the underlying proceedings remain pending before the Western Cape Division, why are the Applicants now before this Court? The short answer is that urgent preservation relief was dismissed,

the Applicants promptly invoked the ordinary appellate process, more than six months later that process has still not produced appellate adjudication, and in the meantime the very implementation sought to be preserved against has advanced towards potentially irreversible consequences. That procedural position has now generated the constitutional questions identified *infra*.[1]

7. The underlying proceedings were instituted on 5 February 2026 as urgent seeking preservation of the then *status quo* pending investigation of a complaint directed to the Office of the Commissioner for the Environment ("Commissioner"), established under the *Constitution of the Western Cape, 1997* ("*WC Constitution*"), but which office remains without an appointed incumbent.

8. The complaint concerns implementation of the Final Cape Peninsula Baboon Management Action Plan (2025) ("Final Action Plan") and associated constitutional, environmental and administrative-law questions.

9. The urgent High Court application was divided into two parts. High Court Part "A" sought only to preserve the *status quo* against permanent or otherwise irreversible implementation pending determination of High Court Part "B". High Court Part "B" concerns, *inter alia*, the continued non-operationalisation of the Commissioner and relief directed at enabling the complaint concerning the Final Action Plan to be dealt with before irreversible implementation overtakes its subject matter.

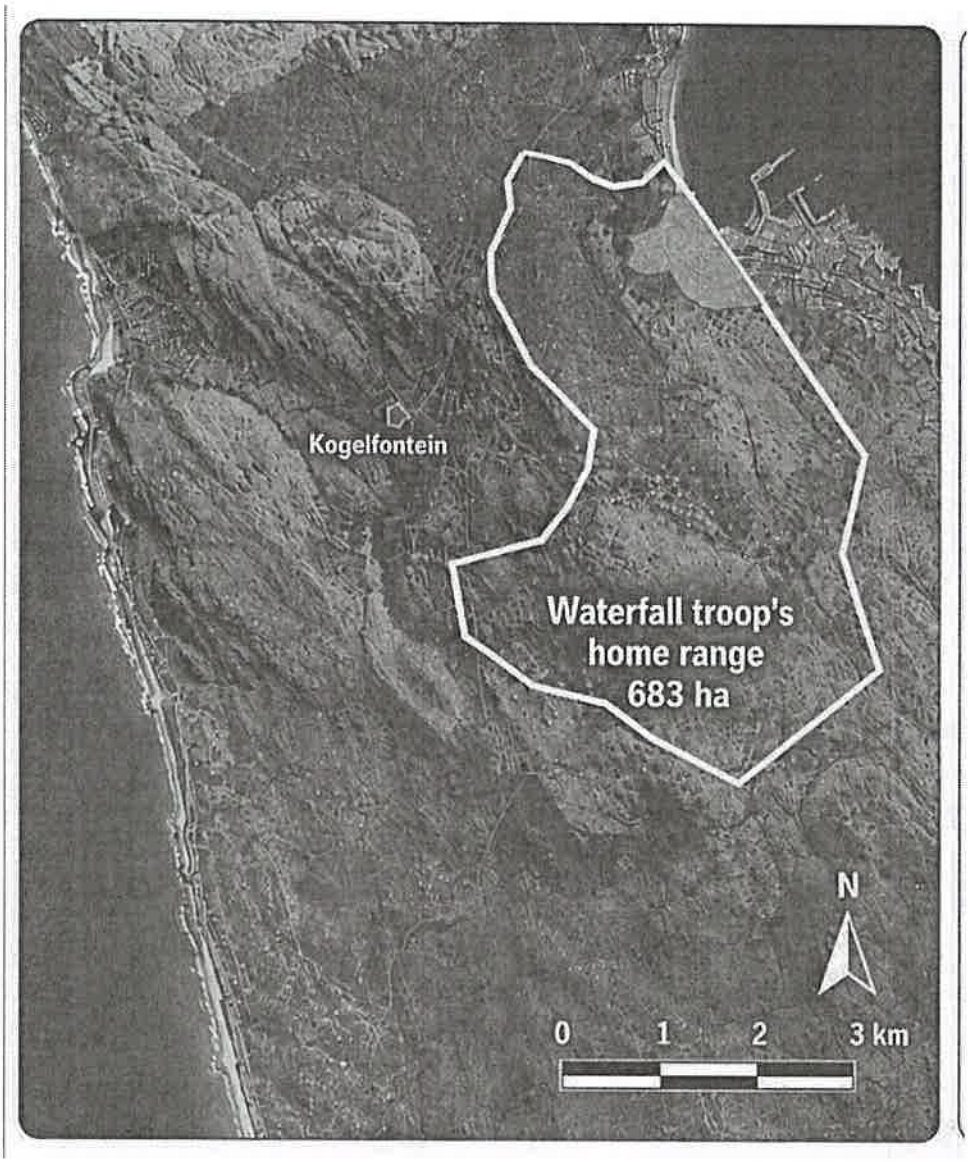
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[1] See paras 24-30 and 86-93 *infra*; see also paras 31-47 *infra* on urgency.

10. The urgent hearing took place on 19 February 2026. On 25 February 2026 Holderness J dismissed High Court Part "A" in its entirety, *inter alia*, for want of urgency. It was not merely struck from the urgent roll. The dismissal ended the preservation sought and left implementation capable of continuing while the Applicants had to invoke the appellate process.

11. The Applicants lodged an Application for Leave to Appeal on 2 March 2026 against the whole of the judgment and order. More than six months later that application remains unheard, despite repeated attempts to obtain expedition.

12. During that period implementation continued. Most significantly, the Waterfall baboon troop was scheduled on 12 September 2026 to be permanently removed from its approximately 683-hectare natural home range and relocated into an electrically fenced sanctuary at Kogelfontein, where the available enclosures are stated to comprise approximately 2,11 hectares and 1,37 hectares respectively. The map *infra* illustrates the scale comparison relied upon by the Applicants for urgency.



Illustrative map of the Waterfall troop's approximately 683 ha home range and the Kogelfontein sanctuary location, as relied upon by the Applicants for urgency and scale comparison.

13. The contemplated Waterfall relocation did not proceed on 12 September 2026 and was postponed for reasons not presently known to the Applicants. That postponement did not constitute abandonment of the proposed relocation and did not remove the threatened irreversible consequence.

14. The Applicants' apprehension of bias on the part of Holderness J was raised expressly in the Application for Leave to Appeal of 2 March 2026 and thereafter developed through the subsequent costs-first sequencing, continuing delay, a complaint to the Judicial Service Commission ("JSC"), requests for head-of-court case management and, ultimately, a formal recusal application.[2]

15. The recusal application was dismissed on 28 August 2026 with a punitive costs order. A separate costs judgment delivered immediately thereafter imposed punitive and personal costs consequences and restrained progression of High Court Part "B". Protective Applications for Leave to Appeal were lodged against both decisions. All three High Court Applications for Leave to Appeal were eventually enrolled for 18 September 2026, but on 17 September 2026 that hearing was postponed into the fourth term without preservation of the disputed subject matter. That supervening event crystallised the present Constitutional Court urgency.

NATURE OF THE APPLICATION

16. This application is deliberately structured so that the two direct appeals arising from the events of 28 August 2026 remain procedurally self-contained. Because final lodgment may occur shortly after expiry of the period contemplated in Rule 19(2), the Applicants seek protective condonation under Rule 32 for any resulting short non-compliance. A separate companion application addresses

[2] The recusal controversy is developed at paras 70-77 and 94-101 *infra*.

the materially earlier judgment of 25 February 2026 and its distinct condonation enquiry.

17. The Notice of Motion is divided into three Parts. Part "A" seeks narrow and temporary preservation, condonation and procedural relief; and, only if the preservation sought is regarded as original relief rather than ancillary relief to the appellate proceedings, alternative direct access under Rule 18. Part "B" seeks direct leave to appeal against the refusal of recusal on 28 August 2026. Part "C" seeks direct leave to appeal against the separate costs judgment and the consequential restraint upon High Court Part "B".

18. The procedural difficulty exposed by this matter is practical rather than theoretical. Although an unsuccessful urgent litigant may promptly lodge an application for leave to appeal, no automatic mechanism carries the urgency of the original proceedings into that leave process, and the lodging of such an application does not itself recreate preservation which the court refused.

19. The result may be that a litigant who sought urgent preservation remains dependent upon sufficiently prompt enrolment and determination in the court a *quo*, while the very conduct sought to be restrained continues. Where implementation may be irreversible, appellate relief can lose practical utility before an appellate court is ever reached.

20. That is substantially what occurred here. The Applicants invoked the ordinary appellate route promptly, repeatedly sought its expedition and, when a hearing was eventually directed by the presiding judge, prepared to argue all three Applications for Leave to Appeal on 18 September 2026. On 17 September 2026, however, that hearing was postponed into the fourth term without any

interim preservation of the subject matter sought to be protected. The Applicants therefore do not approach this Court to bypass an appellate process they neglected, but because the ordinary process which they promptly invoked and diligently pursued has not produced effective appellate adjudication before the very subject matter sought to be preserved became increasingly exposed to irreversible implementation.

CONSTITUTIONAL QUESTIONS TO ANSWER

21. The Applicants respectfully submit that the present proceedings raise a limited number of distinct but interrelated constitutional questions arising directly from the decisions of 28 August 2026 and the procedural circumstances in which they were made.

22. They are identified at the outset so that the constitutional character of the dispute and the basis upon which this Court is asked to intervene are readily apparent. The Applicants do not suggest that every question must necessarily be finally determined at the leave-to-appeal stage. They identify the questions which engage this Court's constitutional jurisdiction and materially inform the interests-of-justice enquiry. The questions are:

    22.1. Effective appellate protection in urgent proceedings;

    22.2. Judicial impartiality and sequencing of the recusal appeal;

    22.3. *Audi alteram partem*, punitive personal costs and denial of reply;

22.4. Conditioning further constitutional litigation upon payment or satisfaction of costs;

22.5. Authority, public-interest litigation and litigant profiling;

22.6. Environmental *fait accompli* and effective constitutional relief; and

22.7. The constitutional obligations of organs of state as litigants.

23. Each question is stated briefly here and developed under its own section *infra*, with the factual chronology incorporated by cross-reference rather than repeated unnecessarily.

24. The first and overarching question concerns effective appellate protection where urgent preservatory relief has been dismissed. Where an unsuccessful applicant promptly invokes the ordinary appellate process, but no automatic mechanism carries the urgency of the original proceedings into the application for leave to appeal, does the *Constitution* permit that process to become practically nugatory while the very conduct sought to be preserved against continues towards potentially irreversible consequences? Relatedly, where section 18 of the *Superior Courts Act, 2013 (Act No. 10 of 2013)* ("*SC Act*") does not, without more, recreate positive preservatory relief which was refused, may and should this Court grant temporary preservation necessary to maintain the practical efficacy of the pending appellate processes?[3]

25. The second question concerns judicial impartiality under sections 34 and 165(2) of the *Constitution*. Where a reasonable apprehension of bias has already been

[3] Question 1 is developed at paras 86-93 *infra*.

raised, may subsequent judicial conduct during the recusal proceedings themselves form part of the cumulative objective enquiry; and, where refusal of recusal has itself become the subject of an application for leave to appeal, do constitutional impartiality and the interests of justice require that question to be determined before further substantive adjudication whose validity depends upon the continued participation of the same judicial officer?[4]

26. The third question concerns the constitutional content of the *audi alteram partem* principle and procedural fairness under section 34 of the *Constitution*. Where a costs determination was initially contemplated to occur in chambers upon written submissions, the Applicants had already lodged an Application for Leave to Appeal before those submissions became due, and a hearing was subsequently convened at which the opposing organs of state advanced oral argument in support of punitive and personal costs and consequential restraints upon further constitutional litigation, may an earlier opportunity to have filed written submissions be relied upon as sufficient *audi* where the affected litigant was not afforded an opportunity to reply to the case actually advanced at the hearing before judgment was pronounced?[5]

27. The fourth question is whether access to court may constitutionally be conditioned upon satisfaction of an adverse costs order where the restrained proceedings concern unresolved constitutional and public-interest questions. In particular, may litigants be prohibited from taking further steps in those proceedings until punitive costs, including personal *de bonis propriis* liability,

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[4] Question 2 is developed at paras 94-101 *infra*.
[5] Question 3 is developed at paras 102-107 *infra*.

are satisfied where the costs order imposing those consequences is itself under appellate challenge and the costs have not yet been taxed or quantified?[6]

28. The fifth question concerns the constitutional limits upon collateral procedural characterisation of a public-interest litigant. Where objective evidence establishes an organisation's authority to litigate, may repeated challenges to authority and selective reliance upon the frequency or outcomes of previous proceedings be used to construct an adverse forensic profile of the litigant, including as a "serial litigant", and thereafter contribute to findings of abuse or punitive personal costs while materially relevant judgments which contradict, qualify or contextualise that alleged pattern are disregarded?[7]

29. The sixth question concerns the intersection of sections 24, 34 and 38 of the *Constitution* and effective constitutional remedies: where governmental conduct challenged in genuine constitutional and environmental litigation may irreversibly alter the very subject matter before appellate scrutiny can occur, must a court considering interim preservation ensure, where the established requirements are met, that the proceedings are not overtaken by a *fait accompli* which renders subsequent adjudication practically ineffective?[8]

30. The seventh question concerns the constitutional boundary between legal professional privilege and the continuing obligations of organs of state as public litigants. Sections 7(2), 34, 165(4) and 195 of the *Constitution* impose obligations of legality, accountability, transparency, candour and assistance to the courts which do not disappear when an organ of state instructs private legal

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[6] Question 4 is developed at paras 108-113 *infra*.
[7] Question 5 is developed at paras 114-122 *infra*.
[8] Question 6 is developed at paras 123-129 *infra*.

practitioners. The Applicants question whether legal professional privilege can operate identically to that ordinarily asserted by private litigants where the client is an organ of state exercising or defending public power and the information concerned bears materially upon the lawfulness of that conduct. The Applicants do not contend that organs of state may not obtain confidential legal advice. The question is whether, and to what extent, such confidentiality or privilege can constitutionally operate where its invocation would conflict with the State's positive obligations under the *Constitution*, including its duties of candour, transparency and accountability in the exercise and defence of public power.[9]

URGENCY

31. The urgency in this application is neither newly created nor self-created. The underlying proceedings were instituted as urgent proceedings on 5 February 2026 for the very purpose of preserving the then *status quo* pending determination of the Applicants' constitutional and environmental challenge. High Court Part "A" was dismissed on 25 February 2026, rather than merely struck from the urgent roll, and the Applicants promptly lodged their Application for Leave to Appeal on 2 March 2026. The urgency which existed at inception did not disappear through the passage of time. It progressively intensified as implementation of the Final Action Plan continued while effective appellate adjudication remained outstanding.

[9] Question 7 is developed at paras 130-135 *infra*.

32. The Applicants have throughout attempted to obtain relief through the ordinary processes of the *court a quo*. What they could not reasonably have anticipated when invoking the appellate process on 2 March 2026 was that an Application for Leave to Appeal arising from proceedings instituted as urgent would remain unheard for more than six months, become entangled with an outstanding costs determination and subsequent recusal proceedings, produce two further Applications for Leave to Appeal arising from 28 August 2026, and ultimately culminate in all three applications being enrolled for hearing on 18 September 2026.

33. Importantly, the factual position outside the courtroom did not remain static while the Applicants awaited appellate adjudication. The Final Action Plan continued to be implemented. At the time of the original proceedings the permanent sanctuary infrastructure required for the contemplated removal and confinement of affected baboon troops had not yet become operational. Publicly announced arrangements initially contemplated sanctuary infrastructure on privately owned land made available for that purpose. That arrangement was subsequently abandoned or materially altered and sanctuary infrastructure was thereafter developed on land made available by the City. During the same period in which the Applicants were attempting to obtain determination of their leave application, the physical infrastructure necessary for permanent relocation progressed from proposal and construction towards operational reality.

34. That development materially increased urgency. While the sanctuary remained incomplete, construction constituted a practical impediment to immediate

permanent relocation and afforded some time within which the Applicants attempted to obtain appellate determination. The Applicants did not treat that temporary practical impediment as abandonment of the Final Action Plan. They repeatedly sought to have the appellate process determined before implementation reached the point at which permanent relocation could practically occur.

35. By September 2026 that position had materially changed. The sanctuary development had advanced sufficiently for the Waterfall troop to be scheduled for permanent removal from its approximately 683-hectare natural home range and relocation to the sanctuary on 12 September 2026. Although the relocation did not proceed on that date, its postponement did not restore the factual position which existed in February 2026. A principal practical impediment to immediate relocation has substantially, if not entirely, disappeared.

36. The Applicants emphasise this chronology because the passage of time has therefore not diminished the original urgency; it has increased it. While the Application for Leave to Appeal remained unheard, implementation continued outside the courtroom: infrastructure was developed, operational preparations advanced, and permanent relocation moved from a future proposal towards an executable measure.

37. The immediate necessity for approaching this Court crystallised on 17 September 2026. Until then, the Applicants reasonably expected all three Applications for Leave to Appeal to be heard on 18 September 2026 and continued pursuing that ordinary appellate avenue rather than prematurely approaching this Court. On 17 September 2026, however, the hearing was

postponed into the fourth term without a determined replacement date and without interim preservation of the disputed subject matter.

38. The Applicants are consequently confronted with a materially different factual position from that which existed when the original Application for Leave to Appeal was lodged. The appellate questions remain unresolved, but implementation has continued to mature and a principal physical impediment to permanent relocation has meanwhile substantially disappeared. What previously required further infrastructure and preparation is now capable of implementation on materially shorter notice.

39. Urgency is further heightened because the implementation sought to be preserved against is itself the subject of the Applicants' complaint directed to the constitutionally established Office of the Commissioner. That complaint has not been investigated while the office remains without an appointed Commissioner. The Applicants therefore face the prospect that implementation may produce irreversible consequences before the appellate remedies are determined and before the constitutional environmental mechanism to which the complaint was directed has become operational.

40. This is the central urgency confronting this Court: judicial time and implementation time have moved at materially different speeds. The Applicants have spent more than six months attempting to obtain appellate adjudication arising from proceedings instituted precisely to preserve the *status quo*, while the implementation sought to be preserved against has continued to mature towards potentially irreversible execution.

41. The threatened consequences are not readily reversible. Capture, permanent removal from an established natural home range, confinement and any lethal management measures capable of implementation under the impugned arrangements may create consequences which cannot simply be undone by a subsequently successful appeal. The urgency lies not merely in the importance of the dispute, but in the risk that the external factual position becomes irreversible before judicial process can determine whether preservation should have been afforded.

42. Put differently, a subsequently successful appeal may provide vindication in law while arriving too late in fact. That is the *fait accompli* the Applicants seek temporarily to prevent. The utility of appellate adjudication cannot meaningfully be preserved if the subject matter upon which effective relief depends has already been permanently altered.

43. The Applicants do not through urgency ask this Court finally to determine the legality or desirability of the Final Action Plan or the merits of High Court Part "B". Part "A" of the present Notice of Motion is substantially preservatory. Its purpose is to maintain the position sufficiently to allow this Court to consider the applications for leave to appeal without their practical subject matter being overtaken.

44. There is presently no satisfactory alternative remedy capable of providing equivalent protection within the time available. Returning to the *court a quo* does not resolve the immediate difficulty: the original preservation was dismissed there; the 2 March 2026 Application for Leave to Appeal remains unresolved; the subsequent recusal and costs decisions have themselves

generated appellate proceedings; and the hearing intended to address all three applications on 18 September 2026 was postponed into the fourth term without a determined replacement date.

45. The balance of convenience similarly favours temporary preservation. The relief sought does not require this Court presently to prohibit implementation permanently or determine which baboon-management policy should ultimately prevail. Preservation temporarily maintains the contested position. Refusing it carries the materially greater risk that implementation produces consequences which cannot effectively be reversed if leave is later granted and an appeal succeeds.

46. Any temporary inconvenience to the Implementing Respondents must therefore be weighed against the possibility that irreversible implementation renders the appellate processes substantially academic. Temporary preservation is the course which best protects this Court's ability to afford effective relief if it ultimately concludes that such relief is warranted.

47. The Applicants accordingly request that the Chief Justice and this Court treat the application as urgent under Rule 12 and issue the directions necessary for expedited consideration of Part "A" and the associated applications for leave to appeal. The Applicants seek no procedural advantage beyond what is necessary to prevent the subject matter from being overtaken by events.[10]

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[10] Rule 12 of the Rules of the Constitutional Court; *Snyders and Others v De Jager (Interim Relief)* (CCT186/15) [2016] ZACC 52; 2017 (5) BCLR 585 (CC).

THE APPLICANTS, AUTHORITY, THE RESPONDENTS AND INTERESTED PARTIES

48. LFN is a voluntary association without gain and common-law *universitas*, having perpetual succession and legal personality in accordance with its written Founding Constitution. The complete LFN Constitution comprises 51 pages. For brevity and proportionality, the provisions relevant to legal personality, governance, authority and the institution of these proceedings are annexed as a redacted extract marked "**CC1**". The complete Constitution will be provided if required.

49. In terms of section 38(1)(e) of the LFN Constitution, the President is the head and chief directing officer of LFN, acts in consultation with the National Working Committee ("NWC"), and may at any reasonable time institute or defend legal proceedings on behalf of the organisation.

50. For this Constitutional Court proceeding the Applicants do not rely merely upon what was placed before the High Court in February. The relevant consultation and decision have, *ex abundanti cautela*, been reduced to writing in the NWC Written Record of Consultation and Decision dated 17 September 2026, annexed marked "**CC2**". It confirms the institution and prosecution of this application and the companion application, the continued pursuit of the High Court appellate processes, and my authority to sign, lodge, serve and present the papers.

51. The confirmatory affidavit of Ms Mariska Geldenhuys, the current Acting National Secretary of LFN and the other presently functioning member of the NWC, is annexed marked "**CC3**". It confirms my office, the consultation, the

recorded decision and LFN's support for the proceedings. The record in the court *a quo* also contains a confirmatory affidavit by LFN's former Acting National Secretary, Ms Patience Mavuso.

52. The Applicants accordingly distinguish authority from standing. Authority concerns whether proceedings in LFN's name were authorised; standing concerns whether LFN and I may invoke the Court's jurisdiction. The former is established for present purposes by annexures "**CC1**" to "**CC3**". The constitutional implications of the repeated authority and standing challenges are dealt with under Question 5 *infra*.[11]

53. The **PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE** ("Premier") is cited in his official capacity as head of the Western Cape provincial executive, with the service details appearing from the Notice of Motion.

54. The **WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE** ("WC Minister") is cited in his official capacity as the member of the provincial executive responsible, *inter alia*, for environmental affairs, with service details appearing from the Notice of Motion.

55. **SANParks** is a national public entity whose protected-area functions are presently regulated principally under the *National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)*. **CapeNature** is the commonly

[11] The constitutional significance of authority, standing and litigant profiling is developed at paras 114-122 *infra*.

used name of the Western Cape Nature Conservation Board constituted under the *Western Cape Biodiversity Act, 2021 (Act No. 6 of 2021)*. The **City** is a metropolitan municipality contemplated by section 151 of the *Constitution* and the *Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)*.

56. The Implementing Respondents collaborated through the Cape Peninsula Baboon Management Joint Task Team ("CPBMJTT"), adopted and/or implemented the relevant baboon-management arrangements, opposed the urgent High Court relief and subsequent recusal proceedings, and are the bodies presently capable of taking or authorising the capture, relocation and permanent sanctuary-confinement measures which Part "A" seeks temporarily to restrain.

57. Only the Premier, WC Minister and Implementing Respondents are cited as Respondents in this application because they either opposed the processes now on appeal, are directly affected by the relief, or both. The remaining persons and bodies cited in the High Court are listed in Schedule A to the Notice of Motion and will be served with the complete papers for notice and procedural transparency. No coercive relief is presently sought against them.

58. Should any served interested party contend that it has a direct and substantial legal interest in an order sought, the Applicants do not oppose that party seeking appropriate intervention or directions from this Court.



THE COMMISSIONER, THE COMPLAINT AND THE ENVIRONMENTAL GOVERNANCE BACKGROUND

59. The underlying dispute is about more than a disagreement over baboon-management policy. Sections 71 to 77 of the *WC Constitution* establish the Office of the Commissioner. Section 72 contemplates, *inter alia*, investigation of complaints concerning environmental administration and the making of recommendations to provincial organs of state and municipalities.

60. The Western Cape Government's own 2025/26 planning material records that the Commissioner is a Schedule 3 Part C public entity, that the Commissioner has not yet been appointed, and that the legislative process concerning the Constitution of the Western Cape First Amendment Bill [B1-2021] will determine whether the entity continues. The relevant official extract is annexed marked "**CC4**".

61. The record in the court *a quo* further reflects that the Premier requested the Speaker of the Western Cape Provincial Parliament to revive the legislative process concerning Bill B1-2021 and relied upon that process in opposing relief directed at operationalising the office. The significance relied upon here is institutional rather than partisan: the constitutional office remains in the provincial constitutional text while its incumbent has not been appointed and the Applicants' complaint remains uninvestigated.

62. The Provincial Parliament's published description of Bill B1-2021 records that one stated purpose is repeal of the provisions relating to the Commissioner, while its current bill-tracking information records the Bill as "Introduced". The relevant official materials are annexed collectively marked "**CC5**". The

Applicants do not ask this Court in this application to determine the political wisdom of retaining or repealing the office.

63. During late 2025 the CPBMJTT and its constituent authorities progressed the Final Action Plan, which contemplates interventions including capture, relocation, reproductive measures and euthanasia in defined circumstances.

64. On or about 9 December 2025, LFN lodged a formal complaint directed to the Office of the Commissioner, transmitted *via* the offices of the Premier and the Speaker of the Western Cape Provincial Parliament because no incumbent was available through whom the complaint could ordinarily be received. The complaint concerned the environmental administration associated with the baboon-management arrangements, including the legal status and decision-making of the CPBMJTT and the 2023 memorandum of agreement. Importantly, the governmental and environmental authorities to which such concerns might ordinarily have been directed were themselves implicated in, or formed the subject of, the complaint. In those circumstances, the constitutionally established and intended independent Office of the Commissioner presented itself as the most appropriate available mechanism through which the complaint could be independently investigated. The complaint is annexed marked "**CC6**".

65. Because the office remained vacant and non-operational, no Commissioner was available to investigate the complaint in the constitutionally contemplated manner. The Applicants therefore sought a moratorium and thereafter urgent judicial preservation pending, *inter alia*, appointment and investigation.

66. The central logic remains straightforward. The Applicants did not ask the High Court, and do not ask this Court, to become the wildlife manager. They seek to prevent potentially irreversible implementation from rendering legality, oversight and appellate adjudication historical exercises after the relevant acts have already occurred.

THE HIGH COURT PROCEEDINGS AND THE EVENTS OF 28 AUGUST 2026

67. High Court Part "A" sought urgent interim protection against permanent or irreversible implementation, including capture, removal, relocation or confinement of baboon troops, pending determination of the broader constitutional and administrative questions in High Court Part "B".

68. High Court Part "A" was heard by Holderness J on 19 February 2026 and dismissed on 25 February 2026, including on findings concerning urgency, standing and authority, with costs reserved. The judgment is annexed marked "**CC7**" and the formal order marked "**CC8**".[12]

69. The Applicants delivered their Application for Leave to Appeal on 2 March 2026 against the whole judgment and order. It challenges, amongst other matters, the findings concerning section 38 standing, authority, urgency, procedural fairness and the Court's characterisation of the Applicants. It is annexed marked "**CC9**" and remains pending.

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[12] *Liberty Fighters Network and Another v Premier of the Western Cape and Others* (2026-024184) [2026] ZAWCHC 85 (25 February 2026)

70. The reserved costs issue, which was to be determined in chambers unless a hearing was considered necessary, remained outstanding for months. The Applicants objected that the contemplated punitive and personal *de bonis propriis* costs had, in the meantime, become inextricably intertwined with findings and characterisations in the judgment which were already under challenge in the pending Application for Leave to Appeal.

71. On 2 June 2026 the Applicants lodged a complaint with the JSC concerning, amongst other matters, aspects of the High Court Part "A" judgment and the decision to defer the leave hearing until after costs. The Applicants accept that a JSC complaint does not of itself require recusal.

72. After further delay and attempts to obtain administrative expedition, the Applicants instituted a formal urgent recusal application on 14 August 2026, seeking recusal of Holderness J from further proceedings and urgent reallocation so that the appellate process could continue.

73. The recusal application and the reserved costs issue were heard on 28 August 2026. During the recusal hearing counsel for the City and CapeNature described the recusal application as a "*bullying stratagem*". Before my reply, Holderness J stated words to the effect: "*Well said. Mr De Beer can rest assured that I will not be bullied.*" The Applicants rely upon the official audio and their working transcript, subject to correction against the official record.

74. The Court also raised, for the first time at the hearing, criticism concerning communications addressed to chambers, including the use of expressions such as "*worthy of censure*", "*paternalistic*" and "*patronising*". Those matters had therefore not formed part of an earlier case to which the Applicants could have

responded in writing. When I attempted to address them and explain the context in which those expressions had been used, I was directed to confine myself to the application before Court and was informed that any further complaint could be pursued before the JSC.

75. The Court thereafter delivered an *ex tempore* judgment dismissing the recusal application and making an adverse costs order. The working transcript is annexed marked "**CC10**", the sealed recusal order marked "**CC11**", and the full speaker-attributed audio-derived transcript of the proceedings marked "**CC12**".

76. Immediately thereafter the Court proceeded to the separate costs determination. I addressed the Court first. The represented Implementing Respondents then advanced substantive submissions, including personal *de bonis propriis* liability and a restraint upon High Court Part "B". I was not afforded a further reply before judgment was pronounced.

77. The Court then delivered a separate *ex tempore* costs judgment imposing punitive and personal costs consequences and restraining further steps in High Court Part "B" until the High Court Part "A" costs order had been satisfied. The working transcript is annexed marked "**CC13**" and the sealed costs order marked "**CC14**". The sealed orders are relied upon for their operative terms and the transcripts for the oral reasons and sequence.



THE POST-JUDGMENT APPELLATE STEPS AND THE 17 SEPTEMBER 2026 EVENT

78. On 8 September 2026 the Applicants delivered a protective Application for Leave to Appeal against the recusal judgment and order, without waiting further for a final typed judgment or professional transcript. It is annexed marked "**CC15**". A separate protective Application for Leave to Appeal against the costs judgment and High Court Part "B" restraint was delivered on the same date and is annexed marked "**CC16**". Both remain pending and are disclosed for purposes of Rule 19(3)(d).

79. On 8 September 2026 the Applicants again approached the head of court for urgent case management, recording that the two 28 August judgments and sealed orders had not yet been furnished in final form and requesting expedition. The correspondence is annexed marked "**CC17**".

80. On 11 September 2026 the Chief Justice advised the Applicants that a report had been requested from the Judge President concerning institutional case-management issues raised by the Applicants. The Applicants do not contend that this administrative step stayed the proceedings. The communication is annexed marked "**CC18**".

81. On 15 September 2026 the High Court directed that all three Applications for Leave to Appeal be heard on Friday, 18 September 2026. The directive and correction of the hearing time are annexed marked "**CC19**". The Applicants objected on 16 September 2026 to the compressed timing but made clear that they were prepared to proceed and would not use the absence of final typed

judgments as a reason to delay. That communication is annexed marked **"CC20"**.

82. The attorneys for the City and CapeNature thereafter requested postponement because written judgments and professional transcripts were not yet available and were said to be indispensable for preparation. SANParks indicated availability for later dates. Those communications are annexed marked "**CC21**" and "**CC22**".

83. On the morning of 17 September 2026 the Court postponed the hearing into the fourth term and directed the parties to identify a later date. The directive is annexed marked "**CC23**". The Applicants immediately objected to postponement without preservation, recorded their readiness to proceed, requested an undertaking that irreversible sanctuary implementation would not occur, and reserved the right to approach the appropriate Court urgently. Their response and a further communication confirming that the directives remained in force are annexed marked "**CC24**" and "**CC25**".

84. No preservation undertaking has, as at the signing of this affidavit, been furnished by all relevant Implementing Respondents. The objective effect of the 17 September development is therefore additional time in a dispute in which time itself may irreversibly change the subject matter.

85. The external factual position is also supported by the Cape of Good Hope SPCA. On 6 September 2026 it confirmed in writing that it does not support permanent confinement of healthy, free-ranging baboons in a sanctuary environment, that this position had been communicated to the CPBMJTT, and that welfare monitoring should not be construed as endorsement of sanctuary

relocation. The email, annexed marked "**CC26**", further records anticipated monitoring of capture, handling, transportation and confinement under the *Animals Protection Act, 1962 (Act No. 71 of 1962)*.

QUESTION 1: EFFECTIVE APPELLATE PROTECTION IN URGENT PROCEEDINGS

86. The first question is not whether every unsuccessful urgent litigant has a constitutional right to an immediate appeal. The narrower problem is whether an appellate process which has been promptly invoked can remain practically effective where the refusal of preservation leaves nothing positive to suspend and the threatened irreversible acts may occur before leave is determined.

87. Section 18 of the *SC Act* regulates the operation and execution of decisions pending appeal. The Applicants' difficulty is that a dismissal of requested preservation does not, on its face, create the positive restraint which they sought. Suspending the operation of a dismissal does not necessarily recreate an interdict that was never granted. The issue is therefore one of preservation pending appellate consideration, not execution of a positive order.

88. Rule 12 empowers the Chief Justice in urgent applications to dispense with ordinary forms, service and time periods and to direct the procedure appropriate to the circumstances. This Court has previously exercised its power to grant

urgent interim relief pending determination of an application for leave to appeal where the requirements for interim relief were met.[13]

89. The Applicants' primary position is that Part "A" is ancillary and preservatory relief in support of the Rule 19 proceedings and the companion application. If any component is regarded as original relief, direct access is sought in the alternative under section 167(6)(a) of the *Constitution*, read with Rule 18. The alternative is pleaded so that the efficacy of the appellate process does not depend upon an artificial procedural characterisation of preservation. The Applicants submit that the alternative direct-access request and the preservatory relief can be determined on the affidavits and documentary record without oral evidence.

90. The urgency and absence of an equivalent alternative remedy are established in paragraphs 31–47 *supra*. The Applicants invoked the ordinary appellate route on 2 March 2026, repeatedly sought expedition and case-management intervention, lodged the two further Applications for Leave to Appeal arising from the events of 28 August 2026, and prepared to argue all three Applications for Leave to Appeal on 18 September 2026. On 17 September 2026, that hearing was postponed into the fourth term without a determined replacement date and without interim preservation of the subject matter.

91. The preservation sought is deliberately narrow. It does not require abandonment of the Final Action Plan or determine its ultimate lawfulness. It temporarily restrains materially irreversible permanent relocation and confinement pending the specified appellate processes, preserves *bona fide*

[13] *Snyders*, above, especially paras 1 and 22–33.

emergency veterinary and animal-welfare measures, and requires only a limited status disclosure concerning implementation.

92. The requested status disclosure is necessary because the Implementing Respondents possess current information concerning capture or relocation dates, contractors, operational readiness and any implementation steps taken or contemplated after 12 September 2026. The Applicants cannot responsibly state as fact matters which are peculiarly within those bodies' present knowledge.

93. The Applicants accordingly submit that effective appellate adjudication should not depend upon whether implementation happens to move more quickly than the leave process. As demonstrated in paragraphs 31–47 *supra*, the factual position continued to develop while the Applicants pursued the ordinary appellate process and the practical impediments to permanent relocation progressively diminished. Temporary preservation would enable this Court to determine jurisdiction, leave and appropriate sequencing without events outside the courtroom determining the practical outcome first. Without such preservation, a subsequently successful appellate process risks providing vindication in law only after the subject matter sought to be protected has already been materially or irreversibly altered.

QUESTION 2: JUDICIAL IMPARTIALITY AND SEQUENCING OF THE RECUSAL APPEAL

94. The recusal appeal directly implicates the constitutional requirement of an independent and impartial court. The applicable enquiry is objective and demanding: the Applicants must establish that a reasonable, objective and informed person, possessed of the correct facts and mindful of the presumption of judicial impartiality, would reasonably apprehend that the judicial officer has not or will not bring an impartial mind to bear upon the adjudication of the case.[14]

95. The Applicants do not rely upon adverse rulings as proof of bias, nor upon isolated expressions or incidents viewed without their proper context. Their case is cumulative and is set out fully in the Recusal LTA annexed marked "**CC15**". The present application does not attempt to manufacture a new first-instance recusal case, but asks that the appellate challenge be considered upon the objective circumstances relevant to the apprehension already raised.

96. The apprehension was raised before the formal recusal application. It appears expressly in the Application for Leave to Appeal lodged on 2 March 2026 and thereafter developed through the sequencing of the reserved costs issue, the continuing delay, subsequent case-management events and the conduct relied upon in the formal recusal application.

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[14] *Bernert v Absa Bank Ltd* (CCT37/10) [2010] ZACC 28; 2011 (3) SA 92 (CC), paras 28–36; *Systems Applications Consultants (Pty) Ltd t/a Securinfo v SAP SE and Another* (CCT101/24) [2026] ZACC 13, paras 42–45.

97. Importantly, subsequent conduct is not necessarily irrelevant merely because it occurred after the recusal application had already been instituted. This Court has recently recognised that subsequent judicial conduct may be relevant at the appellate consideration of a recusal complaint insofar as it sheds light upon the earlier conduct which gave rise to that complaint, although the weight to be attributed to subsequent conduct must necessarily depend upon its nature and context.[15] The Applicants accordingly rely upon the events occurring during the recusal hearing itself not as a new and independent cause for recusal, but insofar as they illuminate, reinforce or contextualise the apprehension already placed in issue.

98. In that regard, the Applicants rely particularly upon the exchange concerning the alleged "*bullying stratagem*", the Court's response before I had been afforded an opportunity to reply, criticism raised for the first time from the bench concerning communications addressed to chambers, and the curtailed opportunity afforded to me to explain or answer those matters. Those events must be considered in their full context and cumulatively with the antecedent circumstances relied upon in the Recusal LTA, rather than as isolated expressions advanced as independent proof of bias.

99. The Applicants accept that robust judicial engagement, irritation, criticism or an adverse ruling does not without more establish a reasonable apprehension of bias, and that judicial officers have a duty to sit where they are not disqualified. The issue is whether the totality of the objective circumstances, viewed through

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[15] *Systems Applications Consultants*, above, particularly paras 55–56. The Constitutional Court recognised that subsequent conduct or a subsequent judgment may shed evidential light upon the conduct forming the subject of the original recusal complaint, although such later material may warrant lesser weight.

the eyes of the reasonable, objective and informed person and with due regard to the presumption of judicial impartiality, crossed the constitutional threshold.[16]

100. The sequencing question is consequential. The Recusal LTA remains pending before the same judicial officer whose continued participation is challenged. The Applicants do not contend that the filing of a recusal application or an application for leave to appeal automatically produces recusal or deprives that judicial officer of further competence. They ask the narrower question whether, in the particular circumstances now before this Court and in the interests of justice, the recusal appellate question should be determined anteriorly to further substantive adjudication whose validity or utility may subsequently depend upon its outcome.

101. Such sequencing may avoid rather than multiply proceedings. If the recusal appeal ultimately succeeds after further substantive adjudication has already occurred, the validity or utility of those subsequent proceedings may itself become contested; if it fails, ordinary case management may continue on a clarified footing. The Applicants accordingly contend that the recusal issue is anterior only in this limited procedural sense, as reflected in Part "B" of the Notice of Motion, and not because they claim any entitlement to choose their judicial officer. Their concern is that the constitutional requirement of impartial adjudication should, in the circumstances of this case, be resolved before further contested judicial functions are performed whose subsequent validity may depend upon that very question.

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[16] *Bernert v Absa Bank Ltd*, above, paras 35–36; *Systems Applications Consultants*, above, paras 44–45.

QUESTION 3: *AUDI ALTERAM PARTEM*, PUNITIVE PERSONAL COSTS AND DENIAL OF REPLY

102. The separate costs determination on 28 August 2026 raises a distinct question under section 34 of the *Constitution*. The Applicants do not contend that there was no notice that punitive or personal costs were contemplated. The judgment of 25 February 2026 expressly invited submissions on that possibility. The constitutional issue is narrower: whether, before extraordinary punitive, personal and coercive consequences were ultimately imposed, I was afforded a meaningful opportunity to answer the factual and legal case upon which those consequences were actually based.

103. The procedural history is material. Before the contemplated costs submissions became due, the Applicants lodged their Application for Leave to Appeal on 2 March 2026. That application itself addressed the contemplated costs consequences and challenged findings and characterisations in the judgment upon which punitive and personal costs could depend. No separate written costs submissions in the format contemplated by the judgment were thereafter delivered. The Applicants' position was that the costs question had become materially intertwined with matters already placed under appellate challenge. The represented Respondents nevertheless delivered their costs submissions.

104. The Court subsequently notified the parties in writing that the reserved costs determination would be delivered by an indicated date without convening an oral hearing. No subsequent notification was given that this procedure had been reconsidered or that the Court instead intended to hear further oral argument

on costs. The contemplated determination did not occur as indicated. On 28 August 2026, the costs issue was instead heard immediately after the separately argued recusal application and the delivery of an *ex tempore* judgment dismissing that application.

105. The sequence on 28 August 2026 is particularly material. The recusal application was heard first, with founding argument, opposing argument and reply, whereafter the Court delivered its *ex tempore* recusal judgment. The costs hearing followed immediately. I then made a brief opening argument on costs, substantially by reference to the Applicants' Heads of Argument. Counsel for the represented Implementing Respondents thereafter addressed the Court in turn. Their submissions were not confined to the circumstances existing on 25 February 2026 or even to the matters contained in their earlier written costs submissions. They relied upon subsequent events and conduct and, materially, advanced argument founded upon findings which the Court had made only moments earlier in its *ex tempore* recusal judgment.

106. That chronology lies at the heart of the *audi alteram partem* complaint. Had the costs determination occurred in chambers when the Court had notified the parties that it would occur, events arising thereafter could not have formed part of the basis for that determination. Once the determination was deferred and an oral hearing was subsequently convened, however, the factual and forensic basis advanced in support of punitive and personal costs materially expanded. Matters which had not existed when costs were originally reserved, matters arising after the previously indicated date for determination, matters not contained in the Respondents' earlier costs submissions, and even findings

made in the immediately preceding recusal judgment were advanced against the Applicants. Those were matters to which I could not previously have responded.

107. After counsel for the represented Implementing Respondents had advanced those submissions, I was not afforded an opportunity to reply before the costs judgment was pronounced. The Applicants' complaint is therefore not an absence of initial notice that punitive or personal costs were contemplated, nor merely that they had not previously been permitted to address costs. It is that the eventual adverse determination was made upon a materially expanded factual and forensic basis, including matters arising after the original opportunity for written submissions and matters advanced for the first time at the hearing, without affording me a meaningful opportunity to answer that case before personal *de bonis propriis* liability and a restraint upon further prosecution of High Court Part "B" were imposed. The constitutional question is whether, in those circumstances, the earlier opportunity to make costs submissions could satisfy *audi alteram partem* in respect of the materially different case upon which the Court ultimately acted.[17]

[17] *Member of the Executive Council for Health, Gauteng v Lushaba* (CCT156/15) [2016] ZACC 16; 2017 (1) SA 106 (CC), especially paras 18–19; *Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening)* (CCT48/17) [2017] ZACC 20; 2017 (9) BCLR 1089 (CC), especially para 4.

QUESTION 4: CONDITIONING FURTHER CONSTITUTIONAL LITIGATION UPON SATISFACTION OF COSTS

108. The sealed costs order provides that the Applicants may not take further steps in High Court Part "B" until the High Court Part "A" costs order is satisfied. At the time that restraint was imposed, the relevant costs had not yet been taxed or quantified. The restraint therefore operates prospectively to prevent further prosecution of Part "B" by reference to satisfaction of a costs liability whose monetary extent had not yet been determined.

109. South African courts possess a limited power, in appropriate circumstances, to stay later proceedings because costs of sufficiently related earlier proceedings remain unpaid. That power is exceptional and is directed principally at preventing abuse of the process of court rather than operating as an automatic consequence of an outstanding costs order.[18]

110. The Applicants contend that the present restraint requires constitutional scrutiny because it operates against unresolved constitutional and public-interest proceedings and follows the very punitive and personal *de bonis propriis* costs determination which is itself under appellate challenge. Its practical effect is that High Court Part "B" may not proceed unless and until the impugned costs order is first satisfied, notwithstanding that both the validity of that costs determination and the procedure by which it was imposed remain contested on appeal.

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[18] *Clipsal Australia (Pty) Ltd and Others v Gap Distributors (Pty) Ltd and Others* (657/08) [2009] ZASCA 49; 2010 (2) SA 289 (SCA), paras 16–17.

111. The constitutional costs principle applicable to genuine litigation against the State seeks to avoid the chilling effect which financially ruinous adverse costs consequences may have upon *bona fide* litigants seeking to assert constitutional rights, while preserving the power of courts to sanction litigation which is frivolous, vexatious, manifestly inappropriate or otherwise abusive.[19] The Applicants accept that public-interest or constitutional litigation does not confer immunity from appropriate costs consequences.

112. The question here, however, extends beyond the costs liability itself. The impugned order uses satisfaction of that liability as a condition precedent to further access to adjudication of unresolved constitutional and environmental issues in High Court Part "B". The Applicants contend that an order having that effect requires careful and proportionate justification under sections 34 and 38 of the *Constitution*, particularly where the costs are punitive and personal, remain unquantified, and the order imposing them is itself under appellate challenge.

113. The restraint bears directly upon the pending Rule 28(4) amendment process in High Court Part "B". Part "C" of the Notice of Motion accordingly seeks appellate relief against that restraint so that the lawfulness of conditioning further prosecution of Part "B" upon satisfaction of the impugned costs order can itself be determined. This challenge is distinct from the procedural-fairness challenge addressed in paragraphs 102–107 *supra*: Question 3 concerns the process by which the punitive and personal costs consequences were imposed,

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[19] *Biowatch Trust v Registrar, Genetic Resources and Others* (CCT80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC), especially paras 15, 20–25 and 60.

whereas Question 4 concerns the constitutionality and lawfulness of using satisfaction of those costs as a barrier to further constitutional adjudication.

QUESTION 5: AUTHORITY, PUBLIC-INTEREST LITIGATION AND LITIGANT PROFILING

114. The Applicants accept that authority to institute proceedings is a legitimate procedural enquiry. Its function is to establish that litigation brought in the name of a litigant was in fact authorised by that litigant. It should not become a freestanding substantive defence once objective evidence of authority is before the Court. The present authority is evidenced by annexures "**CC1**" to "**CC3**".[20]

115. Standing is a separate enquiry. Section 38 of the *Constitution* deliberately creates broad categories through which constitutional rights may be enforced, including public-interest standing and standing of an association acting in the interests of its members. The constitutional approach is generous but not limitless: the pleaded capacity and interest must still be established on the facts.[21]

116. That distinction matters because repeated interrogation of authority and standing can otherwise become collateral to the substantive constitutional dispute. The Applicants do not ask this Court to disregard proper procedural requirements. They ask that those requirements be applied for their proper

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[20] *Unlawful Occupiers of the School Site v City of Johannesburg* (036/2004) [2005] ZASCA 7; 2005 (4) SA 199 (SCA), especially paras 14–16, concerning the proper procedural enquiry into authority.
[21] *Lawyers for Human Rights and Another v Minister of Home Affairs and Another* (CCT38/03) [2004] ZACC 12; 2004 (4) SA 125 (CC), para 17; *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* (CCT25/12) [2012] ZACC 28; 2013 (3) BCLR 251 (CC).

purpose and not transformed into an indefinite investigation of LFN's internal affairs once current objective evidence of authority has been supplied.

117. A related and important question is what the Applicants describe as "litigant profiling". The High Court Part "A" judgment characterised the Applicants as "*serial litigants*" and then used that characterisation as an evidential premise from which to draw conclusions concerning their procedural knowledge. In paragraph 43 the Court referred to numerous previous matters involving the Applicants and, in paragraph 141, reasoned that I, "*as a serial litigant*", knew the difference between evidence and argument. That reasoning was followed immediately by findings concerning abuse of the urgent process and the contemplated punitive and personal costs enquiry. The Applicants accordingly challenge not merely the terminology employed, but the use of selected previous litigation as an adverse forensic characteristic capable of influencing conclusions in materially different proceedings.

118. The Applicants do not contend that prior litigation history is constitutionally irrelevant. It may plainly become relevant where a recognised legal enquiry into abuse, vexatious proceedings, *res judicata*, issue *estoppel* or related process requires it. The difficulty arises where judgments from different proceedings, involving different causes of action, legal questions, procedural settings or courts, are aggregated to construct an adverse pattern without first determining whether those matters are genuinely comparable to the conduct under consideration. A previous adverse outcome does not, merely because the same litigant was involved, establish that later litigation is abusive, procedurally improper or lacking in *bona fides*.

119. That concern is not theoretical in the present matter. Among the previous decisions relied upon are matters which the Applicants contend are materially distinguishable from these proceedings by subject matter, jurisdiction, procedural setting or subsequent procedural developments. The Applicants do not seek in this application to reopen or collaterally appeal those judgments. Their narrower submission is that, if previous decisions are to be used evidentially to establish an adverse pattern concerning the Applicants, their actual relevance and distinguishing features cannot be disregarded. Equally, subsequent developments affecting the continuing significance of such decisions may be relevant to the weight which can fairly be attributed to them.

120. The concern is compounded by selectivity and by the ease with which such a profile may be constructed. The same methodology, if applied to recurring institutional litigants, demonstrates its difficulty. The City, CapeNature and SANParks are themselves repeatedly involved in litigation. It would ordinarily prove little about their conduct in the present matter to search reported judgments involving them, select cases in which they were unsuccessful or judicially criticised, disregard cases pointing in the opposite direction, and then rely upon that collection as evidence that they are institutionally prone to unlawful, unreasonable or abusive conduct. Their conduct in this matter must instead be determined from the evidence and legal issues arising in this matter. The Applicants submit that the same evidential discipline must apply to them. Because I openly act in LFN's litigation and my identity is repeatedly associated with LFN in reported judgments, the Applicants' litigation history is particularly easy to identify and aggregate; that accessibility does not make unrelated adverse decisions probative of their conduct in the present proceedings. The

same caution is illustrated by legal practitioners who repeatedly participate in litigation involving unsuccessful arguments or adverse outcomes without those unrelated cases ordinarily being accumulated as propensity evidence against them in later proceedings. If litigation history is nevertheless introduced to establish an adverse pattern concerning the Applicants, its actual relevance, comparability and complete context must be considered rather than selecting only those decisions capable of supporting the proposed characterisation.

121. This distinction assumes particular constitutional significance where litigation seeks to hold organs of state to account. Frequency of litigation, success or failure in particular cases, and abuse of court process are different concepts. A person or public-interest organisation may repeatedly invoke sections 34 and 38 of the *Constitution*, and may sometimes be unsuccessful, without later constitutional proceedings thereby acquiring an abusive character; conversely, even a single proceeding may constitute abuse if the recognised legal requirements are established. Constitutional authority therefore protects access to courts while permitting proportionate measures against litigation properly established to be vexatious or abusive.[22] The Applicants submit that previous resort to courts should not operate as adverse propensity evidence in later constitutional litigation without a proper legal and evidential foundation connecting that history to the issue actually being determined. If selected previous decisions are considered relevant to an alleged pattern, elementary even-handedness requires consideration of whether they are genuinely comparable, whether subsequent developments affect their significance, and

[22] *Beinash and Another v Ernst & Young and Others* (CCT12/98) [1998] ZACC 19; 1999 (2) SA 116 (CC), especially paras 15–17; *Motjamela v George Local Municipality* (CCT34/26) [2026] ZACC 31, especially paras 20–21.

whether materially relevant litigation history pointing in the opposite direction qualifies the inference sought to be drawn.

122. The fuller appellate challenge to the February "*serial litigant*" characterisation belongs in the companion application. Its significance here is consequential but substantial. The punitive and personal costs determination of 28 August 2026 followed upon an existing adverse characterisation of the Applicants and, as explained in paragraphs 102–107 *supra*, ultimately incorporated subsequent conduct and material beyond the circumstances existing on 25 February 2026. To the extent that selected litigation history, the "*serial litigant*" characterisation or subsequent events were used cumulatively to support findings of abuse or extraordinary costs consequences, the Applicants submit that the constitutional requirement of fair and even-handed adjudication requires each to be assessed for its actual relevance and proper evidential weight, rather than allowing the existence of previous adverse judgments itself to become proof of an adverse litigant character.

QUESTION 6: ENVIRONMENTAL *FAIT ACCOMPLI* AND EFFECTIVE CONSTITUTIONAL RELIEF

123. The environmental question is deliberately narrow. This Court is not asked in this application to choose a baboon-management policy or finally determine the legality of the Final Action Plan. The question is whether effective constitutional adjudication requires temporary preservation where implementation may materially or irreversibly alter the very subject matter of the dispute before meaningful appellate scrutiny can occur.

124. The factual basis is set out under Urgency at paragraphs 31–47 *supra* and in the chronology at paragraphs 78–85 *supra*. The sanctuary infrastructure has progressed, the Waterfall relocation was scheduled for 12 September 2026, and the SPCA has treated the capture, transportation and confinement of the affected baboons as live implementation events rather than abstract future possibilities.

125. The Applicants further rely upon section 24 of the *Constitution*, section 38 thereof and, where applicable, section 32 of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("*NEMA*"). Section 32 of *NEMA* expressly recognises proceedings brought in the public interest and in the interest of protecting the environment. The environmental dimension reinforces, rather than displaces, the ordinary requirements governing interim relief.

126. There is at least a *prima facie* basis for appellate consideration. The present application seeks direct leave to appeal against the recusal determination and the separate punitive and personal costs determination and consequential restraint upon High Court Part "B", raising constitutional questions concerning impartiality, procedural fairness and access to continued constitutional adjudication. The companion application, in turn, challenges the dismissal of the original preservation relief. The Applicants do not ask this Court at this stage to determine those appeals merely because interim protection is sought.

127. There is a reasonable apprehension of irreparable practical harm because capture, permanent removal from an established home range, territorial displacement and confinement may create consequences which cannot later simply be undone by a successful appellate judgment. Even if physical

relocation were theoretically capable of reversal, it does not follow that the ecological, behavioural and social circumstances existing before implementation could simply be recreated months later. The Applicants therefore seek preservation before implementation creates the very *fait accompli* which the appellate processes are intended to prevent.

128. The balance of convenience favours maintaining the disputed position for the limited judicial period required to determine the appellate route and, where appropriate, the appeals themselves. The proposed order expressly preserves *bona fide* emergency veterinary and welfare interventions and therefore does not disable necessary measures to prevent imminent death, serious injury or suffering. In *Snyders* this Court itself granted interim relief pending determination of an application for leave to appeal and applied the ordinary requirements of *prima facie* right, balance of convenience and absence of another satisfactory remedy.[23]

129. Temporary preservation therefore protects the practical efficacy of adjudication without requiring this Court to prejudge the legality of the Final Action Plan or the merits of High Court Part "B". Its purpose is narrower: to keep the subject matter of the dispute sufficiently intact so that the pending appellate processes can produce effective, rather than merely retrospective, judicial relief.

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[23] *Snyders*, above, especially paras 22 and 34.

QUESTION 7: THE CONSTITUTIONAL OBLIGATIONS OF ORGANS OF STATE AS LITIGANTS

130. The Applicants' seventh question raises a constitutional distinction which does not appear to have been finally determined in the particular context now advanced. Section 7(2) of the *Constitution* obliges the State to respect, protect, promote and fulfil the rights in the Bill of Rights, while section 8(1) expressly binds the legislature, executive, judiciary and all organs of state. The Applicants question whether legal professional privilege, developed principally to protect confidential lawyer-client communications, can operate identically where the client is an organ of state exercising or defending public power and the information concerned bears materially upon the lawfulness of that public conduct. The Applicants do not contend that State officials lose their personal rights, nor that organs of state may not obtain confidential legal advice. The narrower question is whether confidentiality between an organ of state and its legal practitioners can constitutionally operate so as to defeat the State's distinct duties of candour, transparency, accountability and full disclosure of material facts concerning the exercise of public power.

