



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

JUDGMENT

Reportable / Not reportable

Case No: 7630/2023

In the matter between:

MY VOTE COUNTS NPC

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Second Respondent

MINISTER OF HOME AFFAIRS

Third Respondent

INDEPENDENT ELECTORAL COMMISSION

Fourth Respondent

AFRICAN NATIONAL CONGRESS

Fifth Respondent

DEMOCRATIC ALLIANCE

Sixth Respondent

ECONOMIC FREEDOM FIGHTERS

Seventh Respondent

INKATHA FREEDOM PARTY	Eight Respondent
NATIONAL FREEDOM PARTY	Nineth Respondent
UNITED DEMOCRATIC MOVEMENT	Tenth Respondent
FREEDOM FRONT PLUS	Eleventh Respondent
CONGRESS OF THE PEOPLE	Twelfth Respondent
AFRICAN CHRISTIAN DEMOCRATIC PARTY	Thirteenth Respondent
AFRICAN INDEPENDENT CONGRESS	Fourteenth Respondent
PAN AFRICANIST CONGRESS	Fifteenth Respondent
AFRICAN TRANSFORMATION MOVEMENT	Sixteenth Respondent
GOOD PARTY	Seventeenth Respondent
AL JAMA-AH	Eighteenth Respondent
ACTION SA	Nineteenth Respondent

Coram: ERASMUS, J et SLINGERS, J et HOLDERNESS, J

Heard: 18 February 2025

Delivered: 21 August 2025

This judgment is handed down electronically by circulation to the parties' legal representatives' email addresses.

ORDER

1. The application is dismissed with no order as to costs.

JUDGMENT

THE COURT

- [1] The applicant describes itself as a campaigner for a more inclusive, transparent and accountable political and electoral system in South Africa, which has as its objective increased accountability, transparency and inclusiveness of elections and politics in South Africa. The applicant avers that it strives to achieve its objective by *inter alia* campaigning for reform of the political party funding system in South Africa through the introduction of legislation and other measures.
- [2] In 2017 the applicant successfully challenged the constitutionality of the Promotion of Access to Information Act, Act 2 of 2000 (**'PAIA'**) to the extent that it failed to provide for access to information on the private funding of political parties¹. This failure rendered PAIA inconsistent with the constitutional right to access information, the state's obligation to protect, promote and fulfil the rights in the Bill of Rights, the citizen's political rights.
- [3] Subsequent to the applicant's successful constitutional challenge, Parliament was afforded 18 months to amend PAIA and to take any other measure it deemed appropriate to provide for the recordal, the preservation and facilitation of reasonable access to information on the private funding of political parties and independent candidates.
- [4] This resulted in the enactment of the Political Party Funding Act of 2018 (**'the PPFA'**) and the PAIA amendment Act. In terms of the PPFA, a political party could not accept a donation from a person or entity in excess of R15 million within a financial year (**'the donation limitation'**)² and a political party was

¹ *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* 2018 (5) SA 380 (CC) (**'My Vote Counts 2'**)

² Section 8(2) of the PPFA read with regulation 7 to Schedule 2 thereof

obliged to disclose to the Electoral Commission all donations received above R100 000 within a financial year (**'disclosure threshold'**).³ A juristic person or entity which donated more than R100 000 within a financial year was obliged to disclose this donation to the Electoral Commission.

- [5] Section 12(2)(d)(ii) of the PPFA obliged the accounting officer to prepare a statement showing all donations and membership fees, and any levy imposed by the political party on its elected representatives during that financial year.
- [6] Section 12(3)(c) obliged the auditor to perform an audit of the financial statements and express an opinion on those statements *inter alia* listing the donations under the disclosure threshold.
- [7] The donation limitation and disclosure threshold are viewed as unconstitutional by the applicant which is seen as negatively impacting on:
 - (i) the effective and informed exercise of citizen's rights to vote as enshrined in sections 19(1) and (3) of the Constitution;
 - (ii) free and fair elections in accordance with section 19(2) of the Constitution; and
 - (iii) ensuring that the state carries out its duties to promote, respect and fulfil the Bill of Rights, including the right to vote, the right to free and fair elections and the right to access to information.
- [8] Therefore, it instituted these application proceedings wherein it sought an order for the following substantive relief:
 - (i) declaring sections 8(2), 9(1)(a), 12(2)(d)(ii), 12(3)(c), 22 and 24(1) of, and regulations 7 and 9 in Schedule 2 to the PPFA inconsistent with the Constitution and invalid;
 - (ii) to the extent necessary, declaring the PPFA and the Promotion of Access to Information Act, 2000 to be inconsistent with the Constitution