131. Constitutional authority recognises that public litigants bear heightened duties because they are principal agents of the *Constitution*. They are required to respect the law, fulfil procedural requirements and observe standards of candour and accountability in litigation. Those obligations are consistent with the constitutional values of accountability, responsiveness and openness and with section 165(4), which requires organs of state, through legislative and other

measures, to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.[24]

132. That principle is material here because the Implementing Respondents are not private commercial adversaries litigating only about private rights. The conduct challenged in the underlying proceedings concerns the exercise and implementation of public power, including implementation of the Final Action Plan. Those Respondents opposed preservation of that conduct and thereafter sought, supported or advanced submissions in favour of punitive costs consequences and the restraint upon further prosecution of High Court Part "B". Their status as organs of state therefore remains constitutionally relevant notwithstanding that they litigate through privately instructed legal practitioners.

133. The Applicants accordingly submit that forensic choices made by privately instructed legal practitioners remain choices advanced on behalf of the organs of state from whom their instructions emanate. Private representation cannot enlarge an organ of state's constitutional latitude or reduce the standards of legality, candour and accountability applicable to it as a public litigant. The constitutional character of the litigant does not change according to whether its case is conducted by the State Attorney or by privately instructed attorneys and counsel.

134. The Applicants do not ask this Court to determine an abstract question concerning every incidence of State privilege, disclosure or litigation strategy. Nor do they contend that an organ of state must concede disputed allegations

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[24] *Public Protector v South African Reserve Bank* (CCT107/18) [2019] ZACC 29; 2019 (6) SA 253 (CC), especially paras 152 and 155–156; *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* (CCT91/17) [2019] ZACC 15; 2019 (4) SA 331 (CC), especially paras 60–61 and 78–80.

or refrain from advancing a proper defence. The question arises only to the extent that a purely adversarial procedural position is relied upon to justify withholding or obscuring material information, avoiding proper constitutional accountability, impeding determination of the merits, or seeking coercive costs consequences against those challenging the exercise of public power. In such circumstances, the Applicants submit that the constitutional obligations attaching to the public litigant remain relevant to the lawfulness and propriety of the forensic position adopted.

135. The Applicants accordingly distinguish between the legitimate confidentiality necessary for an organ of state to obtain legal advice and the use of legal professional privilege as a forensic barrier against constitutional accountability. The *Constitution* places the State under positive obligations to respect, protect, promote and fulfil rights; and, as set out in paragraph 131 *supra*, constitutional authority already requires public litigants to observe heightened standards, not to mislead or obfuscate, and to place a full and fair account of material facts before a court. The Applicants submit that this gives rise to a further constitutional question: whether, and to what extent, legal professional privilege can operate where its invocation would permit an organ of state to withhold material facts concerning the exercise of public power which its constitutional duties would otherwise require it candidly to disclose. Private legal representation cannot alter the answer. An organ of state cannot, merely by communicating through or instructing private practitioners, acquire a greater entitlement to secrecy concerning the exercise of public power than the *Constitution* permits the organ of state itself. This Court is not required presently to formulate an exhaustive rule governing every State communication with legal

practitioners; it is sufficient that the constitutional boundary between legitimate confidential legal consultation and the State's overriding duties of legality, candour, transparency and accountability be recognised and, to the extent necessary in these proceedings, determined.

CONDONATION, DIRECT APPEAL AND THE INTERESTS OF JUSTICE

136. On 8 September 2026 the Applicants delivered the two protective High Court Applications for Leave to Appeal described at paragraph 78 *supra*. They remain pending and are neither withdrawn nor abandoned. Their existence is expressly disclosed for purposes of Rule 19(3)(d).

137. Rule 19(2) requires an application for direct leave to appeal to be lodged within 15 days of the order sought to be appealed. Calculated conservatively from oral pronouncement of the two orders on 28 August 2026, that period expired on Friday, 18 September 2026. The present application was prepared with the intention of lodgment by that date, but finalisation, commissioning, pre-filing service preparation and assembly of the supporting material could not responsibly be completed before expiry. Protective condonation is accordingly sought under Rule 32 for the resulting short non-compliance.

138. The degree of lateness is slight and will be apparent *ex facie* the Court file. There has been no abandonment of the appellate challenges, disregard of the Rules or period of unexplained inactivity. To the contrary, the Applicants were actively pursuing the same appellate disputes in the High Court throughout the

relevant period and had lodged the protective High Court leave applications before expiry of the Rule 19(2) period.

139. A material part of the explanation is that, although the two orders were pronounced orally on 28 August 2026, the sealed written orders were only electronically filed by the Registrar and made available on 11 September 2026. The recusal order was filed at approximately 15h03 and the costs and High Court Part "B" restraint order at approximately 15h04. The Applicants had already lodged the protective High Court leave applications on 8 September 2026 before receipt of those sealed orders.

140. The chronology then changed rapidly. On 15 September 2026 all three High Court leave applications were directed to be heard on 18 September 2026. Until 17 September 2026 the Applicants therefore had an imminent ordinary appellate hearing and were preparing to proceed with it. The practical necessity for the present direct route crystallised only when that hearing was postponed into the fourth term without interim preservation of the subject matter.

141. The Applicants then had to finalise this combined Rule 12 and Rule 19 application, the companion Rule 19 application concerning the 25 February 2026 judgment, the authority material required because authority remains contested, pre-filing service arrangements, and the annexures necessary to place the chronology before this Court accurately. Any short period immediately after 18 September 2026 was used for those purposes and not for tactical delay.

142. The overarching standard for condonation is the interests of justice. Relevant considerations include the nature of the relief sought, the extent and cause of the delay, its effect upon the administration of justice and other litigants, the

reasonableness of the explanation, the importance of the issues and prospects of success. The explanation must cover the period of non-compliance and be sufficiently full and reasonable to excuse the default.[25]

143. Those considerations favour condonation. The Respondents have known of the recusal and costs challenges since 8 September 2026 and will receive pre-filing service of the present papers. The short delay causes no material forensic prejudice. Refusing condonation would, by contrast, prevent consideration of substantial constitutional complaints while the underlying preservation dispute remains urgent and potentially irreversible implementation remains unrestrained.

144. The proposed appeals are not frivolous. The constitutional questions are identified in paragraphs 24–30 *supra* and developed under Questions 1 to 7 above. The Applicants respectfully submit that the appeals disclose reasonable prospects of success and, independently and cumulatively, raise constitutional questions of sufficient importance that their determination is in the interests of justice.

145. The Applicants' reason for approaching this Court before determination of the High Court leave applications is not that the ordinary appellate route is inconvenient or that they seek to bypass it. They invoked that route promptly and prepared to argue all three High Court leave applications when they were enrolled for 18 September 2026. The difficulty is that the hearing was postponed

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[25] *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* (CCT12/07) [2007] ZACC 24; 2008 (2) SA 472 (CC), especially paras 20 and 22; *Grootboom v National Prosecuting Authority and Another* (CCT08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC), especially paras 22–23.

while potentially irreversible implementation remained unrestrained and one of the proposed appeals itself concerns the refusal of recusal by the judicial officer who would otherwise determine the pending applications for leave to appeal.

146. The Applicants recognise that this Court ordinarily benefits from prior consideration by other courts. They therefore seek effective procedural management rather than an artificial all-or-nothing choice between the pending High Court and direct appellate routes. If this Court considers that any High Court leave application should first be determined, it may preserve the subject matter while doing so, hold the relevant direct application in abeyance, or issue such expedited directions as it considers appropriate. Such management would preserve both ordinary appellate process and effective constitutional adjudication rather than permitting intervening implementation to determine the practical outcome before either route is adjudicated.

147. The companion Rule 19 application concerning the 25 February 2026 judgment contains its own materially different condonation enquiry. The Applicants seek coordinated management of the two Constitutional Court matters because their factual and procedural histories overlap, but do not seek procedural merger of their distinct timeliness enquiries or appellate questions.

SERVICE, RECORD, REMOTE HEARING AND PROCEDURAL SAFEGUARDS

148. The five cited Respondents will receive pre-filing service through their attorneys of record and/or official service addresses. The remaining High Court parties

identified in Schedule A to the Notice of Motion will be served for notice even though no substantive coercive relief is presently sought against them.

149. The official audio recording of the proceedings on 28 August 2026 constitutes the best evidence of the disputed spoken exchanges and the sequence in which they occurred. The Applicants accordingly seek preservation of that recording and the expedited preparation of official transcripts. Pending their availability, the Applicants tender their affidavit-verified working transcripts, prepared by reference to the audio available to them, subject to correction against the official recording and transcripts. If any passage is disputed, the Applicants respectfully request that the precise timestamp, disputed wording and proposed correction be identified, rather than any imperfection in the working transcripts being permitted to defeat the urgency or prevent consideration of the substance of the application.

150. The complete High Court record under case number 2026-024184 is available electronically on Court Online. The urgent Constitutional Court bundle therefore contains the documents presently necessary to understand and determine this application without reproducing the entire High Court record. Any additional High Court material considered necessary by this Court or the Registrar can be identified and supplied promptly upon direction.

151. The Applicants will comply with any Registry direction concerning electronic filing, pagination, record preparation and the nominated service address within 25 kilometres of the Registrar.

152. If an oral hearing is directed, particularly in relation to urgent Part "A", the Applicants respectfully request that remote or hybrid participation be

considered. I reside in Cape Town and conduct these proceedings from there, LFN is self-represented, and travel to Johannesburg on urgent notice entails material travel, accommodation and logistical costs which may impede the Applicants' practical ability to participate at short notice. Remote participation would facilitate full participation without delaying determination of the urgent issues. This remains a procedural request only, and the Applicants will comply with whatever mode of hearing the Chief Justice or this Court directs.

153. The request for remote participation does not alter the nominated Midrand service address and does not seek preferential treatment. It is advanced in furtherance of practical access to this Court, effective participation and efficient urgent case management.

COSTS AND CONCLUSION

154. The Applicants seek no punitive costs against any Respondent merely because that Respondent elects in good faith to oppose the relief sought. This is constitutional and public-interest litigation involving organs of state, and the Applicants recognise the legitimate entitlement of those Respondents to place properly disputed facts and legal arguments before this Court. If the Applicants obtain substantial success, they seek reimbursement only of reasonable and proven disbursements and expenses actually incurred in prosecuting these proceedings, insofar as such recovery is legally permissible for self-represented litigants.[26]

[26] *Biowatch*, above, especially paras 16–25 and 60.

155. The Applicants nevertheless reserve the right to seek an appropriate costs order if opposition is conducted frivolously, vexatiously, abusively or in a manner materially inconsistent with the constitutional obligations of public litigants identified in paragraphs 130–135 *supra*, particularly if such conduct materially frustrates urgent preservation after the Respondents have been placed on notice of the risk that implementation may create irreversible consequences or a *fait accompli*. Any such request would depend upon the conduct actually occurring and would not arise merely from opposition to the relief.

156. For all these reasons I respectfully request the relief set out in the Notice of Motion.

REYNO DAWID DE BEER

DEPONENT

THUS SIGNED AND SWORN TO before me at Fish Hoek SAPS on this 20 day of **SEPTEMBER 2026**, the Deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, and considers the oath binding on his conscience, and that all other prescribed formalities have been complied with.

SUID-AFRIKAANSE POLISIEDIENS
COMMUNITY SERVICE CENTRE
20 SEP 2026
GEMEENSKAPDIENSSENTRUM
VISHOEK / FISH HOEK K.P. / C.P.
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

Full names: Zolile Bonani

Designation: Constable

Address: CNR Banks/Main Road Fish Hoek

Constitution

Liberty Fighters Network (LFN)

2018

As Amended (2024)



This is the Revised Constitution for the Liberty Fighters Network (LFN) as unanimously accepted by its original founding members and introduced to the public on 9 September 2018 at a Conference held in Johannesburg, Gauteng, Republic of South Africa. Hereby the previous Constitution is being repealed in its entirety.

Amendment, 2024: The 2018 Constitution for the Liberty Fighters Network (LFN) had been amended as indicated herein by way of unanimous resolution by its voting members on 23 June 2024 at a National Conference held in Pretoria, Gauteng, Republic of South Africa, and by way of electronic virtual conferencing, and subsequently republished.

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PREAMBLE

We, the members of the ***Liberty Fighters Network***, hereby unite to establish a non-racial and non-sexist organisation for all South Africans with the vision to eradicate oppression, exploitation and discrimination within our country as well as the promotion, development and maintenance of an authentic citizenship for every one of us. We belief that a non-exploitative and democratic society depends on the unity of the citizens directed at the eradication of oppression. As citizens we unite to develop ourselves so that we can control our own destiny and take our historic role as the vanguard at the struggle for liberation.

We further in particular strive for a better controlled immovable property industry, driven by the citizens for the constant quest to provide a fair piece of land to all our citizens irrespective of our race and to create an environment where our farmers are protected and a true partnership exists between farmers and our people in general for the benefit of all.

We also strive for a total reformed judicial system where everyone will have the right to have his or her case heard in a Court by an independent and competent judicial officer where formal legal representation by a legal practitioner will not be required and historic British dress codes and practices have been done away with.

The Organisation represents:

- A fresh start for a new South Africa. It is an organisation uncontaminated by the past; and
- A multiracial leadership emanating from diverse political backgrounds, united behind common principles to bring hope to the nation; and
- A genuine federal framework of government with original constitutional powers at the lowest possible level.

CHAPTER 1: FOUNDING PROVISIONS

1. Establishment and Name

(1) There is hereby established an Organisation of residents within South Africa, to be known as the ***Liberty Fighters Network*** in English, which is an independent common law *universitas*.

(2) The Organisation established by subsection (1) is:

(a) an association not for gain; and

(b) a corporate body having perpetual succession, legal existence, and all the legal powers of a juristic person able to own assets in its own name.

(3) As a matter of convenience, ***Liberty Fighters Network***:

(a) is referred to throughout this Constitution as "the Organisation"; and

(b) may be referred to in any notice, correspondence or legal document by the shortened form of name "***LFN***" in English.

(4) Notwithstanding anything to the contrary contained within this Constitution, ***LFN*** may register and act as a political party to stand for any election in South Africa.

(5) Notwithstanding anything contained in this Constitution, the Organisation may form alliances or affiliations with other Organisations or political parties with the same or similar objectives.

2. Objectives

The aim and objectives of the Organisation are:

(a) to recruit and unite South African residents into one single Organisation in order to share their economic and social welfare;

(b) to protect the land and housing security of members, to advance their residence prospects, and to serve their individual and collective interests;

(c) to foster unity, co-operation and comradeship amongst all residents within the scope of the Organisation and other related industries or spheres;

(d) to support democracy as a popular self-rule, but that the current practice of democracy negates this ideal and reduces the citizen to a mere subject. ***LFN*** aims

to restore power to the people, so as to realize the promise enshrined in our country's Constitution;

(e) to enhance the Preamble to our Constitution, ***LFN*** envisions a South Africa, free of corruption, which is a **Sovereign**, **Secular**, **Democratic Republic**;

(f) to resolve securing for all South African residents:

Justice, social economic and political - for everyone including the last person
Liberty of thought, expression, belief, faith and worship
Equality of status and of opportunity in all spheres of life, for individuals and communities and to promote among them all fraternity assuring the dignity of the individual and the Unity and integrity of the Nation;

(g) to bear true faith and allegiance to the *Constitution of the Republic of South Africa, 1996* as by law established and to the principle of real socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of South Africa;

(h) to promote the aims of ***LFN*** as promised in its Constitution and Manifesto:

i) to develop and implement ecological policies consistent with the philosophical basis of the Organisation as expressed in the policies for a sustainable society;

ii) to that end to win seats at all levels of government;

iii) to organise any non-violent activity which will publicise and further these aims.

(i) to establish relationships with other Organisations, Organisation federations, labour organisations or political parties for the benefit of members of the Organisation and the people in general;

(j) to strive to realise the concept that each resident has got the right to adequate housing, land and service delivery to that immovable property;

(k) to realise the understanding amongst all residents that there is a desperate need for affordable housing developments for our residents;

(l) to encourage the revival, development and stop deterioration of our cities, towns, districts, historical townships and informal settlements;

(m) to advance the need to create proper housing for all South African citizens and creating the awareness of Government and other authorities to urgently attend to housing needs of foreign nationals without encouraging or allowing any xenophobic action to occur;

(n) to prevent and fight against all illegal evictions from any dwelling or land, as well as

disconnection of any utility or cease of service to any dwelling or land without first obtaining a Court Order; and

(o) to advance and give inputs to the necessary authorities and role players regarding the Constitutional rights and responsibilities of all our citizens as contained in the Bill of Rights and the African Charter.

3. Scope

The Organisation may operate anywhere in the world and is open to anyone

["Republic of South Africa" replaced with "world" and "any South African resident" replaced with "anyone" - Date: 23 June 2024]

4. Offices

(1) The National Working Committee of the Organisation:

(a) may determine the location of the Organisation's head office; and

(b) must maintain at least one office in the Republic at all times.

5. Authority of the Constitution

This Constitution is the source of all rights and responsibilities within the Organisation, and is the final authority concerning any dispute within the Organisation.

CHAPTER 2: ORGANISATION

6. Structures within the Organisation

(1) The Organisation is organised into the following structures and general spheres of authority:

(a) members, who collectively are the foundation of democratic organisation in the Organisation;

(b) ...

(c) ...

(d) ...

(e) national working committee (referred to as "NWC") which operates at national level; and

(f) national congress (referred to as "NC"), which operates at a national level.

[Sub-paragraphs (b) to (d) deleted - Date: 23 June 2024]

7. Spheres of Authority within the Organisation

Within the Organisation, authority to effect the aims and objectives of the Organisation is allocated as follows:

(1) ...

(2) ...

(3) Within the sphere of operations:

(a) the policy-making authority of the Organisation is exercised by the NC;

(b) the development of Organisation policy, between meetings of the NC is exercised by the NWC, subject to the decisions and policies of the NC;

(c) the National Office-Bearers, exercise the executive authority of the Organisation, subject to the decisions and policies of the NWC and the NC.

[Sub-paragraphs (1) & (2) deleted; "national sphere" replaced with "sphere"; "the NEC, and" deleted - Date: 23 June 2024]

CHAPTER 11: NATIONAL OFFICE

37. National Office-Bearers

(1) The national Office-Bearers of the Organisation are:

(a) the President;

(b) ...

(c) ...

(d) the National Treasurer;

(e) ...

(f) the National Secretary; and

(g) ...

(2) Each national office-bearer

(a) must be elected for a term of 5 years by the NC, in accordance with the provisions of subsection (3);

(b) assumes office on the first working day following the close of the NC meeting at which they were elected; and

(c) hold office until the earliest of the date on which:

(i) the office-bearer resigns or dies;

(ii) the office-bearer is removed from office in terms of sections 52 and 53; or

(iii) their successor assumes office after being elected by the NC.

(3) At an ordinary meeting of NC:

(a) any member in good standing may be nominated and seconded for election as a national office-bearer referred to in subsection (1);

(b) if only one person is nominated for a particular National Office-Bearer post, that person must be declared elected; and

(c) if more than one person is nominated for a particular national office-bearer post, a vote must be taken for that office by ballot, and the candidate with the highest number of votes must be declared to that office.

[Sub-paragraphs (1)(b), (c), (e), & (g) deleted - Date: 23 June 2024]

38. Powers and Duties of National Office-Bearers

(1) The President must:

(a) preside over meetings of the NC (in absence of the elected Chairperson of the NC), NWC and conduct those meetings in accordance with this Constitution;

(b) in consultation with National Office-Bearers ensure enforcement and observance of the rules and orders of this Constitution;

(c) after consultation with the National Treasurer and/or National Office-Bearers co-sign the national banking accounts and sign minutes of meetings of the NC, NWC and Provided that where the President is absent or unavailable he/she may authorise one of the other National Office-Bearers to co-sign in his/her stead;

(d) together with other National Office-Bearers, generally supervise the affairs of the Organisation and perform duties incidental to the office subject to the resolution of the NWC or congress and more importantly in compliance with the Constitution of the Organisation;

(e) be the head and chief directing officer of ***LFN***, in consultation with the NWC, and the leader of the Organisation who may also at any reasonable time institute or defend legal proceedings;

(f) present to the NWC a comprehensive statement of the state of the nation and the political situation generally; and

(g) Under the overall supervision of the NWC orient and direct the activities of the Organisation.

(h) The President also hold the office of National Treasurer until such time as the NC elects one.

(2) ...

(3) If the President are unable to perform the duties of the President, the NWC must appoint someone from the NWC to act as President until:

(a) the President is able to perform the duties of the President;

or

(b) a new President is elected.

(4) The National Treasurer must:

(a) supervise the financial affairs of the Organisation;

(b) endorse all accounts for payment and sign cheques on the national banking accounts of the Organisation;

(c) submit and present statements of the national accounts for each month to the NWC and NEC, and for each annual period to the NC; and

(d) perform duties usual to the office of the Treasurer, or as are reasonably required by the NC, NWC

(5) The National Secretary:

(a) is responsible for keeping books and accounts of the Organisation as required in terms of prevailing laws, and by the NWC.

(b) must assist the National Treasurer in submitting statements of income and expenditure of the Organisation to each meeting of the NC, NWC

(c) is responsible for preparing, and circulating to the NWC , the annual report of activities of the Organisation, including in it:

(i) statements of income and expenditure, and a balance sheet, all certified by the Organisation's auditors; and

(ii) the auditor's report.

(d) is responsible:

(i) for the correspondence of the Organisation and for tabling it at meetings of the

(ii) for sending out notices and minutes of all meetings of the NC, NWC and any other committee;

(iii) to supervise the work of the provincial secretaries and all officials of the Organisation; and

(iv) for the general organising and coordination of work of the Organisation and for the general office work and administration of the affairs and activities of the Organisation;

(e) may institute and defend legal proceedings in the name of the Organisation in urgent circumstances; and

(f) must undertake any other duty that is necessary or requested by the NC, NWC ‹

(g) must be in full time service of the Organisation.

(6) ...

(7) ...

[NEC replaced with NWC; sub-paragraph (1)(h) inserted; Sub-paragraphs 2, 6, & 7 deleted; "Deputy President" deleted - Date: 23 June 2024]

CHAPTER 12: NATIONAL EXECUTIVE COMMITTEE

[Entire Chapter 12 deleted; "Deputy President" deleted - Date: 23 June 2024]

39. Establishment and Powers

(1) ...

(2) ...

CHAPTER 13: NATIONAL WORKING COMMITTEE

42. Establishment and Powers

(1) The NWC develops the policy of the Organisation between meetings of the NC, and has the necessary powers usual for such a body to give effect to the aims and objectives of the Organisation, including the power to:

(a) give broad direction concerning organisational, political, educational and policy issues within the Organisation;

(b) pass resolutions not inconsistent with the resolutions passed by the NC;

(c) establish and determine the nature, membership and scope of sub-committees;

(d) ratify decisions of the NEC;

(e) approve the annual audited financial statements and balance sheet of the Organisation and submit these to the NC;

(f) determine budget guidelines;

(g) establish or dissolve region and provincial structures of the Organisation and demarcate the jurisdiction of such Wards and provinces and delegate powers to the PC and PEC; and

(h) appoint acting National Office-Bearers to fill vacancies occurring in the positions of the National Office-Bearers consistent with this Constitution.

(2) National Office-Bearers and Organisation officials attending meetings of the NWC have full speaking rights but no voting rights.

43. Composition of the National Working Committee

The NWC is composed of the national Office-Bearers listed in section 37(1). :Provided that if ever they deem it necessary, the NWC may co-opt additional NWC members.

[Part from "Provided" inserted - Date: 23 June 2024]

44. Meetings of the National Working Committee

(1) The NWC must meet at least once a year at the place and on the date and time fixed by the President from time to time.

(2) ...

(3) A special meeting of the NWC may consider only the special business that necessitated the special meeting.

(4) The National Secretary must give notice of a NWC meeting in writing to each National Office-Bearer:

(a) at least 14 days before a general NWC meeting; or

(b) at least 7 days before a special NWC meeting.

(5) For purposes of commencing a meeting of the NWC and, in order for the meeting to continue at least 3 (three) of the NWC members must be present.

(6) If, in terms of subsection (5), a meeting cannot be commenced within 1 hour after the time fixed for it to begin:

(a) the National Secretary must fix a new time and date for the meeting, which must be no less than 2 days, and no more than 7 days, after the original date for that meeting; and

(b) the National Secretary must give written notice in writing to each National Office-Bearer of the new date for the meeting.

(7) Despite subsection (5), a meeting scheduled in terms of subsection (6) may be commenced at the time fixed for the meeting to begin, and may proceed until the agenda is completed, regardless of the number of persons present.

[Sub-paragraph 2 deleted - Date: 23 June 2024]

CHAPTER 14: NATIONAL CONGRESS

45. Governing Body of the Organisation

The NC is the highest governing body of the Organisation.

46. Powers of the National Congress

(1) The NC may:

Organisation, failing which the liquidator may dispose of the remaining assets in terms of the applicable law.

[Sub-paragraph (2)(a) deleted - Date: 23 June 2024]

74. Amendments to Constitution

(1) Subject to subsection (2) and (3), any provision of the Constitution may be repealed or amended by resolution passed by a 2/3 (two-thirds) majority at a meeting of the NC:

(a) a notice of the proposed amendment has been sent to the National Secretary;

(b) the National Secretary has circulated the proposal ....

, and

(c) the proposal has been placed on the agenda for that meeting.

(2) A proposal may not be placed on the agenda of a meeting of the NC if it would result in the repeal of any provision that is required in terms of any law to be included in the Constitution, unless the proposal also includes a replacement provision that satisfies the requirements of the that law.

(3) An amendment takes effect only upon being approved by the relevant legislative body, if applicable.

[Sub-paragraphs (1)(b) amended - Date: 23 June 2024]

75. Interpretation

(1) If any doubt arises as to the meaning of any provision of this Constitution the interpretation of that provision is the responsibility of the NC:

(a) which must decide any matter of interpretation by majority vote; and

(b) whose decisions are the final interpretation of the provision in question.

(2) Despite subsection (1), the NWC may make an interim ruling on Constitution interpretation at any time between meetings of the NC.

(3) Every person interpreting and applying the Constitution:

(a) must prefer a reasonable interpretation of a by-law, statement of policy, or decision that is consistent with the Constitution over an interpretation that conflicts with the Constitution;

(b) must give a liberal construction to the provisions of the Constitution, in a manner consistent with the Bill of Rights, applicable law, and the traditions of the Organisation;

(c) may consider applicable legal precedents; and

(d) may consult any recognised authority for the meaning of words not specifically defined in this chapter.

(4) Words importing the singular include the plural, and vice versa.

(5) Wherever any period between two events is expressed as a number of days, the days on which the first and second event take place is not to be counted.

(6) The power to appoint includes the power to replace.

(7) The power to make a rule or policy includes the power to amend or repeal that rule orpolicy.

(8) The word "province", when used as a geographic reference, means a particular province as defined in the Constitution of the Republic of South Africa, 1996 and when used to refer to a constituent element of the Organisation means the operation of the Organisation within a province.

76. Notice

(1) Unless the Constitution provides otherwise, any notice to members may be sent by ordinary post to the address or electronic mail that the member most recently reported to the Organisation or other reported social media address of that member.

(2) Except as otherwise provided in this Constitution, the inadvertent failure of the Organisation to give notice of a meeting to a member does not invalidate the notice, the meeting or any business conducted at that meeting.

77. Transitional Provisions

(1) Notwithstanding any other stipulation contained within this Constitution, the original founding members will elect interim Office-Bearers as described in section 37 and who will be responsible for the duties and have powers as determined in section 38, who will hold office for 5 years from date of approval of this revised Constitution, unless the NC referred to in (1) above wants to replace any one or more of them by putting forth a special motion on a NC.

(2) Notwithstanding any other stipulation contained within this Constitution, the NWC holding office in terms of (1) above, will also function as the NEC with all its powers and functions

(3) ...

(4) Any decision taken in good faith by any office-bearer or structure or institution or defending any pending legal proceedings before acceptance of this revised Constitution, are hereby ratified.

[Sub-paragraph (3) deleted - Date: 23 June 2024]

78. Commencement of this Constitution

This revised Constitution takes effect from 9 September 2018 which is the date of acceptance by the founding members and ratified by the members on the first NC, and is as such in force.

□□□

We, the President and the Deputy President of the Organisation, hereby certify that the Constitution is correct and in force.



President: Reyno De Beer

Date: 9 September 2018



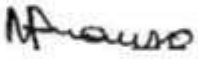
Secretary: Nokwanda Oliphant

Date: 9 September 2018

The original Constitution dated 9 September 2018 is hereby amended as indicated herein by unanimous resolution on a National Conference held in Pretoria and by video conferencing on 23 June 2024.



President: Reyno De Beer
Date: 23 June 2024



Acting Secretary: Patience Mavuso
Date: 23 June 2024

"CC2"

LIBERTY FIGHTERS NETWORK

A voluntary association without gain (common-law *universitas*)

NATIONAL WORKING COMMITTEE

WRITTEN RECORD OF CONSULTATION AND DECISION

Date: ~~18~~ 17 September 2026

M.G.

1. This document records, *ex abundanti cautela*, the consultation and decision of the presently functioning National Working Committee ("NWC") of Liberty Fighters Network ("LFN") concerning High Court case number 2026-024184 and the Constitutional Court proceedings arising therefrom. It does not purport to create authority which did not otherwise already exist under the LFN Constitution.
2. The NWC confirms, and ratifies if necessary, LFN's institution and continued prosecution of High Court case number 2026-024184, including the pending Applications for Leave to Appeal.
3. The NWC expressly confirms the President's decision, in terms of Article 38(1)(e) LFN Constitution, to institute and prosecute the urgent Constitutional Court proceedings seeking interim preservation relief and direct leave to appeal against the recusal judgment and the separate costs judgment/order delivered by Holderness J on 28 August 2026.
4. The NWC further confirms the President's decision to institute and prosecute the separate companion Constitutional Court application for direct leave to appeal against the High Court Part "A" judgment and order dated 25 February 2026, including condonation insofar as required.

M.G.

5. The NWC records that institution of the Constitutional Court proceedings does not constitute withdrawal, abandonment, waiver or peremption of any pending High Court application, appeal process or other right unless LFN subsequently records such election expressly in writing.

6. It is confirmed that REYNO DAWID DE BEER, in his office as President and executive official of LFN, is authorised by the LFN Constitution to sign, depose to, lodge, serve, prosecute and present all notices, affidavits, written submissions, records and related documents reasonably necessary for the proceedings and to make procedural amendments required by the Constitutional Court Registry or judicial directions, provided that substantive abandonment or settlement shall occur in consultation with the NWC and that the final decision lies with the President.

7. The NWC further confirms that the proceedings are consistent with LFN's constitutional objects, including constitutional governance, social justice, environmental accountability, access to courts and the protection of members' and public interests.

8. The presently functioning NWC participants in the consultation and decision recorded herein are Reyno Dawid De Beer, President (also Treasurer in terms of Article 38(1)(h) LFN Constitution), and Mariska Geldenhuys, Acting National Secretary.

REYNO DAWID DE BEER

President, and Treasurer

Date: 17/9/2026

MARISKA GELDENHUYS

Acting National Secretary

Date: 17/9/2026

"CC3"

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT CASE NUMBER: **/2026**

In the matter between:-

L BERTY FIGHTERS NETWORK (A voluntary association without gain, a common-law *universitas*)	First Applicant
REYNO DAWID DE BEER N.O. (cited *nomine officio* as President and executive official of First Applicant)	Second Applicant
and	
PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE	First Respondent
WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE	Second Respondent
SOUTH AFRICAN NATIONAL PARKS	Third Respondent

CAPENATURE Fourth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Fifth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MARISKA GELDENHUYS

declare under oath as follows:

1. I am an adult female and the Acting National Secretary of Liberty Fighters Network ("LFN"). I am the other presently functioning national office-bearer who, together with the President, constitutes the presently functioning National Working Committee ("NWC") for purposes material to this application.

2 I have read the Founding Affidavit of Reyno Dawid De Beer in the urgent Constitutional Court application arising from High Court case number 2026-024184. Insofar as it concerns LFN's internal authority, consultation, offices and the decision to institute the present proceedings, I confirm its contents.

3. I confirm that Mr De Beer is the President and executive office-bearer of LFN and that his current term of office commenced under the amended LFN Constitution adopted on 23 June 2024.

4. I confirm that the LFN Constitution authorises the President to institute and defend legal proceedings on behalf of LFN in consultation with the NWC.

M.G.

5. I confirm that Mr De Beer consulted me regarding the institution of the urgent Constitutional Court proceedings, including the two Rule 19 applications concerning the judgments/orders of 28 August 2026 and the separate companion application concerning the judgment of 25 February 2026.

6. I participated in and support the NWC Written Record of Consultation and Decision dated 17 September 2026. The decision was not unilateral. I expressly support the institution and continued prosecution of the Constitutional Court proceedings on behalf of LFN.

7. I confirm that the NWC supports the continued prosecution of the pending High Court appellate processes and that the Constitutional Court applications are not intended to abandon, waive or perempt those processes.

8. I further confirm that the litigation concerns matters falling within LFN's constitutional objectives, including constitutional governance, public-interest litigation, access to court, environmental accountability and the protection of members' and public interests.

9. I make this affidavit specifically so that there can be no uncertainty before the Constitutional Court as to the existence of consultation, the identity of the persons who participated in it, LFN's decision to litigate, or Mr De Beer's authority to act for LFN in these proceedings.

MARISKA GELDENHUYS

DEPONENT

M.G

THUS SIGNED AND SWORN TO before me at Fish Hoek SAPS on this 20 day of **SEPTEMBER 2026**, the Deponent having acknowledged that she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, considers the oath binding on her conscience, and all prescribed formalities have been complied with.

SUID-AFRIKAANSE POLISIEDIENS
COMMUNITY SERVICE CENTRE
20 SEP 2026
GEMEENSKAPDIENSSENTRUM
VISHOEK / FISH HOEK K.P / C.P.
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

Full names: Zoleka Bavuma

Designation: Constable

Address: CNR Banks / Main Road Fish Hoek

"CC4"

Western Cape Government

Department of Environmental Affairs
and Development Planning



The Department of Environmental Affairs and Development Planning

Annual Performance Plan

2025/26

Western Cape Government



The Department of Environmental Affairs & Development Planning

Annual Performance Plan 2025/26

16. PUBLIC ENTITIES

NAME OF PUBLIC ENTITY	MANDATE	OUTCOMES
CapeNature	Western Cape Biodiversity Act, 2021 (Act No. 6 of 2021)	• Enhanced biodiversity conservation. • Landscape resilience maintained. • Advanced economic sustainability.
Commissioner of the Environment	Western Cape Constitution (s71)	The Commissioner for the Environment is listed as a Schedule 3, Part C Public Finance Management Act (PFMA) public entity, has not yet been appointed. During February 2021, the Standing Committee on the Premier and Constitutional Matters published the Constitution of the Western Cape First Amendment Bill [B 1–2021] to amend the Constitution of the Western Cape (1997), to repeal the provisions relating to the Commissioner for the Environment. This legislative process will determine whether this entity will continue or not.

17. INFRASTRUCTURE PROJECTS

The Department has no planned infrastructure projects for 2025/26.

18. PUBLIC PRIVATE PARTNERSHIPS

The Department has no Public Private Partnerships for 2025/26.

19. PROVINCIAL ENVIRONMENT SECTOR STANDARDISED PERFORMANCE MEASURES

PROGRAMME 2	PROGRAMME 3	PROGRAMME 4	PROGRAMME 5	PROGRAMME 6
ENVIRONMENTAL POLICY, PLANNING AND COORDINATION	**COMPLIANCE AND ENFORCEMENT**	**ENVIRONMENTAL QUALITY MANAGEMENT**	**BIODIVERSITY MANAGEMENT**	**ENVIRONMENTAL EMPOWERMENT SERVICES**
Number of inter-governmental sector programmes implemented	Number of administrative enforcement notices issued for non-compliance with environmental management legislation	Percentage of complete Environmental Impact Assessment (EIA) applications finalized within legislated timeframes	Number of hectares under the conservation estate*	Number of work opportunities created through environment sector public employment programmes
Number of legislated tools developed	Number of completed criminal investigations handed to the NPA for prosecution	Percentage of complete Atmospheric Emission Licenses (AELs) issued within legislated timeframes	Percentage of area of state managed protected areas assessed with a METT score above 67%*	Number of environmental awareness activities conducted
Number of environmental research projects completed	Number of compliance inspections conducted	Percentage of complete Waste License applications finalized within legislated timeframes	Percentage of complete biodiversity management permits issued within legislated timeframes*	Number of environmental capacity building activities conducted
Number of functional environmental information management systems maintained			Number of Biodiversity Economy initiatives implemented	
Number of climate change response interventions implemented				

*Please refer to the 2025/26 APP of CapeNature, for the respective Programme Performance Information.

"CC5" 101

PUBLIC HEARINGS ON CONSTITUTION OF THE WESTERN CAPE FIRST AMENDMENT BILL

The Western Cape Provincial Parliament's Standing Committee on the Premier and Constitutional Matters of the invites stakeholders, interested persons and organisations to make submissions on the Constitution of the Western Cape First Amendment Bill [B1–2021].

The purpose of the amendment bill is to amend the Constitution of the Western Cape, 1997, so as to align it with the Constitution of the Republic of South Africa, 1996, with regard to the loss of membership of the Provincial Parliament, the calling and setting of dates for an election of the Provincial Parliament, the definition of a money bill, provincial intervention in local government, the imposition of surcharges by the Provincial Parliament and the raising of loans by the Western Cape Government; to repeal the provisions regarding the Commissioner for the Environment; to substitute references to the President of the Constitutional Court; to effect certain incidental text changes; and to provide for matters connected therewith.

Stakeholders, interested persons and organisations who wish to submit oral submissions can do so by sending them as voice notes on WhatsApp to cell no: 082 372 7463. Oral submissions must include full contact details, including name and surname, email address and contact number.

Requests to appear before the standing committee for oral submissions must reach the Procedural Officer before the date of the public hearing. Written comments must reach the standing committee by no later than Monday, 31 May 2021.

The public hearings will be conducted as follows:

Date	Time	Venue
Tuesday, 11 May	15:00 - 17:00	Mossel Bay Town Hall, 101 Marsh Street, Mossel Bay
Wednesday, 12 May	15:00 - 17:00	George High School, 2 Plaatjies Street, George
Tuesday, 18 May	15:30 - 18:00	The Dial Rock Hall, Albatross Street, Saldanha
Wednesday, 26 May	15:30 - 18:00	Western Cape Provincial Parliament ,7 Wale Street, Cape Town

For enquiries contact Ms Waseemah Kamish-Achmat, Procedural Officer, on cell no: 083 462 4803 or email: wachmat@wcpp.gov.za.

Click here to download a copy of the Constitution of the Western Cape First Amendment Bill [B1–2021].

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Liberty Fighters Network

Est. 2016 - A voluntary association without gain (*Universitas*)

***Office of the President*: Reyno De Beer**

Office: +27(0)72 745 2869 / Cellular: +27(0)67 735 7288

Electronic Mail: reyno@libertyfighters.org

Website: www.libertyfighters.org / Telegram: @libertyfightersnews / Twitter: @LFN_SouthAfrica /

Facebook: Libertyfightersnetwork / YouTube: @LibertyFighters

Date: 9 December 2025

ATTENTION: **Office of the Commissioner for the Environment**

(As established in terms of section 71 of the Constitution of the Western Cape, 1997)

c/o **Speaker of the Western Cape Provincial Parliament**

Mr Daylin Gary Mitchell

Email(1): speaker@wcpp.gov.za

Email(2): reagen.allen@wcpp.gov.za

c/o **Premier of the Western Cape**

Mr. Alan Winde

Email(1): Alan.Winde@westerncape.gov.za

Email(2): Premier.Winde@westerncape.gov.za

Email(3): Tammy.dedecker@westerncape.gov.za

c/o Western Cape: Minister for Local Government, Environmental Affairs, and Development Planning

Mr. Anton Bredell

Email(1): anton.bredell@westerncape.gov.za

Email(2): graham.paulse@westerncape.gov.za

Dear Commissioner

COMPLAINT TO THE COMMISSIONER FOR THE ENVIRONMENT: "FINAL CAPE PENINSULA BABOON MANAGEMENT ACTION PLAN (2025)" AND PROPOSED IMPLEMENTATION OF IRREVERSIBLE BABOON MANAGEMENT INTERVENTIONS

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2. INTRODUCTION

2.1. This complaint is submitted by **Liberty Fighters Network (LFN)**, a voluntary association acting in the public interest, together with our members, including **Monkey Valley Resort (Pty.) Ltd.** and it's managing director, **Ms. Judy Sole**, situated in Noordhoek (against the slopes of Chapman's Peak), Western Cape.

2.2. This submission concerns the Cape Peninsula Baboon Management Joint Task Team (CPBMJTT), its proposed Baboon Action Plan affecting multiple baboon troops on the Peninsula, and the resulting environmental, administrative and constitutional implications.

2.3. This complaint is formally addressed to the **Office of the Commissioner for the Environment**, as created by **section 71 of the Constitution of the Western Cape, 1997**, which provides:

*"71(1) There **is** a provincial Commissioner for the Environment."* [My Emphasis]

2.4. Despite this constitutional creation, no Commissioner has been appointed since 1997, and the Office remains without an incumbent. This complaint is nevertheless properly directed to the Commissioner as the Constitution's mandated independent oversight structure for environmental governance in the Western Cape.

3. CONSTITUTIONAL AND STATUTORY FRAMEWORK

3.1. Section 71 – Existence of the Commissioner

Section 71 establishes a provincial Commissioner who must function impartially and independently, subject only to the national and provincial Constitutions and the law.

3.2. Section 72 – Core Functions

Section 72 requires that the Commissioner's functions *must include*:

a) **Monitoring** urban and rural development and other matters affecting the environment;

b) **Investigating complaints** in respect of environmental administration;

c) **Recommending a course of conduct** to any organ of state on matters investigated; and

d) Acting in accordance with the principles of co-operative governance.

The present dispute falls squarely within section 72.

3.3. Constitutional Obligations of the Provincial Government

Section 237 of the national Constitution provides:

> *"All constitutional obligations must be performed diligently and without delay."*

The Western Cape Government's failure to establish the Office of the Commissioner for more than 25 years constitutes a *prima facie* breach of this provision and has deprived the public of the independent environmental oversight intended by the Constitution of the Western Cape.

4. FACTUAL BACKGROUND GIVING RISE TO THE COMPLAINT

4.1. The Proposed Baboon Action Plan

4.1.1. The CPBMJTT has formulated and seeks to implement a Baboon Action Plan affecting baboon troops across the Cape Peninsula, including potential:

a) Permanent removal of troops;

b) Relocation to sanctuaries;

c) Destruction of individual animals deemed "problematic";

d) Alterations to troop ranges and habitats.

4.1.2. Several of these measures are **irreversible** and carry significant biodiversity, welfare, ecological and socio-economic consequences.

4.2. Absence of Proper Decision-Making by Competent Authorities

4.2.1. The CPBMJTT is a **consultative forum** and does not constitute a statutory decision-maker under:

a) NEMA;

b) The Biodiversity Act; or

c) Any provincial legislation.

4.2.2. There is no evidence that the three competent authorities (City of Cape Town, SANParks, and CapeNature):

a) Have taken **independent, lawful, administrative decisions** adopting the plan;

b) Have complied with **public participation requirements**;

c) Have considered **reasonable alternatives**; or

d) Have lawfully **authorised** any irreversible actions.

4.3. Environmental and Community Impact

4.3.1. Residents, businesses and conservation bodies — including our members at Monkey Valley — have experienced:

a) Increased baboon incursions,

b) Damage to property,

c) Safety concerns, and

d) Uncertainty arising from inconsistent management strategies.

4.3.2. Conversely, conservationists and welfare organisations have raised concerns regarding:

a) Potentially unlawful destruction of baboons,

b) Lack of transparent scientific justification,

c) Inadequate community consultation, and

d) Possible contraventions of NEMA and PAJA.

4.4. Lack of Independent Oversight Due to Non-Appointment of the Commissioner

4.4.1. The Commissioner is the constitutionally designated institution to investigate precisely these types of disputes.

4.4.2. However, because the Western Cape Government has:

a) Not appointed a Commissioner,

b) Not operationalised the Office, and

c) Not ensured that the constitutional oversight framework is functional,

4.4.3. the public is deprived of an independent forum to resolve environmental disputes. This has in turn forced stakeholders toward litigation rather than constitutional oversight.

5. THE COMPLAINT

We hereby request that the Commissioner — upon appointment and operationalisation of the Office — investigate the following:

5.1. Lawfulness of the Baboon Action Plan

Whether the Plan, its approval process, and its proposed implementation:

a) Comply with NEMA, the Biodiversity Act, PAJA, and applicable provincial legislation;

b) Constitute lawful administrative action by the three competent authorities;

c) Are supported by adequate scientific and conservation evidence; and

d) Comply with the precautionary principle and sustainable development obligations.

5.2. Legality of CPBMJTT's Role

Whether the CPBMJTT has:

a) Acted *ultra vires* by formulating decisions or recommendations beyond its consultative mandate;

b) Functioned as a *de facto* decision-maker without statutory authority;

c) Usurped functions that constitutionally and legislatively belong to independent oversight structures.

5.3. Environmental Governance Failures

Whether the Western Cape Government's non-implementation of section 71:

a) Has prejudiced the public interest;

b) Has deprived communities of independent environmental dispute resolution;

c) Has contributed to maladministration in baboon management processes;

d) Constitutes a breach of constitutional obligations under both the provincial and national Constitutions.

6. RELIEF REQUESTED FROM THE COMMISSIONER

We respectfully request that the Commissioner, upon appointment:

a) **Investigate** the dispute as contemplated under section 72(1)(b);

b) **Call for submissions** from all affected stakeholders, including residents, welfare bodies, conservation experts, and the three authorities represented in the CPBMJTT;

c) **Review all scientific, administrative and policy materials** underlying the Baboon Action Plan;

d) **Assess** whether the Plan and its implementation comply with applicable legislative and constitutional requirements;

e) **Issue recommendations** to the competent authorities as provided under section 72(1)(c); and

f) **Report publicly** to the Western Cape Provincial Parliament on the findings, in accordance with section 75.

7. INTERIM POSITION PENDING OVERSIGHT

We record that:

a) This complaint now constitutes a formal request for constitutional oversight.

b) Implementing the Baboon Action Plan prior to the completion of independent oversight may cause **irreparable environmental harm**.

c) Should any authority proceed with irreversible measures, LFN will approach the High Court on an urgent basis for interdictory relief pending lawful and independent determination of this dispute.

8. CONCLUSION

8.1. This complaint is submitted to activate the constitutional machinery intended to safeguard environmental governance in the Western Cape. We submit that the longstanding non-appointment of the Commissioner must not operate to the detriment of the public, the environment, or affected communities.

8.2. We request that this complaint be acknowledged, recorded, and preserved for the attention of the Commissioner upon appointment, and that the Provincial Government take immediate steps to operationalise the Office in compliance with section 71.

8.3. Our rights, and those of our members and the broader public we serve, remain reserved *in toto*.

Yours Sincerely,



Reyno D. De Beer

President: Liberty Fighters Network

On behalf of our members

And in the interests of the Public

"CC7"

COURT ONLINE COVER PAGE

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



JUDGMENT AS HANDED DOWN BY HOLDERNESS J ON 25 FEB 2026

NOTE: **This document was filed electronically by the Registrar on 25/3/2026 at 8:29:00 AM South African Standard Time (SAST). The time and date**

the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

Registrar of The High Court, Western Cape Division, Cape Town

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

CASE NO: 2026-024184

In the matter between:



LIBERTY FIGHTERS NETWORK	First applicant
REYNO DAWID DE BEER N.O.	Second applicant

and

PREMIER OF THE WESTERN CAPE, **MR. ALAN WINDE N.O., OR HIS** **SUCCESSOR IN TITLE**	First respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. **DAYLIN MITCHELL N.O., OR HIS** **SUCCESSOR IN TITLE**	Second respondent
WESTERN CAPE PROVINCIAL **MINISTER FOR LOCAL GOVERNMENT,** **ENVIRONMENTAL AFFAIRS AND** **DEVELOPMENT PLANNING, MR.** **ANTON BREDELL N.O., OR HIS**	Third respondent

SUCCESSOR IN TITLE
OFFICE OF THE COMMISSIONER OF
THE ENVIRONMENT

OFFICE OF THE COMMISSIONER OF Fourth respondent
THE ENVIRONMENT

SOUTH AFRICAN NATIONAL PARKS Fifth respondent

CAPE NATURE Sixth respondent



CITY OF CAPE TOWN METROPOLITAN Seventh respondent
MUNICIPALITY

CHAIRPERSON OF CAPE PENINSULA Eighth respondent
BABOON MANAGEMENT JOINT TASK
TEAM, MR. ROBERT McGAFFIN N.O.,
OR HIS SUCCESSOR IN TITLE

JUDITH ANNE SOLE Ninth respondent

WILDLIFE ANIMAL PROTECTION Tenth respondent
FORUM OF SOUTH AFRICA

BABOON ADVISORY GROUP Eleventh respondent

Heard: 19 February 2026

Delivered: 25 February 2026

JUDGMENT

HOLDERNESS, J

[1] Litigation is not a game.

[2] The repeated admonishments by various courts, including the Supreme Court of Appeal ("SCA"), have, however, not had any impact on Liberty Fighters Network ("LFN"), nor its alter ego, Mr. Reyno Dawid de Beer (Mr. R de Beer), who appears intent on treating our courts as a playground.

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CAPE TOWN
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WESTERN CAPE DIVISION,
CAPE TOWN

[3] The first applicant, described in the founding affidavit as 'well-known voluntary association, referred to as a common law universitas', specialising in advancing social justice on the grassroots operating as a non-governmental organisation with perpetual succession and without an eye on gain, existence separate from its members and ability to own property in its own name with a common cause amongst its members clearly identified in its Constitution,

[4] The applicants seek relief in two parts. In Part A, it seeks the following urgent interim relief:

(a) Confirmation of LFN's representation by the second applicant, Mr. Reyno de Beer N.O., and permission for the applicants to bring the application in their own capacities, in the interests of LFN members and the public.

(b) An interim interdict restraining the third respondent, the Premier of the Western Cape ("the Premier"), and the fifth to eighth respondents, from taking any steps to implement the Final Cape Peninsula Baboon Management Action Plan dated 31 October 2025 ("the Action Plan") insofar as such steps are permanent, irreversible, or create a fait accompli, including, inter alia:

(i) Capture, removal, relocation, or confinement of baboon troops.

(ii) Vasectomy or reproductive interventions.

(iii)Euthanasia or lethal control of baboons.

(iv)Conclusion of agreements concerning baboon sanctuaries or enclosures.

(v) Construction or installation of infrastructure for sanctuary confinement.

(c) Directing that the respondents, within ten court days, deliver affidavits and records detailing every decision, the identity of each decision-maker, dates of each decision, reasons, and/or authorisations related to the Action Plan.

(d) In terms of Part B, the applicant seeks final orders:

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(i) Declaring that the failure of the Premier, and where applicable the second respondent and the third respondents, to 'operationalise' the Office of the Commissioner for the Environment constitutes conduct 'constitutes conduct inconsistent with the constitutional obligation to perform constitutional duties diligently and without delay.'

(ii) Directing the Premier to appoint a suitable man or woman, after a proper public participation process, to fill the Fourth Respondent within ninety (90) days of this order; alternatively, take all steps necessary to ensure the lawful appointment of either a man or woman to fill the Fourth Respondent by no later than 1 June 2026, and to file a report under oath with this Court within thirty (30) days thereafter, setting out in detail:

(1) the steps taken to comply with this order;

(2) the applicable appointment process and timeline; and

(3) the reasons for any delay or inability to comply sooner.

(iii) Granting leave to the Applicants, upon filing of the report referred to in paragraph 10 *supra,* alternatively on failure of the First Respondent to comply with Item 10 *supra,* to re-enrol the matter on the same papers, duly supplemented, if necessary, for this Court's consideration of the report and the granting of further and/or alternative relief, including structural, supervisory, or compliance-directed orders.

(iv) Directing the Premier to appoint a suitable individual to the Office of the Commissioner within 90 days or by 1 June 2026, with a report under oath detailing compliance steps.

(v) Leave for the Applicants to re-enrol the matter for further relief if the First Respondent fails to comply.

(vi) Declaring that the agreement establishing the Cape Peninsula Baboon Management Joint Task Team (the JTT) and the Action Plan is invalid or unlawful, with an alternative order for the Commissioner to investigate the legality of the agreement once the office is operationalised.

(vii) Confirmation of the rule nisi issued under Part A.



[5] I am indebted to Ms. O'Sullivan SC and Ms de Villiers (who appeared on behalf of the sixth and seventh respondents) and Mr. de Beer (who appeared for the fifth respondent) for the detailed and well-researched heads of arguments which have been of great assistance in adjudicating this urgent application and in drafting this judgment.

[6] Recent genetic assessments suggest that Chacma baboons have lived in the Cape Peninsula for almost 2 million years.[1]

[7] Due to increasing human population and urban sprawl, the Cape Peninsula baboon population experiences high levels of human-baboon conflict.[2]

[8] Since 2023, three authorities from the three spheres of government, namely the fifth respondent, South African National Parks ("SANParks"), the sixth respondent ("CapeNature") and the seventh respondent ("the City of Cape Town or the City"), have collaborated through the JTT to manage the Cape Peninsula Chacma baboon (baboon) population sustainably.

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[1] Dubay, S. (2018) "Behavioural and physiological responses of chacma baboons (Papio ursinus) to wildfire in the Cape Peninsula of South Africa" FitzPatrick Institute of African Ornithology, Department of Biological Sciences, University of Cape Town. Available at: https://ncc-group.co.za/wp-content/uploads/2022/10/thesis_sci_2018_dubay_shannon.pdf.
[2] Id.

[9] On 6 July 2023, a Memorandum of Agreement ("the MOA") was signed. This marked a historical milestone in cooperative governance among the three authorities, allowing for collaborative governance in baboon management in the Cape Peninsula.

[10] In September 2023, after extensive public and stakeholder participation, including expert reviews, the Baboon Strategic Management Plan ("the BSMP") was finalised.

[11] The BSMP aims to sustainably manage the baboon population and includes a Baboon Advisory Group for stakeholder engagement.

[12] The Action Plan was adopted on 20 November 2025, detailing practical implementation measures for the BSMP, including population control methods such as translocation, contraception and sterilisation, and, as a last resort, euthanasia.

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[13] The applicants seek to halt the implementation of the Final Baboon Management Action Plan and to interdict *inter alia* the capture, relocation, and euthanasia of baboons.

[14] The Baboon Advisory Group ("BAG") was created to facilitate stakeholder engagement and support the implementation of the BSMP. Its inaugural meeting was held on 12 February 2025. Members include representatives from communities, academic institutions, and animal welfare organisations.

The Action Plan

[15] The Action Plan, which was finalised by the JTT after extensive stakeholder engagement and expert review, outlines management actions for baboon populations from November 2025 to November 2030, based on scientific principles.

[16] As elaborated in the Action Plan, there are thirteen baboon troops on the Cape Peninsula. The Action Plan sets out management measures to be implemented and measures to manage the baboon population at sustainable levels, with upper limits set for the south and north subpopulations based on population capacity figures.

[17] Appended to the Action Plan is the implementation schedule, which includes a budget for action items, with significant financial allocations, and includes critical measures to manage baboon populations and to mitigate human-baboon conflict. The LFN failed to place this highly relevant appendix for the purposes of Part A. I agree with Ms. O' Sullivan, who appeared for Cape Nature and the City of Cape Town, that this failure constitutes a serious omission on the part of the applicants.

[18] Key measures in the Action Plan include the establishment of a northern fence (from Zwaanswyk to Constantia Nek) to prevent baboons from accessing urban areas, with a budget of R17 million, and the relocation of Constantia Nek troops into the Table Mountain National Park, which is planned for May 2026. These are the aspects of the Action Plan which appear to be the most implicated in terms of the urgent interdictory relief sought.



[19] A baboon sanctuary is to be constructed near Cape Point Reserve, with a budget of R10 million for infrastructure and operational costs.

[20] The legal authority of Cape Nature and other stakeholders in the management of baboons is outlined in the National Environmental Management: Biodiversity Act 10 of 2004 (the "Biodiversity Act"), which provides for biodiversity conservation and management.

The applicants' case for interim relief

[21] The applicants are seeking to stop what they describe as a 'permanent and irreversible shift in how baboons are managed on the Cape Peninsula.

[22] The applicants raise the following three primary legal arguments to contest the plan:

(a) The JTT lacks the legal standing and statutory authority to make these decisions.
(b) No 'identifiable, lawful administrative decisions' have been taken by the proper authorities to authorise such 'extreme measures.'
(c) The executive's failure to 'operationalise' the office of the Environmental Commissioner, a position mandated by the provincial constitution but currently vacant or non-functional, is a breach of its constitutional mandate

Urgency

[23] The principles governing urgency are well-established[3]:

a. An applicant must set out explicitly the circumstances which render the application urgent.
b. Urgency must not be self-created or subjectively perceived.
c. The prejudice to the respondent caused by the abridged time limits is relevant.
d. Prompt action by an applicant favours a finding of urgency.

[24] The alleged urgency in this matter, according to the applicants, is that, the JTT has explicitly stated it will proceed with implementation regardless of the pending legal complaints and has refused to provide an undertaking that they will not take 'irreversible steps' in the interim.

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[25] The applicants contend that without an interdict, baboons may be sterilised or euthanised before the adjudication of the applicant's case, rendering any future final order nugatory.

[26] The applicants state they are not acting as 'armchair conservationists', nor seeking to dictate policy choices, but are raising procedural issues, namely that these weighty decisions must be made by lawfully empowered bodies using proper administrative channels with appropriate oversight.

[27] SANParks, Cape Nature and the City of Cape Town, unsurprisingly, deny that the matter is urgent and contend that any alleged urgency is manifestly of the applicants' own making. They submit that the matter should accordingly be struck from the roll, with costs.

[28] The respondents highlight the fact that the applicants have unduly delayed, since 2023, in bringing their application against the MOA and BMSP, and should have done so after the adoption of the BSMP more than two and a half years ago. The BSMP and 2019 guidelines contain the very management tools which the applicants seek to interdict under the Action Plan.

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[3] See e.g., *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196, *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and another* 1981 (4) SA 108 (C) at 112H-113A.

[29] In this regard, it bears emphasising that there is no direct attack in the application on the Action Plan. As Cape Nature and the City point out, LFN has not pleaded any basis for the implicated steps in the Action Plan to be halted in light of its complaint.

[30] The Action Plan is dated 31 October 2025. The joint statement was issued on 20 November 2025. The management actions are to be implemented in terms thereof between November 2025 and November 2030. Material steps under the Action Plan have already been implemented in the three months since November 2025 and are ongoing.

[31] In a letter to the respondents dated 28 November 2025 and marked 'very urgent', LFN sought a 'moratorium'.



[32] Importantly, in a response dated 8 December 2025, the JTT declined to agree thereto, but provided LFN with a copy of the MOA and indicated that the JTT was available to meet with LFN. Yet LFN still did not approach the Court, nor did it meet with the JTT.

[33] I agree with the respondents that there is no answer for LFN to rely on the submission of the complaint on 9 December 2025, and the JTT not agreeing to halt implementation pending the appointment of the Environment Commissioner, and the investigation by such commissioner of its complaint. One of the grounds of LFN's complaint is that there has been no Environment Commissioner since 1997.

[34] The application *in casu* was filed electronically on 5 February 2026, more than three months after the date of the final Action Plan. The respondents were afforded approximately two days to prepare their answering papers. The applicants have failed to explain the delay, the basis for the greatly truncated and highly prejudicial timetable, given the far-reaching interdictory relief sought.

[35] Adv de Beer, who appeared on behalf of SANParks, contended that the urgent court must not be abused (a trend which is becoming all too common, of late), and emphasised that it is not for litigants who delay, craft impossible timelines and then demand interdictory relief.

[36] I would pause to note that it is more so when litigation involves state functionaries and the use of public funds.

[37] Fisher J recently examined the issue of self-created urgency[4]:

'[32] Self-created urgency implies more than mere delay. It often involves a degree of contrivance and abuse of process.
[33] When a party fails to approach a court at the earliest possible opportunity and then delays unduly to approach court, he risks not affording a party's opposition sufficient time to place its case before the court. This may cause prejudice to a respondent and will necessarily impact upon the urgent court's ability to properly manage its roll which in turn undermines the proper administration of justice.
[34] It is expected of litigants to react immediately to remedy or prevent harm and/or prejudice, rather than standing back and doing nothing until it is too late.
[35] This is why our Courts have, in appropriate circumstances, held that a party who creates his own urgency is not entitled to urgent relief.'

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[38] SANParks submits, correctly in my view, that the present application is a classic case of self-created urgency.

[39] The applicants failed to provide an adequate explanation for their delay.

[40] In the founding affidavit, the applicants rely on a letter written by the JTT dated 21 January 2026. I agree with SANParks that this is contrived. The applicants knew in November 2025 that the Action Plan would be adopted.

[41] For the first time in reply, the applicants claim that as the signature page of the Action Plan reflects that it was signed in January 2026, this is the start of the 'operative approval' of the Action Plan.

[42] The applicants are not permitted to make out their case for urgency in reply. Moreover, what they fail to take into account is that the Joint Statement to the Action Plan itself, published on 20 November 2025, records it was 'finalised and adopted' by the three organs of state, and the version under oath of SANParks, Cape Nature and the City that it was adopted earlier, in October 2025, notwithstanding the fact that it was formally signed in January 2026. This evidence of the respondents cannot be gainsaid by the applicants.

[4] *Carrim v Madlanga N.O* (2026/017082) [2026] ZAGPJHC 83 (5 February 2026).

[43] The applicants are not ordinary lay litigants. They have litigated in our courts in numerous matters over several years. They are serial litigants and are well-versed in the rules regarding urgency.

[44] A mere month before this application was launched, the Gauteng High Court[5] criticised them for creating their own urgency and admonished them to revisit the well-established legal principles regarding urgency. It seems that this (and several previous warnings and criticisms by our courts) fell on deaf ears.

[45] Lastly, SANParks submits that the manner in which the applicants have approached the urgent court, their delays and the impossible timelines which they unilaterally imposed on the respondents, is an abuse that warrants censure.

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[46] In *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others*[6] the SCA held that:

> 'Urgency is a reason that may justify deviation from the times and forms the rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief. Where an application is brought on the basis of urgency, the rules of court permit a court (or a judge in chambers) to dispense with the forms and service usually required, and to dispose of it 'as to it seems meet' (Rule 6(12)(a)). This in effect permits an urgent applicant, subject to the court's control, to forge its own rules[3] (which must 'as far as practicable be in accordance with' the rules). Where the application lacks the requisite element or degree of urgency, the court can for that reason decline to exercise its powers under Rule 6(12)(a). The matter is then not properly on the court's roll, and it declines to hear it. The appropriate order is generally to strike the application from the roll. This enables the applicant to set the matter down again, on proper notice and compliance.'

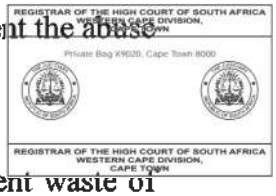
[47] Having considered the parties' submissions, whilst I am persuaded that any urgency which may exist is indeed self-created, to strike the matter from the roll is likely to result in the

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[5] *Liberty Fighters Network and Another v Registrar of the High Court, Gauteng Division, Pretoria and Another* (2022/030165; 2022/30280; 2022/030165) [2026] ZAGPPHC 4 (2 January 2026) para 13.
[6] *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others* (379/05) [2006] ZASCA 51; 2006 (4) SA 292 (SCA); [2006] 2 All SA 565 (SCA); 68 SATC 141 (31 March 2006) at para 9.

applicants re-enrolling it on a semi-urgent basis or on the ordinary opposed roll, unduly burdening another court with having to revisit the same facts and entertain the same arguments. This is clearly not in the interests of justice, in the particular circumstances of this case.

[48] This tension is apparent in several urgent applications which are presented in this division, and Judges hearing such matters are frequently confronted with the re-enrolment conundrum. If, however, courts hear such matters in the fast lane, as the merits have been considered and the affidavits filed under considerable time pressure, it may create an environment where litigants 'take their chances' and effectively jump the queue ahead of more deserving and genuinely urgent matters. Courts find themselves in an unenviable position in deciding how best to deal with these matters in the interests of justice and to prevent the abuse of process and the burdening of our already overburdened court system.



[49] In the present matter, the record exceeds 1000 pages. It would be a patent waste of judicial resources and public funds (in respect of legal fees incurred by the state functionary respondents) if this matter were to be struck, as it properly ought to be, only to be re-enrolled a month or two later before another judge.

[50] A court may choose to express its displeasure with this unacceptable approach to litigation is by proceeding to adjudicate the merits and awarding punitive costs against an applicant. This will hopefully have a deterrent effect on other litigants who approach the urgent court in such a manner. This practice, which seems to be growing every day, is to be deprecated in the strongest possible terms.

[51] In my view, the applicant has failed to establish grounds for urgency, and any urgency which may exist is of its own making. For the reasons which will appear below, in the circumstances of this case, I am, however, of the view that, in the interests of justice, the matter should be fully adjudicated on the merits. I will revert to the issue of costs below.

The grounds of opposition and evaluation

[52] The respondents contend that the applicants have overlooked the constitutional and statutory mandate for the three organs of state, which are obliged to adhere to principles of co-operative government, to work together.

[53] In both the Biodiversity Act and the National Environmental Management Act 107 of 1998 ("NEMA") the Legislature emphasises that environmental decisions should involve intergovernmental co-ordination.

[54] Section 2 of the NEMA principles requires intergovernmental harmonisation of policies and actions when those actions significantly affect the environment.

[55] The fifth, sixth and seventh respondents ("the respondents") assert that they have the necessary legal standing and authority to enter into the 2023 MOA, the BSMP, and the associated Action Plan. This cannot be disputed by the applicants.

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[56] The City's duties and obligations, including baboon management, are anchored in specific legislation. In terms of Sections 152 & 153 of the Constitution, the City must provide services sustainably and promote a safe and healthy environment, subject to its financial and administrative capacity.

[57] In its answering papers, the City emphasised that the applicants are effectively seeking to strip the City of its executive discretion regarding how to order and spend public resources, and that the 2023 MOA is fully sanctioned by the Constitution and relevant environmental legislation.

Community and financial impact of unmanaged troops

[58] Cape Nature and the City argued that granting the interdict would have significant negative consequences for both baboons and human communities, as key actions such as the construction of the northern fence and relocation of troops would be indefinitely delayed, and human-baboon conflict is likely to increase, as past data shows higher mortality rates when management measures are not implemented.

[59] Significantly, the Action Plan aims to exhaust non-lethal management options before considering culling, which would be a last resort.

[60] The respondents emphasised that the unmanaged baboon troops pose significant welfare harms to both the animals and local communities.

[61] Moreover, the interdict sought would result in unaffordable and ineffective management alternatives for the baboon population, such as fencing in Simon's Town, which is estimated to cost over R40 million and take a minimum of four years to implement. According to the respondents, the likelihood of poor outcomes from fencing in this area makes it a non-viable option.

[62] An insurmountable obstacle for the applicants is their failure to plead or prove the requirements for an interim interdict, which do not require repeating, and of which the applicants have been informed.

[63] The applicants have failed to set out, in either their founding or their replying affidavits, what right or rights they seek to protect with an interdict.

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[64] Their application must fail on this ground alone. For the reasons set forth below, I nevertheless intend adjudicating the further issues raised in respect of Part A.

[65] Turning now to the requirement of irreparable harm, as SANParks points out, at best, the applicants contend that there may be irreparable harm if the respondents implement the Action Plan, pending the complaint to the non-existent provincial official. But the applicants do not show how the non-existent official could offer relief to them, undoing the Action Plan in due course. In addition to the fact that the office of the Environment Commissioner appears never to have been given effect to, or at the very least not for the past 30 years.

[66] Furthermore, the applicants have failed to show that they are left with no alternative remedy but to approach this court for urgent interdictory relief. They could have become involved in the public participation and consultation process, which was undertaken in the development and adoption of the Action Plan, but failed to do so. Nor did they meet with the JTT when they were expressly invited to do so in December 2025. There were alternative, satisfactory remedies available to the applicants. They, for reasons they have failed to disclose, chose not to avail themselves of such remedies. They have accordingly failed to satisfy this further requirement for interim interdictory relief.

Is the interdict final in effect?

[67] The respondents contend that the interdict sought is in effect a final interdict, as:

(a) There are negligible prospects of success in respect of any of the relief sought in Part B.

(b) The Part B relief will take a lengthy, and possibly indeterminate time to be determined.

(c) If the relief aimed at the appointment of an Environment Commissioner does not succeed, the interdict will remain in place indefinitely as the LFN complaint will never be finalised. Even if that component of the Part B relief succeeds, there will still be considerable delay in the LFN complaint actually being determined, and there is no certainty that the Environment Commissioner, if ultimately appointed, would investigate the complaint.

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[68] Even if the applicants had pleaded a case which supported interdictory relief, the further hurdle they face is that, on the objective evidence of SANParks, Cape Nature and the City, an interdict would halt essential aspects necessary for the effective management of baboons in the Cape Peninsula.

[69] The BMSP sets out how baboon-human conflict has escalated over the years. Proper intervention and careful management are required. This is being undertaken in terms of the MOA, BSMP and Action Plan, with consultation and expert input. This is what the applicants seek to interdict, in circumstances where they have failed to lay any basis entitling them to intervene.

[70] Due to the time constraints under which this judgment has been prepared, it is not practicable to set out the evidence set forth by the three authorities regarding their statutory obligations and standing to take such steps. I am, however, satisfied that they have shown, in the clearest terms, their respective statutory mandates to manage fauna and, in particular, baboons in the Cape Peninsula.

[71] I agree that the interdict is properly characterised as one for final relief. It is intended to operate immediately and seeks to interdict conduct pending an indeterminate process outside the court (and not pending final Rule 53 review relief as ordinarily would be the case). It will therefore not be reconsidered by the Court under Part B.

[72] I am persuaded that significant harm will result if the interdict is granted. It will effectively halt the construction of the northern fence and the relocation of the Constantia troop, the establishment of the sanctuary, lethal culling (where absolutely necessary and as a very last resort), and sterilisation.

[73] The evidence of the respondents makes it clear that the Constantia Troops and the Seaforth and Waterfall Troops, which are highly habituated[7], no longer respond to non-lethal deterrents. In areas where fencing cannot be feasibly implemented within an acceptable time frame, removals are considered essential. When lethal management is reduced, the mortality of baboons in urban areas increases.

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[74] The inescapable and heartrending reality is that urban causes of death (such as irate residents shooting at baboons, motor vehicles and pets) are associated with suffering. Not removing baboons humanely often results in their removal inhumanely.

[75] Moreover, what the applicants appear to have lost sight of is that the MOA and Acton Plans do not confer on the JTT powers which the statutory body or bodies did not hold prior thereto.

[76] In terms of s 55(2)*(d)* and *(e)* of the National Environmental Managed Protected Areas Act 57 of 2003, SANParks may, in managing national parks (including the Table Mountain National Park), or any other kind of protected area assigned to it by the Minister has the control, 'remove or eradicate any species or specimens of species which it considers undesirable to protect and conserve in a park or that may negatively impact on the biodiversity of the park, and to 'carry out any development and construct or erect any works necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters,

[7] Highly habituated baboons, particularly the Chacma baboon (*Papio ursinus)* of the Cape Peninsula, are wild primates that have lost their fear of humans due to regular, close-proximity interaction and the constant availability of anthropogenic food sources (garbage, gardens, houses). These animals have adapted to urban environments, often abandoning natural foraging behaviours to raid homes, cars, and bins for high-calorie human food. (ncbi.nlm.nih.gov).

seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels.'

[77] As highlighted by the respondents, management of baboons on the Cape Peninsula is a complex and polycentric matter requiring co-operation between the three authorities, which have constitutional and statutory obligations within their competencies. In terms of the Constitution, NEMA and the Biodiversity Act, they are obliged to cooperate to protect the environment.

[78] The City and Cape Nature argue that the management of baboon populations is a collaborative, holistic effort governed by a Memorandum of Agreement (MOA).

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[79] Under the BSMP and the Action Plan, the three distinct authorities work cooperatively, in collaboration with local communities via BAG.

[80] A primary concern is that the interdict suspending the implementation of the Action Plan (for a protracted and indefinite period) would prevent the authorities from fulfilling their respective constitutional and statutory duties and would intrude into their budgetary and policy functions.

[81] The stark reality is that without the BSMP and the Action Plan, baboon management by the authorities would be reduced to "limited, ineffectual and unaffordable means". The interdict, if granted, will lock baboons and people into ongoing conflict, with poor outcomes for the human and baboon populations in affected communities.

[82] In *National Treasury and Others v Opposition to Urban Tolling Alliance*[8] the Constitutional Court held that in applying the test for an interim interdict, the court must be applied cognisant of the normative scheme and democratic principles that underpin the Constitution. In respect of the balance of convenience, the Court may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.[9]

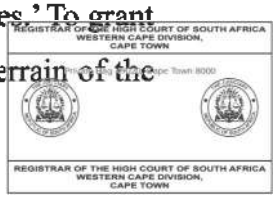
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[8] *National Treasury and Others v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) (OUTA), para 46
[9] Id at para 46.

[83] The Apex Court held[10]:

> 'The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm.'

[84] The case advanced by the applicants is the antithesis of the 'clearest of cases.' To grant an interdict in the terms sought would most certainly intrude into the exclusive terrain of the three authorities, for all the reasons set forth above.



Legal standing of the applicants

[85] The test for legal standing or *locus standi* is governed by Section 38 of the Constitution, which provides that anyone listed in the section has the right to approach a competent court, alleging that a right in the Bill of Rights has been threatened or infringed.

[86] The persons listed in section 38 include:

86.1 Section 38 1(a): Anyone acting in their own interest (s 38 1(a)).
86.2 Section 38 1(d): Anyone acting in the public interest.
86.3 Section 38 1(e): An association acting in the interest of its members.

[87] Mr. R de Beer contends that both he and LFN hold a direct and substantial interest in the relief sought, not only on behalf of themselves and their members, but also in the public interest at large.

[88] The respondents deny that the applicants have any standing.

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[10] Para 47.

Section 38(a) - Own interest standing

[89] In *Giant Concerts v Rinaldo Investments (Pty) Ltd and Others*[11] the Constitutional Court confirmed that 'there is no broad or unqualified capacity to litigate against illegalities. Something more must be shown.'

[90] While broader than the common law test for standing, under section 38(a) of the Constitution, a party must 'nevertheless show that his or her rights or interests are directly affected by the challenged law or conduct.'[12]

[91] The applicants are based in Gauteng.[13] As was pointed out in the answering affidavit SANParks, they do not show how any of their rights or interests are impacted by the implementation of the Action Plan in the Cape Peninsula. The only member of the applicant whom we know lives in the Cape is Ms Judith Sole, who was cited as a respondent by the applicants and who, in notices filed, aligned herself with the applicants' cause. This is addressed briefly below.

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[92] LFN does not state how this case is consistent with its objectives. They do not plead that any of the MOA, the BSMP or the Action Plan or any actions taken in terms thereof, directly and personally affects them. Mr. R de Beer does not allege that he owns property in any of the baboon-affected areas. He resides in Gauteng.

[93] In *Giant Concerts,* the Constitutional Court emphasised that an own-interest litigant does not acquire standing from the invalidity of the challenged decision or law, but from the effect it will have on his or her potential interests.[14]

[94] The applicants' sole claim to standing is that the application 'raises material constitutional issues.' The applicants fail to plead the source of the constitutional duty, nor the breach or threatened breach of the Constitution or of a constitutional duty imposed on any of the parties under NEMA or the Biodiversity Act.

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[11] *Giant Concerts v Rinaldo Investments (Pty) Ltd and Others* 2013 (3) BCLR 251 (CC) para 35 ("*Giant Concerts*").
[12] Id para 41.
[13] They even requested a virtual hearing for the matter.

[14] *Giant Concerts* at para 43.

[95] The applicants limited their 'constitutional' challenge to the failure to appoint an Environment Commissioner. As submitted by Ms. O'Sullivan, the applicants' belated attempt to rely on section 32(1) of NEMA[15] in the replying affidavit does not avail them. I have disregarded any such averments made for the first time in reply.[16]

[96] The applicants are, in accordance with the principle of subsidiarity, prohibited from placing direct reliance on the Constitution where specific and detailed legislation giving effect to a right sought to be enforced has been enacted, in *casu,* NEMA and the Biodiversity Act.

[97] By failing to demonstrate a failure of the Constitution or any applicable statutory prohibitions that have caused them damage, the applicants have failed to establish standing under section 38(a) of the Constitution.



Section 38(e) – Standing in the interests of the members of an association

[98] The applicants do not claim that the application is brought to advance the objectives of LFN as set forth in its Constitution. The sole mention of the environment in the objectives of LFN is in section 2(h), namely:

> 'to promote the aims of the LFN as promised in its Constitution and Manifesto: (i) to develop and implement ecological policies consistent with the philosophical basis of the Organisation as expressed in the policies for a sustainable society (ii) to that end to win seats at all levels of government (iii) to organise any non-violent activity which will further these aims.'

[99] The relief sought does not constitute the development and implementation of ecological policies and therefore does not fall within the ambit of LFN's stated objectives.

[100] The applicants have accordingly failed to establish standing under section 38(e) of the Constitution.

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[15] 32. Legal standing to enforce environmental laws (1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources- (a) in that person's or group of person's own interest; (b) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings; (c) in the interest of or on behalf of a group or class of persons whose interests are affected; (d) in the public interest; and (e) in the interest of protecting the environment.

[16] *Pilane and Another v Pilane and Another* 2013 (4) BCLR 431 (CC) at para 49.

Section 38(d) – Standing in the interests of the public

[101] The final string to LFN's legal standing bow is that they are acting in the public interest.

[102] When asked by the court on what basis the LFN claimed standing in the public interest, Mr. R de Beer responded: 'We represent the interests of the public of SA – whether the matter takes place in Kruger National Park or in CT – it is my country, and I can approach the court.' If only, for the sake of the argument advanced by the applicants, this was the legal position.

[103] In *Lawyers for Human Rights and Other v Minister of Home Affairs and Other*[17] the Constitutional Court set out the following[18]:

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(a) Courts should be circumspect in affording public interest standing and require a party to demonstrate they are genuinely acting in the public interest.

(b) A distinction must be made between the subjective position of a person or organisation claiming to act in the public interest on the one hand, and whether it is objectively speaking in the public interest for the particular proceedings to be brought.

(c) Factors relevant to determining whether a person is genuinely acting in the public interest will include:

(i) Whether there is another reasonable and effective manner in which the challenge can be brought.

(ii) The nature of the relief sought, and the extent to which it is of general and prospective application.

(iii) The range and vulnerability of persons or groups who may be directly or indirectly affected by any order made by the Court and the opportunity that those persons or groups have had to present evidence and argument to the Court.

[17] *Lawyers for Human Rights and Other v Minister of Home Affairs and Others* 2004 (4) SA 125 (CC).
[18] At paras 16 – 18.

[104] The high-water mark of the applicants' case in their heads of argument regarding standing in terms of s 38(e) is that 'LFN's Constitution, as pleaded, encompasses public-interest protection including environmental governance, and LFN's membership includes directly affected persons and entities (including Monkey Valley and Ms Sole).' Ms Sole's unusual role in these proceedings will be addressed briefly below.

[105] In the founding affidavit, LFN claims standing based on acting in the public interest based primarily on various previous litigation in which it was involved (none of which are remotely related to the present issues) and secondly on its 'genuine and established record as human rights activists, consistently acting in the interests of their members and the broader public'.

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[106] LFN cannot rely on previous cases for standing in this case. In each case, an applicant must establish their *locus standi* in their founding papers, on the facts, and along 'conventional lines'.[19]

[107] The applicants fail the test set out above. They have failed to plead and prove that no other party could bring proceedings in relation to the lawfulness of the MOA, BSMP and the Action Plan. SANParks points out that the applicants themselves identify a number of persons who signed a letter by the Wildlife Animal Protection Forum South Africa ("WAPFSA"), who could so act, as well as the ninth respondent ("Ms Sole").

[108] I thus conclude that the applicants do not have legal standing to apply for the Part A relief in terms of section 38(d) of the Constitution, nor in terms of section 38(a) or (e) thereof. On this basis alone, the application for interim relief falls to be dismissed.

[109] Notwithstanding the fact that my finding that the applicants lack legal standing is dispositive of the application before me, I have decided to deal with the various other issues raised, which were addressed comprehensively in both oral and written submissions, as our appeal courts have expressed the view[20] that, even if a single issue may dispose of a matter, it is desirable for a court to determine all of the issues before it.

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[19] *Tavakoli v Bantry Hills* 2019 (3) SA 163 (SCA) para 26.
[20] *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* 2002 (6) SA 642 (CC) para 21; *Maharaj and Others v Mandag Centre of Investigative Journalism NPC and Others* 2018 (1) SA 471 (SCA) para 26; *Minister of Home Affairs and Others v Somali Association of South Africa and*

Lack of authority of Mr. R de Beer to represent LFN

[110] A further order sought by the applicants is that it be confirmed that LFN be represented by 'the second applicant, its nominated official, Mr. Reyno de Beer N.O.'

[111] Authority to represent a juristic entity, such as a company or a voluntary association, appears to be conflated with legal standing from time to time by practitioners and courts alike.

[112] The institution of proceedings on behalf of a voluntary association must be properly authorised by the members of such association. This is different from standing, which has been dealt with exhaustively above.

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[113] Mr. R de Beer relies on section 38(1)(e) of LFN's Constitution as authorising him to lodge the application in that he is 'the head and chief directing officer of LFN, in consultation with the NWC, and the leader of the Organisation who may also at any reasonable time institute or defence legal proceedings.'

[114] On 9 February 2026, the City and Cape Nature delivered a Rule 7(1) Notice in terms of which the applicants were 'required to file authority to prove that they have authority to initiate these proceedings on behalf of the applicants.'

[115] The applicants' response merely refers to the statement made under oath in the founding affidavit that Mr. R de Beer consulted with the LFN's National Working Committee, and took a decision in terms of section 38(1)(e) of the Constitution to institute the application. Mr. R de Beer has not provided any details or documentary proof of that consultation. He has also failed to produce a minute or resolution of LFN's National Working Committee authorising the proceedings.

[116] LFN has moreover failed to provide any information with respect to its membership. There is no proof before me to establish that the application is being brought with the support of its members, after consultation with the National Working Committee of LFN.

Another 2015 (3) SA 545 (SCA) para 18, as recently cited by Saller AJ in *Community Upliftment Projects v Goodfind Properties (Pty) Ltd and Others* (2026/013973) [2026] ZAWCHC 47 (11 February 2026) para 25.

[117] The challenge to its authority would not have come as a surprise to the applicants. In *Liberty Fighters Network and Another v Registrar of the High Court, Gauteng Division, Pretoria and Another*[21] ("LFN Registrar case"), similar relief was sought and denied.[22] The Court found that LFN failed to prove that it was authorised to represent LFN members in the application. There were no minutes of meetings authorising Mr. R de Beer to act on behalf of LFN's members.

[118] In the Equality Court decision of *Liberty Fighters Network v Core Computer Business (Pty) Ltd and Others*[23] (the "*LFN Core Computer case*") the Court found that Mr. R de Beer had not provided any discernible evidence to found and support his authority to institute and prosecute the complaint on behalf of LFN, and that while the Constitution of the LFN in section 38(1)(e) may afford the President the power *'at any reasonable time [to] institute or defend legal proceedings'* this does not inherently prove authority.



[119] The Court further found[24] that this provision can never have the effect of empowering the president of the LFN with unfettered power to act on behalf of its members and the general public interest, and that Mr. R De Beer had no legal authority to represent the public interest.

[120] In the *LFN Registrar* case, Mr. R de Beer also sought an order that he was authorised to litigate on behalf of LFN on the basis that he was the President of LFN and that the Constitution of LFN authorises him to litigate.[25] The Court found that Mr. R de Beer had not provided any supporting proof that he is the president of LFN and that he was authorised to litigate that specific application on behalf of LFN.[26]

[121] In the replying affidavit, Mr. R de Beer attempts to cure his lack of authority, stating that 'I have reduced my formal decision to institute this application to writing on the official LFN letterhead" and annexes what he refers to as a written record of his decision, duly signed, allegedly confirming that the institution of the application was authorised in his capacity as President and executive official of LFN. This letter does not prove authority. The applicants

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[21] *Liberty Fighters Network and Another v Registrar of the High Court, Gauteng Division, Pretoria and Another* (2022/030165; 2022/30280; 2022/030165) [2026] ZAGPPHC 4 (2 January 2026).
[22] Id para 13.
[23] *Liberty Fighters Network v Core Computer Business (Pty) Ltd and Others* [24942+3/2022) [2024] ZAEGC 5 (12 August 2024).
[24] Id at paras 14 to 16.
[25] *LFN Registrar* para12.
[26] Id.

have still failed to produce any proof of consultation with the National Working Committee, or indeed of who such committee is comprised of.

[122] Ms. Sole was cited in these proceedings as the ninth respondent, notwithstanding the fact that she is the owner of Monkey Valley Resort, whom Mr. R de Beer purported to represent in correspondence regarding the complaint against, *inter alia,* the implementation of the Action Plan that preceded the litigation. The applicants also use her address (Monkey Valley Resort) as the service address in the notice of motion.

[123] According to the applicants, Ms. Sole was cited in her personal capacity to 'provide further information to the court enabling it to reach a decision which is in the interest of the public and justice'.



[124] Ms. Sole delivered a notice of intention to oppose in which she supported the relief sought in Part A and a notice in terms of Rule 6(5)(d)(iii), in which she records she supports the relief and wishes to make oral submissions.

[125] SANParks avers that it is inappropriate to cite friendly parties as respondents in litigation, who, in turn, deliver documents to support the relief sought. I agree. SANParks also set out the following in the answer:

> 'Ms Sole appears to be self-represented. SANParks assumes she has been advised by the applicants to participate in this manner. I call on the applicants to disclose to the Court their interactions with Ms Sole in relation to the litigation and the notice she filed.'

[126] The applicants failed to respond.

[127] Ms. O'Sullivan submitted that proceeding in this manner has obvious procedural disadvantages for the City and CapeNature, with reference to the following observation by De Waal AJ in *Goldstar Finance (Pty) Ltd and Others v Capitec Bank (Pty) Ltd and Another*[27]*:*

> 'To the above I want to add that if a respondent could "*support*" an applicant, it would

[27] *Goldstar Finance (Pty) Ltd and Others v Capitec Bank (Pty) Ltd and Another* (16589/23) [2023] ZAWCHC 336; [2024] 1 All SA 727 (WCC) (31 December 2023) ("Goldstar") at para 52 and the authorities there cited.

wreak havoc with the established basis on which factual disputes in motion proceedings are determined, Plascon-Evans, in particular. Even in applications for interim relief, such as the present one, where Plascon-Evans does not apply, the fundamental difficulty with considering a supporting answering affidavit is that it allows an applicant to establish its case based on the answering affidavit (instead of the founding affidavit). This is impermissible.'

[128] In motion proceedings, the practice of citing a party who supports the applicant as a respondent may be a ploy to gain a tactical evidentiary advantage or to avoid being exposed to an adverse costs order is to be deprecated.

[129] If Ms. Sole wishes to join forces with the applicants, she ought to have been properly cited as a co-applicant. Her joinder as a respondent was clearly a stratagem to obtain an unfair advantage over the other respondents. It remains unexplained and plainly amounts to an abuse of the ordinary court process.

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[130] Ms. Sole appeared in person at the hearing, and the distinct impression from the brief submissions which she made is that she was not cognisant of her role in the proceedings or why she had been cited as a respondent. Her repeated refrain was that the relief sought in Part A would result in an 'environmental catastrophe.' He could not take the matter further than that and indicated that she wishes to be afforded an opportunity to file an affidavit.

[131] As she had by then had ample opportunity to do so, and in view of the urgency with which these proceedings had been launched, and the irregular manner in which she had been joined, I declined to afford her further time to do so.

[132] On the last procedural point, it appears from the affidavits of the City and Cape Nature that he provided text argues that the Cape Baboon Partnership, a branch of Shark Spotters, is a necessary party to the litigation whose absence constitutes non-joinder.

[133] The partnership is currently operating under an existing agreement with the City of Cape Town that commenced on 1 January 2025 to assist in implementing the Baboon Strategic Management Plan. According to the Action Plan and its implementation schedule, the partnership is assigned specific, material operational roles, including the construction and management of the northern fence, the relocation of the Constantia Troops, and the management of the sanctuary. Because the City has budgeted substantial funds for these tasks

and is currently finalising an addendum to their agreement, the partnership holds a clear financial and operational stake in the continuity of the plan.

[134] It appears from the foregoing that the Cape Baboon Partnership has a direct and substantial interest in the relief sought in Part A, which seeks to interdict steps under the Action Plan, and should properly have been joined as a party to these proceedings.[28]

[135] In prayer 7 of the Notice of Motion, LFN seeks an order directing the Environment MEC, the City, CapeNature and SANParks to deliver, within ten court days, separate affidavits under oath disclosing *inter alia* their records pertaining to decisions relied upon as lawful authority to implement the Final Action Plan and permits and authorisations, including any CapeNature permitting process.



[136] Ms. O'Sullivan emphasised that LFN has not brought a direct challenge against the Action Plan, nor the BSMP or the existing guidelines, despite having access to all these documents, and in circumstances where the BSMP and existing guidelines are appended to the Action Plan, and their purpose and content are fully explained.

[137] It was incumbent on the applicants to have identified the impugned decisions which they should have sought to challenge by way of review proceedings. The attempt by the applicants to address these shortcomings in reply is impermissible.

[138] No cause of action has been pleaded for such relief, which is plainly not competent.

[139] Based on the findings above, it is apparent that this application is fatally flawed. It has been brought by applicants who have no standing in terms of section 38 of the Constitution and who have failed to prove that they have been authorised by the voluntary association they purport to represent to bring these urgent proceedings for interim interdictory relief.

[140] The three organs of state, SANParks, Cape Nature and the City of Cape Town have had to incur significant legal fees to defend the commendable collaborative work they have undertaken to manage a vexing issue facing both residents and baboons alike.

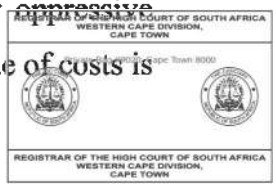
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[28] For the test as to whether there has been a non-joinder see *Moshewu and Others v Department of Land Reform and Rural Development and Another* (660/2025) [2025] ZANWHC 260 (4 December 2025) at para's 32 to 39, citing *Absa Bank Ltd v Naude NO* (20264/2014) [2015] ZASCA 97 (1 June 2015) and *Judicial Service Commission and Another v Cape Bar Council and another* 2013 (1) SA 170 (SCA) at para12.

[141] The applicants did not even attempt to make out a case for interdictory relief in their founding papers. When questioned by the court in this regard and asked to direct the court's attention to the allegations in the founding papers in support of the requirements for interdictory relief, Mr. R de Beer, who, as a serial litigant, is aware of the difference between evidence and argument, could only point to the applicants' heads of argument.

[142] For all the reasons set out above, the application falls to be dismissed.

[143] The court deemed it in the interests of justice not to simply strike the matter for want of urgency, for the reasons set out above, however the abuse of process in bringing this application in the urgent court in the manner in which it did, and on unfairly oppressive timelines, is an issue which will weigh heavily against the applicant when the issue of costs is determined.



Costs

[144] Turning now to costs. The respondents contend that vexatious litigation of this nature falls within the exceptions to the *Biowatch* principle.[29]

[145] In the event that this Court concludes that de Beer lacked the necessary authority, the City and Cape Nature seek costs against him in his representative capacity *de boniis propriis.* Mr de Beer sought a similar order on behalf of SANParks.

[146] Before deciding whether to order punitive costs or costs *de bonis propriis,* the court will need to conduct an independent enquiry into each form of costs order sought, as our highest courts have repeatedly warned that, because personal (*de bonis propriis*) and attorney-client cost orders are both punitive and extraordinary in nature, they should not be granted lightly, but only in exceptional circumstances.[30]

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[29] *Biowatch Trust v Registrar, Genetic Resources and others* 2009 (6) SA 232 (CC) at para 25 citing *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) (2005 (6) BCLR 529) para's 138 para 18, para 24, and at para 35: *'Merely labelling the litigation as constitutional and dragging in specious references to sections of the Constitution would, of course, not be enough in itself to invoke the general rule. "The issues must be genuine and substantive, and truly raise constitutional considerations relevant to the adjudication."*

[30] *Public Protector v SA Reserve Bank* (*'Public Protector I'*) [2019] ZACC 29; 2019 (6) SA 253 (CC) para 220; *Road Accident Fund v Hlatshwayo & Ors* [2025] ZASCA 17 para 2.

[147] In view of the serious implications for the applicants where punitive costs or costs *de bonis propriis* are sought, I directed the parties to, upon delivery of this judgment, file brief written submissions dealing only with this aspect. The use of costs shall accordingly stand over for later determination.

Order

[148] In the circumstances, the following order shall issue:

1. The application in terms of Part A is dismissed.

2. All issues of costs shall stand over for later determination.



3. The parties are directed to file written submissions, not exceeding 10 pages, addressing the following issues:

   3.1. Whether costs should be awarded on a punitive scale as between attorney and client; and/or

   3.2. Whether such costs should be paid by the applicants *de bonis propriis*.

4. The applicants shall file their submissions by no later than 6 March 2026.

5. The fifth, sixth and seventh respondents shall file their responding submissions by no later than 13 March 2026.

6. Thereafter, the Court will determine the issue of costs in chambers, unless the parties are notified that oral argument is required.

Holderness J
Judge of the Western Cape High Court

Appearances

Applicants:	Mr. Reyno Dawid de Beer
Fifth respondent:	Adv M de Beer
Instructed by:	Mkhabela Attorneys
Sixth and seventh respondents:	Adv M O' Sullivan SC and Adv C de Villiers
Instructed by:	Fairbridges Attorneys



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"CC8"

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



ORDER GRANTED BY HOLDERNESS J ON 25 FEBRUARY 2026

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ELECTRONICALLY SIGNED BY:

Registrar of The High Court, Western Cape Division, Cape Town

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

Case No. 2026-024184

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
CAPE TOWN: WEDNESDAY 25 FEBRUARY 2026

BEFORE THE HONOURABLE MS JUSTICE HOLDERNESS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

In the matter between:

LIBERTY FIGHTERS NETWORK	**First Applicant**
REYNO DAWID DE BEER N.O.	**Second Applicant**
And	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE	**First Respondent**
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O. OR HIS SUCCESSOR IN TITLE	**Second Respondent**
WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTION BREDELL N.O., OR HIS SUCCESSOR IN TITLE	**Third Respondent**
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT	**Fourth Respondent**
SOUTH AFRICAN NATIONAL PARK	**Fifth Respondent**
CAPE NATURE	**Sixth Respondent**
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	**Seventh Respondent**
CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE	**Eighth Respondent**

2026 -03- 30
WCD-011

JUDITH ANNE SOLE	**Ninth Respondent**
WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA	**Tenth Respondent**
BABOON ADVISORY GROUP	**Eleventh Respondent**

Having heard the Legal Representative for the Applicants and Respondents and having read the documents filed of record;

IT IS ORDERED:

1. That the application in terms of Part A is dismissed.

2. That all issued of costs shall stand over for later determination.

3. That the parties are directed to file written submissions, not exceeding 10 pages, addressing the following issues:

   3.1. Whether costs should be awarded on a punitive scale as between attorney and client; and/or

   3.2. Whether such costs should be paid by the applicant *de bonis propriis*.

4. That the applicants shall file their submissions by no later than 6 March 2026.

5. That the fifth, sixth and seventh respondents shall file their responding submissions by no later than 13 March 2026.

6. That thereafter, the Court will determine the issue of costs in chambers, unless the parties are notified that oral argument is required.

BY ORDER OF THE COURT

2026 -03- 30

WCD-011

COURT REGISTRAR
Reyno Dawid De Beer (In Person)
24 Lith Road, The Orchards x11
ACASIA

/ds

COURT ONLINE COVER PAGE **"CC9"**

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



Leave to Appeal

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BY:

Registrar of The High Court, Western Cape Division, Cape Town

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain *universitas*)



REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as executive official of 1st Applicant)

and

PREMIER OF THE WESTERN CAPE, First Respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

SPEAKER OF THE WESTERN CAPE Second Respondent

PROVINCIAL PARLIAMENT, MR.

DAYLIN MITCHELL N.O., OR HIS

SUCCESSOR IN TITLE

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE	Third Respondent
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT (a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, currently vacant)	Fourth Respondent
SOUTH AFRICAN NATIONAL PARKS	Fifth Respondent
CAPENATURE	Sixth Respondent
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	Seventh Respondent
CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE	Eighth Respondent

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

JUDITH ANNE SOLE Ninth Respondent

WILDLIFE ANIMAL PROTECTION Tenth Respondent

FORUM OF SOUTH AFRICA

BABOON ADVISORY GROUP Eleventh Respondent

[Application for Leave to Appeal – Part A)



In Re:

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain *universitas*)

REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as executive official of 1st Applicant)

and

PREMIER OF THE WESTERN CAPE, First Respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

SPEAKER OF THE WESTERN CAPE Second Respondent

PROVINCIAL PARLIAMENT, MR.

DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE — Third Respondent



OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT
(a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, currently vacant) — Fourth Respondent

SOUTH AFRICAN NATIONAL PARKS — Fifth Respondent

CAPENATURE — Sixth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY — Seventh Respondent

CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK — Eighth Respondent

TEAM, MR. ROBERT McGAFFIN N.O.,

OR HIS SUCCESSOR IN TITLE

JUDITH ANNE SOLE Ninth Respondent

WILDLIFE ANIMAL PROTECTION Tenth Respondent

FORUM OF SOUTH AFRICA

BABOON ADVISORY GROUP Eleventh Respondent



APPLICATION FOR LEAVE TO APPEAL – PART "A" OF NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the above-mentioned *pro se* Applicants hereby give notice of their intention to apply for leave to appeal, on a date to be determined by the Registrar, to the Supreme Court of Appeal, alternatively to a Full Court of the above-mentioned Division, against the whole of the judgment and court order handed down by Holderness J on 25 February 2026, including any subsequent corrections thereto, in the above-mentioned matter.

TAKE FURTHER NOTICE that this application is brought in terms of section 17 of the *Superior Courts Act, 2013 (Act No.10 of 2013)*, on the basis that another Court would reasonably come to a different conclusion, alternatively that the appeal would have reasonable prospects of success, and/or that there exist other compelling reasons why the appeal should be heard, including issues of legality, constitutional compliance, and procedural fairness.

IN PARTICULAR, the Applicants respectfully contend that the Court *a quo* misdirected itself and erred in law and/or in fact on one or more of the grounds set out *infra*, which grounds are relied upon cumulatively and/or in the alternative, and which will be further addressed and developed at the hearing of this application for leave to appeal.

A. URGENCY: MATERIAL MISDIRECTION

A1. Failure to Strike the Matter After Rejecting Urgency

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self-created
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1. At paragraphs [37]–[45] the Court found that the application constituted "*self-created urgency*".

2. In particular, at paragraph [40] the Court held that reliance on the January 2026 signature page was "contrived", and at paragraph [45] the Court concluded that the matter warranted censure.

3. Having found that urgency was absent, the Court nevertheless proceeded to determine:

    3.1. Standing (*paras* [85]–[95]);

    3.2. Authority;

    3.3. The requirements for interim interdictory relief;

    3.4. The merits of Part A relief.

4. In *Commissioner for the South African Revenue Service v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA)*, the Supreme Court of Appeal confirmed that where urgency is not established, the appropriate order is to strike the matter from the roll.

5. The SCA made it clear that a Court should not determine substantive rights where the procedural gateway of urgency has not been satisfied.

6. By proceeding to determine substantive issues after rejecting urgency, the Court materially misdirected itself.



7. That misdirection has the effect of:

   7.1. Pre-judging issues central to Part B;

   7.2. Creating adverse findings binding the Applicants before a full ventilation of evidence;

   7.3. Forcing the Applicants to challenge Part A findings before Part B may proceed.

8. Another court may reasonably conclude that once urgency was rejected, the matter ought to have been struck from the roll without further adjudication.

A2. Mischaracterisation of the Trigger for Urgency

9. At paragraph [40], the Court treated urgency as flowing from earlier adoption of the Final Action Plan.

10. The Applicants' case, however, was that urgency arose from:

    10.1. The complaint lodged on 9 December 2025 with the Office of the Commissioner for the Environment;

10.2. The continued implementation of allegedly irreversible measures pending investigation;

10.3. The risk that the complaint would be rendered nugatory.

11. The Court reframed the cause of urgency as if the Applicants were challenging historical adoption of policy rather than seeking interim preservation pending constitutional oversight.

12. That reframing constitutes a material factual misdirection.

13. Another court may reasonably find that urgency was assessed on an incorrect premise.

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CAPE TOWN

B3. Improper Use of Litigation History to Determine Urgency

14. At paragraphs [43]–[44], the Court relied on prior litigation history to characterise the urgency as abusive.

15. Urgency must be assessed on the facts of the matter before Court.

16. Reliance on unrelated prior matters risks importing extraneous considerations into the urgency analysis.

17. Another court may conclude that the urgency determination was influenced by impermissible factors.

C. CHARACTERISATION OF THE APPLICANTS AND REASONABLE APPREHENSION OF BIAS

18. At paragraph [43], the Court described the Applicants as “serial litigants”.

19. At paragraph [44], reliance was placed on prior judicial criticism in unrelated matters.

20. At paragraph [45], the Court characterised the present application as abusive and warranting censure.

21. In its reasoning, the Court further suggested that the Applicants use the Court as a “playground”.

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CAPE TOWN
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22. These characterisations were not derived from conduct in the present proceedings alone, but were informed by reference to unrelated prior litigation.

23. The full records of those prior matters were not before this Court.

24. Those matters were factually and legally distinguishable from the present application, which concerned constitutional environmental oversight and the non-appointment of a constitutionally mandated office.

25. Urgency, standing and *bona fides* must be determined on the facts placed before the Court in the matter under adjudication.

26. The reliance on prior litigation history to assess urgency (*paras* [37]–[45]) and standing (*paras* [85]–[95]) risks importing extraneous considerations into the reasoning process.

27. The use of language such as “serial litigants”, “fell on deaf ears”, “abuse”, and the suggestion that the Court is used as a “playground” reflects judicial censure extending beyond purely legal analysis.

28. The Applicants submit that another court may reasonably conclude that such characterisation:

28.1. Influenced the finding on urgency;

28.2. Influenced the restrictive approach to standing;

28.3. Influenced the balance of convenience assessment;



28.4. Contributed to the direction regarding punitive costs at paragraph [147].

29. The test for bias is whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the Court would not bring an impartial mind to bear (*Vide*: *President of the Republic of South Africa and Others v South African Rugby Football Union and Others - Judgment on recusal application (CCT16/98) [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725 (4 June 1999)*).

30. The Applicants submit that another court may reasonably find that reliance on prior unrelated criticism and the use of pejorative language gives rise, at minimum, to a reasonable apprehension that extraneous considerations influenced the adjudication.

31. This constitutes either:

31.1. A material misdirection; or

31.2. A compelling reason for the appeal to be heard in terms of section 17(1)(a)(ii) of the Superior Courts Act.

D. STANDING: MISAPPLICATION OF GIANT CONCERTS

32. At paragraph [85], the Court set out section 38 of the *Constitution*.

33. At paragraph [89], reliance was placed on *Giant Concerts*.

34. At paragraph [91], the Court held that the Applicants are based in Gauteng and do not show how their rights are impacted.

35. At paragraph [92], the Court held that LFN does not state how the case is consistent with its objectives.

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36. At paragraph [94], the Court held that the Applicants' sole claim was that the matter raises constitutional issues.

37. The Applicants submit that:

    37.1. Section 38(1)(d) (public interest) was engaged;

    37.2. Section 38(1)(e) (association interest) was engaged;

    37.3. Section 32(1) of *NEMA* confers broad standing.

38. Paragraph 34 of *Giant Concerts* (not considered in the judgment) confirms that where public interest cries out for relief, standing should not be narrowly confined.

39. Another court may conclude that paragraphs [91]–[94] adopt an unduly restrictive approach inconsistent with Constitutional Court authority.

E. FAILURE TO ENGAGE THE NON-APPOINTMENT OF THE COMMISSIONER

40. At paragraph [95], the Court recorded that the Applicants limited their constitutional challenge to failure to appoint the Environment Commissioner.

41. The vacancy of that office was common cause.

42. No meaningful relief or analysis was granted.

43. The constitutional obligation under section 71 of the *Western Cape Constitution* was not substantively addressed.



44. Another court may conclude that this omission constitutes a material misdirection.

F. *PLASCON-EVANS* MISAPPLIED

45. The Premier did not oppose.

46. Serious allegations regarding constitutional non-appointment and oversight failure were uncontested.

47. The judgment does not give effect to the procedural consequences of non-opposition.

48. The Applicants' uncontested factual allegations were not accepted.

49. Another court may find that the *Plascon-Evans* principle was not properly applied.

G. REPRESENTATION AND AUTHORITY OF LFN

50. The Court made adverse findings regarding authority.

51. However, the Applicants had placed sworn authority and a written decision record before Court.

52. The Applicants relied on superior court authority recognising such representation.

53. The judgment does not meaningfully distinguish binding authority from the SCA[1]. Further, other unreported superior court matters which were all circulated to Holderness J, granting authority to De Beer to represent LFN, and even to represent other members, were discarded.[2]

54. Instead, reliance was placed on isolated High Court findings (*paras* [43]–[44] contextually).

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55. Under *stare decisis*, SCA and Constitutional Court authority must prevail.

56. Another court may find the authority finding erroneous.

H. INTERNAL INCONSISTENCY

57. The Court rejected urgency (*paras* [37]–[45]).

58. It rejected standing (*paras* [91]–[94]).

59. It questioned authority.

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[1] Minister of Cooperative Governance and Traditional Affairs v De Beer and Another (Case no 538/2020) [2021] ZASCA 94 (1 July 2021)

[2] 10 & 10a Kenmere CC v Ndebele and Others (2018/31110) [2019] ZAGPJHC 199 (19 June 2019); De Beer and Another v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2021] ZAGPPHC 549 (19 February 2021); De Beer N.O and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2020] ZAGPPHC 676 (23 October 2020); Liberty Fighters Network and Another v South African Health Products Regulatory Authority (30280/2022) (19 September 2024) (Unreported); Ndebele and Others v 10 & 10A Kenmere CC and Others (CCT 38/20) (19 August 2020) (Unreported); Liberty Fighters Network and 16 Others v KMV Investments (Pty) Ltd and Others (CCT336/18) (4 February 2019) (Unreported)

60. Yet it proceeded to determine the merits comprehensively and dismissed Part A (Order *para* [148]).

61. If standing and authority were absent, no substantive determination should have followed.

62. This internal inconsistency strengthens prospects on appeal.

I. BALANCE OF CONVENIENCE AND STATE PREJUDICE

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63. At paragraph [36] (page 9 of judgment), the Court noted concern when litigation involves state functionaries and public funds.

64. At paragraph [45], the Court referred to abuse warranting censure.

65. The analysis appears to weigh prejudice to organs of state heavily.

66. Irreversible harm to wildlife and constitutional oversight was not symmetrically weighed.

67. Another court may reassess the balance differently.

J. NON-JOINDER AND MS SOLE

68. The Court accepted joinder criticisms (contextually reflected in standing discussion and treatment of Ms Sole at *para* [91]).

69. The Applicants had notified relevant stakeholders once their interests were made known.

70. No indispensable party sought intervention.

71. Another court may find that non-joinder was not fatal.

K. RELIANCE ON MEDIA REPORTS

72. The Applicants will further rely on publicly available media reports demonstrating significant public controversy.[3]

73. The judgment does not consider public material to consider public interest at all.

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74. Interim proceedings permit reliance on publicly available, uncontested material to inform the public interest and balance of convenience.

75. Another court may conclude that not relying on public available material was improperly disregarded.

L. COSTS AND PUNITIVE IMPLICATIONS

76. At paragraph [147], the Court directed submissions regarding punitive costs and *de bonis propriis* liability.

77. Such direction reflects the Court's adverse view of the Applicants' conduct.

78. If the underlying findings on urgency, standing, and authority are set aside, the punitive cost consideration falls away.

[3] https://www.dailymaverick.co.za/opinionista/2026-02-17-cape-peninsulas-neoapartheid-what-the-baat-the-baboon-crisis-reveals-about-power/ **and** https://www.dailymaverick.co.za/opinionista/2026-02-17-cape-peninsula-baboons-a-public-protectotector-complaint-and-accountability-in-a/

M. CUMULATIVE EFFECT

79. The cumulative effect of:

79.1. Mischaracterised urgency (*paras* [37]–[45]);

79.2. Restrictive standing approach (paras [85]–[95]);

79.3. Failure to engage constitutional vacancy (para [95]);

79.4. Authority findings inconsistent with superior precedent;



79.5. Extraneous reliance on litigation history;

79.6. Internal inconsistency in adjudication;

demonstrates reasonable prospects of success.

N. CONCLUSION

80. The Applicants respectfully submit that:

80.1. There are reasonable prospects that another court will come to a different conclusion; alternatively

80.2. The matter raises compelling constitutional issues warranting appellate scrutiny.

81. Leave to appeal should therefore be granted to the Supreme Court of Appeal, alternatively to the Full Court of this Division.

TAKE NOTICE FURTHER that the Applicants provide the electronic mail address hereunder as the address they will receive further notices, documents and process during course of these proceedings as agreed between all parties from the beginning.

SIGNED AT **CAPE TOWN** ON THIS **2ND** DAY OF **MARCH 2026**.

REYNO DAWID DE BEER

Nomine Officio as 2nd Applicant and for 1st Applicant *Liberty Fighters Network*

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TO: REGISTRAR OF THE HIGH COURT

CAPE TOWN

AND TO: **PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE**

First Respondent

c/o Ms Faadia Joseph

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Email(2): Premier.Winde@westerncape.gov.za



AND TO: **SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE**

Second Respondent

c/o Mr Andre Le Roux (Senior Legal Adviser)

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AND TO: **WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE**

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AND TO: **OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT**

Fourth Respondent

c/o First to Third Respondents

Same contacting details as for the First to Third Respondents



AND TO: **SOUTH AFRICAN NATIONAL PARKS**

Fifth Respondent

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AND TO: **CAPENATURE**



Sixth Respondent

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AND TO: **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**

Seventh Respondent

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AND TO: **CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE**

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AND TO: **JUDITH ANNE SOLE**

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AND TO: **WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA**

Tenth Respondent

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AND TO: **BABOON ADVISORY GROUP**

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❑❑❑

"CC10"

Court Audio Transcript — aud_99f40003f99a_raw

Source: raw (unenhanced) 16kHz mono WAV of a South African court proceeding.
Transcribed with Google Gemini (gemini-3.6-flash). Timestamped every ~10s.

[00:00] ... handing down judgment.

[00:10] This is an application for my recusal brought urgently by the applicants on the 14th of August 2026, the applicants being Liberty Fighters Network, the first applicant, Mr De Beer, N.O., the second applicant.

[00:22] The applicants seek an order that I recuse myself and that the remaining issue in respect of Part A of the main application

[00:29] and the leave to appeal which they launched prior to complying with the court order directing them to file submissions on costs

[00:36] be referred to the Office of the Judge President for re-allocation to a new judge.

[00:40] It is therefore incumbent on me to determine the recusal application before I make any determination in respect of costs,

[00:46] an issue which has not been fully ventilated, the applicants

[00:50] having ex abundante cautela addressed this issue in their heads of argument in the recusal application in the alternative.

[00:58] On the 25th of February 2026, I handed down a written judgment and order dismissing Part A of the main application.

[01:05] The findings which I made included that the matter was not urgent, that the second applicant, Mr De Beer, had failed to show that he has authority, sorry, that he was authorized to act for the first applicant, I can't read my own handwriting,

[01:19] Liberty Fighters Network, and that the applicants lacked standing under Section 38 of the Constitution of South Africa 1996, (the Constitution).