³ Section 9(1) of the PPFA read with regulation 9 to the Schedule thereof

and invalid to the extent set forth in its founding affidavit dated 11 May 2023, alternatively the Court's judgment;

- (iii) suspending the above declarations of invalidity save to the extent set forth in (a) and (b) below, for 12 months and directing Parliament to remedy the defects in the PPFA (including Schedule 2 thereto), in accordance with the Court's judgment, within the suspension period:
 - (a) the declaration of invalidity of section 9(1)(a) of, and regulation 9 of Schedule 2 to the PPFA shall be effective as from the date of the Court's Order with full retrospective effect;
 - (b) during the suspension period, section 9(2) of the PPFA shall read as *'A person or entity that makes a donation must disclose that donation to the Commission in the prescribed form and manner.'*
- (iv) in the event that Parliament does not remedy the constitutional defects in accordance with the Court's order and/or judgment, within the suspension period, paragraph (a) and (b) shall continue to apply; and
- (v) directing the first to third respondents, jointly and severally with any other respondent who may oppose the relief sought in this application, to pay the applicant's costs, including the costs of two counsel.

[9] The applicant approached this court in terms of section 38(a) and 38(d) of the Constitution for an order in terms of section 172(1). The applicant argued that it instituted the application to affirm and to meaningfully realise the constitutional imperatives that:

- (i) citizens be able to access information required for the effective and informed exercise of their right to vote as enshrined in section 19(1) and (3) of the Constitution;
- (ii) elections are free and fair in accordance with section 19(2) of the Constitution; and
- (iii) the state carries out its duties to promote, respect and fulfil the Bill of Rights, including the right to vote and other constitutional rights.

[10] It is the applicant's case that access to accurate information about the private funding of political parties is reasonably required for the effective exercise of

the right to vote and to make political choices as envisaged by sections 19 and 32(1) of the Constitution. It also argues that the absence of proper disclosure and regulation mechanism endangers the fundamental democratic values and that transparency in the funding of political parties is required for the effective prevention and detection of corruption.

- [11] The applicant argues that the PPFA and the impugned regulations thereto limit the disclosure of any single or a combination of donations by the same donor to amounts over the threshold of R100 000.00 and do not regulate cumulative donations by donors which are related to one another and entitles political parties to accept private direct donations up to an excess of R15 million and only requires juristic persons to the exclusion of natural person to disclose donations made in excess of the prescribed threshold.

- [12] The applicant contends that the setting of a threshold on the disclosure of private donations is not constitutionally permissible as the constitutional imperatives dictate that all donations must be disclosed. Furthermore, even if the setting of a threshold was permissible, the current threshold is too high.

- [13] The applicant also complains that there is no provision in the legislation to address the cumulative sums of donations from donors who are related to one another.

- [14] The applicant avers that there is no evidence that the legislature has done any analysis on the propriety and reasonableness of the R100 000 disclosure threshold and on whether disclosure of donations above this limit is necessary to exercise the right to vote in an informed fashion. It argues that there is no analysis on whether donations only above R100 000 and would have a material influence on political discourse or the policies of a political parties. Therefore, the threshold of R100 000 is arbitrary.

- [15] The applicant argues that even if it is found that there has to be a limitation on donations, that the upper donation limit of R15 million is excessive and unjustifiable. The applicant argues that the prescribed limit of R15 million

gives wealthy private donors the undue ability to influence political parties in a manner that undermines the right to vote, as it leave the door wide open for private interests to direct the course of politics.