[01:29] The applicant is a seasoned litigant

[01:31] and the manner in which he conducts litigation has been criticized by our courts, including the Supreme Court of Appeal,

[01:38] in Minister of Cooperative and Traditional Affairs v De Beer 2021 (3) All SA 73 (SCA).

[01:46] This and other cases involving the applicant were squarely before me, raised by the respondents, and had a direct bearing on the relief the applicants sought.

[01:53] In light of the fact that costs de bonis propriis and on a punitive scale were sought against the applicants,

[01:59] and because our courts, including the Supreme Court of Appeal,

[02:03] have repeatedly cautioned that such costs orders should not be made lightly and that parties should be forewarned

[02:08] if, in particular, costs de bonis propriis may be granted,

[02:12] to afford them an adequate opportunity to make submissions in this regard, I called for such submissions to be delivered by the applicants by the 6th of March and the respondents by the 13th of March.

[02:22] The applicants chose to disregard this part of the order.

[02:25] They failed to file submissions regarding costs and elected to do so five months later, and in the alternative.

[02:32] Instead, they delivered on the 2nd of March 2026 an application for leave to appeal against the whole of the judgment and order.

[02:39] This leave to appeal only properly came before me or was only properly delivered on the 8th of May when a hard copy was delivered to my registrar's chambers.

[02:48] This was followed by months of correspondence as to whether the matter ought not to have been determined piecemeal, and respondents contended that costs should be determined before the leave to appeal,

[02:58] which would ensure that scarce judicial resources and state funds would not be wasted on two separate

[03:04] leave to appeal applications and subsequent appeals should leave be granted.

[03:08] Mr De Beer continued undeterred.

[03:10] He stated that he would seek my recusal for the first time on the 2nd of June 2026.

[03:16] Thereafter in June, he filed a complaint of judicial misconduct against me with the Judicial Services Commission.

[03:22] He then referred the matter to the Office of the Judge President and the Deputy Judge President.

[03:27] His stance conveyed in correspondence and the tone which he used,

[03:31] in particular with regard to my registrar, Mr Mboya, was at times

[03:35] paternalistic, patronizing, and arrogant.

[03:39] The applicants have pleaded five grounds for my recusal.

[03:41] Firstly, that the language of the judgment shows that I had a pre-existing view

[03:48] ... bear with me ...

[03:52] against them. Secondly, that the material they sent me after the hearing was not engaged with. Thirdly, that the costs first sequence, as they call it, and the delay in resolving it shows I have become invested in a punitive outcome.

[04:05] Fourthly, that it is untenable for costs and leave to be heard before recusal

[04:10] has been determined. And fifthly, cumulatively, that all of this together

[04:14] crosses the line and indicates that there was real bias. I take them in turn and then together as I am required to do.

[04:21] The test for recusal is well-established,

[04:24] namely whether a reasonable, objective, and informed

[04:27] judicial officer on the correct facts would reasonably apprehend

[04:31] that I have not or will not bring an open mind to the remaining issue of costs and the pending leave to appeal,

[04:38] SARFU 1999 (4) SA 147 (CC) at paragraph 48.

[04:43] The presumption is that I am impartial.

[04:45] The applicants are required to meet cogent evidence to disturb such a presumption,

[04:49] see SACCAWU v Irvin & Johnson 2000 (3) SA 705 (CC) at paragraphs 12 to 18, and Bernert v Absa Bank 2011 (3) SA 92 (CC) at paragraphs 28 to 34.

[05:03] Both sides cited Systems Applications Consulting Services v SITA (Pty) Ltd 2026 ZACC 13, where the apex court observed

[05:12] that the court must look at the whole of the proceedings and not in an isolated manner.

[05:17] However, on the facts of that case, a single walkout by the presiding judge over a 74-day trial was found to be irritation,

[05:23] not bias, precisely because in other respects the judge was patient and courteous.

[05:28] This is an issue which, in my view, the applicants have failed to deal with in the present matter.

[05:33] I further have regard to S v Le Grange 2009 (2) SA 434 (SCA) at paragraphs 14 to 21,

[05:40] where the court distinguished between something said in the heat of the hearing and language used in a considered written judgment.

[05:46] And I bear in mind what was said in Bernert at paragraph 113 that recusal should not become

[05:53] standard equipment in a litigant's arsenal simply because a litigant does not like where a matter is headed.

[06:01] The first complaint, Ground A, is the language of the judgment. The complaint is about the opening paragraphs, the description of Mr De Beer as Liberty Fighters Network's alter ego,

[06:11] the references to serial litigants and prior admonishments, and the court being treated as a playground,

[06:17] and what the applicants call the importation of adverse extraneous material.

[06:22] On full inspection of the cases dealing with recusal, these complaints are patentally without merit.

[06:27] All three prior cases were placed before me by the respondents in pleadings

[06:32] and argument, were squarely relevant to the relief sought,

[06:38] which was confirmation of Mr De Beer's authority and urgency. The applicants

[06:43] had a Rule 7(1) notice challenging that authority before the hearing even commenced. None of this should have come as a surprise.

[06:51] I will add since then the applicants have made something of the phrase "litigation is not a game".

[06:55] That phrase is not mine originally, it comes from the fifth respondent's own heads of argument

[07:00] in Part A. I adopted language that was put before me in argument.

[07:04] As to the opening paragraphs themselves, it is a question of style and not substance.

[07:09] There is a difference between a remark made under the pressure of a hearing and language in a judgment written.

[07:14] The question is not whether I could have phrased it more gently, but whether it shows a closed mind, which in my view it does not.

[07:21] After my judgment, and entirely independently of it, as pointed out by the respondents during argument, the DJP in a completely unrelated matter of LFN v Minister of Public Works and Infrastructure 2026

[07:36] ZAWCHC 28, considered the same

[07:41] three prior cases and found a pattern of conduct persisting despite repeated admonishments

[07:49] from the courts, made a punitive costs order, and held Mr De Beer personally liable,

[07:55] or liable for costs de bonis propriis as the driving force behind LFN.

[08:00] That judgment does not make reference to my judgment in Part A, but to my mind is a persuasive

[08:06] basis upon which it can be shown that the applicants' objection is not something particular to this court, it is what an independent judge working from the same material would conclude.

[08:18] An apprehension of bias built on a characterization that another judge reached without any prompting is, in my view, a reasonable apprehension.

[08:26] The applicants say material they sent after the hearing was not engaged with.

[08:30] They still even now do not say what that material was or whether it addressed the central issue, which is Mr De Beer's authority.

[08:38] Nothing turns on this ground.

[08:40] Regarding the ground of the so-called costs sequencing, this appears to constitute the main thrust of the applicants' complaint.

[08:48] The applicants are correct as a matter of law that reserved costs are not a jurisdictional bar to an appeal being heard,

[08:55] see Moch v Nedtravel (Pty) Ltd 1996 (3) SA 1 (A) at 869H to B and Sekhukhune v Nnoro 2023 ZAGPPHC 1037 at paragraphs 11 to 16.

[09:10] I accept that, but that does not avail them because that was not the question before the court.

[09:15] This was a matter involving case management, which Section 173 and the court's inherent power to regulate its own process lays squarely to me.

[09:24] I made the decision that costs should be determined before leave to appeal,

[09:28] so that any appeals would not have to be determined on a piecemeal basis.

[09:32] This is an orderly exercise of my discretion.

[09:36] Were I bent on shutting the door to an appeal, I would have decided punitive costs there and then without inviting submissions.

[09:44] What the applicants have not properly explained is why they did not use the opportunity I gave them. They were ordered to file by 6th of March, which they did not.

[09:55] They filed an application for leave to appeal instead, and said nothing on costs for six months

[10:01] until they turned up in the alternative in the heads for this hearing of application.

[10:05] A letter on the 7th of July addressed to the Deputy Judge President and not to me was not for me to respond to, and I attach no weight to silence on correspondence which I was not sent.

[10:15] The JSC complaint is a different matter.

[10:17] Inasmuch as a complaint against a judge cannot by itself ground recusal.

[10:23] What is curious is the timing.

[10:25] It was lodged on 2 June 2026, the day after the parties were told costs would be decided before leave to appeal. I need not belabor this point.

[10:35] The applicants, relying on Sekhukhune,

[10:38] state that they have not waived any of their rights because the apprehension was already on record in their 2 March

[10:44] leave to appeal application before the 6th of March costs deadline arrived.

[10:49] This, they say, shows that it is not a belated strategy.

[10:52] This, in my view, is unpersuasive. If they genuinely apprehended bias on the 2nd of March 2026,

[10:59] it is difficult to see why they were at that very moment perfectly content for me to hear and decide their leave to appeal.

[11:08] No recusal application followed, nor was such an application mentioned.

[11:12] The grounds of appeal were one thing, a reasonable apprehension that a judge cannot fairly hear her remaining work is quite another, and the applicants' own conduct at the time shows that they did not treat it as the latter.

[11:22] It was only once the costs hearing was fixed that their position changed.

[11:27] I weigh these grounds together, as I must, and cumulatively they add up to no more than they do individually. And in any event, I would strike this application on the basis of delay and self-created urgency alone.

[11:39] However, I am mindful once again that that would just lead to further costs,

[11:43] delays, and waste of judicial resources and public funds.

[11:48] The applicants say the concern goes back to 2 June.

[11:51] However, on the 28th of July, they were told by the respondents that any recusal put before me be sought in an application, and nothing further happened for over two weeks,

[12:00] until a date was fixed for the costs argument, then being avoided for the past five or six months.

[12:06] I record that because the applicants raised it, that a recusal application brought after

[12:11] leave to appeal is, as stated above, procedurally incompetent. However,

[12:16] it was within my remit to determine when that would be heard.

[12:30] Based on the manner in which the applicants have conducted themselves in this recusal application, as in similar applications,

[12:37] it is clear that there is no attempt here by the applicants to vindicate a constitutional right.

[12:43] What they have done is a blatant stratagem, a sustained exercise in delay, aimed at avoiding a proper reckoning on costs.

[12:51] It has all the hallmarks of the Stalingrad defense, aimed not at winning, but at preventing costs being determined.

[12:56] And such a stratagem cannot and will not be countenanced.

[13:00] I reach this view dispassionately, and it follows to my mind inevitably from the facts and circumstances set out above.

[13:08] For these reasons, the application must fail, and costs in terms of the ordinary rule will follow the result.

[13:14] Given what I have found about the nature of this application, the manner in which the applicants have conducted themselves, an ordinary costs order will not mark the court's disapproval adequately.

[13:23] Respondents proposed in argument that I deal with costs on the basis that these costs of the recusal application be costs

[13:30] in the cause of the Part B application. However, I intend to deal with the costs at this

[13:38] juncture.

[13:40] The manner in which this litigation is being conducted is exactly the kind of abuse of resort to litigation which was described in In re Alluvial Creek 1929 CPD 532 at 535 and

[13:51] I am satisfied that in all the circumstances of this case, and the vexatious manner in which this litigation has been conducted, that punitive costs on an attorney and client scale

[14:01] are ordered.

[14:04] The applicants asked if recusal fails that I record their participation from hereon is not waiver of the point, and I have no difficulty in doing so.

[14:12] In Sekhukhune at paragraphs 5 to 6 and 53 to 64, it is confirmed that a litigant who proceeds after a failed recusal application is not thereby taken to have abandoned it

[14:23] absent an unambiguous abandonment.

[14:26] I record for the avoidance of all doubt that nothing said today and nothing about the applicants'

[14:30] participation in the costs hearing that follows amounts to such an abandonment.

[14:34] As before, the second applicant has still failed to show that he is authorized to represent the first applicant. So the costs

[14:41] of this application today, to the extent that they flow from that

[14:46] purported representation, will follow. I make the following order:

[14:49] 1. The application for my recusal is dismissed.

[14:53] 2. It is recorded that the applicants' participation in this or any further proceedings in this matter, including on costs,

[14:59] that follow, does not amount to a waiver of the recusal objection raised in this application.

[15:06] 3. The applicants are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of this application on the scale as between attorney and client,

[15:15] including the costs of two counsel where so employed.

[15:19] That's court business.

COURT ONLINE COVER PAGE **"CC11"**

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



ORDER GRANTED BY HOLDERNESS J ON 28 AUGUST 2026

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Registrar of The High Court, Western Cape Division, Cape Town

11/9/2026-3:03:14 PM

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

Case No. 2026-024184

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
CAPE TOWN: FRIDAY, 28 AUGUST 2026

BEFORE THE HONOURABLE MS JUSTICE HOLDERNESS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

In the matter between:

LIBERTY FIGHTERS NETWORK	**First Applicant**
REYNO DAWID DE BEER N.O.	**Second Applicant**
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE	**First Respondent**
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE	**Second Respondent**
WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENT AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE	**Third Respondent**
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT	**Fourth Respondent**
SOUTH AFRICAN NATIONAL PARKS	**Fifth Respondent**
CAPENATURE	**Sixth Respondent**
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	**Seventh Respondent**
CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., HIS SUCCESSOR IN TITLE	**Eighth Respondent**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2026 -09- 11
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

11/9/2026-3:03:14 PM

JUDITH ANNE SOLE	**Ninth Respondent**
WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA	**Tenth Respondent**
BABOON ADVISORY GROUP	**Eleventh Respondent**

Having heard the Applicant and Legal Representative of the Respondents and having read the documents filed of record;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

IT IS ORDERED:

1. That the application for my recusal of is dismissed.

2. That it is recorded that the applicants' participation in these or any further proceedings in this matter, including the costs ruling that follows, does not amount to a waiver or pre-empting of the recusal objection raised in this application.

3. That applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of this application on the scale as between attorney and client, including the costs of two counsel where so employed.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2026 -09- 11
WCO-011

BY ORDER OF THE COURT

COURT REGISTRAR

In person
Reyno Dawid De Beer
Monkey Valley Resort
Noordhoek

COURT ONLINE COVER PAGE **"CC12"**

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent

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Confirmatory Affidavit

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Registrar of The High Court, Western Cape Division, Cape Town

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: **2026-024184**

LIEERTY FIGHTERS NETWORK	First Applicant
(A voluntary association without gain *universitas*)	
REYNO DAWID DE BEER N.O.	Second Applicant
(cited *nomine officio* as executive official of First Applicant)	
anc	
PREMIER OF THE WESTERN CAPE, MR ALAN WINDE N.O.,	First Respondent
OR HIS SUCCESSOR IN TITLE	
SPEAKER OF THE WESTERN CAPE PROVINCIAL	Second Respondent
PARLIAMENT, MR DAYLIN MITCHELL N.O., OR HIS	
SUCCESSOR IN TITLE	
WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL	Third Respondent
GOVERNMENT, ENVIRONMENTAL AFFAIRS AND	
DEVELOPMENT PLANNING, MR ANTON BREDELL N.O., OR	
HIS SUCCESSOR IN TITLE	
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT	Fourth Respondent
SOUTH AFRICAN NATIONAL PARKS	Fifth Respondent
CAPENATURE	Sixth Respondent
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	Seventh Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE	Eighth Respondent
JUDITH ANNE SOLE	Ninth Respondent
WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA	Tenth Respondent
BABOON ADVISORY GROUP	Eleventh Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

CONFIRMATORY AFFIDAVIT

AUTHENTICATION OF WORKING SPEAKER-ATTRIBUTED TRANSCRIPT OF PROCEEDINGS ON 28 AUGUST 2026

I, the undersigned,

REYNO DAWID DE BEER

do hereby make oath and state:

1. I am an adult male South African citizen, the President of the First Applicant, LIBERTY FIGHTERS NETWORK ("LFN"), and the Second Applicant *nomine officio*. I reside at Monkey Valley Resort, 1 Mountain Road, Noordhoek. I was personally present in Court 5 throughout the proceedings before Holderness J on 28 August 2026.

2. I have listened to the official audio recordings of the proceedings of 28 August 2026 available to me and have compared that recording with the complete speaker-attributed working transcript prepared from it.

3. The transcript to which this affidavit relates is titled **"Court Hearing Transcript - 28/08/2026, speaker-attributed"** and records the full proceedings before Holderness J on that date, including the recusal proceedings, the *ex tempore* recusal judgment, the reserved costs proceedings and the *ex tempore* costs judgment. It is uploaded contemporaneously with this affidavit on Court Online and is identified for present purposes as **Annexure "RDB1"**.

4. To the best of my personal recollection, and after comparison with the available audio recording, I confirm that the transcript accurately reflects the words spoken and the sequence of the proceedings recorded therein, subject to any correction that may properly be established by reference to the official Court recording.

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

5. The transcript is not represented to be an official or Court-certified transcript. It is a working *verbatim* record prepared from the official audio recordings and is placed before the Court transparently in that capacity, subject to verification or correction against the official recording or any transcript subsequently authorised by the Court.

6. The purpose of this affidavit is limited to confirming the provenance and accuracy of the working transcript and to place it, together with this confirmation, on the electronic court record. This affidavit does not seek to amend, supplement, replace, narrow or abandon any pending application, ground of appeal, objection or other right of the Applicants.

7. Should any party contend that any passage in the working transcript materially differs from the official audio, I respectfully request that the precise passage and proposed correction be identified so that the difference may be tested directly against the recording.

8. I accordingly confirm the working speaker-attributed transcript of the proceedings of 28 August 2026, Annexure "**RDB1**", for the purposes set out above.

REYNO DAWID DE BEER

DEPONENT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

THUS SIGNED AND SWORN TO before me at Fish hoek on this 16 day of **September 2026**, the Deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, and considers the oath binding on his conscience, and that all prescribed formalities have been followed.

16/09/2026

COMMISSIONER OF OATHS

Full names: Nkululeko Macepula

Designation / Area: Fish hoek

Address: corner main and bands
Fish hoek

SUID-AFRIKAANSE POLISIEDIENS
COMMUNITY SERVICE CENTRE
16 SEP 2026
GEMEENSKAPDIENSSENTRUM
VISHOEK / FISH HOEK K.P / C.P.
SOUTH AFRICAN POLICE SERVICE

COURT ONLINE COVER PAGE

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent

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Other - Transcript 28 August 2026 Annexure RDB1

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ELECTRONICALLY SIGNED
BY:

Registrar of The High Court, Western Cape Division, Cape Town

Court Hearing Transcript — 28/08/2026, speaker-attributed

Court Hearing Transcript — Gemini speaker-attributed (28/08/2026 09:13–12:04)

Speakers: HOLDERNESS J / MR DE BEER / MS O'SULLIVAN (City of Cape Town / CapeNature) / MR DE BEER (ADV.) (SANParks) / REGISTRAR.

==RECUSAL APPLICATION==



[REGISTRAR] Calling Liberty Fighters Network versus Premier of the Western Cape and Others under Case number 2026-024184.

[MR DE BEER] Good morning, I am Reyno De Beer, the second second applicant and also appearing for Liberty Fighters Network.

[HOLDERNESS J] Thank you. Mr De Beer, our court attire generally requires a jacket. Do you not have one?

[MR DE BEER] Unfortunately I don’t one have one that fits me.

[HOLDERNESS J] Are you not aware of the court attire that requires a jacket?

[MR DE BEER] Uh pardon?

[HOLDERNESS J] Are you not aware of the court attire that requires you to address me in a jacket?

[MR DE BEER] There is nothing like that in the rules Madam Justice that I know of... I’m I’m appearing like this regularly on a period like this before judges.

[HOLDERNESS J] Thank you.

[MR DE BEER (ADV.)] My Lady, I came out for the fifth respondent, SANParks.

[HOLDERNESS J] Thank you.

[MS O'SULLIVAN] My Lady, I appear on behalf of the sixth and seventh respondents, the City of Cape Town and CapeNature.

[HOLDERNESS J] Thank you, Ms O'Sullivan. So, just in terms of the batting order, Mr... I'm going to have strict timelines. Mr De Beer, you'll have 20 minutes for the recusal application, and other... Mr De Beer, you'll have 15, Ms O'Sullivan 15, and then 15 minutes in reply. Can everybody address their argument in that amount of

time? Because I've read the heads of argument and I've read the affidavits, and everyone has done very detailed arguments. Thank you, Mr De Beer, I'm grateful for the effort you've put into making sure that the court file is in order and for doing your heads of argument. So, if you're ready to start, then we can proceed with the recusal. Thank you… And Mr De Beer, you can rest assured that I will view your recusal application dispassionately. You need not be apologetic for any criticisms levelled at the court. That is what a recusal is about, so you... you can proceed. Thank you.

[MR DE BEER] Yes, thank... thank you very much for acknowledging that, Madam Justice. Madam Justice, um, you have confirmed that... that you've read the... the the heads of argument, and I presume the practice notice as well that we have filed. Um, I've provided that in, uh, binded...



[HOLDERNESS J] I have it here.

[MR DE BEER] ...binded index for convenience. Um, so I will be very much quick and um, I believe that we've made our point quite extensively and clearly in the heads of argument. Um, may I ask the court if there is something specifically that... that the court wants me to... to... to uh... uh, expand on specifically?

[HOLDERNESS J] I think it would assist if you just took me through the grounds for the recusal, um, Mr De Beer, because you have set them out, but I just want to make notes on... on your argument on the... the grounds. Um, so perhaps you can just take me briefly through the grounds in terms of the law. I think the parties are all very much... agree that the... the law is well established on recusal applications, so you don't need to go into... I accept that you're appearing as a layperson, so you don't need to go too much into the legal principles, but perhaps if you can just take me through the points of your... your argument in the recusal.

[MR DE BEER] Um, Madam Justice, I will... will do... concentrate on those specific issues. Um...

[MR DE BEER] Okay. Um, I'm...

[HOLDERNESS J] So if you can just give me a moment, I just want... I'm going to be typing notes, so I just need to create a new document.

[HOLDERNESS J] Thank you. You may proceed.

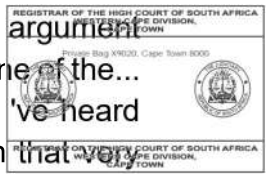
[MR DE BEER] Uh, thank you, Madam Justice. Um, I'm just quickly going... I want to… Um

[MR DE BEER] I beg your pardon, Madam Justice... I'm just quickly trying to see…

[HOLDERNESS J] You're welcome to use your heads as a, um, outline, Mr De Beer, because I have those before me.

[MR DE BEER] Madam Justice, um… I'm not…

[HOLDERNESS J] And, per- perhaps... perhaps it would assist if you address first, because in terms of the issues raised, one of them is the delay in bringing the application, so that may be a good place to start, the delay in bringing the application, and then you can deal with the individual grounds of recusal. Or the grounds upon which recusal is sought.



[MR DE BEER] Madam Justice, yes. I have, um, perused the heads of argument of the, uh, opposing organs of state, and I've noted that that is the, um, one of the... of the grounds that they say. Um, I've actually prepared, uh, once I... 've heard their specific argument in court, uh, I am prepared actually to reply on that very quickly. I've made my... my reply a very... very, um... very, uh, concise on those specific issues once I've... I've heard what they... they say. Um, the constitutional test for recusal, I don't have to go through that. That is in... starting from paragraph 20 of our heads, and then, uh, very important that this case is not a complaint about mere adverse... The applicants do not ask this court to sit in appeal over the correctness of the Part A judgment through the vehicle of recusal. Uh, the pending application for leave to appeal remains the vehicle for attacking urgency, standing, authority, interdictory relief, and the merits of the judgment. The recusal inquiry asks a different question: who may constitutionally perform the unfinished judicial functions? Madam Justice, when at the court proceedings, um, I believe that was on the 19th of February earlier this year, um, once the issue, numerous issues were ventilated to the court regarding, um, standing, uh, urgency, etc. etc., and, um, the time was very restricted, and Madam Justice have allowed me to present submissions afterwards to counter the specific...

[HOLDERNESS J] On... on the merits of the... we can just call it the main application, yes.

[MR DE BEER] Um, specifically pertaining to the so-called admonishments that... that we've had in previous judgments, etc. etc., and, um, the organs of state raised, um, the... the judgment by Justice Holland-Muter. Uh, that matter is currently before the Supreme Court of Appeal. Um, and, um, then also the judgment about, uh, Justice Nyati. Um, and there were only two or three publicly available judgments making adverse findings against the applicants. But I believe that at that point in time I did indicate to the court that those matters, those judgments were judged on specific records that have not been before court. So, um, the court was at that point in time, it appeared to me as if, and I'm I'm saying this because

Madam Justice have also, uh, invited me to be upfront so that the court can understand the complaint for for the recusal case. At that point in time, it did appear as if Madam Justice didn't want to listen to our counter, and because it was, uh, extensively addressed by the organs of state, Madam Justice have indicated, “Please supply submissions afterwards.”

[HOLDERNESS J] On... on costs. Mr De Beer, sorry.

[MR DE BEER] No, no, no, that was submissions on on what was presented in court that that Friday on the 19th of February. So I did send submissions. And regrettably, none of those submissions have been even considered by this court. It it was as if those submissions were never made. Because those submissions I've made, specifically in those heads of argument, pertain to judgments and findings by international authorities, or fora, uh, the Commission on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, where we were not addressed as so-called serial litigants, or where it was clear that we were not using the court as a playground.

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[HOLDERNESS J] So, just in terms of, let’s let’s pause at that expression “serial litigants”. Um, is the ordinary meaning of serial litigants not somebody who frequently litigates? So it's not the same as saying, for example, a vexatious litigant, where there the court needs to make a finding and actually make an order declaring a person to be a vexatious litigant. My understanding of serial litigant is simply that you are a regular litigant in the courts, or unless unless my understanding is incorrect.

[MR DE BEER] Madam Justice, I do acknowledge that serial have got various definitions and implications, but in the context that we as reasonable people understood the judgment was as if the court has specifically indicated that it’s a sin to be in front of the court on a regular basis as self-represented litigants. So, we believe, or I believe that the fact that that we’ve tried to present our case, and eventually the the crux of the case was never actually addressed, because it it it culminated in various technicalities which I had to fight against organs of state, which, and and the way that it was presented in court was totally against section 7(2) of the Constitution, where organs of state are supposed to protect, promote, fulfill, and advance the rights in the Bill of Rights of the people.

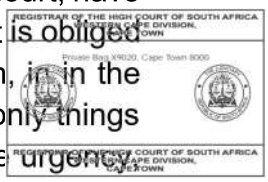
[HOLDERNESS J] So let's let's... I I Mr Mr De Beer, I don't want to constrain you, but I want to focus on the recusal application and not revert at all to the merits of the main application, because those are not before me. That main application Part A has been determined, and you'll be applying for leave to appeal in respect of

Part A. That's a separate issue. I want to focus only on the recusal application. That's all before... that is before me now.

[MR DE BEER] Uh, Madam Justice, um, I have to unfortunately go into the judgment, what was said in the judgment itself.

[HOLDERNESS J] Yes, no, you're welcome to do so for that.

[MR DE BEER] And, um, and the issue there was that that it was the the judgment was, according to us, biased, clearly biased, in the sense that none of our valid arguments that we've presented, and even afterwards submitted to the court, have even been taken into consideration at all. And I'm not saying that a court is obliged to cite each and every argument that's presented before the court, um, in in the judgment itself. I'm not saying that. But when it comes to to recording only things which the organs of state argued, and all your arguments regarding the urgency etc. etc., have not been taken into consideration at all, those are aspects that we subsequently on the 2nd of March specifically indicated on in the in the application for leave to appeal.



[HOLDERNESS J] So, so proceeding from that premise that the there was clear bias in the judgment on Part A, why was the recusal application not brought upon delivery of the judgment?

[MR DE BEER] Madam Justice...

[HOLDERNESS J] Because there have been several months that have trans- have passed since the judgment was delivered. I think the judgment was delivered 4 days, or no, 7 days after hearing. That was in February. We're now in August. And you only launched your application for recusal on the 14th of August. So, what are the reasons why, if the judgment showed bias and was a basis for a recusal application, it wasn't brought 5 months ago?

[MR DE BEER] Madam Justice, uh, from my personal experience appearing in the High Court, specifically, uh, uh, relatively on a regular basis, when an application for leave to appeal is is, um, filed in an application uh, that was originally urgent, it is practice, from my experience, that the application for leave to appeal, if the court did not grant the, um, or in this case dismissed the application on Part A, uh, as happened in the applicant's side, that at least when an application for leave to appeal occurs, um, that that very application should also be addressed on an expedited basis, because the court should be put in a position whereby there may be a possibility that the applicants could succeed in grant or obtain leave to appeal, and for that matter, the appeal process can also be expedited on a on a urgent basis. But in this case...

[HOLDERNESS J] What what date... sorry to interject, Mr De Beer, what was what date was the, um, hard copy of the leave to appeal filed, together with the the record?

[MR DE BEER] Uh, I'm not sure specifically. That...

[HOLDERNESS J] Because that's what's required in terms of our practice directives, and I know that you were repeatedly advised of that by Mr Maboya.

[HOLDERNESS J] And that would be the date upon which the court effectively was seized with an application for leave to appeal.



[MR DE BEER] Madam Justice, if I can consult... That was, uh, shortly after the... the chronology...

[MR DE BEER] Okay, 2nd March 2020, the application for leave to appeal had been lodged, and then the recusal application was lodged... I believe… on the...

[HOLDERNESS J] Now I know when the recusal application was lodged. It was it was uploaded on the 14th of August. All I'm asking is, and I know when the leave to appeal was brought, on the 2nd of March, when was the hard copy of the leave to appeal filed at my chambers as required in terms of the practice directives?

[HOLDERNESS J] I I can assist you, because I asked Mr Maboya the date yesterday. Mr Maboya, do you have a note of that date?

[HOLDERNESS J] It was a couple of months later, wasn't it?

[HOLDERNESS J] Yeah, I think it was a couple of months later, but we were in court, I recall you came into court when I was in in presiding in a different matter. But it was several weeks, if not a month or two, after the electronic copy had been uploaded.

[MR DE BEER] Madam Justice, I can't recall specifically. What I do know is that application for leave to appeal has been has been addressed in communication on a regular basis, and, um, so I I am talking under correction on when is that date when the application those papers have been filed eventually or at at that point in time. Um, the issue here is that the application for leave to appeal have suddenly afterwards, um, have been set at the back side of the cost adjudication. The cost adjudication was set to happen at a certain stage as recorded in the heads of argument, and regrettably the court did not present the, uh, or the the the, um, the findings on the costs. Um, we have simply stated from the beginning, from the onset, we have indicated that because this matter is being pursued as one of urgent, we have addressed the recusal in our application for leave to appeal, and

that would have been addressed as part of the application for leave to appeal, obviously. So a recusal, a formal recusal application, would not have been necessary under those circumstances, because the recusal was already, always a point that we have addressed. There was no delay in bringing the recusal application as the organs of state would suggest. As we have specifically also in, uh, indicated in the, uh, the heads of argument, that was because of a culmination of events, um, from the 2nd of March or after the judgment, that we have attempted on several occasions to move the application for leave to appeal, and then suddenly, once the, uh, the organs of state started to raise the issue that the costs must be adjudicated first, we have simply indicated that that why can't that be addressed as part of the leave application? Um, because the, as I've also indicated in the heads of argument, the cost, if costs are reserved, it never goes away. The one party can still continue...

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[HOLDERNESS J] They'd have to be two appeals. That that was the issue.

[MR DE BEER] Yeah, but, yeah, but but the fact is that if we succeed on the merits on on appeal, automatically those issues would would be framed within the context of adjudication of costs, and maybe if we are successful, then it's not even necessary to address the costs. But in our event, the court has, once the organs of state have raised issue of costs...

[HOLDERNESS J] Sorry Mr I am going to interrupt you Mr De Beer because you are misstating the legal position and I need to make it clear that the issue of costs is an issue which forms part of the main application. It doesn't go away when there is a leave to appeal. All all it meant is that if the leave to appeal was heard before the issue of costs was heard the costs would have been heard and you were been entitled to bring a separate leave to appeal in respect of the costs then there would have been two leave to appeals and two appeals. You would have had the right to do so but the costs don't fall away because there is a leave to appeal on the merits. The costs have to be determined in respect of the main application.

[MR DE BEER] Madam Justice, our complaint about the recusal, or for the refusal, is the fact that the the cost allocation or adjudication was used as a benchmark to postpone the application for leave to appeal, which we have throughout indicated have to be heard on an urgent basis. Um so we could, from a technical uh uh perspective, if if the if the uh adjudication of the of those matters that could have proceeded on uh on on on in the leave to appeal, if those were addressed, obviously um it would have put the the costs issue in a reserve, so that the merits uh because of the fact that the merits of that case and adjudication of the leave to appeal uh at the end of the day would have been important to adjudicate the costs as well. Because now we've we had the the position whereby the the parties

indicated that uh the organs of state indicated that that we've made the the submissions, but those submissions are based on the content of the judgment itself and the findings that the court made in them. So we just simply said, why should we continue with the cost allocation if that is your position, and we have to address the findings in in in the judgment or the court order dismissing the application? In normal leave to- that that is what I wanted to say. In normal leave to appeal uh uh applications, when an order was made, let's say for example the applicants was successful, and an order was granted in their favour, the respondent would have been able to take the matter on leave to appeal. Um section 18 would have kicked in to suspend the operation and the execution of the judgment, and then a party could in terms of of of section 18 also accelerate the implementation uh under certain uh um uh exceptional circumstances that the order can be implemented even though it's should have been suspended by the operation of of the leave. Unfortunately, in our case, we were sort of in a very difficult position to do anything. Our hands were tied, because not only



[HOLDERNESS J] Well, your hands weren't tied because you were- sorry, Mr De Beer, bare one moment. Your hands weren't tied. You were ordered by the court, not requested, ordered, to file submissions on costs to afford you an opportunity to address the cost on a personal the court on a personal costs order or a punitive costs order. You were directed to do so by a specific date. You failed to do so. So that's that's, in effect, contempt. So you failed to do so, and you did not avail yourself of your opportunity to file your written submissions on costs, and you elected rather to try and have it heard on a piecemeal basis. And that's when the dispute arose as to whether or not costs should be heard before the leave to appeal. So that that was the sequence of events. It wasn't that your hands were tied.

[MR DE BEER] Uh Madam Justice, we have understood the- uh there are numerous uh authorities suggesting, or uh actually say- saying from uh the Supreme Court of Appeal and the Constitutional Court that

[HOLDERNESS J] Sorry, just take me in your heads. Take me in your heads to the the authorities, please.

[MR DE BEER] Madam Justice, it's a uh uh it's in fact a separate, I don't think that I've specifically mentioned that fact in the heads of argument, but um I can refer this court to the relevant um appealability, where it was previously said that when an interim order, or or so, is is being appealed, by by practice, and and normally, an appeal is, or under those circumstances, are not immediately suspended um because it's interlocutory of nature, or pending.

[HOLDERNESS J] It's a it's a it's a section 18.

[MR DE BEER] It's a and um then the- but if it does have a a final effect, it can be suspended by bringing the application for leave to appeal. Our our case in the application for

[HOLDERNESS J] Mr De Beer, I'm I'm going to I'm going to interrupt you because I've I've said to you already that at 20 minutes, we're almost on 30. And I've asked you at the outset to address me on the delay in bringing the recusal application and the grounds for the recusal, because those are the relevant issues which I have to determine in this recusal application. It's not about the appealability or grounds for leave to appeal. That is not before me. All that is before me right now is the recusal application, and that is all I'm willing to hear submissions on. So if you have any further submissions on the recusal application, please address them, otherwise I'm going to allow the respondents to address.

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[MR DE BEER] Madam Justice, I have specifically addressed each and every one of those aspects in our heads of argument. I will then I will then um um um await for a short reply after their presentation.

[HOLDERNESS J] Thank you. Mr De Beer?

[MR DE BEER (ADV.)] My Lady, um as before, um Ms O'Sullivan's going to go before me, we've divides. And I've also given her 5 minutes of my time if she needs it.

[HOLDERNESS J] Thank you. Thank you, Mr De Beer.

[MS O'SULLIVAN] Your Ladyship, I've got a copy of the bundle for your Ladyship. I've put all the authorities together if that would assist.

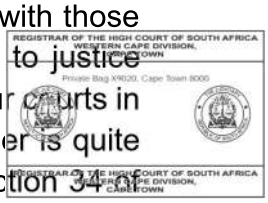
[HOLDERNESS J] Thank you. Thank you.

[MS O'SULLIVAN] Your Ladyship is well aware an application for recusal is a very serious matter. It's not one that a litigant should choose to bring lightly. And it's something that our courts have cautioned against. Judge Spilg in the Bernert matter has said that this should not be a tactic, should not be used as a tactic in litigation. And yet what your Ladyship is confronted with is a litigant who is correctly, as your Ladyship described in paragraph 43 of the judgment, and I'm just going to repeat what was said there, a serial litigant. The applicants are not ordinary lay litigants. They have litigated in our courts in numerous matters over several years. They are serial litigants and are well versed in the law regarding urgency. Now, to add to that, My Lady, your Ladyship in the in the main application, there was reference that was made to the uh constitution of the applicant. And this

morning, your Ladyship inquired about the dress of our learned friend, and I'd just like to read to your Ladyship what the applicants' objectives are. They include uh in their preamble to the constitution the following: 'We also strive for a total reformed judicial system where everyone will have the right to have his or her case heard in a court by an independent and competent judicial officer where formal legal representation by a legal practitioner will not be required and historic British dress codes and practices have been done away with.' Now, the difficulty, of course, that the applicants face is that the applicants are bound by the rules of our court. They have been lectured repeatedly in numerous judgments by our courts about their conduct in their capacity as a serial litigant. And yet, not only do they repeatedly elect to disregard the requirements, the ordinary requirements that apply in this court, but when they are confronted with their shortcomings, what they do is exactly what your Ladyship is confronted with today. They bring a recusal application, or failing that, they complain about the conduct of judges to the Judicial Services Commission or the conduct of court staff. Your Ladyship is not alone in facing this application today. It's something that the applicants regularly use as a strategy in their litigation. And I'm going to point your Ladyship to where this was dealt with in the cases to which your Ladyship referred, where they too, there were multiple recusal applications brought against all the judges in the SCA in the in that case. There were recusal applications brought in Gauteng. There were complaints made against the Registrar of the court. My Lady, applicants can't have their cake and eat it. They can't approbate and reprobate. They can't participate in a system and elect to disregard its rules in its entirety. But that is effectively what they do. And that is why courts have regularly as a mark of censure in relation to their conduct expressed themselves in the manner that they have. Since your Ladyship's judgment, there's been a further judgment in this court. In that judgment, Judge La Grange was not aware of your Ladyship's judgment, and yet he ordered costs de bonis propriis against Mr De Beer because he found that he was not authorized to represent LFN. And so this is not something that can be considered in isolation. And as much as Mr De Beer premises his recusal application on your Ladyship's wrong characterization of Liberty Fighters Network and Mr De Beer, in fact it's the very opposite. Mr De Beer and Liberty Fighters Network only have themselves to blame, I'm afraid, for the manner in which they have been dealt with in our courts. It is their conduct that leads to the consequences that have arisen in relation to the um instances where courts have sanctioned them. And there are no less than four other judgments, as your Ladyship has pointed out, which those judgments that your Ladyship relied on are judgments not only of the Supreme Court of Appeal, but also in Gauteng, and they were cases that were relied upon in pleadings by the respondents, as the respondents are entitled to do. And the reason that they were relied upon is

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because they traverse the same issues that were raised in this matter. They traversed authority, they traversed the fact that um the Liberty Fighters Network did not seem to have any cognizance of the ordinary rules relating to pleading and interdicts, that they entirely disregarded the ordinary rules relating to urgency. And, Your Ladyship, in those circumstances, if your Ladyship were to ignore all of that when confronted with the same practice in this division as had been the case in those multiple cases in another division, it would only currently do a disservice to this court. And the difficulty, of course, is that despite all of these judgments, nothing has changed. Mr De Beer is here today before your Ladyship seeking your recusal on entirely spurious grounds, and I'm going to deal with those with those grounds. Just before I do so, I'd like to just comment on the access to justice issues. There's some very useful comments that have been made by our courts in relation to access to justice. But, and and my learned friend Mr De Beer is quite correct when he says that there's a right of access to courts under section 34 of the Constitution. But access to justice is something that fits within our constitutional scheme. And it doesn't mean that litigants can abuse our system. It doesn't mean that they can do whatever they like. They are held to the foundational standards of audi alteram partem. And it was in that respect that this application was found to be lacking. They are held to standards of fairness, they are held to standards and rules. And as the um as the SCA pointed out in their judgment which your Ladyship will find at 116 of the bundle, in the in the matter, a litigant may not specify the conditions under which



[HOLDERNESS J] Sorry, which paragraph are you

[MS O'SULLIVAN] That's paragraph 64.

[HOLDERNESS J] Yes.

[MS O'SULLIVAN] a litigant may not specify the conditions under which they elect to have a matter heard and adjudicated. Perhaps, equally applicable in this matter. It's not up to Mr De Beer to approbate and reprobate, to deliver a half-hearted leave to appeal, not to provide your Ladyship with a copy of that, that was not something they were aware of until this morning. The ordinary rules of the court require that a hard copy is delivered to Judge's Chambers. Everybody in this division knows that. The fact that you've lodged something on Court Online is not something that is here or there when it comes to having an appeal leave to appeal heard. An leave to appeal to be progressed has to be dealt with by the the party who is seeking um leave to appeal. Third, in so far as the argument that my learned friend has advanced relating to the recusal, as far as I understood it, he appeared to suggest that the recusal uh was somehow also brought through being the grounds uh being referred to in the leave to appeal. And those grounds are the

following: um that a paragraph- that's Case Lines 005612 paragraph 28: 'The applicant submit that another court may reasonably conclude that such characterization influenced the finding on urgency, influenced the restrictive approach to standing, influenced the balance of convenience, contributed to the direction regarding punitive costs.' This constitutes, paragraph 31, 'either a material misdirection or a compelling reason for the appeal to be heard in terms of Section 17(1)(a).' So, when the applicant says, because they raised bias that there was also a recusal application that was somehow before your Ladyship, that's simply not the case.

[HOLDERNESS J] No, there was no recusal application until the 14th of August on any version.



[MS O'SULLIVAN] There was no recusal application on any version until the 14th of August. And that, of course, begs the question which the respondents have asked and the um applicant has not answered, as to why it is that the recusal, the first two grounds of which are premised on a judgment which was not brought on shortly after your Ladyship handed down the judgment in early February. And today, of course, we are informed that it's because that the reason that the costs component couldn't proceed is because um the issues in relation to costs are somehow linked to the recusal application. But, of course, as your Ladyship's pointed out, that would result in a huge layer of additional papers, costs, and an additional appeal. And that's something that the state organs would like to avoid in this matter, and have sought to

[HOLDERNESS J] And acutely aware of the fact that ultimately these costs are passed on to the taxpayer. That is what it comes down to, is every time that these state respondents or state-owned respondents have to appear in court and brief counsel, that money doesn't come out of nowhere. It is paid by the taxpayer. And that was the reason why I required submissions from costs on costs from Mr De Beer, because he is the person and organization who's costing the taxpayer money.

[MS O'SULLIVAN] Yes…

[MS O'SULLIVAN] My Lady, I've set out, set out just in conclusion on this ground, the recusal application brought many months later, shortly after your Ladyship enrolled this the costs for hearing, in fact two days later, is plainly a stratagem to avoid having the costs determined. Um and and there's no other uh reason why he would try and review the conduct given the history of the matter, which we've also set out in our affidavit and in our written submissions in terms of the timing of this hearing. If anything I would submit that Mr de Beer only has himself then for

the lateness of the leave to appeal. If it didn't reach your Ladyship, um attempts were made to to meet were not were rejected, and um there's there's been no um attempt to progress the costs hearing because of the fact that Mr de Beer and the LFN don't wish to have the costs determined. Um the grounds for recusal are set out um at page 27, case lines 05531, page 27 paragraph 52 of the pleadings.

[HOLDERNESS J] Sorry, could you give me the the case...

[MS O'SULLIVAN] Case lines or is it the just got the ordinary pagination at the top of it?

[HOLDERNESS J] Yeah, it's got ordinary page. I have Case Lines open, can you just perhaps just give me the page?



[MS O'SULLIVAN] Page 27, which is 055-31 on Case Lines. That the grounds for recusal are set out.

[HOLDERNESS J] Thank you.

[MS O'SULLIVAN] Now, having taken your Ladyship through the test which is set out um on our in our written submissions at page 7 to 9, because I'm sure your Ladyship is well aware of them. But essentially, as I understand it, if your Ladyship has regard to the judgment in the Systems Application case, um which is at page 43 of the bundle...

[HOLDERNESS J] And does Mr de Beer have a copy of the bundle?

[MS O'SULLIVAN] Yes, he has the bundle with him. Yes, he does.

[HOLDERNESS J] Thank you. Page 43, yes.

[MS O'SULLIVAN] And this was referred to on page 39 of the heads of argument. Um but the the Constitutional Court there set out the principles relating to recusal and why that ought to be repeated. But they also explain um the scope of of um what must be considered in determining whether there is bias. In paragraph 48 of that judgment commences, um and it says "This Court has adopted different approaches." It explains in SACCAWU it determined bias pursuant to the case made out in the founding papers of the recusal application, and the court determined bias in Steinbank by considering the judge's overall conduct during the proceedings. In Mamabela, the court considered certain comments made by the judge in the context of the proceedings as a whole. And then in on on the following page, the uh sorry, paragraph 51, the court says "They're inclined to agree with the approach adopted in Steinbank and Mamabela, that all relevant evidence, including the record, the overall conduct of the presiding officer may be considered

in the context of the whole trial, and it seems that that would allow the court to squarely place itself in in in the context of a reasonable, informed, and objective person on the double object double reasonable test, bearing witness to the proceedings as a whole, to properly contextualise it." And then, um there's some discussion about events that were subsequent. But as I understand it, the the application for recusal is brought on the basis of of that, that it is uh a pattern that the applicant is trying to describe overall. The first two grounds of the recusal relate to uh the complaint about the judgment itself, the language that is used in the judgment. Um and those uh we've set out what those um what those four grounds are for recusal at page 9 of our heads of argument. So, the first is the the language grounds, 'playground', 'alter ego' 'serial litigants', high-handedness uh and unrelated matters. The difficulty, of course, that the applicant faces in relation to that ground is that that seems to me to be precluded by S versus Basson, because in Basson, uh the court held, and if your Ladyship has regard to the judgment which is at um page 47 it starts of the bundle, and it's the paragraph is um at uh 33 to 37, which is on page 59 of the bundle. And the court there explains that where the issue where there's an issue of bias in the trial court, there's a difference between grounding a complaint of bias on the conduct of the judge in the hearing and the ground that the complaint on the relationship between the judge and one of the parties or witnesses, it's explained. And the court explains that the um on the following page that um uh it's important effectively that the the nub of the judgment as I understand it is that ordinarily where a litigant is confronted with a judgment, the proper approach is for them to appeal to seek leave in relation to that. Um and uh that does seem to foreclose some of that argument. But in any event, if I'm wrong on that, and the the issue of language um is to be addressed, we deal with that at page 11.

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[HOLDERNESS J] My my thinking, strangely, on on this is or perhaps the reasoning is that ordinarily if it's the conduct of the judicial officer during the conduct of the proceedings which indicates bias, then an application for recusal ordinarily would be brought before any order is made or judgment delivered, especially to avoid the perception that it's in fact a disgruntled losing litigant who's bringing the application.

[MS O'SULLIVAN] Yes, my Lady… And so the so once the judgment is handed down in the absence of a recusal application, the litigant's ordinary remedy then is to bring a leave to appeal application. But if if if I'm wrong on that and there is there remains an entitlement and perhaps there are cases where there are outliers where the content of the judgment itself is so offensive that it clearly indicates bias, one could of course include that as a ground for leave to appeal and in those circumstances one would have to bring a formal recusal application in relation to

the judgment. And that wasn't done in this matter despite a leave to appeal application coming shortly thereafter. And it hasn't been done. Mr de Beer suggested in his submissions somehow that he had um addressed correspondence suggesting in fact that there was uh a recusal...

[HOLDERNESS J] I think he said in June, didn't he?

[MR DE BEER (ADV.)] Yeah. I think he said in June.

[MS O'SULLIVAN] Yes.

[HOLDERNESS J] June of 2026 that there was a mention of recusal, and i...



[MR DE BEER (ADV.)] 2 June…

[HOLDERNESS J] But I mean I don't think that I don't think Mr de Beer is arguing that could be elevated to any kind of application, but that it indicated an intention.

[MS O'SULLIVAN] He said there was an intention, and he said as I understood it that that application for leave to appeal also somehow by default contained a recusal application.

[HOLDERNESS J] Which it plainly did not, yeah …

[O'SULLIVAN] Which it plainly did not. So, in relation to the the use of the language in the judgments, much of that must be understood within the context of the three judgments um that we referred to during the hearing for your Ladyship. And I just go to um uh take your Ladyship to those three cases, just to some references there. The first is that the um... Let's start with the SCA case, at 112 of that case. Um that at page 32...

[HOLDERNESS J] Oh, not of the bundle?

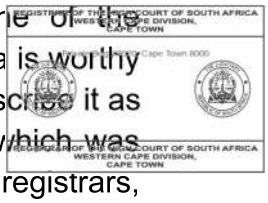
[MS O'SULLIVAN] Yes, 112 of the bundle, sorry, paragraph 32.

[HOLDERNESS J] Yeah.

[MS O'SULLIVAN] In that matter, at uh page paragraph 32, there was an objection about the manner in which the court was going to hear the matter because it was to be held on a digital video-conferencing platform, and there was an associated attempt to secure the recusal of the judges assigned to hear the matter at paragraph 32, that was the first recusal. And then uh there was again the the preference in relation to the virtual hearing at paragraph 48. And then at page um uh 11... there was a day before the scheduled hearing of the appeal, correspondence was to be filed with the registrar in an application for the recusal

of all the judges assigned to hear the appeal, and paragraph 3.2 of the founding affidavit there is repeating. And um there it was uh about what the application is not about. Um but the and that was what led the court to conclude that litigants may not specify the conditions under which they are prepared to have a a hearing. And there were then very um uh I would submit rude uh um correspondence that they served before the SCA and ultimately um in respect of which they expressed their censure. But in addition to that, there was the context of the matter, the manner in which it had been brought, and the um and the interdict...

[HOLDERNESS J] Yes. It's it's unfortunate because in this matter and perhaps Mr de Beer can have an opportunity to address it in reply, the tone of the correspondence which has been addressed to my registrar Mr Mabhoya is worthy of censure. It is paternalistic. It is patronising. I won't go so far as to describe it as racist, but it is certainly worthy of censure. And, similarly to the tone which was adopted in the correspondence before the SCA to their staff and to their registrars, which has been set out as and described as extraordinary, the tone of the correspondence which has been addressed to my registrar similarly is worthy of censure, Mr de Beer.



[MR DE BEER] Uh My Lady,

[HOLDERNESS J] No, you can deal with...

[MR DE BEER] No, no, may I ask the court, why hasn't there been a complaint when the incident occurred? Why must the court…

[HOLDERNESS J] Mr De Beer

[MR DE BEER] …raise it in these proceedings?

[HOLDERNESS J] Mr De Beer, please take a seat.

[MR DE BEER] Because it wasn't.

[HOLDERNESS J] Please take a seat.

[MR DE BEER] Thank you.

[MS O'SULLIVAN] And my Lady then in the um Core Computer case, which starts 97 of the bundle, and uh the complaints against uh Mr de Beer on page 99 at paragraph 26 to 33 um and this starts off about the um uh their position on representing their client's lack of formal authority and is indicative of the unacceptable conduct of de Beer. He is the reason for matters...

[HOLDERNESS J] So which paragraph uh?

[MS O'SULLIVAN] Paragraph 27. This is dealing with costs. And of course, this also concerned the misuse of public funds because there they were again having to defend spurious litigation. Um "He is the reason for the matter's delay by his frivolous conduct contesting the correcting of non-material aspects in the orders. It was mentioned above that his conduct leaves much to be desired. He was very generous in his insults to all who disagreed with him. He constantly accused the registrar and the office manager of gross negligence, reckless approach to the documentation of court orders, the misconception of what constitutes court orders, invalid conduct, etc., and his conduct is unbecoming." And it was mentioned above at paragraph uh 30 that he de Beer accused DJP Ledwaba of dragging his heels for not allocating a date for hearing. He bemoaned his position with the previous JP Mlambo in this regard. He levelled accusations against Van der Westhuizen J to the JSC. He will leave no stone unturned to raise his objections. He objected to this court hearing the application in the third court and not by a full court of the division. It was necessary to request him on several occasions during his address not to interrupt the court, but to listen to the questions posed. He stepped overstepped all boundaries during his address. And, and so... Um he made some serious allegations against counsel and his conduct is illustrative of de Beer's disrespect for the judiciary and others. Um and then he there too, like in this court, he complained that he was referred to as a layman. Um this was not done during these proceedings, sorry, in the SCA. His final complaint um was that it's a bit confusing that paragraph of the judgment, but anyway. In that case, um... there were of course attorney and client scale cost scales awarded. And then um uh and since then, of course, um your Ladyship is aware of the La Grange judgment, which I uh um dealt with earlier. And that's at 102 of the bundle. And there again, there's this uh the representation issues raised. Um Judge La Grange put uh the issues related um to that based on the Manong judgment. And again, he found that um the Liberty Fighters Network was not properly before the court and that there were costs ordered de bonis propriis personally against Mr de Beer. Now, in relation to that um ground of appeal, there's simply no merit that your Ladyship can be faulted and, in fact, asked to recuse yourself...

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[HOLDERNESS J] Sorry, do you mean ground of recusal?

[MS O'SULLIVAN] Sorry?

[HOLDERNESS J] You said ground of appeal.

[MS O'SULLIVAN] No, no. That your Ladyship could be faulted for relying on those judgments and for that to be used as a ground of recusal for your Ladyship. Um there's the that is um there is simply no merit in that, particularly where the respondents have raised them before your Ladyship. And the language used in

the judgment was taken from the heads of argument, was taken from the um of the judgments in which in effect Mr de Beer had been heavily criticized. And in fact, of course, Judge La Grange reached the same conclusion in relation to authority and lack of standing as your Ladyship had, and ordered costs de bonis propriis. It didn't seem he had given Mr de Beer the benefit of a further hearing in that matter, but it may have transpired, it wasn't clear to me from the judgment, but he without having any regard to your Ladyship's judgment. And that was also the finding in Gauteng. And so, there are three judges at least who have now reached the same conclusion. Um and it'll be interesting to see whether that's going to result in Mr de Beer changing his strategy in future, which is what all the courts seem to be suggesting to him, is that if he's going to persist with litigation on behalf of LFN and the causes that they seek to represent, then he needs to be properly authorised, and he needs to ensure that he has the requisite standing when he brings um litigation. Then on this issue of the costs first trajectory, the the difficulty with that as your Ladyship has pointed out is that the costs first trajectory is the only way in which one can avoid piecemeal um litigation. We've set out in the application for recusal um at pages 178 to 181 the history of the matter, and right from the get-go, the applicants uh the respondents had said the costs must be determined first. They don't wish to be involved in two different appeals in relation to the same in relation to the same matter. And uh those um the applicants of course failed to deliver any submissions on costs, as directed by your Ladyship, until their heads were filed I think it was two days ago, in which finally contained submissions on the costs argument that your Ladyship sought. We deal with this issue at pages 13 to 14 of our heads. And the important point is of course that as soon as your Ladyship indicated that you plan to deal with the costs first, the response from the applicants was to complain to the Judicial Service Commission about your Ladyship making that call. And even at that stage...

[HOLDERNESS J] So just to get the the chronology of that, so it was the the indication, which was a day later that the complaint was filed with the JSC?

[MS O'SULLIVAN] Yes, yes. And um and that so that was obviously the first attempt to try and evade the costs issue being determined. And then there was the intervention of the sort of the Deputy Judge President and the President. And when that didn't bear fruit, then this application was set down for costs. The applicants brought their recusal application allegedly on an urgent basis of although related to grounds that allegedly from the judgment some six months beforehand. And we've explained in our answering papers why we consider that to be a stratagem, but I think that the facts speak for themselves. Um and the fact that they were content for your Ladyship to hear the the leave to appeal and were at least amongst the the parties pressing for that, is further evidence that there was no real

apprehension that your Ladyship um recusal was required at that stage. If your Ladyship had determined the leave to appeal within a week or two of that um of that leave to appeal application being lodged, and we had got we were then into this piecemeal approach in the second costs hearing, there's no doubt that uh this recusal application would have featured um prior to the leave to appeal being determined, because as far the Applicants are concerned that would get them of the hook for costs. That's the difficulty they facing despite your Ladyship's explanation to the Applicants. I don't think they appreciate that costs have to be determined regardless, and that seems to be a fundamental misapprehension of the law on their part, that somehow the leave to appeal in relation to the merits, it suspend your Ladyship's, your Ladyship is duty-bound to determine that the leave to appeal has nothing to do with the costs. And as much as my learned friend argues to the contrary, that's not the case. It's not the case that recusal will somehow mean that the costs application, the recusal factors that he's raised somehow result in the costs not being determined because, I mean, it's a confusing argument to follow,

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[HOLDERNESS J] mmm…

[O'SULLIVAN] … but as far as I understood it, that is what he was suggesting, is that that would be a feature that would then be considered and that will influence the costs ultimately. But of course there's no costs order at the moment to be influenced. Until there is a costs order, that's not something that can be considered by an appeal court. And you wouldn't want the position of a leave to appeal making its way through the courts, which undoubtedly it will. This is not the last time this matter will be heard, unfortunately, for the state litigants. There's an amendment application in terms of which Mr De Beer seeking to revisit the issues that were determined in Part A, and that has been opposed, and that's yet to be determined, but no doubt there'll be multiple leave to appeals and others before this, and it's important that those courts have the benefit of any reasoning um necessary in order to make their uh calls and their judgment. And then, um I'm just checking if there's anything else and… I think that's the second prime principal ground of appeal which is raised is this costs first...

[MR DE BEER (ADV.)] Recusal.

[MS O'SULLIVAN] Yes, for recusal is the costs first trajectory, sorry, appeal I said, recusal for the uh uh and there's simply no merit in that. Your Ladyship was entitled to approach the manner matter in that manner and it's not up to the applicant to dictate to your Ladyship as to whether to make a ruling on costs or not. And the fact that your Ladyship has elected to do so is quite correct, and there's... there's nothing in that course of action that could ever remotely result in a judge... in its

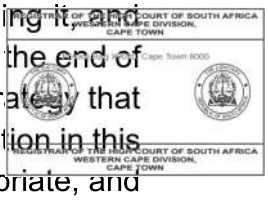
recusal. The fact that you follow the ordinary rules and ordinary principles in our law cannot result in recusal of a judge. And for that reason too, this is simply a stratagem. And it's a... and it's a bullying stratagem, may I say. It's something that these litigants have used in their arsenal repeatedly…

[HOLDERNESS J] Um

[O'SULLIVAN] And it's not something that our courts should countenance.

[HOLDERNESS J] Well said. Mr De Beer can rest assured that I will not be bullied.

[MS O'SULLIVAN] Well, the difficulty of course is that there's no stopping it, and that's the real difficulty here, is that, um um you know, the the this is not the end of the matter, unfortunately. And it's really something that... I think it's a strategy that the applicants simply do a disservice to their cause in approaching litigation in this manner. It's not appropriate, our highest courts have said it's not appropriate, and frankly, um it's... it's not... it's not something that... that does their environmental cause that they purport to advance any any good... it doesn't advance it in any way. Unless there's anything further, my Ladyship, those are my submissions.



[HOLDERNESS J] Thank you. Thank you, Ms O'Sullivan.

[MR DE BEER (ADV)] My Lady.

[HOLDERNESS J] So you have 10 minutes, Mr De Beer...

[MR DE BEER (ADV.)] Yeah, I'll... I'll be quick. Mr De Beer is always very concerned when we point out he's not a lawyer, and he wants to be treated like a lawyer, so I'm going to. Mr De Beer did not deal with the delay in bringing this application in his submissions. He also did not deal with any of the grounds of recusal. So I'm not going to do that. That was his election, and it would be unfair for him to now try and re-argue that in reply, but I'll leave that at your Ladyship's discretion. Instead what I'm going to do is I just want to point out, respond to some answers and just point out one thing. In the Basson judgment paragraph 33 that Ms O'Sullivan took your Ladyship to, the court made a very important point. And that's that a judge is not a silent umpire. And they quote a judge, a Lord Denning quote, which says fairness of court proceedings requires of the trial to be actively involved in the management of the trial, to control the proceedings to ensure that public and private resources are not wasted. A supine approach towards litigation by judicial officers is not justifiable either in terms of the fair trial requirement or in the context of resources. The criticisms being levied at this court in the recusal application are all about this court managing this case and also managing or stopping, trying to stop, abuse of the court's limited resources. And that is not a

ground for recusal… My Lady, we've also made this point: the fact that your Ladyship asked for submissions on costs shows that you are impartial, the court is impartial. If your Ladyship had already decided the issue of costs, that would have been a folly. The applicants do not ever grapple with this issue. And in my submission, that is a complete answer to this case of recusal. Then, my Lady, just about the language, judges criticize litigants. There's two judgments I can bring to your Ladyship's attention, they are in CaseLines, we don't need to go there, but it's the judgment by Judge Dennis Davis, not Dayan Davis, in J Arthur Brown's matter. And in that case, Judge Davis referred to what was happening there, also a strange recusal application, that you shouldn't treat courts as playthings.



[HOLDERNESS J] Um

[MR DE BEER (ADV.)] And in a recent judgment in the Constitutional Court from last month, it's Motshomela, and in that case, the court criticized Mr Motshomela because of all his... if I can just read it to your Ladyship, it's paragraph 43, his relentless campaign of litigation before this and other courts. The only point I want to make about this is that your Ladyship's use of words like playground, litigation is not a game, etc...

[HOLDERNESS J] It's through your heads of argument, which everyone ignored.

[MR DE BEER (ADV.)] Yeah, it's from heads of argument as well, but also the courts use this language all the time.

[HOLDERNESS J] Ja

[MR DE BEER (ADV.)] It's not unusual...

[HOLDERNESS J] Well, what I'm saying, it's not a bad thing, it's in your heads of argument. I'm saying it was used from... from heads of argument, but in any event, whether it was or wasn't...

[MR DE BEER (ADV.)] Yeah.

[HOLDERNESS J] To my mind, it is not a basis upon which it can be said that the court was biased.

[MR DE BEER (ADV.)] Precisely. Because courts criticize litigants like this all the time, and justifiably, especially when they are wasting the court's resources, and as your Ladyship has pointed out, organs of state resources. The next point is that we are told that the applicants believe that it's a sin to be self-represented litigants in this court. And that this is against access... Mr De Beer said it feels like it's a sin.

And that's just totally false. Um, he was also... we were also told that related to this, in Part A, they were rushed. Now, my Lady, with respect, they were not.

[HOLDERNESS J] I heard the matter for hours, as I recall.

[MR DE BEER (ADV.)] Hours. The courtroom was full.

[HOLDERNESS J] And that was... it wasn't almost the entire day, and I delivered judgment within a week.

[MR DE BEER (ADV.)] But also, my Lady, the courtroom was full, and I want to make the point that there were other litigants who had to wait on their urgent matters because of this. And I return to my first point, these are people who've done urgent court, and now they are taking up court's time to deal with other matters, and they're the ones complaining about access to justice being denied to them. It's not fair. There's something new said today. Mr De Beer said that they have said that the court could deal with costs and leave to appeal at the same time. Where? I can't find it anywhere. It's never been said before.



[HOLDERNESS J] So, so, did Mr De Beer say who's 'they'?

[MR DE BEER (ADV.)] Oh, sorry. The applicants suggested...

[HOLDERNESS J] That the respondents had...

[MR DE BEER (ADV.)] No, no, sorry, sorry. The respondents have always said deal with costs first, then leave to appeal. Now it was argued today that the applicants at some stage said back to the respondents, "Why don't we deal with leave to appeal and costs at the same time?"

[HOLDERNESS J] Well, that could never be because there's not an existing costs order which can be, against which leave can be sought.

[MR DE BEER (ADV.)] Absolutely, my Lady. But the point I want to make is this, is that they never wrote correspondence that said that, because we would have pointed that out. And I would just like to know where it is. So in reply I invite Mr De Beer to please take us to the correspondence where that was set, because it was positively put up that this happened as an argument.

[HOLDERNESS J] Mr De Beer can deal with that in reply.

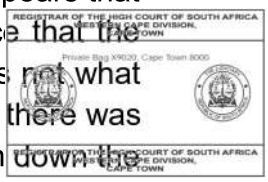
[MR DE BEER (ADV.)] Thank you. Um, about the costs first issue and when it was raised, um, the argument was a bit difficult to follow, but it seemed to be that we only raised the costs first issue way down the line, only in June or July. But there's

a letter from my attorneys from 13 March, it's at 055-371, where my attorneys clearly state costs first, then leave to appeal.

[HOLDERNESS J] So, what was the date of that?

[MR DE BEER (ADV.)] That was the 13th of March, 2026, sorry. Costs first, and then leave to appeal. So this isn't something we came up with down the line to delay leave to appeal.

[HOLDERNESS J] Well, that's why I raised, explicitly I thought that the respondents were aware of this issue with the hard copy, because it appears that based on what has been contended throughout in the correspondence that the court was supine and sat for months on end with a leave to appeal. It's not what happened. There was a leave to appeal uploaded to Court Online, and there was no hard copy delivered despite numerous requests. And I'm trying to pin down the date on which that hard copy was filed, because that is the date upon which that leave to appeal was before me, not before me, but was then could be dealt with and a date allocated. And that then was prior to, I think it was in May, but it was prior to obviously the complaint and all the rest of it that preceded it. But it certainly wasn't that nothing happened for months on end before the matter was dealt with.



[MR DE BEER (ADV.)] My Lady, I wish I could assist you on when it was file... delivered, but I... Mr Maboya is trying to find it out, because it will be... We weren't... We weren't even aware that it wasn't delivered. Um...

[HOLDERNESS J] I just know that Mr De Beer came into the court, and he sat where that lady's sat, sitting in another matter, and he then brought the application at that point.

[MR DE BEER (ADV.)] The last question or the last response I need to make deal with this is that Mr De Beer said to your Ladyship, "We decided why should we deal with the issue of costs?" That is what he said. "Why should we have to deal with the issue of costs? We've applied for leave to appeal." And of course, the court didn't just invite submissions on costs, the court directed submissions on costs. And if you're going to be litigating in courts as you do and be irritated if people point out you're not a lawyer, and you then want to be held to the standard of being a lawyer, you should know that if a court directs you to do something, you do it. And if you don't do it, you give an explanation. Now, my Lady, the costs argument I think was filed yesterday or on Wednesday for the first time in the heads of recusal application, and really no explanation was given. So, my Lady, the reality is the court must control its, its, as I say, its docket, its role. The court must stop people abusing it, and the reason for that is because for access to justice to work, the limited resources have to be used effectively. And all the arguments that were

made now, some of them are just totally divorced from what the facts are, but they don't actually address why your Ladyship should recuse yourself. And so in our submission, the matter... that recusal application should be refused, and we've suggested that costs just be costs in the in Part A of the recusal application. Your Ladyship might want to deal with them differently, but that's in practical.

[HOLDERNESS J] Thank you. Mr De Beer, you will have a right to reply, but I'm going to adjourn for tea and you can reply after tea time. Thank you. Court adjourned.



===TEA BREAK===

[HOLDERNESS J] Thank you… Thank you, Mr De Beer.

[MR DE BEER] Uh, thank you.

[HOLDERNESS J] Uh, just to clarify, we... we ascertained over tea that the date on which the hard copy for the leave to appeal was delivered was the 8th of May.

[MR DE BEER] That's correct, yes. That was only confirmed…

[HOLDERNESS J] Two months after the leave to appeal was uploaded.

[MR DE BEER] Uh, Madam Justice, yes, uh, it was, um, but I must also just add under those circumstances that since the... the practices uh pertaining to Court Online and CaseLines in this very division is not very clear,

[HOLDERNESS J] Luckily

[MR DE BEER] to to members of the public...

[HOLDERNESS J] Fortunately, that is definitely not before me, Mr De Beer.

[MR DE BEER] So so, what has happened in in the uh Gauteng division where I always regularly operate, uh, was that uh judges preferred not to have any hard copies.

[HOLDERNESS J] Yeah

[MR DE BEER] So, everything on CaseLines was were considered to be already before court…

[HOLDERNESS J] Let’s move to your..

[MR DE BEER] So, I just feel that it was strange...

[HOLDERNESS J] Mr De Beer, let's move to your reply. We have limited time. Please deal with your reply.

[MR DE BEER] So, uh, I just want to to uh reiterate that um I've delivered it on the 8th of May. I was only informed that it was received on the 19th, and subsequently since then, nothing has transpired with that application for leave to appeal. Then, um, Madam Justice, you have while while the the uh legal practitioners of the counsel for the organs of state, um, addressed the court, you've made the point and immediately silenced me that apparently the communication that was addressed to to your chambers were apparently, as I can understand, inappropriate and you've made several remarks on that. Madam Justice, that in itself is biased. The fact that you have not taken the stance of communicating that problem beforehand, but you while we addressing the recusal application of you, Madam Justice, not me, I'm not asking for my recusal, I'm applying, re-applying for your recusal.

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[HOLDERNESS J] Yes

[MR DE BEER] So, during that process you were biased by putting on record that allegedly I was... you you've complained about my conduct. Something that I did not have the opportunity to address. I would like to emphasize Article 16, reporting inappropriate conduct of the judicial uh code of conduct. Something that is protecting legal practitioners, seemingly does not apply to members of the public, self-represented litigants.

[HOLDERNESS J] Mr De Beer

[MR DE BEER] This...

[HOLDERNESS J], Mr De Beer, I am... I am determining your recusal application on the papers before me and you will confine your argument to the application before me. You will continue with your argument in respect of that application. If you would like to supplement your complaint to the JSC, there is nothing precluding you from doing so, and that would then be the forum to do so. And you can deal with your new complaint in that regard. But I will limit you today to arguing the recusal application before me in terms of the application that you have filed. Any further application or complaint you wish to file, you may do after these proceedings.

[MR DE BEER] Um, Madam Justice, this is exactly why we've brought the application for recusal. Because this court should at all reasonable times assess

itself whether it should recuse or not, whether it has become in... not partial or impartial, or whether it has not become independent. At all all relevant times. This court has showed in this court proceedings that I am being accused of something that did not happen according to me. And that is the problem with all the judgments that the organs of state who are supposed to protect our rights have raised before this court on a continuous basis. Starting off with the Minister of Cooperative Governance the SCA matter, which my... uh which the court

[HOLDERNESS J] I'm not sitting dealing with…

[MR DE BEER] …has indicated I should also address.

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[HOLDERNESS J]... I'm not dealing with any of those judgments, Mr De Beer, I'm dealing with your application for my recusal. Those are the issues to be addressed.

[MR DE BEER] Justice, um Madam Justice, uh this court has utilised the arguments… uhh… constructed by the opposing organs of state

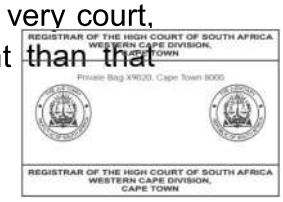
[HOLDERNESS J] Uhum…

[MR DE BEER] in that respect against me, against the applicants, but now it seems that we are not allowed to clarify those very judgments which apparently shows that we are continuously, contemptuous, now I am not supposed to address it. I think that is unfair.

[HOLDERNESS J] But no, but but as you said, it's not your conduct which is on the line, it is the court's conduct. So, it is not you who is being impugned, it is the court's conduct. So, what you are required to show if you want to succeed with your application for recusal is that there are grounds and, as has been pointed out by the respondent's counsel, despite me asking you twice at the beginning of the hearing to address the issue of delay and to address me on each of the grounds of recusal, and I'm doing so, Mr De Beer, to ensure that you have a fair hearing, that is my obligation, so I'm asking you to address those grounds and I'm asking you to address the delay. You didn't avail yourself of that opportunity and you are not entitled to do so in reply, but that has been afforded you now twice in this application.

[MR DE BEER] Ja, Madam Justice, um we regrettably, the what we have now doubt in front of the Supreme Court of Appeal as well, litigant profiling. You cannot profile a litigant in these proceedings based on allegations made in other judgments where the records are not before this court. Litigation, litigant profiling is being used as a argument to not recuse. Um the organs of state is trying to to to persuade this court to say that, "Judge, please do not recuse yourself because this

person on the other side has got a habit of doing this." But it is being said in such a way that it is continuously a a problem. So so so I have to, unfortunately, uh address those specific issues. Number one, I've indicated before that the judgment in the the the the uh uh in the SCA is being challenged on various ways. So, it's not that it's set in stone. So, we're still waiting for outcomes. Um that's on all the cases that they are presenting. And then, I'm very much glad that they have used the the Le Grange case judgment earlier this year in June. I'm very much glad that they've put it in. Because that is an that is specificly a good reason why one cannot rely on other judgments, because what has subsequently happened was that Madam Justice Goliath, acting uh uh Deputy Judge President of this very court, have come to a finding on the 18th of June that is totally different than that judgment by Justice Le Grange in the way...



[HOLDERNESS J] Can you hand it up, please, Mr De Beer?

[HOLDERNESS J] Hand it up, please. You referred to it.

[MR DE BEER] I have already sent the required judgment or order to uh to the registrar.

[MR DE BEER (ADV.)] Sorry, My Lady...

[HOLDERNESS J] What? The the counsel's standing up. Sit down, please, Mr De Beer.

[MS O'SULLIVAN] Sorry, My Lady. We are not aware of the judgment being handed to Your Ladyship. If we could have a copy of that from Mr De Beer?

[HOLDERNESS J] So, when did you send it to my registrar, Mr De Beer?

[MR DE BEER] Um..... I'm just quickly going to check.

[HOLDERNESS J] Presumably it's a written judgment then? It would be...

[MR DE BEER] Yeah, it's it's it's actually, what has happened, Madam Justice...

[HOLDERNESS J] No, no, no, let's go...

[MR DE BEER] No, no, no, I must, because ...

[HOLDERNESS J] I I I'll ask you,

[MR DE BEER] those procedures are not before this court.

[HOLDERNESS J] Sorry, Mr De Beer. One moment. I asked you to please advise me, first deal with that aspect, when did you send the judgment to Mr Maboya of Judge of Deputy Judge President Goliath?

[MR DE BEER] Madam Justice, that was the moment when Ms Olivier has indicated, sent the judgment, oh yes, she sent the judgment by Justice Le Grange on the 3rd of June and then..... Oh yeah, it was sent on the 20th of June to all the parties inclusive of um Ms Olivier and also um the um Ms Ntamboe.

[HOLDERNESS J] What is what is the name of the matter? I don't recall seeing...

[MR DE BEER] The the name of the matter is, it's a simple court order. What has transpired in that matter was that it was an amicus curiae application brought by the applicants. Uh we subsequently withdrew the case, the application, yes, before it was enrolled. The matter before Judge Le Grange was an intoc inter interlocutory application in that very application. So...

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[HOLDERNESS J] But the sub- the submission you made was that um Deputy Judge President Goliath made a finding which was entirely at odds with that found by Judge Le Grange…

[MR DE BEER] I i indeed it was…

[HOLDERNESS J] and I'm trying to get to the So what was the finding which Deputy...

[MR DE BEER] Well, she heard, she had no problem, no quarrel in in in accepting my representation of Liberty Fighters Network in the first instance. She declared that the court was functus officio in that matter due to the fact that a notice of withdrawal was timeously failed filed in that matter. So, the case, technically speaking, the case that Justice Le Grange heard was was never before court. It was an invalid application, because you cannot

[HOLDERNESS J] So so she heard…

[MR DE BEER] you cannot separate...

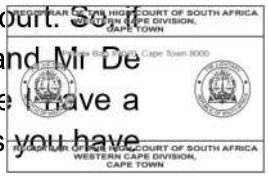
[HOLDERNESS J] She heard the same She heard the same case? Sorry, she heard the same case as Judge Le Grange?

[MR DE BEER] Exactly the same case.

[HOLDERNESS J] and she granted an…

[MR DE BEER] It was the amicus curiae application brought in the expropriation of expropriation act challenge um in the DA application itself. Uh we were ordered by Justice Goliath to submit submissions on costs and then the DA decided not to proceed with further submissions, indicating that the version of of Liberty Fighters Network and myself in exactly the same format as we are appearing before this court were were valid, in the sense that we said that you cannot adjudicate a case further if you have validly withdrawn it, because there was no enrolment of the matter.

[HOLDERNESS J] I I I'll await a copy of that judgment. Mr De Beer, I want to see the judgment before you address me on it, because it's not before the court. So if it has been sent to the parties, I'm sure that between Ms O'Sullivan and Mr De Beer and Mr Maboya, I will get a copy of that judgment and then once I have a copy and I can actually look at it, then you can address me on it. Unless you have it on your computer and you can show it to me.



[MS O'SULLIVAN] Sorry to interrupt, but it's not a judgment, it's a court order, and it predates Judge Le Grange's judgment, and it's not referred to in Judge Le Grange's judgment, so I've included Judge Le Grange's judgment at 101 on the sub-bundle, and the order is just 1 page or 2 pages, I'll send it to Your Ladyship.

[HOLDERNESS J] The order of Judge Goliath?

[MS O'SULLIVAN] The order of Judge Goliath is March 2026, the judgment was um um 2 June 2026, but so I'm not sure...

[HOLDERNESS J] Did the order relate to this matter of um Minister of Public Works and the DA, the order of Judge Goliath?

[MS O'SULLIVAN] Uh yes. It it seems to on the face of it, but it's just curious that it's not referred to by Judge Le Grange in his judgment, which is 3 months later.

[MR DE BEER] Um Madam Justice, I can clarify that and hence why judgments where the same litigants appear in unner other unrelated matters should not be referred to in as as argument in in other cases. Because what has happened there, unfortunately, the date was this we've requested Judge Ju Justice Goliath to kindly allow this that order to be corrected to the 18th of June, because the judgment was made or the order was made on the 18th of June and…

[HOLDERNESS J] Sorry, sorry, hold on, hold on, Mr De Beer

[MR DE BEER] read and and in error it was the 18th of March...

[HOLDERNESS J] One moment. I I will not be I will not receive submissions from the bar on evidence that is not before me or matters that are not before me in cases that are not before me. I do not know anything about an order of Justice Goliath, but what you have submitted is that she made a finding which flew in the face of that which was found by Judge Le Grange, and you seem to make that assertion on the basis that therefore Judge Le Grange's findings are assailable by on the basis of a judgment of a different judge in this court, because we we have a a rule of precedent where judges are bound by each other's decisions unless they're clearly wrong. So, it's a very serious submission that you're making and that's why I'm trying to find the underlying judgment. An order, can I just be clear, that if a judge makes an order without reasons, it cannot be inferred from that order that there are the reasons for their finding without reasons being given. So if there is no judgment by Judge Goliath, then you're making a patently incorrect assertion. If there is a judgment by Judge Goliath, then I will have regard to it, but if there is just an order which was made without any reasons, then it cannot be used to rely for you to rely on as a basis to say Judge Le Grange was incorrect. Do you understand the principle?

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[MR DE BEER] Madam Justice, you you've con confirmed what I've been saying all the time about the fact of referring to other unrelated judgments. Because you cannot you cannot make conclusions of how we conduct ourselves in these proceedings before this court based on judgments that occurred in 2021 or or before the time. You have to address the the merits

[HOLDERNESS J] Do you have…

[MR DE BEER] of those matters, and that is what this court has never done.

[HOLDERNESS J] Mr De Beer, I'm trying to make it very plain. I really am. I'm trying to say you referred to a judgment by Judge Goliath, Deputy Judge President Goliath. You've said that that judgment was sent to all of the parties on the 20th of June. I don't recall ever seeing such a judgment and everything is brought to my attention by my registrar. I'm asking you to get a copy of the judgment.

[MR DE BEER] Um...

[HOLDERNESS J] Or at least forward it to somebody who can print it and bring me a copy.

[MR DE BEER] Madam Justice, I can send I can just re-forward that email

[HOLDERNESS J] Please do so.

[MR DE BEER] of the 20th of June.

[HOLDERNESS J] Well, please do so.

[MR DE BEER] to all the parties once again.

[HOLDERNESS J] You can You can send it straight to Ms Olivier is in court, well Ms Olivier is in court, you can send it to her right now.

[MR DE BEER] Um I don't have access to to Wi-Fi, but I'll do that immediately when I can.

[HOLDERNESS J] Okay, but you said um perhaps Ms Olivier can just instruct her counsel, because you said that you sent her the judgment on the 20th of June so she would have that on her...



[MR DE BEER] All the parties, inclusive Mr Mabuya.

[HOLDERNESS J] Thank you.

[MR DE BEER] Um Madam Justice, the importance of that is that based on on uh the procedures in that very case, where Justice um Goliath subsequently have confirmed that the court was functus officio based on the withdrawal that was made, based on the submissions that's not before this court. Unfortunately, those submissions that we have made is not before this court, because but...

[HOLDERNESS J] So she gave a Did she give an extempore judgment?

[MR DE BEER] Um Madam Justice, um around the 2nd of March, I believe, a directive was issued by Madam Justice Goliath um to based on a request and arguments presented by um uh senior counsel Pillay in that matter, appearing before uh on behalf of the Democratic Alliance, um in which she was or in which we were requested...

[O'SULLIVAN] Sorry, sorry my Lady.

[HOLDERNESS J] Sorry sorry

[MS O'SULLIVAN] Sorry, sorry Mr De Beer. Can I just object to this line of evidence from the bar.

[HOLDERNESS J] Yes.

[MS O'SULLIVAN] ...litigation?

[HOLDERNESS J] I'm I'm not going to allow it, because.

[MS O'SULLIVAN] Yeah.

[MS O'SULLIVAN] All we have received is an order, we will furnish Your Ladyship's registrar with it. We have not received the judgment. But we also can't be expected to respond or deal with submissions that have been made in a different case by different counsel.

[HOLDERNESS J] Thank you, Ms O'Sullivan. I'm trying to give you latitude, Mr De Beer, but you know how You know how this works now. You You're a serial litigant. So, you can't address me on something that's not before me.

[MR DE BEER] Madam Justice, the point I'm making is that this court has repeatedly followed judgments in other unrelated matters, nothing to do with this matters nothing to do...



[HOLDERNESS J] That, that point has been duly made.

[MR DE BEER] Now, again this is happening and again that issue is before court and again we are not in a position to to to present the records.

[HOLDERNESS J] At the risk of repeating myself…

[MR DE BEER] Ja, so…

[HOLDERNESS J] Do you have any further submissions…

[MR DE BEER] Ja

[HOLDERNESS J] regarding the delay or the recusal application, Mr De Beer?

[MR DE BEER] Uh

[HOLDERNESS J] You have a final opportunity to address me.

[MR DE BEER] Madam Justice, the the the Le Grange case is one. Um unfortunately, Madam Justice, when when let let me just quickly go to the um the… important judgment also um in...

[HOLDERNESS J] Mfff

[MR DE BEER] Pardon Uh that is the corrected one… In the uh Holland Muter judgment that was also referred to by this court, the problem we are sitting with from Liberty Fighters Network side is that every single time when we come before a court, and listen or let me read what Justice Holland Muter in paragraph 2 said. He said:

[HOLDERNESS J] I'm I'm not going to Mr De Beer,

[MR DE BEER] It's it's relevant, uh Justice.

[HOLDERNESS J] Please address the grounds of recusal. How is it relevant to the grounds of recusal?

[MR DE BEER] Um I will get to the point.

[HOLDERNESS J] Now, before you read Before you, Mr De Beer, Mr De Beer, before you refer to the judgment…

[MR DE BEER] Ja…

[HOLDERNESS J] And it's not "ja", it's "yes, My Lady" or "yes, Justice", not "ja". Before you refer to the judgment, could you please advise me on why it is relevant to the application for recusal? I am only hearing submissions from you relevant to the application for my recusal.

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[MR DE BEER] Justice, Madam Justice, Holland Muter said in paragraph 2 of his judgment, which is relevant, please let me allow to just address this issue.

[HOLDERNESS J] What page is it?

[MR DE BEER] Um that is the Holland Muter judgment in the matter of...

[HOLDERNESS J] Now, is it in your authorities there, Mr De Beer? Is it in the authorities which were given to you?

[MR DE BEER] Ja. Um that is the Registrar case that was in Gauteng...

[MR DE BEER (ADV.)] My Lady, just to assist. Page 97 of the bundle that Ms O'Sullivan handed up.

[HOLDERNESS J] Thank you.

[MR DE BEER] In paragraph 2...

[HOLDERNESS J] Yes.

[MR DE BEER] Justice Holland Muter said that uh and I'm I'm just going to approximately the middle of that paragraph: "The underlying reason for the court's latitude was that during the court's preparation for the application, the court became aware of his continuous contemptuous conduct towards the judiciary with reference to the matter of Minister of Cooperative Governance. The admonishment of De Beer by the Supreme Court of Appeal in that matter does not seem to be taken to heart by De Beer." Now, this is also a judge of the High Court.

[HOLDERNESS J] It is.

[MR DE BEER] Who have clearly been influenced by another judgment before while he was preparing...

[HOLDERNESS J] How is that relevant?

[DE BEER] Ja, pardon?

[HOLDERNESS J] How is it relevant to my recusal? How is it relevant to my recusal?

[MR DE BEER] Unfortunately, when the arguments were put, and this court was shown to all these judgments, but all of them are interlinked with one another because once the SCA judgment of 2021 in some how pops up, then immediately the court is shown that, "Ah, Mr De Beer and the Liberty Fighters Network are continuously cont- contemptuous." Not not in that case--

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[HOLDERNESS J] Mr De Beer, anything further?

[MR DE BEER] No, um, Madam Justice, let me address the questions that arose from from them. Um… The SANParks have addressed the Black Sash, um, is the stronger, ja… the the Black Sash judgments. Um, on that respect--

[MR DE BEER (ADV.)] That's costs. Apologies My Lady, that's the costs issue. This is recusal.

[HOLDERNESS J] Yes, we're only dealing with recusal. I can't hear costs until I've heard recusal.

[MR DE BEER] Uh, then, um, why did, yeah, why did we wait, um, the Bernert, Bernert, uh, is the opposite chronology. There the litigants held back and no objection until after the outcome. Here the applicants formally recorded the apprehension five days after judgment. What occurred later was not the creation of the apprehension from nothing, but the accumulation of further objective circumstances which eventually made formal recusal necessary. I just want to show the court in the application for leave to appeal, which has become very important because it seems that no one has specifically addressed that...

[HOLDERNESS J] So, I'm not I'm not dealing with the application for leave to appeal, Mr De Beer.

[MR DE BEER] Madam Justice, it's about the, um, very relevant part in in our application for leave to appeal, it is not heard. It's It's not heard. Exactly. Because...

[HOLDERNESS J] You have two minutes left, Mr De Beer. You have two minutes left because you're not addressing me on the recusal application, and I've given you repeated opportunities to do so.

[MR DE BEER] My Lady if I am be allowed to to to finish my valid points, because they have raised quite a number of of issues?

[HOLDERNESS J] Address their issues then. I'm I'm allowing you to reply.

[MR DE BEER] I am busy with…

[HOLDERNESS J] Are you addressing...

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[MR DE BEER] The issue of you have, Madam Justice, prejudged the application for leave to appeal without the application for leave to appeal actually being heard.

[HOLDERNESS J] Where does that ground appear?

[MR DE BEER] In paragraph L, the application for leave to appeal...

[HOLDERNESS J] Excuse me. When I ask you a question, the practice is that you will wait for the question and answer it. Where does that ground for recusal exist in your application, that I've prejudged the leave to appeal? Please refer to your papers and tell me where that ground appears, because that is what the respondents have responded to, and that is what's being argued.

[MR DE BEER] Madam Madam Justice, we've continuously recorded that--

[HOLDERNESS J] You're not answering my question.

[MR DE BEER] I am.

[HOLDERNESS J] Where Where is the ground Where is that ground? Take me to the page.

[MR DE BEER] We've continuously, in our papers, recorded that you have pushed the cost adjudication as a preliminary before the application for leave to appeal should be heard. Notwithstanding that we have indicated throughout, it was also stated in the complaint to to the Judicial Service Commission, notwithstanding that we have said that, Madam Justice, the cost issue can be addressed with the application for leave to appeal. You have decided to separate our application from leave to appeal on the cost aspect. Because in paragraph L thereof, "cost punitive indications", paragraph 76, at paragraph 147 of the judgment, "the court directed submissions regarding punitive costs and the de bonis propriis liability." Paragraph 77: "Such direction reflects the court's adverse view of the applicant's conduct."

And then paragraph 78: "If the underlying findings of urgency, standing, and authority are set aside, the punitive cost consideration falls away." So the issue of costs and the the adjudication thereof at this point before hearing the application for leave to appeal, we have continuously indicated form part of our application for leave to appeal, yet notwithstanding our plea all the time, Madam Justice have decided to entertain the argument or the position of the organs of state clearly to first address the cost issue. I am, Ms Justice, not afraid...

[HOLDERNESS J] Sorry, Mr De Beer, I'm I'm I'm now cutting...

[MR DE BEER] Madam Justice, may I respectfully protest?



[HOLDERNESS J] Pardon?

[MR DE BEER] Protest.

[HOLDERNESS J] Of what?

[MR DE BEER] No, because I would like to finish my argument, but the court is not providing me...

[HOLDERNESS J] Because your argument is not dealing with the issues before the court.

[MR DE BEER] Madam Justice, if I haven't put those arguments to court yet, then obviously it's it's not helpful.

[HOLDERNESS J] No, it's it's certainly not.

[MR DE BEER] Madam Justice, the point that I've tried to make all the time is that this court cannot continue to delay the application for leave to appeal to accommodate the organs of state. Any reasonable person can clearly see that this court has disconnected itself, respectfully said, with the issues at stake.

[HOLDERNESS J] Um

[MR DE BEER] We We have not once addressed the poor baboons who cannot be in court today and fight their own case.

[UNKNOWN PUBLIC IN COURT] Hear, hear. [Applause]

[MR DE BEER] We haven't done that.

[UNKNOWN PUBLIC IN COURT] Hear, Hear. [Applause]

[MR DE BEER] Apologies for that.

[HOLDERNESS J] Um, if if the people attending court disturb proceedings once more, you will all leave.

[UNKNOWN PUBLIC IN COURT] Oh wow.

[HOLDERNESS J] Please all leave. Thank you.

[UNKNOWN PUBLIC IN COURT] Thank you very much. This is bias. Definitely. I'd like to say that as a member of the public....

[HOLDERNESS J] Um, sorry. Mr Maboya?

[UNKNOWN PUBLIC IN COURT] We came here because of the baboons.

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[HOLDERNESS J] Mr Maboya, please will you get their names and contact details, all of them? Thank you. You'll provide your names and contact details for contempt proceedings, thank you.

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[UNKNOWN PUBLIC IN COURT] A ha.

[HOLDERNESS J] Yes, Mr De Beer, are you done?

[MR DE BEER] Madam Justice, ja, um..... Ja. We've presented our case…

[HOLDERNESS J] Thank you. Thank you, I've heard you. You may sit down, thank you. Thank you. In this matter I'm going to be delivering an ex tempore judgment.

==[HOLDERNESS J, *ex tempore* Judgment: Recusal Application]==

This is an application for my recusal brought urgently by the applicants on the 14th of August 2026, the applicants being the Liberty Fighters Network, the first applicant, and Reyno Dawid De Beer N.O., the second applicant. The applicants seek an order that I recuse myself and that the remaining issue in respect of Part A of the main application and the leave to appeal, which they launched prior to complying with the court order directing them to file submissions on costs, be referred to the Office of the Judge President for reallocation to a new judge. It is therefore incumbent on me to determine the recusal application before I make any determination in respect of costs, an issue which has now been fully ventilated, the applicants having, it would seem, ex abundante cautela, addressed this issue in their heads of argument in the recusal application in the alternative. On the 25th of February 2026, I handed down a written judgment and order dismissing Part A of the main application. The findings which I made include the matter was-- include that the matter was not urgent, that the second applicant, Mr De Beer, had failed

to show that he that he has authority-- sorry, that he was authorized to act for the first applicant-- I can't read my own handwriting-- Liberty Fighters Network, and that the applicants lacked standing under section 38 of the Constitution of South Africa, 1996 (brackets, 'the Constitution'). The applicant is a seasoned litigant, and the manner in which he conducts litigation has been criticized by our courts, including the Supreme Court of Appeal in Minister of Cooperative Governance and Traditional Affairs v De Beer 2021 (3) All SA 723 (SCA). This and other cases involving the applicant were squarely before me, raised by the respondents, and had a direct bearing on the relief the applicants sought. In light of the fact that costs de bonis propriis and on a punitive scale were sought against the applicants, and because our courts, including the Supreme Court of Appeal, have repeatedly cautioned that such costs should not be made lightly, and that parties should be forewarned, if, in particular, costs de bonis propriis may be granted, to afford them an adequate opportunity to make submissions in this regard, I called for such submissions to be delivered by the applicants by the 6th of March and the respondents by the 13th of March. The applicants chose to disregard this part of the order. They failed to file submissions regarding costs and elected to do so five months later, and in the alternative. Instead, they delivered on the 2nd of March 2026 an application for leave to appeal against the whole of the judgment and order. This leave to appeal only properly seized before me, or was only properly delivered, on the 8th of May, when the hard copy was delivered to my registrar's chambers. This was followed by months of correspondence as to the matter ought not to have been determined piecemeal, and the respondents contended that costs should be determined before the leave to appeal, which would ensure that scarce judicial resources and state funds would not be wasted on two separate leave to appeal applications and subsequent appeals, should leave have been granted. Mr De Beer continued undeterred. He stated that he would seek my recusal for the first time on the 2nd of June 2026. Thereafter in June, he filed a complaint of judicial misconduct against me with the Judicial Service Commission. He then referred the matter to the Office of the Judge President and the Deputy Judge President. His stance, conveyed in correspondence, and the tone which he used, in particular with regard to my registrar, Mr Maboya, was paternalistic, patronizing, and arrogant. The applicant has pleaded five grounds for my recusal: Firstly, that the language of the judgment shows that I had a pre-existing view... sorry, if you bear with me... against them; Secondly, that the material they sent me after the hearing was not engaged with; Thirdly, that the costs-first sequencing, as they called it, and the delay in resolving it shows I'd become invested in a punitive outcome; Fourthly, that it is untenable for costs and leave to be heard before recusal has been determined; and Fifthly, cumulatively, that all of this together crosses the line and indicates that this court is biased. I take them in turn, and then

together, as I am required to do. The test for recusal is well-established, namely, whether a reasonable, objective, informed judicial officer on the correct facts would reasonably apprehend that I have not or will not bring, or that they have not or will not bring, an open mind to the remaining issue of costs and the pending leave to appeal (Sarfu 1999 (4) SA 147 (CC) at paragraph 48). The presumption is that I am impartial. The applicants are required to lead cogent evidence to disturb such presumption (see Sacwu v Irvin & Johnson 2000 (3) SA 705 (CC) at paras 12 to 18; and Bernert v Absa Bank 2011 (3) SA 92 (CC) at paragraphs 28 to 34). Both sides cited Systems Application Consultants v SAP SE 2026 ZACC 13, where the Apex Court observed that the inquiry must look at the whole of the proceedings and not an isolated remark. However, on the facts of that case, a single walkout by the presiding judge over a 74-day trial was found to be irritation, not bias, precisely because in other respects the court was patient and courteous. This is an issue which, in my view, the applicants have failed to deal with in the present matter. I further had regard to S v Basson 2007 (3) SA 582 (CC) at paragraphs 33 to 37, where the court distinguished between something said in the heat of a hearing and language used in a considered written judgment. And I bear in mind what was said in Bernert v The State 2021 (2) at para 113 that recusal should not become standard equipment in a litigant's arsenal reached for because a litigant does not like where a matter is heading. The first complaint, Ground A, is the language of the judgment. The complaint is about the opening paragraphs, the description of Mr De Beer as Liberty Fighters Network's alter ego, the references to serial litigants and prior admonishments, and the court being treated as a playground, and what the applicants call the importation of adverse extraneous material. On inspection of the cases dealing with recusal, these complaints are patently without merit. All three prior cases were placed before me by the respondents in pleadings and argument, were squarely relevant to the relief sought, which was confirmation of Mr De Beer's authority and urgency. The applicants had a Rule 7(1) notice challenging that authority before the hearing even commenced. None of this should have come as a surprise. I will add, since then, the applicants have made something of the phrase "litigation is not a game". That phrase is not mine originally. It comes from the fifth respondent's own heads of argument in Part A. I adopted language that was put before me in argument. As to the opening paragraphs themselves, it is a question of style and not substance. There is a difference between a remark made under the pressure of a hearing and language in a judgment written. The question is not whether I could have phrased it more gently, but whether it shows a closed mind, which, in my view, it does not. After my judgment, and entirely independently of it, as pointed out by the respondents during argument, La Grange J in a completely unrelated matter of LFN v Minister of Public Works and Infrastructure 2026 ZAWCHC 287, looked at

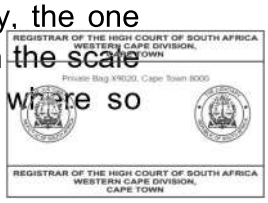
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the same-- considered the same three prior cases and found a pattern of conduct persisting despite repeated admonishments from the courts, made a punitive costs order, and held Mr De Beer personally liable, or liable for costs de bonis propriis, as the driving force behind LFN. That judgment does not make reference to my judgment in Part A, but to my mind is a persuasive basis upon which it can be shown that the applicants' objection is not something particular to this court. It is what an independent judge, working from the same material, would conclude. An apprehension of bias built on a characterization that another judge reached without any prompting is, in my view, a reasonable apprehension... is not, in my view, a reasonable apprehension. The applicants' second material they sent after the hearing was not engaged with. They still, even now, do not say what that material was, or whether it addressed a central issue, which is that is Mr De Beer's authority. Nothing turns on this ground. Regarding the ground of the so-called costs sequencing, this appears to constitute the main thrust of the applicants' complaint. The applicants are correct as a matter of law that reserved costs are not a jurisdictional bar to an appeal being heard (see A.A. Mutual v Mxanga 1981 (4) SA 858 (A) at 869A-B and Security v Norris 2023 ZAGPPHC 1037 at paras 11 to 16). I accept that. However, this does not avail them, because that was not the question before the court. This was a matter involving case management, which section 173 and the court's inherent power to regulate its own process left squarely to me. I made the decision that costs should be determined before leave to appeal, so that any appeals would not fall to be determined on a piecemeal basis. This is an ordinary exercise of discretion. Were I bent on shutting the door to an appeal, I would have decided punitive costs there and then without inviting submissions. What the applicants have not-- sorry, what the applicants have not properly explained is why they did not use the opportunity I gave them. They were afforded-- sorry, they were ordered to file by 6th of March, which they did not. They filed an application for leave to appeal instead, and said nothing on costs for over six months, until it turned up in the alternative in the heads for this very application. The letter on the 7th of July addressed to the Deputy Judge President, and not to me, was not for me to respond to, and I attach no weight to silence on correspondence which I was not sent. The JSC complaint is a different matter, in as much as a complaint against a judge cannot by itself found recusal. What is curious is the timing. It was lodged on 2 June 2026, the day after the parties were told costs would be decided before leave to appeal. I shall revert to this point. The applicants, relying on SACAWU, state that they have not waived any of their rights because the apprehension was already on record in their 2 March leave to appeal application before the 6th March cost deadline arrived. This, they say, shows that it is not a belated stratagem. This, in my view, is unpersuasive. If they genuinely apprehended bias on the 2nd of March 2026, it is difficult to conceive why they

were at that very moment perfectly content for me to hear and decide their leave to appeal. No recusal application followed, nor was such an application mentioned. A ground of appeal is one thing, a reasonable apprehension that the judge cannot fairly do her remaining work is quite another, and the applicants' own conduct at the time shows that they did not treat it as the latter. It was only once the costs hearing was fixed that their position changed. I've weighed these grounds together as I must, and cumulatively they add up to no more than they do individually. I would in any event have struck this application on the basis of delay and self-created urgency alone. However, I am mindful once again that that would just lead to further costs, delays and waste of judicial resources and public funds. The applicants say the concern goes back to 2 June. However, on the 28th of July, they were told by the respondents that any recusal had to be formally sought in an application, and nothing further happened for over two weeks until a date was fixed for the costs argument they'd been avoiding for the past five months, now six months. I record that because because the applicants raise it, that a recusal application brought after leave to appeal is, as stated above, procedurally competent. However, it was within my remit to determine when that would be heard. Based on the manner in which the applicants have conducted themselves in this recusal application, as in similar applications, it is clear that there is no attempt here by the applicants to vindicate a constitutional right. What they have done is a blatant stratagem, a sustained exercise in delay, aimed at avoiding a proper reckoning on costs. It has all the hallmarks of a Stalingrad defense, aimed not at winning, but at putting off costs being determined, and such a stratagem cannot and will not be countenanced. I reach this view dispassionately and it follows to my mind inevitably from the facts and circumstances set out above. For these reasons, the application must fail, and costs in terms of the ordinary rule will follow the result. Given what I've found about the nature of this application, the manner in which the applicants have conducted themselves, an ordinary costs order will not mark the court's disapproval adequately. The respondents proposed in argument that I deal with costs on the basis that these costs of the recusal application be costs in the cause of the Part B application, however, I intend to deal with the costs at this juncture. The manner in which this conduct litigation has been conducted is exactly the kind of abusive resort to litigation which was described in In re Alluvial Creek 1929 CPD 532 at 535, and I am satisfied that in all the circumstances of this case, and in the vexatious manner in which this litigation has been conducted, that punitive costs on an attorney and client scale are ordered. The applicants asked, if recusal fails, that I record their participation from here on does not waive the point, and I have no difficulty in doing so. In SACAWU at paragraphs 5 to 6 and 53 to 54, it is confirmed that a litigant litigant who proceeds after a failed recusal application is not thereby taken to have

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abandoned it, absent an unambiguous abandonment. I record for the avoidance of all doubt that nothing said today and nothing about the applicants' participation in the costs ruling that follows amounts to such an abandonment. As before, the second applicant has still failed to show that he is authorized to represent the first applicant, so the costs of this application to the to the extent they flow from that purported representation will follow. I make the following order: 1. The application for my recusal is dismissed. 2. It is recorded that the applicants' participation in these or any further proceedings in this matter, including the costs ruling that follows, does not amount to a waiver or pre-empting of the recusal objection raised in this application. 3. The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of this application on the scale as between attorney and client, including the costs of two counsel where so employed. So ordered.



[MR DE BEER (ADV.)] As the court pleases.

==COSTS DETERMINATION – PART A==

[HOLDERNESS J] Thank you. And I will now proceed, because it is ripe for hearing, to hear the parties on the issue of costs in respect of Part A, unless there is any objection from any of the parties that these costs be dealt with to avoid any further resources. Are the parties ready to proceed on costs? In respect of Part A?

[MR DE BEER (ADV.)] My Lady, we we're the first respondent's ready to proceed.

[HOLDERNESS J] Thank you. Thank you, Ms O'Sullivan.

[MR DE BEER (ADV.)] The second and third respondent's ready to proceed.

[HOLDERNESS J] Ready to proceed, Mr De Beer, on costs?

[MR DE BEER] Um, Madam Justice, yes. Uh, I have addressed the issue of the costs, um, in our heads of argument as well. Uh, the short and the long is very simple, that punitive costs, uh, in the, uh, sub- the request uh or the uh request for submissions that the court made, specifically pertaining to punitive costs order, um, we are saying in paragraph L of our heads of arg of our of our application for leave to appeal, very straight, simple, that if the underlying findings on urgency, standing, and authority are set aside, punitive costs considerations fall away in any event. So, that is basically, um, in a nutshell, very quickly, in those three paragraphs in under, uh, part L of the application for leave to appeal, has been

addressed, and then in our heads of argument, specifically, we've we've made provision uh let me just quickly uh go to my heads…

[HOLDERNESS J] So that's it paragraph 92 of your heads where you deal with the costs of Part A.

[MR DE BEER] That's correct, and I'll presume that that Madam Justice have also read that?

[HOLDERNESS J] Indeed

[MR DE BEER] So there's there's nothing else that I have to add besides that. Thanks.

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[HOLDERNESS J] Thank you, Mr De Beer. Thanks, Ms O'Sullivan?

[MS O'SULLIVAN] My Lady, may I just hand up a small bundle of the two extracts from two cases.

[HOLDERNESS J] Thank you.

[MS O'SULLIVAN] The sixth and seventh respondents have dealt with costs fully in our written submissions, and I don't repeat what is stated in those submissions. Um, the first, uh, overarching point is that the application did not raise material constitutional issues, and your Ladyship is referred to page 14, paragraph 62 of your Ladyship's judgment, in which you found that the insurmountable obstacle for the applicants is their failure to prove the requirements for an interdict, which do not require repeating, that both applicants have been informed, and then at paragraph 95 of page 20 of the judgment, in which your Ladyship found that the applicants limited their constitutional challenge to the failure to appoint an environmental commissioner, admitted by Ms O'Sullivan, the applicants' belated attempt to rely on section 32(1) of NEMA in their replying affidavit, does not avail them, disregarding such averments made for the first time in reply. In paragraph 96, the applicants are in accordance with the principle of subsidiarity prohibited from base from direct reliance on the Constitution where specific and detailed legislation giving effect to a right sought to be enforced has been enacted, NEMA, and the Biodiversity Act, by failing to demonstrate a failure of the Constitution or any applicable statutory provision to cause them damage, the applicants have failed to establish standing under section 38 of the Constitution. And as a result of that, um, because of the requirement in Biowatch that although the Biowatch principle embodies a general rule for costs in unity, the applicants' case must be one where a matter of genuine constitutional import arise, I've referred your Ladyship to the Wurkar judgment of Navsa in the SCA, and that dealt with, um, at

page... So it's in the bundle, um, uh, and that's dealt with on the last, last, uh, paragraph 3 of the bundle...

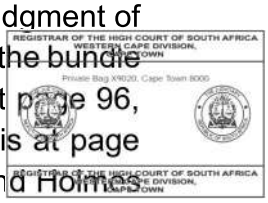
[HOLDERNESS J] That's that's just been handed up, so I have that judgment, yes.

[MS O'SULLIVAN] Yes, Madam Justice, the, um, uh, they they describe the exception and the and they confirm that the that costs are within the discretion of the court in those circumstances, and where there's no genuine constitutional right that's raised, that Biowatch should not be used to raise, um, to doesn't mean that there's risk-free assertive constitutional litigation. And the other judgment, um, uh, that we wish to refer your Ladyship to is that there are a number of exceptions to the Biowatch rule. One of them is the principle that there's no risk in constitutional litigation. Of course in this case it wasn't premised on the Constitution or the relevant legislative framework. The second ground of, um, for attorney and client costs in this case, and also which is also an exception to Biowatch, is where there's an abuse of process. And in relation to that, we've cited Endangered Wildlife Trust, also a recent judgment of the SCA of Skippers, and costs are dealt with on page 6 of that bundle, from paragraph 114 of the judgment, and the court there explains the nature of vexatious proceedings and describes those as being that has little or no basis in law, or no discernible basis, that whatever the intention of the proceeding may be, its effect is to subject to inconvenience, harassment, and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of process of the court, meaning that the use of the court for the process for a purpose or in a way which is significantly different from the ordinary and proper use of the court's process. And this was certainly manifest in the present litigation. Um, the the manner in which it was dealt with by the applicants, the fact that there was no discernible basis for the application to be brought, it wasn't properly pleaded, there was no grounds set out for interdictory relief, there was no reliance, proper reliance placed on the constitutional or legislative framework, um, that certainly falls within the ambit of that exception to Biowatch that is described in Endangered Wildlife Trust, and is on all fours with that. The other relevant, um, point there is at paragraph 126 of the judgment where Skippers says that there are further considerations to justify a cost award against the appellants. Um, the DG's costs are paid out of public funds, ultimately by taxpayers. In addition to an unmeritorious appeal and the vexing of the second respondent's case, valuable judicial resources have been wasted on a misconceived appeal to the detriment of other litigants with cases which have real merit. And I would submit that that was the position in this case. Your Ladyship had to, um, uh, there were other cases that should have had preference on your Ladyship's roll, and instead your Ladyship had to entertain this matter for an entire day, um, or the entire afternoon and sitting the day on those other matters instead.

Um, then thirdly, there's the decision of Public Protector vs Reserve Bank, and that was the case the Constitutional Court dealt with cost orders on a scale as between attorney and client costs, and explained the exceptional circumstances in which those, um, awards are granted, but also emphasize that that principle has been endorsed in a long line of cases, starting with In re Alluvial Creek which was referred to by your Ladyship earlier, and that that is an appropriate order to make to, um, mark a court's disapproval of vexatious conduct and conduct that amounts to an abuse of process. In this case, your Ladyship found in your judgment that there had been an abuse of process, that in in firstly bringing the application in the manner that it did was brought on an oppressive timeline. The respondents were given I think three full days to respond to a very voluminous application, and you've already indicated that that approach would weigh in the costs, um, issue, when it was determined. And secondly, it was a classic case of self-created urgency because your Ladyship will recall that, um, um, JTTs the A and the, um, of the three various instruments which the applicants sought to challenge had been in place for some time, and so there had certainly been a delay, and then it was brought on a very precipitous timeline. Your Ladyship correctly determined in the matter not to simply strike the matter from the roll, because we would then have had to, um, have all of those issues, um, reconsidered by a subsequent judge in a further matter, and that too was appropriate. I've already referred your Ladyship to all of the judgments pertaining to LFN, and to what, uh, um, uh, the Mr De Beer and his role and the various admonitions there. Um, interestingly in this matter, it was launched a month before, I'm sorry, a month before this application was launched, the Gauteng High Court, uh, admonished LFN for creating urgency, asked them to revisit the principles remaining to regarding urgency, and it seems that that warning too had fallen on deaf ears. Um, and of course, the applicants were well aware of the requirements for interdicts and they elected to ignore those, too. Um, and then in relation to authority, of course there was the earlier case, um, and in this matter, we had delivered a Rule 7(1) notice, and so that was not responded to, um, and Mr De Beer could not prove his authority. Um, but, you know, none of that would have come as a surprise to him because this had been traversed in other courts, and I'd just like to make the point in relation to those cases. It's not, um, the issues that were or evidence, or in its findings that were made in another case, but its findings and judgments, and those are relevant undoubtedly to the same case, where the same issues were raised repeatedly and the litigant doesn't take heed of the findings which have been made by judges in other cases. So, in conclusion, this the matter is undoubtedly vexatious and an abuse of process. Your Ladyship, um, is well aware that there are many courts which have in other matters dismissed the same or similar relief. Um, they have also granted cost de bonis propriis orders, and litigation such as that which was launched by the applicant doesn't be the

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procedural result is in and of itself vexatious, and that was plainly so in the present inst instance where the case had little or no basis in law, that no discernible basis, and it has placed the defendants at considerable inconvenience. I would submit the orders are harassment to the extent that organs of state have to file affidavits in the time that they had and to deal with proceedings in this manner given the delay between the events that the application concerned and the application itself is out of all proportion to any, um, gain that the litigant was going to accrue as a result of the litigation and certainly involved an abuse of process. Um, we've dealt with the lack of authority, and if your Ladyship finds, as your Ladyship has found, that Mr De Beer did not have the necessary authority, we refer to the judgment of Blow, Lam versus Lumbetan Chipcon, and your Ladyship will find that in the bundle that was sent, um, by the fifth respondent, and it's at the case starts at page 96, and the ratio in relation to cost de bonis propriis and lack of authority is at page 102 under the heading 6, Cost de bonis propriis against the trustees, and Holmes explained in that that, uh, in my view, the matter falls to be decided on a somewhat different basis. The trustees were held by the court a quo to have instituted proceedings without locus standi to do so, and he refers to the ratio of the earlier judgment and the fact that there was no cross-appeal, and this means that no authority to represent the insolvent estate in the proceedings, and that de jure this insolvent estate was not before court, and did not litigate, and cannot be ordered to pay costs. The right person to be mulcted in costs for the brought-of application are the trustees who purported to bring it on behalf of the insolvent estate without right or authority to do so. This seems to be logically inescapable. That is the conclusion that we rely on. The lack of authority resulting in that case a lack of authority resul resulting an award such as the one that has been sought by the sixth and seventh respondents in this case. Unless there's anything further, your Ladyship would like me... those are our submissions.



[HOLDERNESS J] Thank you, Ms. O'Sullivan. Thank you. Mr De Beer.