[16] On 8 May 2024 the Electoral Matters Amendment Act (**'EMAA'**) became operational, amending the PPFA. This resulted in the applicant amending its notice of motion wherein it sought the following amended relief:

- (i) declaring section 8(2), 9(1)(a), 9(2), 12(2)(d)(ii), 12(3)(c), 22 and 24(1) of, and regulations 7 and 9 in Schedule 2 to the PPFA, as amended by the EMMA, alternatively in their pre amendment form to be inconsistent with the Constitution and invalid;
- (ii) declaring sections 27, 29(g) and 29(h) of the EMMA to be inconsistent with the Constitution and invalid;
- (iii) the to extent necessary:
 - (iii)(a) declaring that the failure by the President to determine the upper limit and the disclosure threshold immediately upon the enactment of the EMMA or within a reasonable time thereafter in terms of regulation 7 and 9, respectively is irrational, unlawful and unconstitutional and invalid, and that the failure by the National Assembly forthwith after the enactment of the EMMA to enable the President to do so is likewise irrational, unlawful, and unconstitutional and invalid;
 - (iii)(b) directing the disclosure thresholds (R100 000 per annum) and upper limits (R15 million per annum) which were provided in regulations 7 and 9 under the PPFA prior to its amendment by the EMMA shall be effective as from 8 May 2024 onwards, the date that the EMMA entered into force; and
- (iv) directing that all donations accepted or received by political parties and independent candidates – or made by any person or entity to any political party or independent candidate, from the date of the enactment of the EMMA to the date of this Court's order, above R15 million annual limit in terms of section 8(2) of the PPFA, read together with regulation 7 to schedule 2 of the PPFA (the R15

million limit), alternatively such parts of such donations as breach the R15 million limit, shall be paid back by such political parties and independent candidates to the relevant donors whence the donation emanated. All terms in this paragraph are defined in the PPFA;

- (v) directing that all donations accepted or received by political parties and independent candidates (as both terms are defined in the PPFA), from any person or entity (alternatively, those donations which are beyond the R100 000 per annum disclosure threshold in terms of section 9(1)(a) of the PPFA be repaid.

[17] Following the applicant's amended notice of motion, the speaker and the chairperson of the National Council of Provinces were joined to the proceedings in terms of an order taken by agreement on 17 October 2024.

[18] Section 24(1) of the PPFA, as amended, provides that:

'(a) The President, acting on a resolution of the National Assembly, may by proclamation in the Gazette make regulations in respect of matters in Section 6(2), 7(2)(e), 7(3)(d), 8(2), 8(5) and 9(1)(a).'

[19] Regulation 7 addresses the upper limit of donations and provides that:

'7(1) The President may, from time to time after a National Assembly resolution and by notice in the Gazette, determine the amount contemplated in section 8(2) of the Act.'

Section 8(2) simply provides that *'a political party may not accept a donation from a person or entity in excess of the prescribed amount with a financial year.'*

[20] Regulation 9 addresses the disclosure limit and provides that:

‘The President must, from time to time after a National Assembly resolution and by notice in the Gazette, determine the threshold referred to in section 9(1)(a) of the Act.’

Section 9(1)(a) of the PPFA, as amended provides that a political party, independent representative or independent candidate must disclose to the Commission all donations received above the prescribed threshold.

- [21] In its amended form, the PPFA did not provide specific amounts in respect of the donation limit or disclosure threshold but provides how it is to be determined. It is common cause that until 18 August 2025 no donation limit or disclosure threshold has been determined in terms of section 24(1).⁴
- [22] Although the PPFA in its pre-amendment form no longer exists, the applicant persisted with its constitutional challenge thereto. Not only was this evident from the submissions made during the hearing of the matter, but it is also evident from the relief it sought in its amended notice of motion.
- [23] The challenge to the donation limitation and disclosure threshold as contained in the PPFA in its pre-amended form no longer exists and has been rendered moot. Consequently, the determination of any constitutional challenges hereto will have no practical effect. As a court of first instance, it is not for us to determine issues which have become moot.⁵
- [24] The EMAA came into effect and removed the donation limitation and disclosure threshold without the President making new regulations in respect thereof in terms of section 24(1) of the PPFA, as amended.
- [25] This resulted in the applicant approaching the court on an urgent basis during May 2024. The matter came before Mr Justice Thulare who found that the EMAA was *prima facie* unconstitutional as it created a lacuna in respect of the donation limitation and disclosure threshold. To resolve this lacuna, Mr

⁴ On 19 August 2025 the President acting on a resolution taken by the National Assembly raised the limit for private donations to political parties to R30 million a year and increased the declaration threshold to R200 000.