[MR DE BEER (ADV.)] My Lady, um, as my late mum used to say, "Every action has an equal and opposite reaction." And we're now at the stage where we need to talk about the consequences for abusive litigation. In the heads of argument at paragraphs 102 and 103, Mr. De Beer says, "Don't order any costs against me because in the lockdown litigation matter, despite the SCA criticizing me, there was no order as to costs." Now, your Ladyship will notice that the court doesn't say why there's no order as to costs. They may have not been asked for costs, to grant costs by the government, I'm not sure. But I want to make a different point, and that's this. When you get given a chance, you need to learn. So if you run off to court, you behave badly, you're criticized by the court and you aren't ordered to pay costs, you should take that as a warning. Since that case has been handed

down, multiple judges have awarded punitive and personal costs against Mr. De Beer. And my client's submission is that this case is no different. I won't repeat what Ms. O'Sullivan has said, but I will make submissions on the extra relief my client has requested. So in the application, the answering affidavit, not sure of… the answering affidavit, my client Sanlam Park said punitive costs are not enough in this case to show the court's displeasure. Punitive costs are not showing the applicants that there are consequences for their actions. And so what my client has requested the court to do is order that if the applicants want to carry on with Part B, they have to satisfy a costs order granted in Part A first.

[HOLDERNESS J] What is the precedent for that, Counsel?



[MR DE BEER (ADV.)] So, that's the case that's in my heads of argument and I have a copy of it with me. Apologies, it's August Printing and Publishing versus Ratland. It's a judgment of this division, it's 1953 (3) 446 at 449. Now, my client hasn't brought a formal application for the order it's requested, but my, and what that judgment says is this, is that the court has an inherent power to grant this kind of order, and it will make an order where a party has done something either in incurring costs or in seeking to escape from paying them, which invites the court's disapproval. In this matter, the applicants are determined to carry on with Part B. They've now brought an application to, for leave to amend their notice of motion in Part B, including to deal with matters your Ladyship has finally determined, trying to fix up the problem. They've written letters to, I think, the JP and the DJP to have the Rule 28 application for amendment to be set down while this event remains outstanding. The court has found, and with respect correctly, that this has been abusive litigation. And the entire debacle of requesting your Ladyship's recusal, arguing about which matter must go first, leave to appeal or costs, I mean, that is a stratagem, as your Ladyship has found, to try and avoid the issue of costs. And so my submission is that this is an appropriate case to say to the applicants, "There are consequences for your conduct. If you want to carry on with Part B, you must satisfy the costs orders first." But of course, I leave that in your Ladyship's hands, it is a discretion. Those are my submissions.

[HOLDERNESS J] Thank you, Mr De Beer.

==[HOLDERNESS J, ex tempore Judgment: Costs Determination – Part A]==

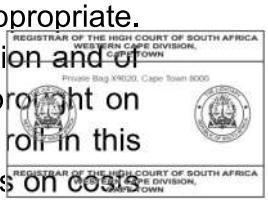
Thank you. We'll be handing down an ex tempore decision in this matter, too. This ruling deals with the costs which reserved in Part A of the main application, in

which I reserved my judgment on the 25th of February -- sorry, in which costs were reserved in terms of my judgment and order handed down on the 25th of February 2026. I noted then that before ordering or considering ordering punitive costs or costs de bonis propriis, this court would need to conduct an independent inquiry into each, due to our higher courts having repeatedly warned that both potential costs orders are punitive and extraordinary and are not to be granted lightly. I directed the parties to file written submissions, the applicants by the 6th of March and the respondents by the 13th of March. The respondents filed their submissions timeously. The applicants, however, did not file submissions at all, and the costs submissions on their behalf appeared for the first time in the alternative in their heads of argument in respect of their recusal application delivered on the 26th of August. I've had regard to the submissions made, late as they are. Better that than let a five-month default foreclosure argument on an aspect of costs that is this serious and overdue. Having heard both sides, I am satisfied that this is an exceptional case in which costs should be ordered on a punitive scale and should be borne by the first applicant in his personal capacity. The relief sought in Part A was dismissed on the basis that no urgency was made out, what urgency was there was of the applicant's own making, and that Mr. De Beer did not prove that he was authorized to act for the second applicant. The applicants furthermore lacked standing under section 38 of the Constitution, and it was recorded in that judgment, together with full reasons, why I came to the finding that the manner in which the applicants had conducted the those proceedings amounted to an abuse of process and in particular of the process of the urgent court in this divisit division on unpressibly… sorry on on… unfairly oppressive timelines, and that this aspect would weigh heavily on the issue of costs. This is not a surprise to the applicant applicants. It followed findings in three prior cases which have been placed before this court, the case before the Supreme Court of Appeal, the Registrar case and the Core Computer case, in which the very same issue with Mr. De Beer's authority was pertinently raised and in which matters the court made findings which heavily criticized the manner in which LFN and Mr. De Beer have conducted litigation. Once again, it appears that these admonishments have gone unheeded by Mr. De Beer, and this only bears out -- is only borne out by the fact that quite independently, Justice La Grange reached the same view on the same material in an unrelated matter and furthermore made a punitive costs order and held Mr. De Beer personally liable for the costs. The respondents have stated… the respondents' stance, as conveyed in correspondence after the hearing, was that costs should be decided before the leave to appeal was heard, as the facts in the two matters are tied up and otherwise the appeal would proceed on a piecemeal basis. I agreed that as a matter of case management and for the reasons which I gave in the recusal ruling, that it was not in the interests of either of the parties, or

in particular of the limited court resources and public purse, that there be two applications for leave to appeal and, if leave was granted, two appeals to follow. On the 1st of June, my offices informed the parties that ca the costs argument would proceed first, and on the very next day, the applicants filed a complaint with the Judicial Services Commission against me. When the costs ruling did not follow as quickly as indicated, they did not query why. This, too, is impacted by the fact, as conveyed earlier, that the application for leave to appeal hard copy was only filed, as it was required to do before it could be set down for hearing, two months after it was uploaded to CaseLines on the 8th of May. Once a date was fixed for costs argument in early August, the applicants then proceeded to bring an urgent recusal application 10 days later, an application which I today earlier dismissed as being without merit and a stratagem to avoid exactly this ruling. For more than five months, until it appeared in in the alternative in the recusal heads of argument, the applicants said nothing on the issue of costs. They've had every opportunity to put up an explanation, to place their circumstances before me, to argue that a punitive costs order or de bonis propriis costs order should not be made, and they did not avail themselves of this opportunity. This is not, to my mind, the conduct of a litigant who does not understand what was required. In that same period, they managed to bring an application for leave to appeal, a JSC complaint, and approach the offices of the Judge President and the Deputy Judge President. I regard it in the circumstances as a contemptuous disregard of a direction of this court sustained over a period of months for a... In respect of the principles relating to costs generally, the ordinary scale is that -- sorry, the ordinary scale of party and party is the rule. It is well-established or trite that punitive costs are the exception and are reserved for conduct that is vexatious, reckless or driven by an ulterior motive. In this regard, see Nel v Waterberg 1946 AD 597 at 607. Attorney and client costs orders mark the court's displeasure at conduct of exactly that nature. This is reinforced by In re Alluvial Creek 1929 CPD 532 at 535, where the court found that a losing party who has put the other side to unnecessary expense should not ordinarily -- or not always get away with only an ordinary party and party costs order. In this matter, the litigation was pursued by the applicants after precisely the same defects relating to procedural shortcomings, urgency, lack of authority, lack of standi locus standi had already emerged and be been dealt with decisively by other courts, including by the Supreme Court of aff Appeal. Despite all of this, these same points were raised in the main application before this court, and for months, the applice applicants have avoided dealing directly with the issue of costs to avoid costs being timeously determined. The applicants in their belated heads of argument invoke Biowatch (2009 (6) SA 232 (CC) at paragraphs 23 to 25 and 43), as well as Affordable Medicines Trust (2006 (3) SA 247 (CC)), and more recently the Helen Suzman Foundation. These citations will be included in the full judgment.

Where the court found that in terms of the well-established Biowatch rule, a constitutional litigant is ordinarily shielded from adverse costs order even if unsuccessful, and that the bar from departing from this general rule or principle is high. It is generally applied where there are exceptional circumstances and where the man, sorry, and when the litigant has conducted themselves in a manner that is frivolous, vexatious or manifestly inappropriate. Ms. O'Sullivan in argument argued that it is quite clear that this is a matter where the applicants are clearly not genuinely vindicating constitutional rights and emphasized that there is no such thing, as appears from our established case law, as risk-free constitutional litigation. This case in any event was not premised on constitutional rights, and for all of the foregoing reasons, quite clearly constitutes vexatious proceedings where there was little or no basis in law. This is dealt with in more detail in the main judgment, but I am satisfied and persuaded that this is indeed manifestly -- or was manifestly inappropriate litigation where there was no discernible basis for the relief sought and no case made out for the interdictory relief which was claimed. I have repeatedly stated, but I highlight again, that the costs for the respondent are paid from -- paid for from public funds. This is one of the reasons why I made the controversial statement that the court is not a playground, not because it was out of any bias towards the applicants, but to show that when a party approaches this court for relief on the basis that the applicants have done so, it bears a serious risk that it will face a punitive costs order or adverse costs order if that relief is not properly grounded in fact and law. In this matter, it is quite clear that the manner in which it was conducted, brought on oppressive and precipitous timelines of giving the respondents approximately three days to respond in circumstances where there clearly was self-created urgency, that on all of the evidence, amounts to an abuse of process. In this case, it is clear that it is the applicants' own conduct, as I have already found, of their own making, and in circumstances where they lacked authority to act and had been alerted to this in two preceding decisions. It is well-established that Biowatch protects genuine constitutional litigation from being from the chilling effects of an adverse costs order. It was never intended to shield a litigant who presses on with points which have already been repeatedly rejected by the courts and then simply refuses to engage or to comply with court directions relating to matters um which have been dealt with in a court judgment. That, to my mind, is a manifestly inappropriate manner in which to conduct oneself in litigation, even on a reading of the applicants' own authorities. I have considered the applicants' reliance on the um LFN, sorry, the Liberty Fighters Network Supreme Court of Appeal case in the Minister of Cooperative Governance and Traditional Affairs v De Beer (2021 ZASCA 95 at paragraphs 118 to 120), where the Supreme Court of Appeal, despite describing extra-curial conduct by the same applicants as, open quotes, "crude, gratuitously insulting and clearly

contemptuous", made no costs order at all and referred the matter to the NDPP instead. The submission for me to go further than the SCA was prepared to order on what is demonstrably more egregious conduct. I do not accept that proposition, firstly on the basis that a costs discretion is exercised on a peculiar set of facts, and I am not bound by another finding by a different court on different facts. This is accepted by the applicants' own heads of argument, even if they describe the point as narrower rather than abandoning it. Secondly, and more to the point, where the SCA declined to punish or mulct the applicants in costs with conduct directed at that court itself after argument had closed, for which a dif different remedy, the re referral for pos possible prosecution was thought more appropriate. This is not the facts of what is before me. It is the conduct of this litigation and of the applicants from the inception of these proceedings, which were brought on authority which was already lacking, an abuse of the fast-lane urgent roll in this division, and then months of inaction and refusal to provide submissions on costs process despite a cost court direction in this regard.



[MR DE BEER] Pr

[HOLDERNESS J] Sorry, Mr. De Beer, did you have something to say?

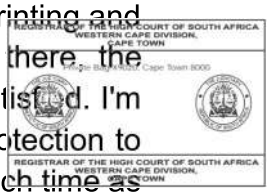
[MR DE BEER] No, I just had something in my throat. I beg your pardon.

[HOLDERNESS J] An order of de bonis propriis costs requires that there be actual misconduct in the conduct of litigation invo tied to the person concerned against whom such an order is sought. In this matter, to my mind, both requirements are clearly met. Mr. De Beer did not prove his authority to bring this application on behalf of the second applicant, and it follows that it is appropriate that he bear the costs himself and in his personal capacity. I am mindful of the fact that he is not a legal practitioner and is a layperson and appears in person. However, it does not excuse a sustained failure over months to engage with the direction of this court on a serious costs issue from an individual who in the same period managed to file a leave to appeal, a JSC complaint and a applications to two separate judicial officers within this court. In argument, Mr. De Beer referred me to the matter of Blow versus... sorry, no, that was Ms. O'Sullivan, if I could just go here. Mr. De Beer highlighted that -- advocate De Beer highlighted that Mr. De Beer did not prove his authority to act for Liberty Fighters Network, and that it is appropriate that the costs should fall on him personally and not on this organization. I've already set out why this matter falls outside of the ordinary Biowatch protection, and I now need only deal with the last aspect which was raised by Mr. De Beer, which is that an order is now sought that the applicants are not permitted to continue with the litigation in respect of the remaining Part B until such time as they have satisfied the costs order which I intend to make. I have considered this, which

was dealt already with the, um... sorry, which was dealt already by the respondents in the answering affidavit, and which the applicants have had several months to address, including that they may have or that they had adequate opportunity, more than adequate opportunity, to address this in their written submissions which they were directed to file by in March of this year.

[HOLDERNESS J] On a conspectus of all the facts before me and the manner in which this con- litigation has been conducted, I am satisfied that this is one of those exceptional cases where such an order is justified.

[HOLDERNESS J] I was referred by Mr de Beer to the case of Argus Printing and Publishing in 1953 where this division ordered that a part- the party there, the losing party could not continue with Part B until the costs order was satisfied. I'm satisfied that in this matter, that order is appropriate and will afford protection to the respondents against further unnecessary costs being run up until such time as this costs order has been satisfied. In the circumstances, I make the following order: The second applicant, Mr Reyno Dawid De Beer, is ordered to pay the costs of the application in Part A, including the costs of two counsel where so employed, on the scale as between attorney and client. Mr De Beer is ordered to make payment of these costs de bonis propriis or in his personal capacity and not out of the funds of the first applicant. Moreover, neither the first nor the second applicant may continue with litigation relating to Part B of this application until such time as these costs orders have been satisfied.



[MR DE BEER (ADV.)] As the court pleases.

[HOLDERNESS J] Thank you. So ordered. Court adjourned.

[REGISTRAR] All rise.

[MR DE BEER] You are going to make a lot of money with all the appeals. Congratulations.

==END==

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Court Audio Transcript — aud_ce11aa9f8900_raw

Source: raw (unenhanced) 16kHz mono WAV of a South African court proceeding. Transcribed with Google Gemini (gemini-3.6-flash). Timestamped every ~10s.

[00:00] This ruling deals with the costs which were reserved in Part A of the main application, which were reserved in my judgment

[00:10] on 25th of February, sorry, which costs were reserved in terms of my judgment and order handed down on 25th February 2023.

[00:24] I noted then that before ordering, considering ordering punitive costs or costs de bonis propriis,

[00:34] this court would need to conduct an independent inquiry into each, due to our higher courts having repeatedly warned that

[00:43] both potential costs orders of punitive and extraordinary nature to be granted,

[00:48] I directed the parties to file written submissions, the applicants by the 6th of March and respondents by the 13th.

[00:55] The respondents filed their submissions timeously, the applicants however did not file submissions

[01:02] at all, and the costs submissions on their behalf appeared for the first time in the alternative

[01:08] in their heads of argument in respect of their recusal application delivered on 26th of August.

[01:13] I've had regard to the submissions made, delayed as they are,

[01:17] delayed as that, the delayed five-month default of further argument on an aspect of costs that is this serious and overdue.

[01:25] Having heard both sides, I am satisfied that this is an exceptional case in which costs should be awarded

[01:32] on a punitive scale and should be borne by the first applicant in his personal capacity.

[01:37] The relief sought in Part A was dismissed on the basis that

[01:41] no urgency was made out, what urgency was there was of the applicant's own making,

[01:46] and that Mr De Beer did not prove that he was authorized to act for the second applicant.

[01:51] Applicants further more lacked standing under section 38 of the Constitution,

[01:56] and it was recorded in that judgment, together with full reasons,

[02:00] why I came to the finding that the manner in which the applicants have conducted these court proceedings amount to an abuse of

[02:10] process and in particular of the process of the urgent court in this division on impressively, sorry, on unfairly oppressive timelines,

[02:18] and that this aspect would weigh heavily on the issue of costs.

[02:22] This is not a surprise to the applicant, applicants. It followed findings in three prior cases,

[02:30] which have been a case before this court, the case before the Supreme Court of Appeal,

[02:35] the Registrar case in the Full Court, the Interdict case in which the very same issue of Mr De Beer's authority

[02:40] was pertinently raised and in which matters the court made findings

[02:47] severely criticising the manner in which ALF and Mr De Beer have conducted litigation.

[02:54] Once again, it appears that these admonishments have gone unheeded by Mr De Beer,

[03:00] and this only bears out, is only borne out by... In fact, quite recently Justice Le Grange reached the same view in the same material in an unrelated matter,

[03:10] and furthermore made a punitive costs order and held Mr De Beer personally liable for the costs.

[03:18] The respondents' stance, as conveyed in correspondence after the hearing, was that costs should be decided before the leave to appeal was heard

[03:26] as the facts in two matters are tied, otherwise the appeal would proceed on a piecemeal basis.

[03:34] I agree that as a matter of case management and for the reasons which I gave in the recusal ruling,

[03:40] that it is not in the interests of either of the parties, or in particular of the limited court resources and public purse, that there be two applications for leave to appeal if leave is granted, two appeals to follow.

[03:54] On the 1st of June, my office informed the parties that the costs argument would proceed first,

[04:00] and on the very next day, the applicants filed a complaint with the Judicial Service Commission against me,

[04:05] and the costs ruling did not follow as quickly as indicated, and I did not clear why this too was impacted by the fact as conveyed earlier that the application for leave to appeal hard copy was only

[04:17] filed as was required to do before setting down the hearing two months after it was uploaded to CaseLines on the 8th of May.

[04:26] Once a date was set for costs argument in early August, the applicants then proceeded with an urgent recusal application 10 days later,

[04:34] an application which I today earlier dismissed as being without merit and a stratagem to avoid exactly this ruling.

[04:42] For more than five months, until it appeared in the alternative in the recusal heads of argument, the applicants had said nothing on the issue of costs.

[04:51] They had every opportunity to put up an explanation, to place their circumstances before me, to argue that

[04:58] a punitive costs order or a de bonis propriis costs order should not be made,

[05:03] and they did not avail themselves of this opportunity.

[05:07] This is not, to my mind, the conduct of a litigant who does not understand what was required.

[05:13] In that same period, they managed to bring an application for leave to appeal, a JSC complaint, and approach the offices of the Judge President and the Deputy Judge President.

[05:23] I regard it, in the circumstances, as a contentious disregard of directions of this court, which has stayed or impaired the matter.

[05:30] I have, in vain, searched for a more generous explanation for the applicants' conduct, which I have not been able to find.

[05:38] In respect of the principles relating to costs generally, the ordinary scale is that,

[05:44] sorry, the ordinary scale of party and party is the rule.

[05:48] It is well-established law that punitive costs are the exception and are reserved for conduct that is vexatious, reckless, or driven by an ulterior motive.

[05:58] See Nel v Waterberg 1946 AD 597 at 607.

[06:03] Attorney and client costs orders mark the court's displeasure at conduct of an abusive nature.

[06:09] This is reinforced by In re Alluvial Creek 1929 CPD 532 at 535,

[06:16] where the court found that a losing party who has put the other side to unnecessary expense should not ordinarily, or not always get away with only an ordinary party and party costs order.

[06:30] In this matter, litigation was pursued by the applicants on precisely the same defects relating to procedural shortcomings,

[06:38] urgency, lack of authority, lack of locus standi had already emerged and been dealt with

[06:47] decisively by other courts, including by the Supreme Court of Appeal.

[06:57] Despite all of this, these same points were raised in the main application before this court,

[07:03] and for months, the applicants have avoided dealing directly with the issue of costs to avoid costs being timeously determined.

[07:14] The applicants in their belated heads of argument invoke Biowatch

[07:18] 2009 (6) SA 232 (CC) at paragraphs 23 to 25 and 43 as well as Affordable Medicines Trust 2006 (3) SA 247 (CC)

[07:29] and more recently the Helen Suzman Foundation. These citations will be included in the full judgment.

[07:36] Where the court found that

[07:38] in terms of the well-established Biowatch rule, constitutional litigants are ordinarily shielded from adverse costs order

[07:46] even if unsuccessful, and that the bar from departing from this general rule or principle is high.

[07:54] It is generally applied where in exceptional circumstances, where the manner, sorry, where the litigant has conducted themselves in a manner that is frivolous, vexatious, or manifestly inappropriate.

[08:07] Ms O'Sullivan, appearing for the respondents,

[08:10] argued that it is clear that this is a matter where applicants are clearly not genuinely vindicating constitutional rights, and emphasized that there is no such thing as appears from our established case law as risk-free constitutional litigation.

[08:26] This case, in any event, was not premised on genuine constitutional rights,

[08:31] and for all of the foregoing reasons, quite clearly,

[08:35] constitutes vexatious proceedings where there was little or no basis in law.

[08:40] This is dealt with in more detail in the main judgment, but I am satisfied and persuaded that this is indeed manifestly, or was manifestly inappropriate litigation

[08:50] where there was no discernible basis for the relief sought, and no case made out for the interdictory relief which was sought.

[08:59] I have repeatedly stated, but I highlight again, the costs for the respondent are paid from public, paid for from public funds.

[09:07] This is one of the reasons why I made the

[09:12] controversial statement that the court is not a playground, not because it implied any bias towards the applicants, but to show that when a party approaches this court

[09:22] for relief on the basis that the applicants have done so,

[09:26] it bears a serious risk that it will face a punitive

[09:30] adverse costs order if that relief is not properly grounded in fact and in law.

[09:37] In this matter, it is quite clear that the manner in which it was conducted, on oppressive and precipitous timelines of giving respondents approximately three days to respond,

[09:48] in circumstances where they clearly were self-created urgency, that on all of the evidence amounts to an abuse of process.

[10:07] In this case, it is clear that it is the applicants' own conduct, as I have already found, of their own making,

[10:14] and in circumstances where their lack of authority to act had been highlighted in two previous decisions.

[10:21] It is well established that Biowatch protects genuine constitutional litigation from being, from the chilling effects of an adverse costs order. It was never intended to shield a litigant who presses on with points which have already been repeatedly rejected by the courts,

[10:36] and then simply refuses to engage or to comply with court directions relating to matters

[10:43] which be dealt with in a court judgment. That, to my mind, is a manifestly inappropriate manner in which to conduct oneself in litigation, even on a reading of the applicants' own authorities.

[10:55] I've considered the applicants' reliance on the, um, LFF case, the, in the Supreme Court of Appeal case in Minister of Cooperative Governance and Traditional Affairs v De Beer 2021 ZASCA 95 at paragraphs 118 to 120,

[11:11] where the Supreme Court of Appeal, despite

[11:13] describing extra-curial conduct by these same applicants as, open quotes, "crude, gratuitously insulting, and clearly contemptuous",

[11:24] made no costs order at all, and referred the matter to the NDPP instead. The submission is that I ought not to go further than the SCA was prepared

[11:34] to order on what is demonstrably more

[11:41] egregious conduct. I do not accept that proposition, firstly on the basis that a costs discretion is exercised on the peculiar set of facts, and I am not bound by another finding by a different court on different facts.

[11:55] This is accepted by the applicants' own heads of argument, even if they describe the point as narrower rather than about.

[12:03] Secondly, and more to the point, where the SCA declined to punish in default the applicants in costs,

[12:09] in costs for conduct directed at that court itself off argument close, for which a different remedy, a referral for possible prosecution was thought more appropriate.

[12:21] This is not the facts of what is before me. Here it is the conduct of this litigation and of the applicants from the inception of these proceedings,

[12:30] which were brought on authority which was already lacking, and an abuse of the quasi-urgent roll in this division, and then months of inaction and refusal to provide submissions on costs process despite court directions in this regard.

[12:47] Sorry, Mr De Beer, did you say something?

[12:50] [inaudible] No, I've, I just had a... something in my throat. I beg your pardon.

[12:57] An order of de bonis propriis costs

[12:59] requires that there be actual misconduct in the conduct of litigation,

[13:05] tied to the person concerned against whom such an order is sought. In this matter,

[13:12] to my mind, both of these requirements are clearly met. Mr De Beer did not prove his authority to bring this application on behalf of the second applicant,

[13:23] and it follows that it is appropriate that he bear the costs himself and in his personal capacity.

[13:31] I am mindful of the fact that he is not a legal practitioner and is a lay person appearing in person.

[13:37] However, it does not excuse a sustained failure over months to engage with a direction of this court

[13:44] on a serious costs issue from an individual who in the same period managed to file a leave to appeal, a JSC complaint, and applications to two separate judicial officers within this court.

[13:59] In argument, Ms De Beer referred me to the matter of Blow versus, sorry, Ms O'Sullivan...

[14:12] Ms O'Sullivan highlighted that, applicant De Beer highlighted that Mr De Beer did not prove his authority to act for Liberty Fighters Network,

[14:21] and that it is appropriate that the costs should fall on him personally and not on his organization. I've already set out why this matter falls outside of the ordinary Biowatch protection,

[14:31] and I now need only deal with the last aspect which was raised by Ms De Beer...

[14:38] which is that an order is now sought that the applicants are not permitted to continue with litigation in respect of the remaining Part B,

[14:48] until such time as they have satisfied the costs order which I intend to make.

[14:54] I have considered this, which was dealt with already with the, um, sorry, which was dealt with already by the respondents in the answering affidavit and which the applicants have had several months to address,

[15:06] including that they may have, that they had adequate opportunity, more than adequate opportunity to address this in the written submissions which they were directed to file in March of this year.

[15:19] On a prospectus of all facts before me and the manner in which this litigation has been conducted, I am satisfied that this is one of those exceptional cases where such an order is justified.

[15:31] I was referred by Ms De Beer to the cases of Harvest Products and Published in 1953 where this division ordered that the party there, the losing party could not continue with Part B until the costs order was satisfied.

[15:44] I am satisfied that in this matter that order is appropriate, and will afford protection to the respondents against

[15:52] further unnecessary costs being run up until such time as this costs order has been satisfied.

[16:00] In the circumstances, I make the following order:

[16:03] The second applicant, Mr Reyno Dawid De Beer, is ordered to pay the costs of the application in Part A,

[16:09] including the costs of two counsel where so employed, on the scale as between attorney and client.

[16:15] Mr De Beer is ordered to make payment of these costs de bonis propriis in his personal capacity and not out of the funds of the first applicant.

[16:25] Moreover, neither the first nor the second applicant may continue with litigation relating to Part B of this application until such time as these costs orders have been satisfied.

[16:39] It's the court's order. Thank you.

COURT ONLINE COVER PAGE **"CC14"**

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



ORDER GRANTED BY HOLDERNESS J ON 28 AUGUST 2026

NOTE: **This document was filed electronically by the Registrar on 11/9/2026 at 3:04:19 PM South African Standard Time (SAST). The time and date**

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BY:

Registrar of The High Court, Western Cape Division, Cape Town

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

Case No. 2026-024184

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
CAPE TOWN: FRIDAY, 28 AUGUST 2026

BEFORE THE HONOURABLE MS JUSTICE HOLDERNESS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

In the matter between:

LIBERTY FIGHTERS NETWORK	**First Applicant**
REYNO DAWID DE BEER N.O.	**Second Applicant**
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE	**First Respondent**
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE	**Second Respondent**
WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENT AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE	**Third Respondent**
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT	**Fourth Respondent**
SOUTH AFRICAN NATIONAL PARKS	**Fifth Respondent**
CAPENATURE	**Sixth Respondent**
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	**Seventh Respondent**
CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., HIS SUCCESSOR IN TITLE	**Eighth Respondent**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2026-09-11
WCD-011
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

11/9/2026-3:04:19 PM

JUDITH ANNE SOLE	**Ninth Respondent**
WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA	**Tenth Respondent**
BABOON ADVISORY GROUP	**Eleventh Respondent**

Having heard the Applicant and Legal Representative for Respondents and having read the documents filed of record;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

IT IS ORDERED:

1. That the second applicant, Mr Reyno Dawid de Beer, is ordered to pay the costs of the application in Part "A", including the costs of two counsel where so employed, on the scale as between attorney and client.

2. That the second applicant is ordered to pay the costs de bonis propriis in his personal capacity.

3. That the applicants may not take any further steps in respect of Part B of the main application until such time as this costs order is satisfied.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2026-09-11
WCD-018
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

BY ORDER OF THE COURT

COURT REGISTRAR

In person
Reyno Dawid De Beer
Monkey Valley Resort
Noordhoek

COURT ONLINE COVER PAGE

"CC15"

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant
and	
PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



Leave to Appeal

NOTE: **This document was filed electronically by the Registrar on 9/9/2026 at 9:01:29 AM South African Standard Time (SAST). The time and date**

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ELECTRONICALLY SIGNED BY:

Registrar of The High Court, Western Cape Division, Cape Town

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 2026-024184

In the matter between:

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain *universitas*)



REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as executive official of 1st Applicant)

and

PREMIER OF THE WESTERN CAPE, First Respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

SPEAKER OF THE WESTERN CAPE Second Respondent

PROVINCIAL PARLIAMENT, MR.

DAYLIN MITCHELL N.O., OR HIS

SUCCESSOR IN TITLE

WESTERN CAPE PROVINCIAL Third Respondent

MINISTER FOR LOCAL GOVERNMENT,

ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE

OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT Fourth Respondent

(a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, currently vacant)



SOUTH AFRICAN NATIONAL PARKS Fifth Respondent

CAPENATURE Sixth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Seventh Respondent

CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE Eighth Respondent

JUDITH ANNE SOLE Ninth Respondent

WILDLIFE ANIMAL PROTECTION Tenth Respondent

FORUM OF SOUTH AFRICA

BABOON ADVISORY GROUP Eleventh Respondent

[Application for Leave to Appeal – Recusal Judgment and Order of 28 August 2026]

In Re:



LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain *universitas*)

REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as executive official of 1st Applicant)

and

PREMIER OF THE WESTERN CAPE, First Respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

SPEAKER OF THE WESTERN CAPE Second Respondent

PROVINCIAL PARLIAMENT, MR.

DAYLIN MITCHELL N.O., OR HIS

SUCCESSOR IN TITLE

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE	Third Respondent
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT (a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, currently vacant)	Fourth Respondent
SOUTH AFRICAN NATIONAL PARKS	Fifth Respondent
CAPENATURE	Sixth Respondent
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	Seventh Respondent
CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE	Eighth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

JUDITH ANNE SOLE Ninth Respondent

WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA Tenth Respondent

BABOON ADVISORY GROUP Eleventh Respondent

APPLICATION FOR LEAVE TO APPEAL – RECUSAL JUDGMENT AND ORDER OF 28 AUGUST 2026



BE PLEASED TO TAKE NOTICE that the above-mentioned *pro se* Applicants hereby give notice of their intention to apply, on an urgent date to be determined by the Registrar, for leave to appeal to the Supreme Court of Appeal, alternatively to a Full Court of this Division, against the whole of the *ex tempore* judgment delivered by Holderness J on 28 August 2026 dismissing the Applicants' recusal application, and against all adverse portions of the resulting order, including the punitive costs order, save for the express recording that the Applicants' continued participation does not constitute waiver of the recusal objection.

TAKE FURTHER NOTICE that this application is brought in terms of section 17 of the *Superior Courts Act, 2013 (Act No. 10 of 2013)*, on the basis that the appeal would have reasonable prospects of success and/or that there exist compelling reasons for the appeal to be heard, including substantial constitutional questions concerning section 34, judicial impartiality, equal treatment of self-represented litigants, procedural fairness, judicial case management and the proper application of the reasonable-apprehension-of-bias test.

TAKE NOTICE FURTHER that the final typed judgment and sealed order have not yet been furnished. This application is accordingly lodged *ex abundante cautela* on the basis of the official audio record and the Applicants' working transcripts thereof. The Applicants expressly reserve the right to amend, supplement, refine and/or replace any ground herein upon receipt of the final written judgment, sealed order, official transcript or any fuller reasons subsequently supplied by the Court.

TAKE NOTICE FURTHER that nothing herein limits the Applicants' pending Application for Leave to Appeal dated 2 March 2026 against the Part "A" judgment of 25 February 2026, or their right, should the interests of justice so require, to seek leave to appeal directly to the Constitutional Court under section 167(6)(b) of the *Constitution of the Republic of South Africa, 1996* and the applicable *Constitutional Court Rules*, including Rule 19, alternatively to seek such direct access or urgent constitutional relief as may lawfully be available.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN
Private Bag X9020, Cape Town 8000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

IN PARTICULAR, the Applicants respectfully contend that the Court *a quo* misdirected itself and erred in law and/or in fact on one or more of the grounds set out *infra*. The grounds are relied upon cumulatively and/or in the alternative and are stated with sufficient particularity for purposes of leave; the supporting authorities and fuller forensic argument will be developed in the Applicants' Heads of Argument.

A. CONSTITUTIONAL CHARACTER AND WHOLE-PROCEEDINGS TEST

1. The recusal application directly engaged section 34 of the *Constitution* and the constitutional guarantee that every litigant is entitled to a fair public hearing before an independent and impartial court.

2. The Constitutional Court has confirmed that recusal is itself a constitutional matter and that the assessment is not confined to isolated remarks or to the founding papers where later judicial conduct forms part of the overall proceedings: *Systems Applications Consultants (Pty) Ltd t/a Securinfo v SAP SE and Another (CCT101/24) [2026] ZACC 13*.

3. The correct enquiry remained whether a reasonable, objective and informed person, apprised of the correct facts and the whole course of proceedings, would reasonably apprehend that the judicial officer had not or would not bring an impartial mind, open to persuasion, to the remaining judicial functions.



4. The Court stated that it had considered the grounds cumulatively, but materially excluded or discounted conduct arising during the very recusal hearing, notwithstanding that such conduct formed part of the whole proceedings and bore directly upon the constitutional question under determination.

5. Another court may reasonably conclude that the recusal enquiry was impermissibly narrowed and that the subsequent courtroom conduct materially strengthened, rather than displaced, the objective apprehension relied upon by the Applicants.

B. BIAS WAS FORMALLY RECORDED ON 2 MARCH 2026

6. The Court materially misdirected itself in treating the distinction between a ground of appeal alleging reasonable apprehension of bias and a later formal recusal application as substantially answering the Applicants' chronology.

7. Part “C” of the Application for Leave to Appeal dated 2 March 2026 expressly raised the reasonable-apprehension-of-bias test, identified the impugned judicial language and litigant profiling, and contended that those matters may have influenced urgency, standing, the balance of convenience and punitive costs.

8. The apprehension was therefore formally recorded within days of the judgment of 25 February 2026 and before the deadline originally fixed for costs submissions.

9. The constitutional duty to remain impartial is borne by the judicial officer and does not arise only after a self-represented litigant selects a particular procedural vehicle.



10. The later formal recusal application did not invent the apprehension; it responded to the accumulation of additional post-judgment circumstances, including the costs-first sequencing, continued delay, the June JSC complaint, unsuccessful head-of-court case-management efforts and the eventual fixing of the costs hearing.

11. Another court may reasonably find that the judgment elevated procedural form over the substance of a constitutionally recorded apprehension and then used that formal distinction adversely to infer tactical motive.

C. DELAY, URGENCY AND THE '*STRATAGEM*' FINDING

12. The finding that the recusal application was a belated stratagem aimed at avoiding costs was not the only reasonable inference available from the objective chronology and was materially influenced by disputed factual premises.

13. The Applicants repeatedly sought movement of the pending Part "A" appellate process, first through correspondence and thereafter through the offices of the Deputy Judge President and Judge President.

14. On 28 July 2026 SANParks expressly insisted that, if recusal was sought, it should be pursued by formal application.

15. The costs hearing was thereafter fixed during August and the formal recusal application was lodged on 14 August 2026.



16. The recusal application accordingly arose against a live sequence of post-judgment events and not merely from dissatisfaction with the judgment delivered approximately six months earlier.

17. The Court nevertheless characterised the application as a '*blatant stratagem*', a '*sustained exercise in delay*' and as having the hallmarks of a '*Stalingrad defence*'.

18. Those are grave findings of ulterior motive and abuse. They required a fair engagement with the contrary chronology and objective material demonstrating repeated attempts by the Applicants to obtain an expedited appeal and institutional case management.

19. Another court may reasonably conclude that the motive finding was not established on the objective record and that its use materially infected both the recusal determination and the punitive costs order.

D. MATERIAL FACTUAL MISDIRECTION: HARDCOPY AND COURT ONLINE

20. The Court treated 8 May 2026 as the date upon which the pending Application for Leave to Appeal was effectively before Holderness J and repeatedly relied upon an alleged failure to provide a hardcopy despite '*numerous requests*'.

21. The Applicants record that only one request for a hardcopy was made and that it was complied with promptly.

22. The Application for Leave to Appeal had in any event already been electronically lodged through Court Online on 3 March 2026.



23. The legal effect of any surviving hardcopy practice in a post-Court Online matter was not a ground pleaded in the recusal application against the Applicants, nor had the Applicants been forewarned that electronic lodgment would be treated as legally ineffective until paper reached chambers.

24. By 25 May 2026 the Registrar was already canvassing dates for a hearing of the leave application during June, demonstrating that any administrative hardcopy issue had by then been cured.

25. The subsequent postponement of the leave application arose from the Court's own decision on 1 June 2026 that costs would be determined first.

26. Another court may reasonably conclude that the hardcopy narrative could not rationally explain the later delay and should not have been used to support the inference that the Applicants themselves caused the months of inactivity.

E. MATERIAL FACTUAL MISDIRECTION: THE APPLICANTS DID ADDRESS COSTS

27. The recusal judgment proceeded on the factual premise that the Applicants disregarded the costs direction and '*said nothing on costs*' for approximately six months.

28. The order of 25 February 2026 prescribed written submissions not exceeding ten pages but did not prescribe a separate title, template or document form.

29. Part "L" of the Application for Leave to Appeal dated 2 March 2026 expressly addressed punitive costs and *de bonis propriis* liability, referred to the Court's costs direction and stated the Applicants' substantive position that the punitive-cost enquiry fell with the impugned underlying findings if those findings were set aside.

30. That written document was lodged before the 6 March 2026 deadline.

31. The Applicants also thereafter repeatedly stated in correspondence that the reserved costs were intrinsically linked to the Part "A" judgment and should be dealt with in conjunction with the leave process.

32. Whether Part "L" constituted full or substantial compliance may be debated, but it was materially incorrect to treat the Applicants as having said nothing at all about costs.

33. The erroneous '*silence*' premise materially contributed to the findings of disregard, delay, contemptuous conduct and ulterior motive upon which the recusal ruling relied.

34. Another court may reasonably conclude that the reasonable-observer test had to be applied on the correct facts and that this material factual error alone requires appellate scrutiny.

F. COSTS-FIRST SEQUENCING AND COURT-CREATED DELAY

35. The Court correctly accepted in the recusal judgment that reserved costs did not constitute a jurisdictional bar to the pending Application for Leave to Appeal.

36. The Court nevertheless treated the costs-first sequence as ordinary case management and dismissed the Applicants' concern that this sequence had materially delayed urgent appellate relief.

37. The original order contemplated that costs would be determined in chambers unless oral argument was considered necessary.



38. On 9 June 2026 Holderness J's registrar expressly advised, by direction of the Court, that the costs judgment would be delivered by the end of the following week.

39. That promised costs judgment was not delivered then.

40. The resulting delay of the leave application cannot rationally be attributed exclusively or predominantly to the Applicants where the Court itself had treated costs as ripe for judgment in chambers, promised delivery and thereafter did not deliver the ruling for more than two further months.

41. Another court may reasonably conclude that the delay became self-referential: delay attributable at least materially to the judicial process was subsequently used as evidence of the Applicants' alleged tactical delay.

G. NEW PERSONAL CENSURE INTRODUCED FROM THE BENCH

42. During argument on 28 August 2026 Holderness J, without prior notice, introduced a personal criticism of correspondence addressed to her registrar and described its tone as '*worthy of censure*', '*paternalistic*' and '*patronising*', adding that she '…*would not go so far as to describe it as racist*'.

43. Those allegations did not arise merely from a respondent's affidavit being tested by the Court; they were advanced by the judicial officer whose recusal was under determination and concerned communications with her own chambers.



44. When the Second Applicant immediately sought to ask why no complaint had been raised when the alleged conduct occurred and why the issue was being introduced during the recusal proceedings, he was immediately directed to sit down.

45. The substance of the criticism was later repeated in the recusal reasoning as '*paternalistic, patronising and arrogant*'.

46. A reasonable observer could regard the Court as having introduced new adverse material of its own, denied an effective opportunity to answer it when raised, and then relied upon it in adjudicating whether the Court itself remained manifestly impartial.

47. The Applicants submit that this engages the *audi alteram partem* principle independently of whether the underlying correspondence was objectively courteous or otherwise.

48. Another court may reasonably conclude that this episode materially altered the objective recusal enquiry and could not lawfully be excluded merely because it arose during the hearing rather than in the founding affidavit.

H. EXPRESS ADOPTION OF THE '*BULLYING STRATAGEM*' CHARACTERISATION

49. Counsel for the City and CapeNature characterised the recusal application during argument as a '*bullying stratagem*'.

50. Before the Applicants had delivered their reply, Holderness J immediately responded: '*Well said. Mr De Beer can rest assured that I will not be bullied.*'

51. The response did not merely acknowledge counsel's submission. It objectively adopted the adverse premise that the Applicants' recusal process constituted bullying and personalised the issue as an attempt to bully the presiding judge.



52. The recusal judgment thereafter characterised the same application as a '*blatant stratagem*' and a '*Stalingrad defence*'.

53. Another court may reasonably conclude that an informed observer witnessing that sequence could apprehend that the Court had aligned itself with a pejorative adversarial characterisation before the recusal issue had been finally adjudicated.

54. The fact that the final ruling was delivered shortly thereafter does not neutralise the objective appearance created during argument.

I. DRESS-CODE EPISODE AND USE AS LITIGANT-PROFILE EVIDENCE

55. The first substantive exchange of the hearing concerned Holderness J's assertion that court attire generally required the Second Applicant to wear a jacket.

56. The Second Applicant stated that he was unaware of any rule requiring a jacket from an unrepresented member of the public.

57. Counsel for the City and CapeNature later expressly relied on LFN's constitutional objective of reforming historic British dress codes and practices and connected the morning's jacket issue to an argument that the Applicants disregard the rules and ordinary requirements of the Court.

58. The Applicants do not contend that courtroom *decorum* is irrelevant or that self-represented litigants are exempt from lawful rules.

59. The complaint is that an unidentified professional or customary dress convention was capable of being transformed during the recusal hearing into character evidence supporting the pre-existing narrative that the Applicants habitually disregard court rules.

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60. Viewed cumulatively with the litigant-profile evidence, another court may reasonably conclude that the episode was relevant to the reasonable-observer assessment and should not be dismissed as an isolated matter of attire.

J. EQUAL DIGNITY AND THE 'JA' / HONORIFIC EXCHANGE

61. During reply the Second Applicant used the ordinary Afrikaans response '*Ja*'. Holderness J corrected him that it was not '*ja*' but '*yes, My Lady*' or '*yes, Justice*'.

62. The exchange concerned no issue material to recusal and occurred in a hearing already marked by personal criticism of the self-represented litigant.

63. The Applicants rely on the incident cumulatively, not as a free-standing ground, because the constitutional standard requires both the actuality and appearance of equal dignity and impartial treatment.

64. Another court may reasonably consider whether such interventions, together with the jacket issue and the new personal censure, contributed to an objectively intimidating or unequal atmosphere during a recusal hearing.

K. LITIGANT PROFILING AND SELF-REINFORCING USE OF UNRELATED JUDGMENTS

65. The Court relied extensively upon prior unrelated judgments containing adverse criticism of the Applicants as corroboration for the proposition that the judicial characterisation in this matter was objectively justified.



66. The full records underlying those unrelated judgments were not before the Court for determination of their factual context.

67. The Court further relied on the later Le Grange J judgment as persuasive confirmation that an independent judge, working from similar material, reached the same adverse conclusions concerning LFN and the Second Applicant.

68. That reasoning is circular where the very complaint is that selected adverse judicial characterisations are being carried from one unrelated matter into another as propensity or character evidence.

69. The Goliath DJP order and related procedural history concerning the same broader *amicus* proceedings were raised during the hearing and materially complicated any attempt to use the Le Grange J judgment as simple institutional confirmation of Holderness J's own conclusions.

70. The Applicants do not allege collusion between judges. The appeal ground is the objective danger of a self-reinforcing litigant profile in which one adverse judgment is used to validate the next.

71. Another court may reasonably conclude that prior judgments could not displace the obligation to adjudicate the Applicants before the Court on the individual record and facts of this case.

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L. FAILURE TO CONSIDER NEW CONDUCT AS PART OF THE WHOLE PROCEEDINGS

72. When the Second Applicant attempted to rely upon conduct occurring during the recusal hearing itself, Holderness J stated that any new complaint could be taken to the JSC and confined argument to the existing recusal papers.

73. That approach is materially difficult to reconcile with the whole-proceedings enquiry affirmed in *Systems Applications Consultants*, particularly where the new conduct was the conduct of the judicial officer whose recusal was under consideration and arose before judgment.

74. The Court could regulate orderly argument and prevent the introduction of unrelated evidence, but it could not constitutionally ignore relevant judicial conduct occurring in real time merely because it post-dated the founding affidavit.

75. Another court may reasonably conclude that the Court was obliged at least to consider whether its own new interventions altered the objective appearance of impartiality before dismissing the application.

M. FINDINGS OF ULTERIOR MOTIVE AND ABSENCE OF CONSTITUTIONAL PURPOSE

76. The judgment found that the Applicants were not attempting to vindicate a constitutional right and that the recusal application was instead designed to avoid a '*proper reckoning on costs*'.

77. That conclusion did not fairly engage the fact that the original proceedings concern constitutional environmental oversight, section 38 standing, the non-operationalisation of the Office of the Commissioner for the Environment, and an urgent appellate process directed at potentially irreversible implementation of the Baboon Management Action Plan.

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78. Nor did it engage the chronology of repeated attempts to obtain an expedited hearing of the original leave application and head-of-court intervention.

79. The recusal application itself invoked section 34 and the constitutional requirement of an impartial court.

80. Another court may reasonably conclude that characterising such an application as devoid of any attempt to vindicate a constitutional right required substantially stronger reasons than were given and materially contributed to the appearance of a closed adverse view of the Applicants' motives.

N. PUNITIVE COSTS OF THE RECUSAL APPLICATION

81. The respondents proposed that the costs of the recusal application be costs in the cause of Part "B".

82. Holderness J nevertheless imposed an immediate attorney-and-client costs order against the Applicants jointly and severally as a mark of the Court's disapproval.

83. The punitive order was founded substantially upon the same disputed findings of ulterior motive, delay, abuse and litigant profiling which formed part of the recusal controversy itself.

84. A recusal application engages the section 34 right to an impartial court and cannot be rendered effectively risk-free merely by invoking the *Constitution*; however punitive costs remain exceptional and require a properly established basis.

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85. Another court may reasonably conclude that the punitive costs order has an impermissible chilling effect upon a *bona fide* constitutional recusal complaint, particularly where the respondents themselves did not seek the punitive order ultimately imposed.

86. The costs order is therefore independently appealable as part of the recusal judgment and should be set aside or replaced with no order as to costs, alternatively costs in the cause.

O. CUMULATIVE EFFECT AND COMPELLING REASON

87. The Applicants rely on no isolated phrase as conclusive proof of actual subjective bias.

88. The cumulative sequence comprises the pre-existing litigant profile, the costs-first delay, factual errors concerning costs submissions and hardcopy delivery, the new personal censure of chambers correspondence, the restriction upon responding to that censure, the jacket issue later deployed as character evidence, the '*bullying stratagem*'

exchange, the insistence upon an honorific response, the reliance upon unrelated adverse judgments, and the ultimate '*Stalingrad defence*' finding.

89. The reasonable-apprehension test is objective and protective of public confidence; actual bias need not be proved.

90. Another court may reasonably conclude that the cumulative whole crossed the constitutional threshold even if individual incidents, viewed separately, might admit innocent explanation.



91. The appeal raises questions of public importance concerning the treatment of self-represented constitutional litigants and the point at which robust case management becomes objectively indistinguishable from adversarial alignment.

92. Those questions constitute compelling reasons for appellate scrutiny under section 17(1)(a)(ii) of the *Superior Courts Act*.

P. URGENCY AND CONSTITUTIONAL COURT RESERVATION

93. The appeal is urgent because the affected baboons are understood to be scheduled for relocation to the proposed sanctuary on 12 September 2026 while the original Part "A" appeal and Part "B" proceedings remain unresolved.

94. The recusal question determines who may constitutionally perform the remaining judicial functions in a matter where effective relief risks being overtaken by events.

95. The Constitutional Court has already recognised recusal as a constitutional matter under section 34 in *Systems Applications Consultants*.

96. The Applicants accordingly reserve the right, if ordinary appellate mechanisms cannot produce effective relief in time, to seek leave to appeal directly to the Constitutional Court and/or appropriate urgent preservation relief without abandoning this application.

Q. CONCLUSION

97. There are reasonable prospects that another court will conclude that the recusal application ought to have been granted, alternatively that the recusal judgment and punitive costs order cannot stand because the objective whole-proceedings enquiry was materially misdirected.

98. There are, independently, compelling constitutional and public-interest reasons why the appeal should be heard.

99. Leave to appeal should accordingly be granted to the Supreme Court of Appeal, alternatively to a Full Court of this Division, with the costs of this application to be costs in the appeal, alternatively no order as to costs.

100. The Applicants reserve *in toto* all rights to supplement these grounds at the hearing or upon receipt of the final written judgment, sealed order and official transcript, and to seek direct constitutional appellate relief where the interests of justice require.

TAKE NOTICE FURTHER that the Applicants provide the electronic mail addresses hereunder as the addresses at which they will receive further notices, documents and process during the course of these proceedings.

SIGNED AT CAPE TOWN ON THIS 8TH DAY OF SEPTEMBER 2026.

REYNO DAWID DE BEER

Nomine Officio as Second Applicant and for First Applicant Liberty Fighters Network

Service Address within 25km of court building:

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Noordhoek, Cape Town

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TO: **REGISTRAR OF THE HIGH COURT**

CAPE TOWN

AND TO: **PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE**

First Respondent

c/o State Attorney

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Email: AHoosain@justice.gov.za

AND TO: **SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE**

Second Respondent

c/o Mr Andre Le Roux (Senior Legal Adviser)

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AND TO: **WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE**

Third Respondent

c/o State Attorney

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AND TO: **OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT**

Fourth Respondent

c/o First to Third Respondents

Same contacting details as for the First to Third Respondents

AND TO: **SOUTH AFRICAN NATIONAL PARKS**

Fifth Respondent

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AND TO: **CAPENATURE**

Sixth Respondent

c/o FAIRBRIDGES ATTORNEYS

Per: DEIRDRE OLIVIER

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AND TO: **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**

Seventh Respondent

c/o FAIRBRIDGES ATTORNEYS

Per: DEIRDRE OLIVIER

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AND TO: **CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE**

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AND TO: **JUDITH ANNE SOLE**

Ninth Respondent

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AND TO: **WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA**

Tenth Respondent

c/o Administrator and Coordinator: Ms Megan Carr

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AND TO: **BABOON ADVISORY GROUP**

Eleventh Respondent

c/o Tom Cohen, Chris Hart, Garth Kew, and Simon's Town Civic Association

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

CASE NO: **2026-024184**

In the matter between:

LIBERTY FIGHTERS NETWORK,REYNO DAWID DE BEER NO REYNO DAWID DE BEER NO	Plaintiff / Applicant / Appellant

and

PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE,SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE,WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR.ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE,OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT,SOUTH AFRICAN NATIONAL PARKS,CAPENATURE,CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY,CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE,JUDITH ANNE SOLE JUDITH ANNE SOLE ,WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA,BABOON ADVISORY GROUP	Defendant / Respondent



Leave to Appeal

NOTE: **This document was filed electronically by the Registrar on 8/9/2026 at 2:30:17 PM South African Standard Time (SAST). The time and date**

the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED
BY:

Registrar of The High Court, Western Cape Division, Cape Town



IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 2026-024184

In the matter between:

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain *universitas*)



REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as executive official of 1st Applicant)

and

PREMIER OF THE WESTERN CAPE, First Respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

SPEAKER OF THE WESTERN CAPE Second Respondent

PROVINCIAL PARLIAMENT, MR.

DAYLIN MITCHELL N.O., OR HIS

SUCCESSOR IN TITLE

WESTERN CAPE PROVINCIAL Third Respondent

MINISTER FOR LOCAL GOVERNMENT,

ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE

OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT Fourth Respondent

(a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, currently vacant)



SOUTH AFRICAN NATIONAL PARKS Fifth Respondent

CAPENATURE Sixth Respondent

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Seventh Respondent

CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE Eighth Respondent

JUDITH ANNE SOLE Ninth Respondent

WILDLIFE ANIMAL PROTECTION Tenth Respondent

FORUM OF SOUTH AFRICA

BABOON ADVISORY GROUP Eleventh Respondent

[Application for Leave to Appeal – Costs Judgment and Part "B" Restraint of 28 August 2026]

In Re:

LIBERTY FIGHTERS NETWORK First Applicant

(A voluntary association without gain *universitas*)



REYNO DAWID DE BEER N.O. Second Applicant

(cited *nomine officio* as executive official of 1st Applicant)

and

PREMIER OF THE WESTERN CAPE, First Respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

SPEAKER OF THE WESTERN CAPE Second Respondent

PROVINCIAL PARLIAMENT, MR.

DAYLIN MITCHELL N.O., OR HIS

SUCCESSOR IN TITLE

WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE	Third Respondent
OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT (a constitutional office established in terms of section 71 of the Constitution of the Western Cape, 1997, currently vacant)	Fourth Respondent
SOUTH AFRICAN NATIONAL PARKS	Fifth Respondent
CAPENATURE	Sixth Respondent
CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY	Seventh Respondent
CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE	Eighth Respondent



JUDITH ANNE SOLE Ninth Respondent

WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA Tenth Respondent

BABOON ADVISORY GROUP Eleventh Respondent

APPLICATION FOR LEAVE TO APPEAL – COSTS JUDGMENT AND PART "B" RESTRAINT OF 28 AUGUST 2026



BE PLEASED TO TAKE NOTICE that the above-mentioned *pro se* Applicants hereby give notice of their intention to apply, on an urgent date to be determined by the Registrar, for leave to appeal to the Supreme Court of Appeal, alternatively to a Full Court of this Division, against the whole of the *ex tempore* costs judgment and order pronounced by Holderness J on 28 August 2026, including the attorney-and-client scale, the order directing the Second Applicant to pay the Part "A" costs de bonis propriis in his personal capacity, the costs of two counsel where so employed, and the order prohibiting both Applicants from continuing with Part "B" until the Part "A" costs orders have been satisfied.

TAKE FURTHER NOTICE that this application is brought in terms of section 17 of the *Superior Courts Act, 2013 (Act No. 10 of 2013)*, on the basis that the appeal would have reasonable prospects of success and/or that there exist compelling reasons for the appeal to be heard, including questions concerning the *Biowatch* principle, personal punitive costs, section 34 access to court, section 38 public-interest litigation, section 173 inherent power,

the constitutional limits of a stay for unpaid costs, and the application of section 18 of the *Superior Courts Act*.

TAKE NOTICE FURTHER that the final typed judgment and sealed order have not yet been furnished. This application is accordingly lodged *ex abundante cautela* on the basis of the official audio record and the Applicants' working transcripts. The Applicants reserve the right to amend, supplement, refine and/or replace any ground upon receipt of the final written judgment, sealed order, official transcript or fuller reasons.

TAKE NOTICE FURTHER that, upon lodgment of this application, the Applicants contend that the operation and execution of the final costs judgment and the consequential restraint upon Part "B" are suspended *ex lege* under section 18(1), read with section 18(5), of the *Superior Courts Act*, no order under section 18(3) presently having been granted.

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TAKE NOTICE FURTHER that nothing herein abandons or limits the pending Application for Leave to Appeal dated 2 March 2026 against the judgment of 25 February 2026. The Applicants reserve the right, should the interests of justice require, to seek leave to appeal directly to the Constitutional Court under section 167(6)(b) and the applicable *Constitutional Court Rules*, including Rule 19, alternatively such urgent direct access or preservation relief as may lawfully be available.

IN PARTICULAR, the Applicants respectfully contend that the Court a quo misdirected itself and erred in law and/or in fact on one or more of the grounds set out *infra*. The grounds are relied upon cumulatively and/or in the alternative and will be developed more fully in Heads of Argument.

A. FINALITY, APPEALABILITY AND SECTION 18

1. The order finally determines the reserved costs of Part "A", including the applicable scale and the Second Applicant's personal liability.

2. It further imposes an immediate and coercive restraint preventing both Applicants from continuing with Part "B" until the Part "A" costs orders have been satisfied.

3. The restraint is not merely procedural or temporary in the sense contemplated by section 18(2); its effect is final and potentially indefinite until taxation, demand and payment have occurred.



4. The decision therefore falls within section 18(1), read with section 18(5), of the *Superior Courts Act*.

5. Upon lodgment of this Application for Leave to Appeal, the operation and execution of the judgment and order are suspended *ex lege* unless a competent court orders otherwise under section 18(3).

6. The finality and access-to-court consequences of the Part "B" restraint independently constitute compelling reasons why appellate scrutiny is required urgently.

B. MATERIAL FACTUAL MISDIRECTION: THE APPLICANTS DID NOT REMAIN SILENT ON COSTS

7. The judgment proceeded repeatedly on the premise that the Applicants failed to file any costs submissions, said nothing on costs for approximately five or six months, and only addressed costs for the first time in the August recusal heads.

8. That premise is materially contradicted by the contemporaneous record.

9. The order of 25 February 2026 required written submissions not exceeding ten pages but prescribed no separate title, form, affidavit or template.

10. Part "L" of the Application for Leave to Appeal dated 2 March 2026 expressly dealt with 'COSTS AND PUNITIVE IMPLICATIONS', identified the direction concerning punitive and de bonis propriis costs and stated the Applicants' substantive answer to it.

11. That written document was lodged before the 6 March 2026 deadline.

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12. On 6 March 2026 and repeatedly thereafter, the Applicants further placed their position on costs in correspondence, including the contention that the reserved costs were intrinsically linked to the merits and should be addressed with the leave process.

13. Whether Part "L" was exhaustive or amounted to perfect procedural compliance is distinct from the factual proposition that the Applicants said nothing at all.

14. The Court used the alleged silence as evidence of contemptuous disregard, ulterior motive and abuse and as a principal foundation for both punitive and personal costs.

15. Another court may reasonably conclude that the costs discretion was exercised upon a material factual misdirection and is therefore appealable.

C. THE COSTS PROCESS WAS CAPABLE OF DETERMINATION IN CHAMBERS

16. The judgment and order of 25 February 2026 contemplated that the reserved costs would be determined in chambers unless the parties were notified that oral argument was required.

17. The Court therefore retained the procedural ability to determine costs on the written material before it notwithstanding any dispute about the Applicants' preferred sequencing.

18. On 9 June 2026 Holderness J's registrar expressly advised, by direction of the Court, that the costs judgment would be delivered by the end of the following week.

19. That communication objectively demonstrates that the Court itself regarded the costs issue as ripe for adjudication at that stage.



20. The promised judgment was not delivered then and was ultimately pronounced only on 28 August 2026.

21. The subsequent delay was therefore not caused exclusively or even necessarily predominantly by the Applicants.

22. Another court may reasonably conclude that it was a material misdirection to convert the passage of time into aggravating conduct against the Applicants without accounting for the Court's own unfulfilled June commitment to deliver judgment.

D. DENIAL OF REPLY: MATERIAL BREACH OF *AUDI ALTERAM PARTEM*

23. The procedure followed during the oral costs determination on 28 August 2026 constituted a further material irregularity. The Applicants were called upon to address the Court first. The Second Applicant referred Holderness J to Part "L" of the Application for Leave to Appeal dated 2 March 2026 and to paragraph 92 of the Applicants' Heads of Argument, and Holderness J expressly confirmed that she had read those submissions.

24. When the Second Applicant thereafter stated that there was nothing further he wished to add, that statement plainly concluded the Applicants' opening submissions on costs. It preceded, and could not reasonably constitute an advance waiver of the Applicants' right to answer, submissions, authorities or relief which the opposing parties had not yet advanced orally.

25. Only thereafter did counsel for the opposing organs of state address the Court. Ms O'Sullivan SC advanced substantive further argument concerning, *inter alia*, the alleged absence of genuine constitutional import, the application and exceptions to the *Biowatch* principle, alleged vexatiousness and abuse of process, and ended up additional extracts from authorities during her oral argument.



26. SANParks thereafter advanced further submissions adverse to the Applicants, including submissions supporting personal de bonis propriis liability and the exceptional restraint ultimately imposed upon the further prosecution of Part "B".

27. The Applicants were not thereafter invited or permitted to reply to those oral submissions, authorities, characterisations or the relief advanced against them. Instead, once the opposing submissions had concluded, Holderness J proceeded directly to deliver the ex tempore costs judgment and consequential orders.

28. That procedure is particularly material because the resulting judgment adopted propositions advanced against the Applicants concerning constitutional character, Biowatch, abuse of process, personal liability and the continuation of Part "B", each carrying serious final and punitive consequences.

29. The denial of reply is further distinguishable from the procedure adopted earlier that same morning in the recusal application, where Holderness J expressly recognised

and afforded the Applicants a right of reply after the respondents had addressed the Court. No corresponding opportunity was afforded during the separate costs determination.

30. Another court may reasonably conclude that elementary audi alteram partem, procedural equality and the constitutional requirement of a fair hearing required that the Applicants be afforded a meaningful opportunity to answer the opposing parties' oral submissions before extraordinary punitive and personally prejudicial relief was finally pronounced, and that the failure to afford such opportunity constitutes a material procedural irregularity independently warranting appellate interference.



E. POST-JUDGMENT CONDUCT WAS IMPROPERLY USED TO PUNISH PART "A"

31. The reserved costs concerned the Part "A" proceedings heard on 19 February 2026 and determined on 25 February 2026.

32. The judgment of 28 August 2026 nevertheless relied heavily upon later events, including the pending leave application, the JSC complaint, approaches to the Judge President and Deputy Judge President, the recusal application, and the disputed handling of costs submissions.

33. Those later events did not form part of the conduct by which Part "A" was instituted and argued.

34. If any later procedural conduct independently warranted sanction, it required to be assessed in its own proper context and through a procedurally fair process; it could

not retrospectively transform the constitutional character of Part "A" into vexatious litigation.

35. The Court's use of subsequent protected procedural steps as aggravating features materially inflated the Part "A" costs discretion.

36. Another court may reasonably conclude that the punitive Part "A" order was influenced by irrelevant or impermissible post-judgment considerations.

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F. *DE BONIS PROPRIIS* LIABILITY: STRINGENT REQUIREMENTS NOT ESTABLISHED

37. The judgment correctly recognised that de bonis propriis costs require actual misconduct in the conduct of litigation tied to the person against whom the order is sought.

38. The Court nevertheless concluded that personal liability followed principally from the contested authority finding and the alleged months-long refusal to address costs.

39. The authority finding is itself under appeal in the pending Application for Leave to Appeal dated 2 March 2026 and cannot rationally be treated as conclusive proof of personal misconduct while its correctness remains *sub judice*.

40. The alleged failure to address costs was materially premised upon the incorrect finding that Part "L" and the subsequent written correspondence did not constitute any engagement with costs at all.

41. A personal punitive costs order is exceptionally harsh and requires clear reasons demonstrating conduct sufficiently egregious to justify piercing the representative capacity in which the litigant acted.

42. The Constitutional Court has repeatedly required a properly reasoned and stringent foundation before personal punitive costs may be imposed; see, by analogy, *Public Protector v South African Reserve Bank [2019] ZACC 29*.

43. The judgment did not establish dishonesty, fraud, bad faith, intentional obstruction or comparable misconduct by the Second Applicant in the conduct of Part 'A".



44. Another court may reasonably conclude that the personal costs discretion was influenced by wrong principles and material factual errors and therefore falls to be set aside.

G. DOUBLE PUNITIVE EFFECT: PERSONAL LIABILITY ON ATTORNEY-AND-CLIENT SCALE

45. The order does not merely make the Second Applicant personally liable; it simultaneously imposes the extraordinary attorney-and-client scale and the costs of two counsel where employed.

46. The cumulative effect is therefore doubly punitive.

47. The judgment was required to explain with particular clarity why ordinary costs, ordinary personal costs, or no order under *Biowatch* would be inadequate and why the highest practical combination of personal and punitive liability was just and equitable.

48. General statements that the Court wished to mark its displeasure do not, without a sustainable factual and legal foundation, satisfy the stringent threshold for such an exceptional order.

49. The practical severity of the order is magnified because the Second Applicant is a self-represented official of a voluntary association without gain and the litigation was brought without professional legal representation.

50. Another court may reasonably conclude that the punitive discretion was disproportionate to any proven misconduct.



H. *BIOWATCH* AND THE GENUINE CONSTITUTIONAL CHARACTER OF THE LITIGATION

51. The Part "A" proceedings were directed against organs of state and raised express constitutional questions concerning section 38 standing, environmental governance, the lawfulness of governmental arrangements, and the continued vacancy and non-operationalisation of the Office of the Commissioner for the Environment established under the *Constitution of the Western Cape*.

52. The underlying complaint to that constitutional office was lodged on 9 December 2025 and remains incapable of institutional investigation because the office is vacant.

53. The Court nevertheless held in the costs judgment that the litigation was not premised on genuine constitutional rights and fell outside the Biowatch protection.

54. The fact that constitutional relief was unsuccessful, urgent relief was refused, or standing and authority were disputed does not by itself strip the litigation of its constitutional character.

55. *Biowatch* protects unsuccessful private constitutional litigants against the State unless the litigation is frivolous, vexatious or manifestly inappropriate; the Constitutional Court has recently reaffirmed that framework, including in *South African Riding for the Disabled Association v Regional Land Claims Commission, Western Cape and Others [2025] ZACC 25*.



56. The judgment's conclusion that the proceedings were manifestly depended substantially upon the same disputed litigant-profile, authority, urgency and costs-silence findings challenged herein and in the 2 March 2026 leave application.

57. Another court may reasonably conclude that *Biowatch* was displaced on an unsustainable foundation and that, at minimum, no adverse Part "A" costs order should have been made against the Applicants.

I. LITIGANT PROFILING AND RELIANCE ON UNRELATED ADVERSE JUDGMENTS

58. The costs judgment again relied on prior unrelated judgments criticising LFN and the Second Applicant and treated those criticisms as proof that previous admonishments had gone unheeded.

59. It further relied upon the later Le Grange J judgment as recent confirmation of the same adverse character assessment.

60. The full records of those unrelated matters were not before the Court for re-evaluation of their factual contexts.

61. The use of selected judicial criticism from unrelated proceedings as propensity evidence risks replacing adjudication of the actual conduct in this matter with an accumulated institutional character profile.

62. The Le Grange judgment itself is the subject of a pending JSC complaint and arose in proceedings in which a later Goliath DJP process produced materially different procedural consequences.



63. The Applicants do not allege collusion. They contend that the costs discretion must be exercised on the record of this case and not through a self-reinforcing profile generated from unrelated litigation.

64. Another court may reasonably conclude that the reliance on such material improperly aggravated the costs outcome.

J. JSC AND HEAD-OF-COURT COMPLAINT MECHANISMS WERE TREATED AS AGGRAVATING CONDUCT

65. The judgment expressly relied upon the fact that the Applicants, while allegedly failing to engage on costs, managed to lodge a JSC complaint and approach the Judge President and Deputy Judge President.

66. Those steps were lawful constitutional and institutional mechanisms invoked to complain about judicial conduct and to seek case-management intervention in a stalled urgent matter.

67. The exercise of those mechanisms cannot, without more, constitute litigation misconduct warranting personal punitive costs.

68. Treating recourse to the JSC and Heads of Court as aggravating features risks chilling the exercise of lawful accountability mechanisms by self-represented litigants.

69. Another court may reasonably conclude that the costs discretion was influenced by an impermissible consideration.



K. HARDCOPY / COURT ONLINE ERROR

70. The costs judgment again relied upon the proposition that the Application for Leave to Appeal was only properly before Holderness J when a hardcopy reached chambers on 8 May 2026.

71. The Applicants maintain that only one request for a hardcopy was made and that it was promptly complied with.

72. The leave application had already been electronically lodged through Court Online on 3 March 2026.

73. By 25 May 2026 the Registrar was canvassing hearing dates for June, demonstrating that the administrative issue had been cured.

74. Any later delay therefore arose from the costs-first sequencing and the subsequent judicial process, not from continued absence of a hardcopy.

75. Another court may reasonably conclude that the 8 May narrative could not support a punitive inference concerning the Applicants' conduct after May and was an irrelevant or materially overstated factor in the costs discretion.

L. PUBLIC RESOURCES AND THE ACTUAL URGENT-ROLL ALLOCATION

76. The judgment repeatedly invoked scarce judicial resources, public funds and the cost to taxpayers as reasons supporting punitive treatment.

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77. The Applicants accept that public resources are relevant to responsible litigation by and against organs of state.

78. However, the actual urgent-roll allocation on 19 February 2026 was deliberately placed last at approximately 14h15 because the matter was to be video-recorded.

79. The assertion that other urgent litigants were necessarily held up by the Applicants therefore required factual verification rather than assumption.

80. The constitutional obligation of organs of state under section 7(2) is not displaced merely because they brief private counsel; state litigation must remain directed at lawful, proportionate and constitutionally accountable outcomes.

81. Another court may reasonably conclude that abstract concern about the public purse was given disproportionate weight while the constitutional public interest and the irreversible environmental consequences were not weighed symmetrically.

M. PART "B" RESTRAINT: NO FORMAL APPLICATION

82. During the costs hearing SANParks' counsel expressly acknowledged that SANParks had not brought a formal application for the order preventing the Applicants from continuing with Part "B" until the Part "A" costs were paid.

83. Counsel nevertheless invited the Court to grant the relief under its inherent power and relied upon a 1953 decision of this Division.

84. The relief ultimately granted is coercive, final in effect and directly limits the Applicants' section 34 ability to prosecute remaining constitutional proceedings.

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85. Such relief required proper procedural notice, a clearly formulated legal and factual case, and an effective opportunity to answer the specific requirements for a stay.

86. The mere presence of a request in an answering affidavit did not relieve the Court of the obligation to determine whether the exceptional modern requirements for such a restraint had been established.

87. The denial of reply addressed under section D *supra* was especially prejudicial in relation to this relief: the specific final restraint was advanced orally immediately before judgment, together with a legal basis and authority which the Applicants had no opportunity to answer before the order was pronounced.

88. Another court may reasonably conclude that the restraint was granted contrary to *audi alteram partem* and without a procedurally competent application.

N. MODERN LAW ON STAY FOR UNPAID COSTS WAS NOT APPLIED

89. The judgment relied on pre-constitutional authority for the proposition that a party may be prevented from continuing further proceedings until previous costs are satisfied.

90. The Supreme Court of Appeal has since explained the modern constitutional position in *Showroom Centre (Pty) Ltd and Others v Kagan (573/2024) [2025] ZASCA 175*.

91. A stay based on unpaid prior costs is exceptional because it impedes section 34 access to court and requires a balancing of rights.

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92. The modern enquiry includes whether the further proceedings substantially cover the same ground, whether there is an abuse of process, and critically whether the previous costs have been taxed and demanded and whether non-payment results from a wilful refusal to pay.

93. On 28 August 2026 the Part “A” costs had only just been ordered. They had not been taxed, quantified, demanded or wilfully refused.

94. The Applicants could not factually have been characterised as wilfully or contumaciously refusing to pay costs which had not yet been taxed, quantified or demanded.

95. The Court did not engage *Showroom Centre* or equivalent constitutional limitations upon the old inherent-power remedy.

96. Another court may reasonably conclude that the Part “B” restraint was granted on an outdated and materially incomplete legal test.

O. DISPROPORTIONATE AND POTENTIALLY INDEFINITE BARRIER TO PART "B"

97. The restraint applies to both Applicants and prohibits all litigation relating to Part "B" until the costs have been '*satisfied*'.

98. The costs must first be taxed before the amount payable can ordinarily be known, and taxation itself may take months.

99. The order therefore converts an unquantified costs liability into an immediate and potentially indefinite bar against prosecuting constitutional and environmental relief.



100. It does so while the Rule 28(4) application seeking to amend Part "B" had already been awaiting a Judge President enrolment directive since July 2026.

101. The practical effect is to condition access to the remaining constitutional case upon the ability to satisfy an unknown future amount of punitive costs.

102. That consequence is particularly severe for public-interest litigants acting without professional representation and is capable of rendering the underlying constitutional proceedings nugatory before they can be heard.

103. Another court may reasonably conclude that the order is disproportionate, inconsistent with sections 34 and 38 of the *Constitution* and not justified by the interests of justice.

P. SECTION 173 DOES NOT AUTHORISE DISPLACEMENT OF SUPERIOR LAW

104. The inherent power in section 173 exists to regulate and develop court process taking into account the interests of justice.

105. It cannot be exercised in a manner inconsistent with the *Constitution*, the *Superior Courts Act* or binding appellate authority.

106. Where an inherent-power restraint limits section 34 access to court, the constitutional limitations and modern requirements identified by the Supreme Court of Appeal must be satisfied.

107. The exercise of section 173 cannot lawfully transform unpaid and unquantified costs into an automatic jurisdictional barrier to the continuation of pending constitutional proceedings.

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108. Another court may reasonably conclude that the inherent-power discretion was exercised upon a wrong legal principle.

Q. INTERDEPENDENCE WITH THE PENDING PART "A" APPEAL

109. The punitive costs order is inseparably linked to the findings on urgency, authority, standing and abuse made in the Part "A" judgment and already challenged in the pending Application for Leave to Appeal dated 2 March 2026.

110. The costs judgment itself relied repeatedly upon those contested findings as established defects and as proof that the Applicants should have known not to litigate.

111. If another court overturns or materially qualifies those findings, the foundation for punitive and personal costs is correspondingly undermined.

112. The appeal against costs should therefore be managed consistently with the pending Part "A" appeal so that appellate courts do not determine the same factual and constitutional premises inconsistently.

113. The Applicants do not seek piecemeal appellate litigation; they seek an appellate process capable of considering the completed Part "A" judgment, including its eventual costs consequences, as an integrated whole.



R. IMPENDING IRREVERSIBLE PREJUDICE

114. The affected baboons are understood to be scheduled for relocation to the proposed sanctuary on 12 September 2026.

115. Part "B" includes constitutional and administrative issues concerning the governmental framework under which the Baboon Management Action Plan is being implemented and the non-operationalisation of the Office of the Commissioner for the Environment.

116. The Part "B" restraint therefore operates at the exact moment when effective judicial access is most time-sensitive.

117. A later successful appeal after the baboons have been captured and permanently confined may not restore the factual position which the litigation seeks to preserve.

118. The immediate practical consequences constitute a further compelling reason why leave should be granted and the appellate process expedited.

S. CUMULATIVE EFFECT

119. The costs discretion was cumulatively influenced by the incorrect '*silence on costs*' premise, the disputed hardcopy narrative, post-judgment JSC and case-management steps, unrelated adverse judgments, contested authority and standing findings, an adverse litigant profile and abstract public-resource concerns.

120. The Part "B" restraint was then added without a formal application, without taxation or demand, without proof of wilful refusal to pay, and without engagement with the modern section 34 limitations upon such a stay.



121. These are not merely disagreements with the weight attached to permissible factors; they constitute material factual and legal misdirections permitting appellate interference with the costs discretion.

122. Another court may reasonably come to a substantially different conclusion on both the Part "A" costs and the Part "B" restraint.

T. CONCLUSION

123. There are reasonable prospects that another court will set aside the punitive attorney-and-client and de bonis propriis costs order, substitute no order as to Part "A" costs under *Biowatch*, alternatively substitute an ordinary and proportionate costs order.

124. There are strong prospects that another court will set aside the prohibition upon continuing with Part "B" as procedurally unfair, legally premature, inconsistent with the modern requirements for a stay and disproportionately restrictive of sections 34 and 38.

125. The appeal raises compelling constitutional questions of access to court, public-interest litigation, personal punitive costs and the permissible reach of section 173.

126. Leave to appeal should accordingly be granted to the Supreme Court of Appeal, alternatively to a Full Court of this Division, with the costs of this application to be costs in the appeal, alternatively no order as to costs.

127. The Applicants reserve in toto all rights to supplement these grounds upon receipt of the final written judgment, sealed order and official transcript, and to seek direct constitutional appellate relief if ordinary appellate mechanisms cannot preserve effective relief.



TAKE NOTICE FURTHER that the Applicants provide the electronic mail addresses hereunder as the addresses at which they will receive further notices, documents and process during the course of these proceedings.

SIGNED AT CAPE TOWN ON THIS 8TH DAY OF SEPTEMBER 2026.

REYNO DAWID DE BEER

Nomine Officio as Second Applicant and for First Applicant Liberty Fighters Network

Service Address within 25km of court building:

Monkey Valley Resort

1 Mountain Road

Noordhoek, Cape Town

Mobile: +27 (0)67 735 7288

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TO: **REGISTRAR OF THE HIGH COURT**

CAPE TOWN

AND TO: **PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE**

First Respondent

c/o State Attorney

Ref: 354/25/P40 - Hoosain Aayesha

Email: AHoosain@justice.gov.za



AND TO: **SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE**

Second Respondent

c/o Mr Andre Le Roux (Senior Legal Adviser)

Email: aleroux@WCPP.GOV.ZA

AND TO: **WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE**

Third Respondent

c/o State Attorney

Ref: 354/25/P40 - Hoosain Aayesha

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AND TO: **OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT**

Fourth Respondent

c/o First to Third Respondents

Same contacting details as for the First to Third Respondents

AND TO: **SOUTH AFRICAN NATIONAL PARKS**

Fifth Respondent



c/o MKHABELA HUNTLEY ATTORNEYS INC.

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AND TO: **CAPENATURE**

Sixth Respondent

c/o FAIRBRIDGES ATTORNEYS

Per: DEIRDRE OLIVIER

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AND TO: **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**

Seventh Respondent

c/o FAIRBRIDGES ATTORNEYS

Per: DEIRDRE OLIVIER

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Email: deirdre.o@fairbridges.co.za



AND TO: **CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE**

Eighth Respondent

c/o Mr Robert McGaffin

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AND TO: **JUDITH ANNE SOLE**

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AND TO: **WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA**

Tenth Respondent

c/o Administrator and Coordinator: Ms Megan Carr

Email: administrator@wapfsa.org

AND TO: **BABOON ADVISORY GROUP**



Eleventh Respondent

c/o Tom Cohen, Chris Hart, Garth Kew, and Simon's Town Civic Association

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"CC17"

Liberty Fighters Network

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Date: 8 September 2026

EXTREMELY URGENT

BABOON RELOCATION SCHEDULED FOR 12 SEPTEMBER 2026

ATTENTION: **JUDGE PRESIDENT N. P. MABINDLA-BOQWANA**

High Court of South Africa: Western Cape Division, Cape Town

c/o Ms Jerelene Naidoo-Chetty and Ms Phumelele Dhlamini

Email(1): JNaidoo-Chetty@judiciary.org.za

Email(2): PDhlamini@judiciary.org.za

cc. All Interested Parties (As listed at the end)

Dear Madam Judge President,

RENEWED AND EXTREMELY URGENT REQUEST FOR HEAD-OF-COURT CASE-MANAGEMENT INTERVENTION, CONSTITUTION OF AN APPROPRIATE COURT, IMMEDIATE PRODUCTION OF JUDGMENTS AND ORDERS, DIRECTIONS ON THE RULE 28(4) ENROLMENT, AND PRESERVATION OF EFFECTIVE APPELLATE RELIEF – CASE NO. 2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER // PREMIER OF THE WESTERN CAPE AND 10 OTHERS

1. This correspondence is addressed directly to the Office of the Judge President and copied to all interested parties in the interests of complete procedural transparency. It is not an attempt to obtain an *ex parte* advantage, to invite the Judge President to determine appellate merits by correspondence, or to interfere with the decisional independence of any judicial officer. It is a renewed and now exceptionally urgent request for the lawful exercise of head-of-court case-management powers so that this litigation remains capable of producing an effective constitutional remedy before the factual subject matter is irreversibly altered.

2. The urgency is immediate and objectively measurable. The Applicants are informed that the affected Cape Peninsula baboons are scheduled to be captured, removed and relocated to the proposed sanctuary on or about 12 September 2026. Today is 8 September 2026. The Court and the parties therefore have only days, not weeks, before the very factual position which the Applicants sought to preserve changes materially and potentially permanently.

3. The constitutional trigger for the original urgency must be stated accurately because it has repeatedly been obscured by portraying the litigation as a belated attack upon an historic policy choice. On 9 December 2025 the Applicants lodged a complaint concerning the Final Cape Peninsula Baboon Management Action Plan and related environmental-governance matters with the Office of the Commissioner for the Environment created by sections 71 to 77 of the *Constitution of the Western Cape, 1997*. The office exists in law, but remains vacant and non-operational. The complaint can therefore not be investigated by the very constitutional oversight institution to which it was directed.

4. The Applicants' case is that the continuing failure and/or refusal of the constitutionally responsible provincial institutions to complete the process contemplated by the Western Cape Constitution for the nomination, approval, appointment and operationalisation of the

Commissioner is itself a live constitutional wrong. The proposed amended relief in Part 'B' accordingly seeks, *inter alia*, structural orders requiring the Western Cape Provincial Parliament to take the necessary steps contemplated in section 75 and requiring the Premier thereafter to appoint the duly nominated and approved Commissioner. The Rule 28(4) application is the procedural gateway through which those amendments are presently sought.

5. The urgency has therefore never been merely that the Applicants disagree with how baboons should be managed. The central problem is that the impugned Action Plan continues to be implemented while a lawfully lodged environmental complaint cannot be independently investigated because the constitutional office established for that purpose has not been operationalised. The result is a potentially self-fulfilling constitutional failure: the longer the appointment and litigation processes are delayed, the more of the contested programme is implemented before the constitutional oversight mechanism can function at all.

6. The impending sanctuary relocation gives that institutional problem a concrete deadline. The Cape of Good Hope SPCA confirmed in writing on 6 September 2026 that it does not support the permanent confinement of healthy, free-ranging baboons in a sanctuary environment, that this position has been formally communicated to the CPBMJTT, and that its welfare monitoring should not be construed as endorsement or approval of the relocation. The SPCA's mandate is distinct from the legal merits before this Court, but its position confirms that the intended relocation is neither an insignificant nor an uncontested implementation step.

7. Once free-ranging baboons have been captured, transported and permanently confined, a later appellate victory may be legally important but practically sterile. This is the precise danger against which the Applicants have repeatedly sought protection: judicial delay must

not itself become the mechanism by which a disputed constitutional and environmental programme achieves a *fait accompli*.

8. This is also not the first request for head-of-court intervention. On 17 July 2026 the Applicants addressed a detailed request to Goliath DJP for urgent administrative case management. On 18 July 2026 that request was expressly referred to the Office of the Judge President because Goliath DJP was on leave. On 29 July 2026 the Office of the Judge President prescribed the procedure to be followed and expressly undertook to revert once the court file had been received and the Judge President had had an opportunity to consider the matter. The Applicants complied, including by physically delivering a consolidated indexed and paginated hardcopy bundle on 31 July 2026. No substantive case-management decision was thereafter communicated.

9. The Applicants consequently lodged a complaint against the Judge President with the Judicial Service Commission on 13 August 2026, subsequently acknowledged under JSC reference JSC/95/08/2026. The complaint is not invoked as leverage. Its relevance is factual: the earlier absence of a communicated decision is now part of the procedural history and explains why the Applicants require a definite response to this renewed request before the 12 September 2026 relocation occurs.

10. A separate and earlier head-of-court issue remains unresolved. In or about July 2026 the Applicants approached the Registrar's office for a Judge President enrolment directive in respect of their opposed Rule 28(4) application concerning Part 'B'. The Applicants' Practice Note for Allocation and Enrolment dated 13 July 2026 records that the papers are closed, the bundle comprises approximately 445 pages, the interlocutory application is ripe for hearing, and the Applicants sought the earliest reasonably available opposed motion date for which one full court day could be reserved.

11. Mr Lekalakala of the Registrar's office advised the Second Applicant that an application of this nature could ordinarily be dealt with relatively speedily through the Judge President's allocation process and that a direction could be expected within approximately two weeks. Despite subsequent follow-ups, no enrolment directive or hearing date has been issued. That prior omission has now acquired direct and substantial procedural consequence because the order pronounced by Holderness J on 28 August 2026 purports to prohibit the Applicants from proceeding with Part 'B' until the Part 'A' costs orders have been satisfied. Absent suspension of that order pending appeal, its practical effect would therefore be capable of preventing the already-pending Rule 28(4) application from being enrolled for an indeterminate period, particularly where the taxation of the costs so ordered may itself take several months before the amounts allegedly payable are finally quantified.

12. The Applicants are simultaneously with this letter lodging protective Applications for Leave to Appeal against (a) the recusal judgment of 28 August 2026, and (b) the costs judgment and consequential restraint upon Part 'B' pronounced on 28 August 2026. Those applications are lodged without waiting further for the final typed judgments or sealed orders, so as to avoid any later contention that appellate time commenced with the oral pronouncements and expired while the Applicants waited for the Court's written record.

13. The Applicants expressly contend that the order of 28 August 2026 finally adjudicates the reserved costs of Part 'A', including the scale thereof and the personal *de bonis propriis* liability imposed upon myself in person, and further imposes a coercive prohibition upon the Applicants progressing Part 'B' until those costs have been satisfied. Whatever its procedural origin, that order is final in nature and effect for purposes of section 18 of the *Superior Courts Act, 2013*. It therefore falls squarely within section 18(1), read with section 18(5), and not section 18(2), which is confined to interlocutory orders not having the effect of a final judgment. Upon lodgment of the Application for Leave to Appeal against the costs judgment and order, its operation and execution are accordingly suspended *ex lege*,

subject only to a competent order granted in terms of sections 18(1) and 18(3). No such execution order presently exists.

14. The consequential restraint upon progressing Part ‘B’ can therefore no longer constitute an administrative impediment to the outstanding Rule 28(4) allocation request. The Applicants do not ask the Judge President to set aside, vary or disregard Holderness J’s order administratively. They ask that the ordinary statutory consequence of the presently lodged Application for Leave to Appeal be recognised for case-management purposes and that the Rule 28(4) allocation process resume immediately. Should any Respondent contend that the suspended order nevertheless ought to operate pending appeal, the *onus* rests upon that Respondent to invoke section 18(3) by proper judicial process and obtain the requisite order; that contention cannot operate by default, or through administrative inaction, as a continuing bar to enrolment.

15. The two judgments and formal court orders pronounced on 28 August 2026 have, as at the date of this letter, still not been furnished to the Applicants in final written and sealed form. This is not a minor inconvenience. The Applicants must know the exact operative terms of the orders and the final reasons in order to prosecute the new appellate processes properly. During the *ex tempore* costs ruling Holderness J expressly indicated that the authorities would be recorded more fully in the final judgment. The Applicants are therefore entitled to clarity whether fuller reasons remain under preparation and, if so, when they will be delivered.

16. The official proceedings of 28 August 2026 were audio-recorded. The Applicants obtained the official voice recordings through the Court and have prepared working *verbatim* transcripts which have been checked against those recordings as far as reasonably possible. I am prepared to verify under oath the source, method of preparation and

accuracy of those transcripts, expressly subject to correction against any official transcript or final written judgment.

17. There is persuasive authority against elevating paid professional transcription into a jurisdictional barrier to justice. In *Van Straaten v Wehnke NO and Others (JR 1876/21) [2023] ZALCJHB 269; (2024) 45 ILJ 180 (LC)*, the Labour Court held, in the context of a review record, that a transcription produced from an official electronic record was sufficient irrespective of the manner in which it was converted into usable form, and rejected the proposition that only a paid professional transcription could suffice. The Court expressly approached the issue through constitutional access to justice and the danger that astronomical transcription costs may deny impecunious litigants an effective remedy. Although the procedural context differs from the present High Court appeal process, the constitutional principle is directly relevant by analogy.

18. The point is reinforced by *Solidarity obo Matthews v South African Police Service Commission for Conciliation, Mediation and Others (C500/2024) [2026] ZALCCT 117*, where an incomplete official record was supplemented by a transcription of a recording made by a party's representative. The Applicants do not ask that their working transcript be treated as infallible or immune from challenge. They ask that the official audio and an affidavit-verified transcription be accepted provisionally for purposes of protecting appellate rights until the Court supplies its own final written record or official transcription.

19. The hardcopy issue also requires immediate institutional clarification. During the proceedings of 28 August 2026 Holderness J relied upon the proposition that the Application for Leave to Appeal dated 2 March 2026, and electronically lodged on Court Online on 3 March 2026, was only properly before her after a hardcopy was delivered on 8 May 2026, and referred to '*numerous requests*'. The Applicants record unequivocally that only one request for hardcopy was made and that it was complied with promptly. More

importantly, the application had already been formally lodged through *Court Online* on 3 March 2026.

20. The publicly available replacement to Western Cape Practice Directive 45, effective from 1 June 2022, provides that an unrepresented litigant lodging an application for leave to appeal is simultaneously to deliver to the Registrar an additional copy endorsed for delivery to the judge, and that the unrepresented litigant approaches the Chief Registrar for the arrangement of a hearing date. That formulation does not, on its face, provide that an application duly lodged electronically with the Registrar is legally non-existent, ineffective, or incapable of engaging the Court until the litigant additionally causes a physical copy to be delivered to the judge or chambers. The subsequent implementation of *Court Online* creates an obvious need for an authoritative statement of the presently operative practice applicable to post-December 2024 *Court Online* matters.

21. Moreover, Practice Directives exist to facilitate the proper and efficient administration of justice and are not ordinarily to be elevated, irrespective of context, into inflexible jurisdictional barriers where the interests of justice require otherwise. The apparent treatment of an administrative hard-copy requirement as an indispensable precondition before Holderness J could regard herself as seized with an Application for Leave to Appeal already lodged on *Court Online* — particularly where the underlying proceedings were instituted as urgent under Rule 6(12), and where the Applicants maintain that only one request for a hard copy was ever made and promptly complied with — raises a further question of legality, access to court and proportionality which the Applicants intend to pursue on appeal.

22. That clarification is particularly necessary because the Office of the Chief Justice publicly describes *Court Online* as an end-to-end electronic filing, digital case-management and evidence-management system intended to permit litigants to file documents electronically

from anywhere, minimise paper and physical movement, and enable judges to adjudicate using the electronic system. If a surviving divisional requirement nevertheless makes physical delivery of a leave application a prerequisite before a judge becomes seized with it, self-represented litigants must be able to identify that requirement clearly, prospectively and from an authoritative public source.

23. Practice directives serve an indispensable administrative purpose, but remain subordinate to the *Constitution*, legislation, the Uniform Rules and binding law. They may regulate and supplement the manner in which rights and procedures created by superior law are exercised, but may not lawfully extinguish, materially restrict or transform those rights through administrative practice into something different from that which the governing law provides. The Constitutional Court has likewise emphasised that procedural rules exist to facilitate the inexpensive and expeditious determination of disputes and are not ends in themselves: *Social Justice Coalition and Others v Minister of Police and Others [2022] ZACC 27*.

24. The Applicants accordingly seek neither exemption from lawful court procedure nor preferential treatment. They require authoritative clarification of what exact and presently binding directive governed an unrepresented litigant in a *Court Online* matter in March 2026; whether that directive required an additional physical copy notwithstanding successful electronic lodgment with the Registrar; whether such requirement was communicated as a condition affecting the legal efficacy of the application rather than merely its administrative transmission to the allocated judge; and, most importantly, upon what legal basis an Application for Leave to Appeal already lodged through the Court's designated electronic platform could thereafter be treated as not having placed the matter before the Court until a physical copy, in an application lodged as urgent, reached chambers approximately two months later.

25. The costs narrative similarly requires an accurate record. The judgment of 28 August 2026 proceeded on the premise that the Applicants had said nothing concerning costs for approximately five months. Yet the order of 25 February 2026 prescribed written submissions without prescribing a separate title, form or template, and Part 'L' of the Application for Leave to Appeal dated 2 March 2026 and electronically lodged on 3 March 2026 expressly dealt with the punitive and *de bonis propriis* costs consequences identified by Holderness J. That document was lodged before the 6 March 2026 deadline. Whether it amounted to substantial compliance is an appellate question; it cannot fairly be converted, without analysis, into an assertion that the Applicants were silent.

26. The order of 25 February 2026 further contemplated that costs would be determined in chambers unless oral argument was required. On 9 June 2026 Holderness J's registrar expressly advised, by direction of the Court, that the costs judgment would be delivered by the end of the following week. No such judgment was delivered then. Whatever may ultimately be decided about the Applicants' stance on costs, the Court itself had by that stage treated the issue as ripe for judgment in chambers. The ensuing delay cannot rationally be attributed "exclusively" to the Applicants.

27. Nor should the expenditure of judicial resources be considered in the abstract while the actual allocation of 19 February 2026 is ignored. The pre-hearing communication recorded that the matter was deliberately placed last on the urgent roll at 14h15 because it was to be video-recorded. The Applicants will address the legal significance of that fact in the appellate process. It is recorded here because allegations of wasted public resources and displacement of other urgent litigants have repeatedly been used as moral and costs-based criticism against the Applicants, while the current delay in finalising the judicial record and appellate process is no longer within their control.

28. The events of 28 August 2026 also explain why the Applicants no longer consider direct, informal chambers communication with Holderness J to be institutionally safe. During the recusal hearing Holderness J introduced, without prior notice, criticism of correspondence addressed to her registrar, describing its tone as '*worthy of censure*', '*paternalistic*' and '*patronising*', for the first time and stating that she '…*would not go so far as to describe it as racist*'. When the Second Applicant immediately sought to know why no complaint had previously been communicated and why the issue was being introduced during the recusal proceedings, he was immediately directed to sit down. Those criticisms were subsequently incorporated, at least in material part, into the recusal reasoning.

29. During the same hearing, after Ms O'Sullivan SC, counsel for the City and CapeNature in their answer and before the Applicants delivered their reply, characterised the recusal application as a '*bullying stratagem*', Holderness J immediately responded, '*Well said. Mr De Beer can rest assured that I will not be bullied.*' Elsewhere, after the Second Applicant used the ordinary Afrikaans response '*Ja*', Holderness J corrected him in an irritated tone that it was not '*ja*' but '*yes, My Lady*' or '*yes, Justice*'. The Applicants do not ask the Judge President to adjudicate those exchanges in this administrative process. They will form part of the supplementary JSC complaint and the appellate record. Their relevance here is that the very manner of communication with chambers and the Court has itself become controversial, making a neutral institutional communication protocol necessary.

30. The Applicants have considered the broader question of institutional contempt raised by the Court's own repeated use of the language of '*contemptuous*' conduct. *S v Mamabolo [2001] ZACC 17* teaches that contempt of court exists to protect the administration of justice and public confidence in the courts, not the personal feelings or reputation of an individual judicial officer. The Constitutional Court emphasised that the most durable source of judicial respect is the fairness, objectivity, restraint, dignity and *decorum* of judicial conduct itself. The Applicants invoke that principle in its institutional sense. They

do not ask the Judge President in this letter to pronounce Holderness J guilty of criminal contempt, and no allegation of high treason is made: the present facts do not establish the stringent elements of that offence. The material question is instead whether conduct from the bench which is itself alleged to diminish the appearance of impartiality, dignity and equal treatment must receive an institutional response rather than being immunised from scrutiny merely because it emanates from a presiding officer.

31. The existing JSC complaint against Holderness J, JSC/62/06/2026, will accordingly be supplemented with the events of 28 August 2026. That earlier complaint was not confined to abstract disagreement with the judgment: it specifically placed on formal record concerns about pejorative judicial language, the descriptions of the Applicants as '*serial litigants*', the '*playground*' characterisation, reliance on unrelated adverse litigation, and the resulting appearance of litigant profiling.

32. By 28 August 2026 Holderness J was plainly aware that her language and post-judgment conduct were already the subject of a JSC process. During the recusal hearing she nevertheless again referred to the Second Applicant as a '*serial litigant*' and introduced the further censure, the reference to racism and the bullying exchange recorded *supra*. The Applicants do not allege retaliatory motive as an established fact; they record the objective escalation after formal notice because it materially strengthens the need for independent institutional safeguards.

33. As a direct consequence of proceedings arising from or materially connected with this very case, a separate complaint has now also been lodged under JSC/108/09/2026 against Le Grange J concerning, *inter alia*, alleged prejudgment, litigant profiling, unequal treatment of a self-represented litigant and punitive personal costs, including the subsequent reliance upon his adverse findings in unrelated litigation involving the Applicants. A further complaint concerning the Judge President's own earlier case-management omission in this

matter remains pending under JSC/95/08/2026. The existence of these JSC complaints does not, individually or collectively, prove judicial misconduct, nor do the Applicants suggest otherwise. Their exceptional concentration around the Applicants and the procedural history of this case nevertheless creates an objectively serious institutional circumstance which can no longer responsibly be treated as ordinary litigation dissatisfaction.

34. Whether ultimately substantiated or not, the developing pattern gives rise to an increasing appearance that adverse judicial characterisation, litigant profiling and procedural disadvantage experienced by these self-represented Applicants are capable of being carried from one proceeding into another. It is precisely because the Applicants seek to prevent that appearance from hardening into a reasonable perception of systemic judicial treatment that the independence, impartiality and manifest fairness of all further proceedings in this matter now require proactive protection by the Head of Court rather than being left to deteriorate further.

35. For that reason, the Applicants request consideration of a lawful multi-judge allocation. Section 14(1)(a) of the *Superior Courts Act* expressly empowers a Judge President, at any time, to direct that a civil matter at first instance be heard by a court consisting of not more than three judges. Section 14(1)(b) further recognises that a civil matter being heard by a single judge may, in consultation with the Judge President, be discontinued before that judge and referred for hearing before a court constituted of more judges. The Applicants accordingly request that the Rule 28(4) application, and such further first-instance proceedings in Part ‘B’ as may lawfully and appropriately be constituted in that manner, be considered for allocation to a court of three judges. This would not predetermine the merits; it would strengthen institutional confidence that the actual constitutional questions are being determined independently of the escalating personal controversy which has developed around the litigation.

36. The Applicants do not seek an extra-statutory ‘umpire’ or informal observer in the courtroom. If Holderness J remains judicially involved in any future first-instance proceeding which lawfully permits the constitution of a multi-judge court, the Applicants respectfully request the Judge President to consider invoking the mechanism contemplated in section 14 of the *Superior Courts Act*, rather than leaving further adjudication solely before one judicial officer against the exceptional procedural history which has now developed.

37. Should Holderness J, upon reconsideration of the proceedings of 28 August 2026 and the subsequent developments, determine *mero motu* that her continued involvement would no longer best serve the requirements or appearance of judicial impartiality, or should she otherwise become unavailable for any proceeding capable of reallocation, another judge or appropriately constituted court should be allocated without delay. Given that the Judge President’s own earlier case-management omission in this matter presently forms the subject of JSC/95/08/2026, the Applicants do not insist that the Judge President personally constitute part of such a court.

38. On the contrary, an independently constituted three-judge court would, in the Applicants’ respectful submission, provide the cleaner institutional safeguard against any further controversy concerning individual judicial involvement and would materially protect both the actuality and appearance of independence, impartiality and public confidence in the further adjudication of this already exceptional matter.

39. The request for a multi-judge court is not judge-shopping. The Applicants do not seek to nominate any judge or to obtain a bench perceived to be sympathetic to them. They seek the opposite: a structure which reduces the risk that the litigation is personalised around any individual judicial officer and which protects both the judiciary and the parties against

the continuing appearance that adverse litigant profiling has become embedded in the matter.

40. The Applicants are acutely conscious that the principal public respondents include organs of state situated in a province and municipality governed by the Democratic Alliance, and that the separate proceedings before Le Grange J involved a national Minister associated with the same political party. The Applicants are apolitical and make no allegation that political affiliation has in fact determined any judicial outcome. Nor do they ask the Judge President to accept the proposition that judges are 'protecting' any political party. The constitutional concern is one of public appearance: where a sequence of contested judicial and administrative decisions consistently benefits state respondents while the self-represented public-interest litigants' appellate and amendment processes remain stalled, transparent institutional safeguards become more, not less, important.

41. The position of self-represented litigants also requires principled treatment. Sections 9, 10 and 34 of the *Constitution* protect equality, dignity and access to a fair public hearing; section 165(2) requires courts to apply the *Constitution* and law impartially and without fear, favour or prejudice; section 165(4) requires organs of state, through legislative and other measures, to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness; and section 173 permits regulation and development of court process only with the interests of justice in view. Section 7(2) further requires the State to respect, protect, promote and fulfil the rights in the Bill of Rights. Those obligations are not displaced when organs of state brief private attorneys and senior counsel: the forensic conduct remains conduct undertaken on behalf of the State.

42. Section 39(1)(b) of the *Constitution* requires courts, when interpreting the Bill of Rights, to consider international law. Article 14(1) of the *International Covenant on Civil and Political Rights* guarantees equality before courts and a fair hearing before a competent,

independent and impartial tribunal. Articles 3 and 7 of the *African Charter on Human and Peoples' Rights* protect equality before the law, equal protection and the right to have one's cause heard within a reasonable time by an impartial court or tribunal. The African Commission's *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* identify equality of arms, respect for inherent dignity, adequate opportunity to present argument and evidence, and the ability to challenge opposing material as essential components of a fair hearing. These are not foreign ornaments. They reinforce the constitutional standard by which the treatment of represented and self-represented litigants alike must be measured.

43. The Applicants anticipate that this letter may be criticised as an attempt to relitigate recusal, bypass the appeals, intimidate the Court through JSC complaints, select judges, manufacture urgency, or procure administrative disregard of an extant order. None of those characterisations is correct. The merits are being taken on appeal through the two Applications for Leave lodged herewith. The conduct issues are being taken to the JSC. **The Judge President is asked only to exercise lawful head-of-court functions: finalisation of judgments and orders, case-flow management, transparent communication, allocation, and constitution of an appropriate court where the statute permits it.**

44. Nor should the factual detail in this letter be treated as an exhaustive pleading, admission, waiver, abandonment, peremption or concession on any issue. It is supplied so that the Judge President can understand why immediate institutional action is required. The Applicants expressly reserve the right to place fuller evidence and legal argument before the competent court in the existing and new appellate proceedings, in the Rule 28(4) application, before the JSC, and in any further constitutional proceedings which become necessary.

45. The *Superior Courts Act* places responsibility for management of the judicial functions of the Division upon the Head of Court. Section 8(4)(b), read with section 8(6), extends that responsibility to case-flow management, assignment of cases and judicial duties, and finalisation of matters, including outstanding judgments, decisions and orders. Section 14(1)(a) separately supplies the mechanism for constitution of a court of up to three judges. The Applicants respectfully invoke those powers because the ordinary sequence has not produced an effective remedy in time.

46. For avoidance of doubt, the Applicants do not request the Judge President to suspend Holderness J from judicial office. Suspension of a judge is governed by section 177(3) of the *Constitution* and lies with the President acting on the advice of the JSC. The immediate issue within the Judge President's competence is different: whether and how this Division will allocate, constitute and manage the proceedings so that the Applicants' appellate and Part 'B' rights are not extinguished in practice while the disciplinary processes take their course.

47. Pending further direction, the Applicants propose that all administrative correspondence in case number 2026-024184 be addressed to the Office of the Judge President and copied simultaneously to Holderness J's registrar and every interested party. The Applicants request that administrative communications emanating from Holderness J's chambers likewise be copied to or channelled through the Office of the Judge President. This is not disrespectful and does not refuse service from chambers. It creates a transparent record and protects all concerned against any further dispute about tone, content, receipt or purpose of communications.

48. The Applicants have now, respectfully, exhausted informal patience. A pending Application for Leave to Appeal dates from early March 2026; the Rule 28(4) allocation request has remained unresolved since July; an earlier head-of-court intervention received no

substantive response; a costs judgment in chambers promised for June was delivered only on 28 August; the two 28 August judgments and formal orders remain unavailable in final written form; and the baboons are now scheduled for removal on 12 September 2026. The institutional response must therefore be measured in hours and days, not another cycle of weeks.

49. In these circumstances, the Applicants respectfully request the following immediate administrative intervention:

49.1. that the Office of the Judge President urgently procure and furnish to the Applicants and all parties the two formal court orders pronounced on 28 August 2026, alternatively written confirmation of their exact operative terms and the date upon which sealed orders will be available;

49.2. that the Office urgently ascertain and communicate whether the *ex tempore* recusal and costs judgments of 28 August 2026 constitute the complete reasons of Holderness J or whether fuller written judgments remain under preparation;

49.3. if fuller written judgments remain under preparation, that a firm and immediate date for delivery be provided, having regard to the 12 September 2026 relocation and the appellate time periods;

49.4. that the official audio recordings of 28 August 2026 be preserved as part of the court record and remain available to the parties and any appellate court;

49.5. that, pending an official transcript or final written judgments, the competent judicial authority confirm that the Applicants may rely provisionally upon their affidavit-verified working transcripts prepared from the official audio, expressly subject to correction against the official record;

49.6. that the Judge President identify in writing the exact Practice Directive, *Court Online* directive, rule or other binding source which governed the lodging and delivery of applications for leave to appeal by unrepresented litigants in this Division in March 2026, and clarify whether physical hardcopy delivery to chambers was a prerequisite to a judge becoming seized with an application already lodged electronically on *Court Online* and available to the judge for immediate access;

49.7. that the Applicants be informed whether the requirement in the 2022 replacement to Practice Directive 45 for an unrepresented litigant to deliver an additional copy to the Registrar remains operative, has been modified by *Court Online*, or has been superseded, and that any presently applicable hardcopy requirement be stated clearly for the three Applications for Leave now requiring management;

49.8. that the Judge President take note that the two protective Applications for Leave to Appeal arising from 28 August 2026 are lodged simultaneously herewith and that, by operation of section 18(1), read with section 18(5), the operation and execution of the final costs judgment and its consequential Part ‘B’ restraint are suspended *ex lege*, no order under section 18(3) presently having been granted;

49.9. that an immediate case-management direction be issued concerning the Application for Leave to Appeal delivered in early March 2026 and the two Applications for Leave lodged herewith, including the earliest dates upon which each can be heard and the manner in which unnecessary duplication may lawfully be avoided without delaying any one of them into practical uselessness;

49.10. that the Judge President confirm the present status of the Rule 28(4) allocation request, including whether it was ever placed before her, whether any decision was made, and why no enrolment directive or hearing date has yet been communicated;

49.11. that, in light of the suspension operating under section 18(1), the Rule 28(4) application be allocated the earliest reasonably available date and that the suspended Part ‘B’ restraint not be treated administratively as preventing such allocation, without prejudice to any Respondent’s right to seek a competent execution order under section 18(3);

49.12. that the Judge President consider exercising section 14(1)(a) of the Superior Courts Act by directing that the Rule 28(4) application, and such further first-instance Part ‘B’ proceedings as are legally suitable, be heard by a court consisting of three judges;

49.13. that, should Holderness J remain involved in any future proceeding which is legally capable of multi-judge constitution, the Judge President consider whether the interests of justice and public confidence warrant constitution of such a court under section 14(1)(a), alternatively, if Holderness J recuses herself or is otherwise unavailable, that another judge or properly constituted court be allocated without delay;

49.14. that the neutral communication protocol proposed in paragraph 47 *supra* be confirmed, alternatively that the Judge President prescribe another transparent protocol which avoids further controversy concerning direct chambers correspondence while preserving lawful service and notice;

49.15. that an urgent case-management conference, if necessary by MS Teams, be convened no later than 9 September 2026 for the limited purposes of dates, judicial allocation, record availability, implementation of the section 18(1) consequences, Rule 28(4) enrolment, and any other procedural step necessary to preserve effective relief before 12 September 2026;

49.16. that any submissions by the represented organs of state in response to this administrative request be confined to legitimate case-management issues and not be treated as an invitation to litigate the substantive merits by correspondence; and

49.17. that all administrative and judicial directions made pursuant to this request be communicated simultaneously to every party in writing and uploaded to *Court Online* where appropriate, so that no issue of informal or unequal access can arise.

50. Given the exceptional urgency, the Applicants respectfully request written acknowledgment that this letter and the two Applications for Leave lodged herewith have been placed before the Judge President, together with any immediately available interim direction, by no later than 09h00 on Wednesday, 9 September 2026.

51. The Applicants further request a substantive case-management response, alternatively a reasoned indication of the steps being taken and the exact time by which they will be completed, by no later than 09h00 on Wednesday, 9 September 2026. If either period is genuinely impossible, the Applicants request immediate written reasons and the earliest alternative time which still preserves a meaningful opportunity for judicial intervention before 12 September 2026.

52. These time periods are not selected to manufacture urgency. The relocation is understood to be scheduled for 12 September 2026. A response after the baboons have been captured and removed would not cure the prejudice. The Applicants must retain a realistic opportunity, if this Division cannot provide an effective administrative response, to escalate the institutional management problem to the Chief Justice and, if necessary, seek urgent constitutional relief from a competent court before the factual position becomes irreversible.

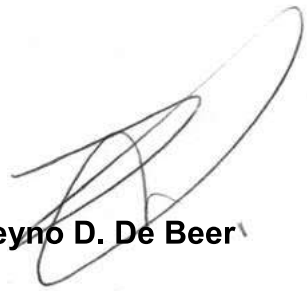
53. If meaningful head-of-court intervention is again unavailable within the period above, the Applicants will, without abandoning any existing or newly lodged appellate process, refer

the institutional administration and finalisation of this matter to the Chief Justice under the constitutional and statutory framework governing the Head of the Judiciary and will consider urgent recourse to the Constitutional Court or another competent court for preservation and constitutional relief. This is not advanced as a threat. It is the foreseeable procedural consequence if repeated internal case-management mechanisms of the Western Cape Division fail to provide an effective remedy within the only time that still matters.

54. The Applicants remain ready to comply immediately with every lawful and clearly communicated direction capable of moving this matter forward. They seek no preferential treatment, no private access to judicial officers, no nominated judge, and no predetermined outcome. They seek equal dignity, transparent procedure, effective appellate access and an impartial court capable of deciding the constitutional issues before events outside Court decide them by default.

55. The rights of the Applicants, LFN's members, the affected communities and the public interests represented in these proceedings, together with all rights of appeal, review, recusal, complaint, constitutional recourse and international human-rights recourse, remain reserved *in toto*.

Yours Faithfully,



Reyno D. De Beer

President: Liberty Fighters Network

On behalf of Applicants and in the interests of the public

Attachments for immediate reference

A. Email from the Cape of Good Hope SPCA dated 06 September 2026 confirming its continued opposition to the permanent confinement of healthy, free-ranging baboons and clarifying that welfare monitoring does not constitute endorsement of the sanctuary relocation.

B. Applicants' working *verbatim* transcript of the full proceedings before Holderness J on 28 August 2026, prepared from the official court audio.

C. Applicants' working *verbatim* transcript of the *ex tempore* recusal judgment delivered on 28 August 2026.

D. Applicants' working *verbatim* transcript of the *ex tempore* costs determination delivered on 28 August 2026.

E. Applicants' Practice Note for Allocation and Enrolment in the Rule 28(4) application dated 13 July 2026.

F. Applicants' protective Application for Leave to Appeal against the recusal judgment and order pronounced on 28 August 2026, lodged simultaneously herewith.

G. Applicants' protective Application for Leave to Appeal against the costs judgment and consequential Part 'B' restraint pronounced on 28 August 2026, lodged simultaneously herewith.

Interested Parties

AND TO: **PREMIER OF THE WESTERN CAPE, MR. ALAN WINDE N.O., OR HIS SUCCESSOR IN TITLE**

First Respondent

c/o State Attorney

Ref: 354/25/P40 - Hoosain Aayesha

Email: AHoosain@justice.gov.za

AND TO: **SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT, MR. DAYLIN MITCHELL N.O., OR HIS SUCCESSOR IN TITLE**

Second Respondent

c/o Mr Andre Le Roux (Senior Legal Adviser)

Email: aleroux@WCPP.GOV.ZA

AND TO: **WESTERN CAPE PROVINCIAL MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, MR. ANTON BREDELL N.O., OR HIS SUCCESSOR IN TITLE**

Third Respondent

c/o State Attorney

Ref: 354/25/P40 - Hoosain Aayesha

Email: AHoosain@justice.gov.za

AND TO: **OFFICE OF THE COMMISSIONER OF THE ENVIRONMENT**

Fourth Respondent

c/o First to Third Respondents

Same contacting details as for the First to Third Respondents

AND TO: **SOUTH AFRICAN NATIONAL PARKS**

Fifth Respondent

c/o MKHABELA HUNTLEY ATTORNEYS INC.

Email(1): mkhabela@mhalaw.co.za

Email(2): refiloe@mhalaw.co.za

Email(3): mmasetshaba@mhalaw.co.za

Email(4): kamohelo@mhalaw.co.za

Reference: SAN2-0038 /Mr L Mkhabela/

Correspondent: c/o MASERUMULE ATTORNEYS

Email(1): glen@maserumulecpt.co.za

Email(2): jamie@maserumulecpt.co.za

Email(3): ophelia@maserumulecpt.co.za

Reference: Mr Glen Cassells

AND TO: **CAPENATURE**

Sixth Respondent

c/o **FAIRBRIDGES ATTORNEYS**

Per: **DEIRDRE OLIVIER**

Ref: DO/AA/10144964

Email: deirdre.o@fairbridges.co.za

AND TO: **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**

Seventh Respondent

c/o **FAIRBRIDGES ATTORNEYS**

Per: **DEIRDRE OLIVIER**

Ref: DO/AA/10144964

Email: deirdre.o@fairbridges.co.za

AND TO: **CHAIRPERSON OF CAPE PENINSULA BABOON MANAGEMENT JOINT TASK TEAM, MR. ROBERT McGAFFIN N.O., OR HIS SUCCESSOR IN TITLE**

Eighth Respondent

1) c/o Mr Robert McGaffin
Civic Centre, Podium Block, Fifth Floor

Email(1): cpbmjtt@capetown.gov.za

Email(2): cpbmjtt@sanparks.org

Email(3): cpbmjtt@capenature.co.za

2) Senior Legal Advisor: Ms Emlyn Williams
Office of the City Manager (Legal Services)

Email: Emlyn.Williams@capetown.gov.za

AND TO: **JUDITH ANNE SOLE**

Ninth Respondent

Email(1): judy@monkeyvalleyresort.com

Email(2): traxdb@gmail.com

AND TO: **WILDLIFE ANIMAL PROTECTION FORUM OF SOUTH AFRICA**

Tenth Respondent

c/o Administrator and Coordinator: Ms Megan Carr

Email: administrator@wapfsa.org

AND TO: **BABOON ADVISORY GROUP**

Eleventh Respondent

c/o Tom Cohen, Chris Hart, Garth Kew, and

Simon's Town Civic Association

Email(1): waldohelives@icloud.com

Email(2): chrisjonllo@gmail.com

Email(3): krok@mweb.co.za

Email(4): stcamail@gmail.com

❑❑❑

"CC18"

Chief Justice Mandisa M L Maya
Constitution Hill, 1 Hospital Street, Braamfontein, 2017
Private Bag X1, Constitution Hill, 2107
Tel: +27 11 359 7400
Website: www.concourt.org.za

11 September 2026

Mr Reyno De Beer
President & Founder
Liberty Fighters Network

Dear Mr De Beer

REQUEST FOR URGENT INTERVENTION BY THE HEAD OF THE JUDICIARY: CASE-MANAGEMENT IMPASSE, IMMINENT IRREVERSIBLE IMPLEMENTATION AND PENDING APPELLATE/JSC PROCESSES – WESTERN CAPE DIVISION CASE NO. 2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER// PREMIER OF THE WESTERN CAPE AND 10 OTHERS

I acknowledge receipt of your letter dated 10 September 2026.

I have requested Judge President Mabindla-Boqwana to provide me with a report on the issues you raise and will inform you of the outcome as soon as practicably possible.

Yours sincerely,

MML Maya
Chief Justice of the Republic of South Africa

"CC19"

Subject: RE: RE: LEAVE TO APPEALS 2026-024184
From: Njabulo Mabuya <MabuyaN@judiciary.org.za>
Date: 2026/09/15, 12:26
To: Refiloe Mntambo <refiloe@mhalaw.co.za>, "reyno@libertyfighters.org.za" <reyno@libertyfighters.org.za>, Reyno De Beer <debeerreyno@gmail.com>, "reyno@libertyfighters.org" <reyno@libertyfighters.org>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, Emlyn Williams <Emlyn.Williams@capetown.gov.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, "Reyno De Beer" <debeerreyno@gmail.com>, Hoosain Aayesha <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>, Celani Mchunu <celani.m@fairbridges.co.za>

Dear All
Kindly note the amendment to the time of the hearing.
The hearing will take place at **10H00**, and not **09H00** as previously communicated. Apologies.

Kind regards,

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Njabulo Mabuya
Chambers of the Honourable Judge Holderness
Western Cape High Court

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High Court of South Africa, Western Cape Division
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Private Bag X 9020, Cape Town, 8001

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From: Njabulo Mabuya
Sent: Tuesday, 15 September 2026 11:06
To: 'Refiloe Mntambo' <refiloe@mhalaw.co.za>; reyno@libertyfighters.org.za; Reyno De Beer <debeerreyno@gmail.com>; 'reyno@libertyfighters.org' <reyno@libertyfighters.org>; cpbmjtt@sanparks.org; Deirdre Olivier <deirdre.o@fairbridges.co.za>
Cc: André le Roux <aleroux@WCPP.GOV.ZA>; Leslie Mkhabela <leslie@mhalaw.co.za>; Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>; Kamohelo Mapota <Kamohelo@mhalaw.co.za>; glen@maserumulecpt.co.za; jamie@maserumulecpt.co.za; Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>; cpbmjtt@capenature.co.za; Emlyn Williams <Emlyn.Williams@capetown.gov.za>; krok@mweb.co.za; chrisjonllo@gmail.com; stcamail@gmail.com; Reyno De Beer <debeerreyno@gmail.com>; Hoosain Aayesha <ahoosain@justice.gov.za>; Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>; judy@monkeyvalleyresort.com; Tracy De Breuyn <traxdb@gmail.com>; waldohelives@icloud.com; administrator@wapfsa.org; Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>; Celani Mchunu <celani.m@fairbridges.co.za>
Subject: RE: LEAVE TO APPEALS 2026-024184

Dear All

RE: Leave to Appeals under C/N: 2026-024184

Kindly be advised that, by directive of the Hon. Holderness J

Parties are hereby advised that the following:

1.1. Application for leave to appeal the judgment and order handed down on 25 February 2026, dated 2 March 2026;

1.2. Application for leave to appeal the costs judgment handed down on 28 August 2026, and

1.3. Application for leave to appeal the judgment relating to the recusal application handed down on 28 August 2026.

will be heard on **Friday, 18 September 2026 at 09H00**. Court 5.

Kind regards,

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

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Disclaimer:

The information contained in this communication from mabuyan@judiciary.org.za sent at2026-09-15 12:26:10 is confidential and may be legally privileged. It is intended solely for use by reyno@libertyfighters.org and others authorized to receive it. If you are not reyno@libertyfighters.org you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the contents. Powered by Office Of The Chief Justice

"CC20" 346

Subject: Re: LEAVE TO APPEALS ENROLLED FOR 18 SEPTEMBER 2026 - HCWCDC #2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER v PREMIER OF THE WESTERN CAPE AND OTHERS
From: Reyno De Beer <reyno@libertyfighters.org>
Date: 2026/09/16, 13:55
To: Njabulo Mabuya <MabuyaN@judiciary.org.za>, Phumelele Dhlamini <PDhlamini@judiciary.org.za>, Elmarie Sievers <ESievers@judiciary.org.za>, Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, Emlyn Williams <Emlyn.Williams@capetown.gov.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, Hoosain Aayesha <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, Celani Mchunu <celani.m@fairbridges.co.za>, Refiloe Mntambo <refiloe@mhalaw.co.za>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>

ATTENTION: **MADAM JUSTICE HOLDERNESS** (c/o Mr Mabuya)

cc. **JUDGE PRESIDENT N. P. MABINDLA-BOQWANA**

cc. **DEPUTY JUDGE PRESIDENT GOLIATH**

cc. All Interested Parties

Dear Madam Justice Holderness,

1. Receipt is acknowledged of the directive issued on 15 September 2026 enrolling the three Applications for Leave to Appeal for Friday, 18 September 2026, with the time subsequently corrected to 10h00 in Court 5.

2. The Applicants respond directly to this communication because it is a formal chambers directive transmitted openly to the parties and requires a procedural response. This should not

be understood as a retreat from the communication safeguard adopted after the proceedings of 28 August 2026.

3. After the tone of earlier correspondence to chambers became an issue during those proceedings, the Applicants requested SANParks' attorneys to transmit the newly lodged Applications for Leave to Appeal and related correspondence to Mr Mabuya, rather than initiating further informal substantive communication with chambers. The present response is therefore deliberately open, confined to procedure, and copied simultaneously to the Judge President, Deputy Judge President and all interested parties.

4. The Applicants further record, for the protection of all concerned, that if you Madam Justice or Mr Mabuya considers any wording in this communication to be disrespectful, inappropriate, arrogant, paternalistic, patronising, or otherwise objectionable in tone or content, the Applicants respectfully request that the precise wording and concern be identified to them immediately in writing, before it is relied upon adversely in any judicial proceeding. Any such communication is respectfully requested to be copied simultaneously to the Judge President, Deputy Judge President and all interested parties. The Applicants will then have a fair opportunity to explain, clarify or correct any unintended meaning, rather than again being confronted for the first time during a court hearing with a complaint concerning the tone or content of an earlier communication. This request is made solely to maintain a transparent contemporaneous record and to avoid a repetition of such a concern first being raised during later judicial proceedings.

5. The Judge President and Deputy Judge President are copied for the limited purpose of that communication safeguard and the preservation of a transparent administrative record. The Applicants do not by copying them ask either judicial officer to intervene in the merits of any pending application, or to interfere with adjudicative independence.

6. The Applicants respectfully object to the hearing date having been fixed on approximately three days' notice without their availability first being canvassed. Earlier in this same matter, proposed dates were circulated and the parties' availability was obtained before the 28 August hearing date was fixed. The Applicants reasonably expected a similar process for a hearing

involving three separate Applications for Leave to Appeal to be heard on the same day.

7. The prejudice is concrete. Before the directive was issued, I had a serious pre-existing commitment with my terminally ill brother on 18 September 2026. I have now had to cancel that commitment in order to comply with the Court's directive.

8. The Applicants nevertheless do not seek to default, avoid the hearing or create further delay. Unless directed otherwise, they will attend Court 5 at 10h00 on 18 September 2026 under express protest. Their attendance and participation do not constitute consent to the manner of set-down or waiver of any procedural or appellate right.

9. For orderly preparation, the Applicants record that they will request at the outset that the Application for Leave to Appeal dated 8 September 2026 against the recusal judgment ("the Recusal LTA") be called, heard and determined first. The Applicants' position is not that the Recusal LTA automatically creates an interim positive recusal order. It is that the correctness of the refusal to recuse, and therefore the disputed competence of the same judicial officer to perform the remaining substantive judicial functions, is already a live anterior appellate issue.

10. The Applicants will record their procedural position in a Practice Note to be filed for the hearing of 18 September 2026 and, insofar as necessary, in preliminary heads of argument. The Applicants will respectfully raise the anteriority and sequencing of the Recusal LTA *in limine* at the commencement of the hearing. Neither the Practice Note nor the preliminary heads creates a second recusal application or amends, supplements, replaces, narrows or abandons any of the existing grounds in the Recusal LTA.

11. The Applicants further record that the final settled written judgments and sealed orders arising from the proceedings of 28 August 2026 remain outstanding and have not been furnished to them, notwithstanding previous requests therefor. The Applicants accordingly respectfully request that, before the hearing, they be furnished with:

(a) the final settled written form of the *ex tempore* recusal judgment delivered on 28 August 2026;

(b) the final settled written form of the *ex tempore* costs judgment delivered on 28 August 2026; and

(c) the sealed orders flowing from those judgments.

12. The Applicants' preparation and filing of working transcripts from the available audio recording does not transfer to them any responsibility to produce, at their own cost, an official or authoritative transcription of judgments delivered by the Court, nor does it relieve the Court of furnishing the parties with the final written judgments and orders constituting the authoritative judicial record.

13. If the oral reasons delivered *ex tempore* constitute the entirety of the Court's reasons, the Applicants respectfully request that those reasons be reduced to, or otherwise furnished in, their final authoritative written form, together with the corresponding sealed orders, so that the decisions which are the subject of the pending appellate processes are identified and recorded with certainty.

14. The Applicants request that the official audio recording of the complete proceedings of 28 August 2026 be preserved as part of the court record. The pending Recusal LTA was lodged protectively on the available audio-derived record and expressly reserved the right to refine the record upon receipt of the final judgments, orders or official transcript.

15. The present direct response should likewise not be construed as abandonment of the Applicants' request for a neutral and transparent communication protocol. Unless another protocol is directed, the Applicants respectfully request that any further substantive administrative communication from chambers concerning this matter be circulated simultaneously to the Judge President, Deputy Judge President and all interested parties. No *ex parte* communication is sought or invited.

16. This communication is sent openly to all interested parties and is confined to procedure. All rights remain reserved *in toto*.

PS: Kindly note the Important/Disclaimer Notice underneath our signature for your information.

Kind Regards,

Reyno De Beer

President: Liberty Fighters Network

Mobile: +27 (0) 67 735 7288

Telegram News Channel: @libertyfightersnews

Facebook: libertyfightersnetwork

Twitter: @LFN_SouthAfrica

YouTube: Reyno De Beer, Liberty Fighter #1

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On 2026/09/15 11:06, Njabulo Mabuya wrote:

Dear All

RE: Leave to Appeals under C/N: 2026-024184

Kindly be advised that, by directive of the Hon. Holderness J

Parties are hereby advised that the following:

1.1. Application for leave to appeal the judgment and order handed down on 25 February 2026, dated 2 March 2026;

1.2. Application for leave to appeal the costs judgment handed down on 28 August 2026, and

1.3. Application for leave to appeal the judgment relating to the recusal application handed down on 28 August 2026.

will be heard on **Friday, 18 September 2026 at 09H00**. Court 5.

Kind regards,

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Njabulo Mabuya
Chambers of the Honourable Judge Holderness
Western Cape High Court

Office: +27 21 480 2622
Email: MabuyaN@judiciary.org.za

High Court of South Africa, Western Cape Division
35 Keerom Street, High Court, 1st Floor
Room 29
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www.judiciary.org.za

Disclaimer:

The information contained in this communication from mabuyan@judiciary.org.za sent at2026-09-15 11:06:42 is confidential and may be legally privileged. It is intended solely for use by debeerreyno@gmail.com and others authorized to receive it. If you are not debeerreyno@gmail.com you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the contents. Powered by Office Of The Chief Justice

Subject: RE: LEAVE TO APPEALS ENROLLED FOR 18 SEPTEMBER 2026 - HCWCDC #2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER v PREMIER OF THE WESTERN CAPE AND OTHERS
From: Celani Mchunu <celani.m@fairbridges.co.za>
Date: 2026/09/16, 15:20
To: Reyno De Beer <reyno@libertyfighters.org>, Njabulo Mabuya <MabuyaN@judiciary.org.za>, Phumelele Dhlamini <PDhlamini@judiciary.org.za>, Elmarie Sievers <ESievers@judiciary.org.za>, Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, Emlyn Williams <emlyn.williams@capetown.gov.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, Hoosain Aayesha <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, Refiloe Mntambo <refiloe@mhalaw.co.za>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>

Dear Mr Mabuya

We refer to Mr de Beer's email of this afternoon.

We approached Inlexo to obtain a typed copy of the judgment and transcript of the hearing, when we received notice of the proposed hearing on Friday 18 September 2026. Inlexo advised today that Judge Holderness has requested that the judgment be produced by Inlexo, but it is not yet available. We understand that the judgments might be available by close of business tomorrow.

It is the view of our clients and their legal team that obtaining the written judgments in the costs' determination, and in the recusal application, (as well as the transcript of the hearing which is relied upon in the leave to appeals) is indispensable to the hearing of the applications for leave to appeal against those orders and is needed for the preparation for argument.

Even if those written judgments are only provided to the parties by close of business tomorrow (Thursday), the transcripts will only be available thereafter.

Unfortunately, that will not allow sufficient time to deliver heads of argument, or to prepare for the hearing of all three of the applications for leave to appeal by 9 am on Friday morning.

In the circumstances and given Mr de Beer's personal difficulties with the hearing taking place on Friday 18 September 2026, we propose that the hearing instead takes place on 22 or 23 September 2026, or after the recess, on 5, 6 or 8 October 2026, or on another later date which suits Judge Holderness and the parties.

We look forward to hearing from you as soon as possible.

Kind regards,

Celani Mchunu
Associate

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E: celani.m@fairbridges.co.za
22nd Floor, Portside Building, 5 Buitengracht Street, Cape Town

FAIRBRIDGES
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TERRALEX AFRICA

From: Reyno De Beer <reyno@libertyfighters.org>
Sent: Wednesday, 16 September 2026 13:56
To: Njabulo Mabuya <MabuyaN@judiciary.org.za>; Phumelele Dhlamini <PDhlamini@judiciary.org.za>; Elmarie Sievers <ESievers@judiciary.org.za>; Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>
Cc: André le Roux <aleroux@WCPP.GOV.ZA>; Leslie Mkhabela <leslie@mhalaw.co.za>; Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>; Kamohelo Mapota <Kamohelo@mhalaw.co.za>; glen@maserumulecpt.co.za; jamie@maserumulecpt.co.za; Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>; cpbmjtt@capenature.co.za; Emlyn Williams <emlyn.williams@capetown.gov.za>; krok@mweb.co.za; chrisjonllo@gmail.com; stcamail@gmail.com; Hoosain Aayesha <ahoosain@justice.gov.za>; Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>; judy@monkeyvalleyresort.com; Tracy De Breuyn <traxdb@gmail.com>; waldohelives@icloud.com; administrator@wapfsa.org; Celani Mchunu <celani.m@fairbridges.co.za>; Refiloe Mntambo <refiloe@mhalaw.co.za>; cpbmjtt@sanparks.org; Deirdre Olivier <deirdre.o@fairbridges.co.za>
Subject: Re: LEAVE TO APPEALS ENROLLED FOR 18 SEPTEMBER 2026 - HCWCDC #2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER v PREMIER OF THE WESTERN CAPE AND OTHERS

ATTENTION: **MADAM JUSTICE HOLDERNESS** (c/o Mr Mabuya)

cc. **JUDGE PRESIDENT N. P. MABINDLA-BOQWANA**

cc. **DEPUTY JUDGE PRESIDENT GOLIATH**

cc. All Interested Parties

Dear Madam Justice Holderness,

1. Receipt is acknowledged of the directive issued on 15 September 2026 enrolling the three Applications for Leave to Appeal for Friday, 18 September 2026, with the time subsequently corrected to 10h00 in Court 5.

2. The Applicants respond directly to this communication because it is a formal chambers directive transmitted openly to the parties and requires a procedural response. This should not be understood as a retreat from the communication safeguard adopted after the proceedings of 28 August 2026.

Subject: RE: LEAVE TO APPEALS ENROLLED FOR 18 SEPTEMBER 2026 - HCWCDC #2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER v PREMIER OF THE WESTERN CAPE AND OTHERS
From: Refiloe Mntambo <refiloe@mhalaw.co.za>
Date: 2026/09/16, 18:03
To: Celani Mchunu <celani.m@fairbridges.co.za>, Reyno De Beer <reyno@libertyfighters.org>, Njabulo Mabuya <MabuyaN@judiciary.org.za>, Phumelele Dhlamini <PDhlamini@judiciary.org.za>, Elmarie Sievers <ESievers@judiciary.org.za>, Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, Hoosain Aayesha <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>

Dear Mr Mabuya

We refer to today's exchange of correspondence regarding the hearing of the applications for leave to appeal and confirm that SANParks shall abide by any further directions issued in this regard.

If further directions are issued, we confirm availability on the proposed dates of 22 or 23 September 2026, or 5 or 8 October 2026.

Warm Regards

mha 25 Years
FOUNDED 28 NOVEMBER 2000

Refiloe Mntambo
Senior Associate

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From: Celani Mchunu <celani.m@fairbridges.co.za>
Sent: Wednesday, 16 September 2026 17:27
To: Reyno De Beer <reyno@libertyfighters.org>; Njabulo Mabuya <MabuyaN@judiciary.org.za>; Phumelele Dhlamini <PDhlamini@judiciary.org.za>; Elmarie Sievers <ESievers@judiciary.org.za>; Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>
Cc: André le Roux <aleroux@WCPP.GOV.ZA>; Leslie Mkhabela <leslie@mhalaw.co.za>; Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>; Kamohelo Mapota <Kamohelo@mhalaw.co.za>; glen@maserumulecpt.co.za; jamie@maserumulecpt.co.za; Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>; cpbmjtt@capenature.co.za; krok@mweb.co.za; chrisjonllo@gmail.com; stcamail@gmail.com; Hoosain Aayesha <ahoosain@justice.gov.za>; Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>; judy@monkeyvalleyresort.com; Tracy De Breuyn <traxdb@gmail.com>; waldohelives@icloud.com; administrator@wapfsa.org; Refiloe Mntambo <refiloe@mhalaw.co.za>; cpbmjtt@sanparks.org; Deirdre Olivier <deirdre.o@fairbridges.co.za>
Subject: Re: LEAVE TO APPEALS ENROLLED FOR 18 SEPTEMBER 2026 - HCWCDC #2026-024184: LIBERTY FIGHTERS NETWORK AND ANOTHER v PREMIER OF THE WESTERN CAPE AND OTHERS

Caution! This message was sent from outside your organization.

Dear Mr Mabuya

Our clients note the contents of the email from Mr de Beer. Please could you place the following correspondence before Judge Holderness.

We refer to the exchange of correspondence today. At the stage when the City and Cape Nature's counsel indicated their availability for Friday's leave to appeal hearing yesterday, it was on the reasonable assumption that at the very least a judgment would be available sufficiently in advance of the leave hearing, for the necessary preparation to take place, and preferably the transcript too (given the multiple references to what was said during the hearings on 28 August 2026 in the leave to appeal application).

In our view, as a minimum those are required. Ordinarily, the litigant seeking leave to appeal would make the necessary arrangements to have the ex tempore judgment typed, and send it to the Presiding Judge for corrections, prior to the leave to appeal being heard.

As that has not been done by Mr de Beer, inquiries were made to Inlexo by Fairbridges yesterday in relation to the urgent typing, and Fairbridges were informed initially that arrangements would have to be made with the Court to obtain the recording, and thereafter to obtain a quotation. On following up today to ascertain whether the Court had sent the recording to Inlexo, we were then informed that the Judge's chambers had already requested that the judgment be typed by Inlexo, and that it may be available before the end of tomorrow.

It is in those circumstances, the City and Cape Nature sought to approach Judge Holderness to seek a short postponement of the leave to appeal, until next week (within a few days), or if that is not possible, because recess commences on Thursday, until the first week of term (which is in a few weeks time).

We respectfully submit that there is no urgency in the matters involved, such that would warrant the leave to appeal being heard in the absence of the judgment, or a transcript of the hearing, where the applicant seeks to place reliance on what it says was said during the hearing, or which require the matter to be heard on this Friday.

We accordingly persist with our request, and seek directions from Judge Holderness. The City and Cape Nature's counsel are available to meet with Judge Holderness in person or virtually tomorrow to arrange for the further conduct in the matter, should she consider a meeting necessary.

Kind regards,

Celani Mchunu
Associate

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E: celani.m@fairbridges.co.za
22nd Floor, Portside Building, 5 Buitengracht Street, Cape Town



"CC23"

Subject: RE: RE: LEAVE TO APPEALS 2026-024184
From: Njabulo Mabuya <MabuyaN@judiciary.org.za>
Date: 2026/09/17, 09:22
To: Refiloe Mntambo <refiloe@mhalaw.co.za>, "reyno@libertyfighters.org.za" <reyno@libertyfighters.org.za>, Reyno De Beer <debeerreyno@gmail.com>, "reyno@libertyfighters.org" <reyno@libertyfighters.org>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, Emlyn Williams <Emlyn.Williams@capetown.gov.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, "Reyno De Beer" <debeerreyno@gmail.com>, Hoosain Aayesha <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>, Celani Mchunu <celani.m@fairbridges.co.za>, Phumelele Dhlamini <PDhlamini@judiciary.org.za>, Elmarie Sievers <ESievers@judiciary.org.za>

Dear All

Kindly be advised that Justice Holderness has noted the contents of the correspondence received in this matter.
The Court has requested Inlexso to provide the two ex tempore judgments delivered on 28 August 2026. Any necessary corrections, if applicable, will thereafter be attended to, and the judgments will be forwarded to the parties.
The matter will not proceed on 18 September 2026 as previously scheduled.
The parties are requested to agree on a mutually suitable date for the hearing during the fourth term**,** at 09H00**,** and to agree on a timetable for the filing of the Heads of Argument**.** The agreed arrangements should be communicated to the Court accordingly.
The Court will be available to hear the matter on the mutually agreed date.
Further note that the written Judgment and Orders referred to by the Applicant in the correspondence were uploaded onto Court Online some time ago and are accessible to all parties.

Kind regards,

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Njabulo Mabuya
Chambers of the Honourable Judge Holderness
Western Cape High Court

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From: Njabulo Mabuya
Sent: Tuesday, 15 September 2026 11:06
To: 'Refiloe Mntambo' <refiloe@mhalaw.co.za>; reyno@libertyfighters.org.za; Reyno De Beer <debeerreyno@gmail.com>; 'reyno@libertyfighters.org' <reyno@libertyfighters.org>; cpbmjtt@sanparks.org;

Deirdre Olivier <deirdre.o@fairbridges.co.za>
Cc: André le Roux <aleroux@WCPP.GOV.ZA>; Leslie Mkhabela <leslie@mhalaw.co.za>; Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>; Kamohelo Mapota <Kamohelo@mhalaw.co.za>; glen@maserumulecpt.co.za; jamie@maserumulecpt.co.za; Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>; cpbmjtt@capenature.co.za; Emlyn Williams <Emlyn.Williams@capetown.gov.za>; krok@mweb.co.za; chrisjonllo@gmail.com; stcamail@gmail.com; Reyno De Beer <debeerreyno@gmail.com>; Hoosain Aayesha <ahoosain@justice.gov.za>; Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>; judy@monkeyvalleyresort.com; Tracy De Breuyn <traxdb@gmail.com>; waldohelives@icloud.com; administrator@wapfsa.org; Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>; Celani Mchunu <celani.m@fairbridges.co.za>
Subject: RE: LEAVE TO APPEALS 2026-024184

Dear All

RE: Leave to Appeals under C/N: 2026-024184

Kindly be advised that, by directive of the Hon. Holderness J

Parties are hereby advised that the following:

1.1. Application for leave to appeal the judgment and order handed down on 25 February 2026, dated 2 March 2026;

1.2. Application for leave to appeal the costs judgment handed down on 28 August 2026, and

1.3. Application for leave to appeal the judgment relating to the recusal application handed down on 28 August 2026.

will be heard on **Friday, 18 September 2026 at 09H00**. Court 5.

Kind regards,

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Njabulo Mabuya
Chambers of the Honourable Judge Holderness
Western Cape High Court

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Disclaimer:

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"CC24"

Subject: Re: LEAVE TO APPEALS 2026-024184
From: Reyno De Beer <reyno@libertyfighters.org>
Date: 2026/09/17, 10:57
To: Njabulo Mabuya <MabuyaN@judiciary.org.za>, Elmarie Sievers <ESievers@judiciary.org.za>, Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>, Phumelele Dhlamini <PDhlamini@judiciary.org.za>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, Emlyn Williams <Emlyn.Williams@capetown.gov.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, Hoosain Aayesha <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, Celani Mchunu <celani.m@fairbridges.co.za>, Refiloe Mntambo <refiloe@mhalaw.co.za>, Reyno De Beer <debeerreyno@gmail.com>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>

ATTENTION: **MADAM JUSTICE HOLDERNESS** (c/o Mr Mabuya)

cc. **JUDGE PRESIDENT N. P. MABINDLA-BOQWANA**

cc. **DEPUTY JUDGE PRESIDENT GOLIATH**

cc. All Interested Parties

Dear Madam Justice Holderness,

1. Receipt is acknowledged of Mr Mabuya's communication of this morning conveying the further directive of you, Madam Justice.

2. **At the outset, the Applicants expressly maintain and reserve the urgency of this matter *in toto*. Nothing in their compliance with the Court's latest directive, nor their participation in identifying a fourth-term hearing date, is to be construed as an abandonment, dilution or waiver of the urgency repeatedly placed before the Court, the Chief Justice, the Judge President, the Deputy Judge President, and all**

interested parties.

3. The Applicants further expressly record that they did not request, agree to or consent to the cancellation of the hearing directed for 18 September 2026. The hearing has now been removed by direction of the Court notwithstanding the Applicants' recorded opposition to a postponement.

4. The Applicants will comply with the directive while expressly objecting to the postponement and reserving all rights arising from its consequences.

5. The Applicants' principal concern is that today's directive postpones the appellate hearing into the fourth term without addressing the urgency which has repeatedly formed the foundation of the Applicants' requests for expedition.

6. The Applicants' extremely urgent communication of 8 September 2026 expressly recorded that the affected baboons were then scheduled for capture and relocation to the proposed sanctuary from approximately 12 September 2026 and warned that the available period was measured in days, not weeks.

7. The Applicants further expressly warned that once free-ranging baboons are captured, transported and permanently confined, a later appellate victory may become legally significant but practically sterile because the factual subject matter of the litigation may already have been irreversibly altered.

8. That urgency has not disappeared merely because 12 September 2026 has passed. On the contrary, the Applicants understand that implementation, including capture and relocation of the affected baboons, may now occur at any time. Every further delay therefore increases the risk that the pending appellate processes will be overtaken by the very irreversible implementation which the Applicants have repeatedly sought to prevent.

9. The Applicants accordingly respectfully object to the postponement of the hearing into the fourth term without any corresponding preservation of the factual subject matter of the pending appellate proceedings.

10. The procedural chronology must also be recorded accurately.

11. On 15 September 2026 you, Madam Holderness, directed that all three Applications for Leave to Appeal be heard on 18 September 2026, on approximately three days' notice and without first canvassing the Applicants' availability.

12. The Applicants immediately objected to that compressed and uncanvassed timetable. Nevertheless, I cancelled a serious pre-existing commitment involving my terminally ill brother, rearranged my affairs and undertook to comply with the Court's directive. The Applicants were ready to proceed tomorrow.

13. When that directive was issued, the final typed *ex tempore* judgments of 28 August 2026 had plainly not yet been furnished to the parties. Today's communication now confirms that the Court has requested Inlexo to produce the two judgments, after which any necessary corrections will be attended to before the judgments are forwarded to the parties.

14. This is precisely the record problem which the Applicants had already raised repeatedly.

15. On 8 September 2026 the Applicants placed before the Judge President and all interested parties:

    15.1. the complete working transcript of the proceedings of 28 August 2026;

    15.2. the working transcript of the *ex tempore* recusal judgment;

    15.3. the working transcript of the *ex tempore* costs judgment; and

    15.4. the two protective Applications for Leave to Appeal arising from those proceedings.

16. The accompanying letter expressly recorded that the final written judgments and sealed orders had not been furnished; that the Applicants had obtained the available Court audio; that working *verbatim* transcripts had been prepared; and that I was prepared to verify their source, preparation and accuracy under oath, expressly subject to correction against the official record.

17. Fairbridges was accordingly plainly aware of the transcript issue by no later than 10 September 2026. Indeed, its own response to the Judge President expressly recorded at

paragraph 49:

"*Furthermore, our clients dispute the accuracy of certain portions of the transcript, which Mr de Beer has produced in respect of the recusal application.*"

18. Yet no allegedly inaccurate passage was identified. No page, line, word or proposed correction was provided. No request was made to the Applicants for clarification. No competing transcript was produced.

19. Fairbridges' subsequent correspondence now records that it approached Inlexo only after the hearing was directed on 15 September 2026.

20. The Applicants respectfully submit that this chronology is material. The represented Respondents knew that the Applicants were relying upon working transcripts, knew that the final judgments remained outstanding, had already chosen to dispute portions of the Applicants' transcript, and knew that urgent appellate and case-management relief was being pursued. If a professional transcription was considered indispensable to their preparation, nothing prevented steps being taken at that stage.

21. The Applicants, faced with exactly the same absence of the Court's written judgments, did not seek postponement. They obtained the available Court audio, prepared working transcripts themselves, reconstructed the record, lodged protective appellate papers and repeatedly called for the authoritative judicial record.

22. The Applicants have now additionally uploaded the complete working transcript to Court Online under cover of my commissioned Confirmatory Affidavit authenticating its preparation from the available audio, expressly subject to correction against the official record. The same material is attached hereto again for convenience.

23. If the City, CapeNature or SANParks continues to dispute any portion of that transcript, the Applicants again respectfully request that the precise passage, wording and proposed correction be identified immediately. A generalised assertion that "*certain portions*" are inaccurate cannot reasonably render the entire working record unusable indefinitely.

24. The Applicants must therefore place on record the procedural asymmetry which has now

arisen. They were directed to prepare three Applications for Leave to Appeal on approximately three days' notice notwithstanding that the Court's final typed judgments were unavailable. They objected but prepared to comply. Once the represented organs of state complained that the same absence of final judgments left them insufficiently prepared, the hearing was removed and postponed into the fourth term.

25. **The Applicants do not speculate in this correspondence as to the reason for that different procedural outcome. They record the objective chronology because it is material to the existing recusal and appellate processes and must be preserved accurately.**

26. The Applicants further note Mr Mabuya's statement that "*the written Judgment and Orders referred to by the Applicant in the correspondence were uploaded onto Court Online some time ago and are accessible to all parties*".

27. The Applicants respectfully request clarification of precisely which documents are referred to.

28. The two formal orders arising from the proceedings of 28 August 2026 appear on Court Online as having been electronically filed by the Registrar on 11 September 2026 at approximately 15h03 and 15h04 respectively. The Applicants received no Court Online notification thereof and discovered those orders only this morning.

29. If the reference to "*written Judgment*" is intended to refer to either or both of the two *ex tempore* judgments of 28 August 2026, that would appear difficult to reconcile with the immediately preceding portion of today's directive stating that Inlexo must still provide those judgments and that any necessary corrections will thereafter be attended to before they are forwarded to the parties. The Applicants are aware that the 25 February 2026 judgment had been available since that date. However, if another written judgment is intended, kindly identify it so that the record may be settled with certainty.

30. The Applicants further respectfully record that paragraph 49 of their 8 September 2026 letter to the Judge President specifically requested, *inter alia*:

30.1. immediate production of the operative orders;

30.2. clarity whether the *ex tempore* judgments constituted the complete reasons or whether fuller judgments remained under preparation;

30.3. preservation of the official audio;

30.4. provisional reliance upon the Applicants' affidavit-verified working transcripts; and

30.5. immediate case-management directions concerning all three Applications for Leave to Appeal.

31. Those requests were made because the Applicants had already been experiencing precisely the record difficulties now relied upon by the represented state Respondents. If the absence of the final judgments and transcript has now created a difficulty sufficient to prevent tomorrow's hearing from proceeding, that difficulty cannot fairly be attributed to the Applicants.

32. The urgency issue nevertheless remains the overriding concern.

33. Fairbridges has submitted that there is "*no urgency*" requiring the hearing to proceed tomorrow. The Applicants emphatically dispute that proposition.

34. The urgency does not arise merely because the Applicants prefer an earlier hearing. It arises because implementation of the impugned Baboon Management Action Plan continues while the appellate processes remain unresolved, with the result that the affected baboons may be captured, removed, relocated or permanently confined before the appellate process is capable of providing effective relief.

35. The represented organs of state cannot, with respect, contend that the hearing may safely be postponed for weeks while simultaneously retaining an unrestricted ability to carry out the very measures which may render the appellate proceedings practically ineffective.

36. The Applicants therefore call upon the City of Cape Town, CapeNature and SANParks to confirm immediately and unequivocally whether, pending determination of the three Applications for Leave to Appeal and any immediate appellate process flowing therefrom, they undertake not to:

36.1. capture the affected baboons for purposes of sanctuary relocation;

36.2. remove or transport them to the proposed sanctuary;

36.3. permanently confine them in the sanctuary; or

36.4. take any other materially irreversible implementation step affecting the subject matter of these proceedings.

37. If such an undertaking is furnished by all relevant organs of state, the immediate prejudice created by the postponement can at least be contained while the rescheduled hearing awaits determination.

38. **If no such undertaking is furnished, the Applicants respectfully request that Justice Holderness reconsider whether the hearing can properly be postponed into the fourth term without first addressing preservation of the subject matter of the pending appellate proceedings.**

39. Alternatively, if the postponement remains in place without such preservation, the Applicants expressly reserve their right to approach the appropriate Court urgently for interim and/or appellate relief necessary to prevent the pending proceedings from being overtaken by irreversible implementation.

40. This is not an attempt to reopen the merits by correspondence. It is a procedural objection to delaying appellate proceedings while the very subject matter of those proceedings remains exposed to potentially irreversible alteration.

41. The Applicants do not consent to the postponement of the hearing to the fourth term and expressly maintain their objection thereto. Their participation in any process directed by the Court to identify an alternative date will occur under protest, without acquiescence in the postponement and without waiver of their contention that the pending Applications for Leave to Appeal require urgent determination. Should the Court nevertheless maintain its directive that the hearing be postponed, the Applicants will participate in identifying an alternative date solely in compliance with that directive and subject expressly to all their rights, including the right to seek urgent relief elsewhere.

42. The Applicants remain ready and willing to prosecute all three Applications for Leave to Appeal without avoidable delay. They will comply with any properly determined timetable for the filing of heads of argument once the final authoritative written judgments have been furnished and the position concerning the hearing has been regularised. Nothing in the Applicants' decision not to finalise or file full heads immediately following today's postponement may be construed as contributing to, acquiescing in, or occasioning any delay. The Applicants had prepared to proceed with the hearing on 18 September 2026 as directed; it is the Court's subsequent postponement of that hearing, and not any lack of readiness on the Applicants' part, which has altered the immediate procedural timetable.

43. The Applicants maintain their procedural position that the Application for Leave to Appeal against the recusal judgment is anterior and should be heard and determined before the remaining two Applications for Leave to Appeal. Nothing in today's directive alters or abandons that position.

44. The Judge President and Deputy Judge President remain copied because the availability of the judgments and orders, the preservation of the record, the urgency of the appellate processes and the danger of irreversible implementation have already formed part of the Applicants' requests for institutional case management. They are not copied to interfere with the adjudicative determination of any pending application.

45. The Applicants' previously recorded communication safeguards, procedural objections and non-waiver position remain fully maintained.

46. **For the avoidance of any doubt: the Applicants continue to regard this matter as urgent, continue to object to delay which may render the appellate processes practically ineffective, and expressly reserve all rights to seek urgent relief should preservation of the subject matter not be secured.**

47. All rights of the Applicants, their members, and the interests of the public they seek to protect, remain reserved *in toto*.

PS: Kindly note the Important/Disclaimer Notice underneath our signature for your information.

Kind Regards,

Reyno De Beer

President: Liberty Fighters Network

Mobile: +27 (0) 67 735 7288

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YouTube: Reyno De Beer, Liberty Fighter #1

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On 2026/09/17 09:22, Njabulo Mabuya wrote:

> Dear All
>
> Kindly be advised that Justice Holderness has noted the contents of the correspondence received in this matter.
> The Court has requested Inlexso to provide the two ex tempore judgments delivered on 28 August 2026. Any necessary corrections, if applicable, will thereafter be attended to, and the judgments will

"CC25"

Subject: RE: LEAVE TO APPEALS 2026-024184
From: Njabulo Mabuya <MabuyaN@judiciary.org.za>
Date: 2026/09/17, 11:18
To: Reyno De Beer <reyno@libertyfighters.org>
CC: André le Roux <aleroux@WCPP.GOV.ZA>, Leslie Mkhabela <leslie@mhalaw.co.za>, Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>, Kamohelo Mapota <Kamohelo@mhalaw.co.za>, "glen@maserumulecpt.co.za" <glen@maserumulecpt.co.za>, "jamie@maserumulecpt.co.za" <jamie@maserumulecpt.co.za>, Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>, "cpbmjtt@capenature.co.za" <cpbmjtt@capenature.co.za>, Emlyn Williams <Emlyn.Williams@capetown.gov.za>, "krok@mweb.co.za" <krok@mweb.co.za>, "chrisjonllo@gmail.com" <chrisjonllo@gmail.com>, "stcamail@gmail.com" <stcamail@gmail.com>, "Hoosain Aayesha" <ahoosain@justice.gov.za>, Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>, Tracy De Breuyn <traxdb@gmail.com>, "waldohelives@icloud.com" <waldohelives@icloud.com>, "administrator@wapfsa.org" <administrator@wapfsa.org>, Celani Mchunu <celani.m@fairbridges.co.za>, Refiloe Mntambo <refiloe@mhalaw.co.za>, "Reyno De Beer" <debeerreyno@gmail.com>, "cpbmjtt@sanparks.org" <cpbmjtt@sanparks.org>, Deirdre Olivier <deirdre.o@fairbridges.co.za>, Phumelele Dhlamini <PDhlamini@judiciary.org.za>, Elmarie Sievers <ESievers@judiciary.org.za>

Dear Sir

I acknowledge receipt of your email.

Please be advised that the directives issued by Justice Holderness remain the directives of this Honourable Court.

For the sake of clarity, the **"written Judgment"** referred to in the correspondence is the Judgment handed down on **25 February 2026**, which is available on Court Online.

Kind regards,

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

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From: Reyno De Beer <reyno@libertyfighters.org>
Sent: Thursday, 17 September 2026 10:57
To: Njabulo Mabuya <MabuyaN@judiciary.org.za>; Elmarie Sievers <ESievers@judiciary.org.za>; Jerelene Naidoo-Chetty <JNaidoo-Chetty@judiciary.org.za>; Phumelele Dhlamini <PDhlamini@judiciary.org.za>
Cc: André le Roux <aleroux@WCPP.GOV.ZA>; Leslie Mkhabela <leslie@mhalaw.co.za>; Mmasetshaba Taele <mmasetshaba@mhalaw.co.za>; Kamohelo Mapota <Kamohelo@mhalaw.co.za>; glen@maserumulecpt.co.za; jamie@maserumulecpt.co.za; Ophelia-Faith Abrahams <ophelia@maserumulecpt.co.za>; cpbmjtt@capenature.co.za; Emlyn Williams <Emlyn.Williams@capetown.gov.za>; krok@mweb.co.za; chrisjonllo@gmail.com; stcamail@gmail.com; Hoosain Aayesha <ahoosain@justice.gov.za>; Cape Peninsula Baboon <cpbmjtt@capetown.gov.za>; judy@monkeyvalleyresort.com; Tracy De Breuyn <traxdb@gmail.com>; waldohelives@icloud.com; administrator@wapfsa.org; Celani Mchunu <celani.m@fairbridges.co.za>; Refiloe

Mntambo <refiloe@mhalaw.co.za>; Reyno De Beer <debeerreyno@gmail.com>; cpbmjtt@sanparks.org; Deirdre Olivier <deirdre.o@fairbridges.co.za>
Subject: Re: LEAVE TO APPEALS 2026-024184

ATTENTION: **MADAM JUSTICE HOLDERNESS** (c/o Mr Mabuya)

cc. **JUDGE PRESIDENT N. P. MABINDLA-BOQWANA**

cc. **DEPUTY JUDGE PRESIDENT GOLIATH**

cc. All Interested Parties

Dear Madam Justice Holderness,

1. Receipt is acknowledged of Mr Mabuya's communication of this morning conveying the further directive of you, Madam Justice.

2. **At the outset, the Applicants expressly maintain and reserve the urgency of this matter *in toto*. Nothing in their compliance with the Court's latest directive, nor their participation in identifying a fourth-term hearing date, is to be construed as an abandonment, dilution or waiver of the urgency repeatedly placed before the Court, the Chief Justice, the Judge President, the Deputy Judge President, and all interested parties.**

3. The Applicants further expressly record that they did not request, agree to or consent to the cancellation of the hearing directed for 18 September 2026. The hearing has now been removed by direction of the Court notwithstanding the Applicants' recorded opposition to a postponement.

4. The Applicants will comply with the directive while expressly objecting to the postponement and reserving all rights arising from its consequences.

5. The Applicants' principal concern is that today's directive postpones the appellate hearing into the fourth term without addressing the urgency which has repeatedly formed the foundation of the Applicants' requests for expedition.

"CC26" 370

Subject: Re: URGENT REQUEST FOR IMMEDIATE SPCA ACTION: PROPOSED PERMANENT BABOON SANCTUARY, IMMINENT RELOCATION AND ANIMAL-WELFARE CONCERNS
From: Rudolph Philander <insp12@spca-ct.co.za>
Date: 2026/09/06, 19:02
To: Reyno De Beer <reyno@libertyfighters.org>
CC: Reyno De Beer <debeerreyno@gmail.com>, Judy Sole <judysole@gmail.com>, Tracy De Breuyn <traxdb@gmail.com>, "judy@monkeyvalleyresort.com" <judy@monkeyvalleyresort.com>



Dear Mr De Beer,

Thank you for meeting with us on 4 September 2026 and for formally recording your concerns.

The Cape of Good Hope SPCA's position remains unchanged: we do not support the permanent confinement of healthy, free-ranging baboons in a sanctuary environment and have formally communicated this position to the CPBMJTT.

However, the current reality is that only two options appear to remain: relocation to a sanctuary or euthanasia. No one wishes to see these baboons euthanised. Remaining in their present environment is also not a sustainable welfare outcome, as they are subjected to ongoing harassment, abuse and harm by members of the public.

The SPCA will fulfil its statutory duty and take the necessary steps within its mandate to ensure that the capture, handling, transportation and confinement of the baboons comply with the Animals Protection Act 71 of 1962. We will continue to follow up and monitor their welfare during and after the relocation, including conducting regular post-relocation inspections, as we do with other facilities that house animals. Should any contravention of the Act be identified, appropriate action will be taken.

The CPBMJTT and its constituent authorities remain responsible for managing the baboons and implementing the proposed relocation. Concerns regarding the relevant policy decisions should therefore also be addressed directly to them.

We reiterate - our position remains unchanged: we do not support the permanent confinement of healthy, free-ranging baboons in a sanctuary environment and have formally communicated this position to the CPBMJTT. Lastly, our monitoring of the Welfare matters shouldn't be construed as an endorsement or approval of the sanctuary relocation.

We trust the above is clear and provide clarity.

Thank you

Kind regards

Insp. Rudolph Philander
Inspectorate Supervisor

BSc Honours Biodiversity and Conservation Biology (BSc Hons. BCB)

Cape of Good Hope
DBV SPCA

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From: Reyno De Beer <reyno@libertyfighters.org>
Sent: Friday, September 4, 2026 2:58 PM
To: Rudolph Philander <insp12@spca-ct.co.za>
Cc: Reyno De Beer <debeerreyno@gmail.com>; Judy Sole <judysole@gmail.com>; Tracy De Breuyn <traxdb@gmail.com>; judy@monkeyvalleyresort.com <judy@monkeyvalleyresort.com>
Subject: URGENT REQUEST FOR IMMEDIATE SPCA ACTION: PROPOSED PERMANENT BABOON SANCTUARY, IMMINENT RELOCATION AND ANIMAL-WELFARE CONCERNS

Good afternoon Mr Philander,
Thank you for making the time available this morning, 4 September 2026, to briefly meet with Ms Judith Sole and myself at the Cape of Good Hope SPCA regarding the proposed permanent baboon sanctuary and the anticipated relocation of baboons thereto on or about 12 September 2026.
We appreciate that the meeting had to be brief and, as requested by you, we accordingly place our concerns and request for assistance formally in writing so that the SPCA may consider and respond thereto.
The matter has now become exceptionally urgent.
The Cape of Good Hope SPCA has already publicly expressed a position which, in our respectful view, is highly significant. It has stated that it does not support the placement of free-roaming, wild-caught baboons into a sanctuary as a long-term management solution.
That position substantially corresponds with the concerns which Liberty Fighters Network ("LFN"), Ms Sole and numerous members of the affected communities have been raising regarding the implementation of the Cape Peninsula Baboon Management Action Plan.

For context, it may assist briefly to explain why LFN considers the present circumstances to extend considerably beyond an ordinary disagreement concerning baboon-management policy.
During February 2026, LFN and I instituted proceedings in the Western Cape Division of the High Court under case number **2026-024184**, initially seeking urgent interim protection against permanent or irreversible implementation of the Action Plan, including the capture, removal, relocation and confinement of baboon troops and the establishment or use of sanctuary facilities, pending the determination of broader constitutional and administrative issues.
Those proceedings remain alive.
Among the matters presently contested is the **lawfulness of the Cape Peninsula Baboon Management Joint Task Team ("CPBMJTT") itself and the legal foundation upon which it exercises collective decision-making authority**. LFN challenges, *inter alia*, the agreement concluded on or about 06 July 2023 between SANParks, CapeNature and the City of Cape Town which established the CPBMJTT, as well as decisions purportedly taken pursuant thereto without, where applicable, the necessary lawful approval of the individual organs of state.
The litigation also raises a considerably wider constitutional problem.
Sections 71 to 77 of the Constitution of the Western Cape, 1997 establish the **Office of the Commissioner for the Environment** as an independent constitutional environmental oversight mechanism. The continued vacancy of that office has become common cause in the proceedings. LFN's case is that the office has never been properly established, appointed and operationalised since the relevant constitutional framework took effect in 1998.
LFN has accordingly sought declaratory and structural relief requiring the constitutional appointment process to be undertaken and the office finally brought into operation.
This issue is directly connected with the baboon dispute because a complaint concerning the environmental governance and implementation of the Action Plan has already been directed to the Office of the Commissioner for the Environment. Yet there is presently no functioning Commissioner capable of independently receiving, investigating and reporting upon that complaint.
In practical terms, the very constitutional environmental oversight mechanism which ought to be available while decisions of this magnitude are being implemented is absent.
LFN is presently carrying this challenge essentially alone.
Notwithstanding the considerable public controversy surrounding the proposed sanctuary, and notwithstanding the concerns publicly expressed by various organisations and individuals, **no other organisation has, to date, formally come on board in the litigation by filing an affidavit supporting LFN's challenge and the relief it seeks**.
We do not mention this to criticise any organisation.
We mention it because the approaching relocation creates a moment at which expressions of concern must, where lawful authority exists to act, translate into practical protection.
This is particularly important in relation to the SPCA because the SPCA has already publicly stated that it does not support the placement of free-roaming, wild-caught baboons in a sanctuary as a long-term management solution.
Our present approach to the SPCA is nevertheless deliberately narrower than the broader litigation and public-policy dispute.
We do not ask the SPCA to adopt LFN's legal arguments, to determine the legality of the entire Baboon Management Action Plan, to become responsible for baboon-management policy, or necessarily to become a party to the pending litigation.
We ask the SPCA to do what an independent animal-welfare organisation such as the SPCA is particularly equipped and empowered to do: **intervene before the baboons are captured, transported and permanently confined if their welfare may thereby unlawfully or unnecessarily be compromised**.
The difficulty is that time is rapidly running out.
We understand that the proposed relocation to the sanctuary is anticipated to commence on or about **12 September 2026**. Once free-ranging baboon troops have been captured, removed from their existing ranges, transported and confined in a permanent or semi-permanent

sanctuary environment, the factual position will have fundamentally changed.
Whatever arguments may subsequently be advanced about whether the relocation should have occurred, the animals themselves would already have undergone the capture, sedation and/or darting, handling, transportation, removal and confinement.
Animal welfare cannot effectively be protected retrospectively.
It is for precisely this reason that we approached the SPCA now.
We respectfully request that this email therefore be treated as a **formal and urgent request for animal-welfare investigation and intervention** concerning the proposed sanctuary and the intended relocation of the affected baboon troops.
In particular, we request that the Cape of Good Hope SPCA urgently consider:

1. confirming whether its publicly stated opposition remains unchanged, namely that the SPCA does not support the long-term placement of free-roaming, wild-caught baboons into a sanctuary;
2. urgently inspecting the proposed sanctuary and enclosure, preferably before 12 September 2026, and independently assessing whether the facility is appropriate for the intended permanent or long-term confinement of the affected troops from an animal-welfare perspective;
3. obtaining and independently considering, insofar as reasonably necessary, the relevant information concerning the proposed capture, darting or sedation, handling, transportation, introduction into the enclosure, veterinary supervision, food and water provision, shelter, environmental enrichment, troop integrity, disease control, emergency procedures and long-term confinement of the baboons;
4. determining whether any aspect of the proposed capture, transportation or confinement gives rise to a reasonable concern of cruelty, unnecessary suffering, avoidable distress or any other conduct falling within the SPCA's statutory animal-protection mandate;
5. **engaging urgently with the City of Cape Town, CapeNature, SANParks and the CPBMJTT**, and requesting that no baboon be relocated to the sanctuary until the SPCA has been afforded a proper opportunity to conduct and complete its independent welfare assessment;
6. where the SPCA, its authorised inspectors and/or the National Council of SPCAs possess statutory or other lawful powers to prevent conduct which may constitute cruelty or unnecessary suffering, **exercising such powers before the relocation occurs**, rather than leaving the welfare consequences to be addressed only after the animals have already been moved;
7. if any necessary enforcement or preventative step falls outside the Cape of Good Hope SPCA's own authority, urgently referring or escalating the matter to the NSPCA or any other competent authority capable of taking such action; and
8. if, notwithstanding the above, the relocation proceeds, ensuring insofar as reasonably and lawfully possible that appropriately authorised SPCA inspectors are independently present during the capture, darting, handling, transportation and placement of the baboons and are able to intervene should circumstances affecting their welfare arise.

We wish to emphasise that **LFN is not approaching the SPCA for funding**.
We require no financial contribution whatsoever.
Neither are we asking the SPCA to assume responsibility for our litigation.
What we urgently seek is the SPCA's **independent institutional support for the welfare of these animals**, together with the exercise of whatever statutory, investigative, preventative or enforcement authority is lawfully available to it.

If the SPCA maintains its publicly expressed view that the permanent sanctuary is not an appropriate long-term solution for free-ranging, wild-caught baboons, then the imminent implementation of precisely that solution must, respectfully, warrant more than merely recording disagreement after the event.

The time for meaningful welfare intervention is before the gates close behind the baboons.

We appreciate that the SPCA may ultimately conclude that certain aspects fall beyond its statutory jurisdiction. If that is its considered position, we respectfully request that it identify those limitations in writing and advise what steps it nevertheless can and intends to take within its mandate.

The pending High Court litigation does not, in our respectful view, diminish the SPCA's independent statutory responsibilities.

Quite the contrary.

Irrespective of which party may ultimately prevail concerning the constitutional and administrative legality of the Action Plan, the CPBMJTT or the broader governmental arrangements, the baboons remain entitled to the protections afforded to animals under South African law.

We therefore respectfully request the Cape of Good Hope SPCA to act independently, fearlessly and urgently within its mandate.

Given the anticipated relocation date of 12 September 2026, we would be grateful if this matter could receive immediate attention and if you could provide us with the SPCA's preliminary position and intended course of action as soon as reasonably possible.

We are available at extremely short notice to meet with you, accompany an inspection if considered useful, furnish the relevant court papers and other documentation in our possession, or engage with any inspector or official designated by the SPCA.

We genuinely hope that, notwithstanding whatever differences may exist between the various organisations and stakeholders regarding the future management of Cape Peninsula baboons, there is at least one point upon which we can stand together:

No irreversible step should be taken with these animals before those specifically entrusted with protecting their welfare have independently satisfied themselves that what is about to be done to them is lawful, humane and justified.

We thank you again for receiving us this morning and look forward to your urgent response.

The rights of LFN, its members, Ms Sole, the affected communities and the public remain reserved *in toto*.

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PS: Kindly note the Important/Disclaimer Notice underneath our signature for your information.

Kind Regards,

Reyno De Beer

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