⁵ *Minister of Justice and Correctional Services v Estate Late Stransham-Ford* 2017 (3) SA 152 (SCA)

Justice Thulare granted interim relief which resurrected the R15 million donation limitation and R100 000 disclosure threshold.

[26] In granting the interim relief, it was found that the EMAA is prima unconstitutional as a result of the lacuna it created.

[27] We turn now to the applicant's challenges to the PPFA, as amended.

[28] The applicant challenged the validity of the public participation process in respect of the Electoral Matters Amendment Bill, which was introduced during December 2023, becoming law in May 2024.

[29] This public participation challenge must be evaluated in terms of section 167(4)(e) of the Constitution which provides that:

'Only the Constitutional Court may decide that Parliament or the President has failed to fulfil a constitutional obligation.'

[30] In *Doctors for Life International v Speaker of the National Assembly*⁶ the Constitutional Court held that:

'[27] A construction of s167(4)(e) which gives this Court exclusive jurisdiction to decide whether Parliament has complied with its constitutional obligation to facilitate public participation in its legislative processes is therefore consistent with the principles underlying the exclusive jurisdiction of this Court. An order declaring that Parliament has failed to fulfil its constitutional obligation to facilitate public involvement in its legislative process and directing Parliament to comply with that obligation constitutes judicial intrusion into the domain of the principal legislative organ of the State. Such an order will inevitably have important political consequences. Only this Court has this power.'

⁶ 2006 (6) SA 416

[31] Therefore, this court does not have the jurisdiction to determine the applicant's public participation challenge.

[32] As seen from paragraphs 16 to 18 above, the president has been delegated the discretion to determine the donation limit and the disclosure threshold. The applicant argues that not only is this an impermissible delegation of legislative power to the president but that it is unconstitutional because the president, as the leader of the main political party, has a vested interest in the setting of the donation limit and disclosure threshold. Furthermore, it argues that this discretion is unconstitutionally vague as there are insufficient meaningful guidelines for the exercise of this discretion.

[33] We deal firstly with the issue of whether the delegation by parliament to the president was constitutional or not. While Parliament may delegate regulatory authority, it may not delegate legislative authority.

[34] In *Executive Council, WC Legislature v President of the RSA*⁷ the Constitutional Court held that the test as to whether legislative or regulatory powers have been delegated is:

'...whether what is challenged as an unauthorised delegation of parliamentary power is more than the mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised; for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution.'

[35] The setting of the donation limitation and disclosure threshold gives effect to the principles and policies set out in the PPFA, as amended and the delegation is thereof of a regulatory nature and is constitutional.

⁷ 1995 (4) SA 877 (CC) at paragraph [54]; See also *South African Reserve Bank and Another v Shuttleworth and Another* 2015 (5) SA 146 (CC)

[36] The applicant also objects to the delegation to the president as being inappropriate as he is the leader of the main political party with a vested interest in the setting of the donation limit and disclosure threshold. However, the exercise of this discretion would be subject to review if exercised improperly. The mere possibility that the exercise of a discretion may be exercised improperly or for improper reasons does not per se render it objectionable.

[37] We turn now to the argument that the absence of clear and enforceable guidelines for the exercise of the president's discretion violates the rule of law which require laws to be precise and predictable to ensure fairness and accountability.

[38] Section 24(1)(b) sets out the following factors which the president must consider when determining the donation limitation and disclosure threshold. These are:

- (i) the amount of money previously appropriated by Acts of Parliament for the Political Representatives Fund within the previous five financial years;
- (ii) the effects of inflation on the value of money over time; and
- (iii) the costs associated with participating as a political party, independent representative or independent candidate in elections and the democratic process in South Africa.

[39] Furthermore, the exercise of the discretion is guided by the general law principle that relevant factors must be considered. The exercise of the presidential discretion would also be circumscribed by the policies and objectives of the PFFA.

[40] The president's delegated discretion to set the donation limit and disclosure threshold remains subject to the National Assembly's direct supervisory role.

- [41] Although it is the applicant's case that there are no clear and enforceable guidelines for the exercise of the presidential discretion, it has not set out any facts and/or reasons why the factors set out in section 24(1)(b), together with the policies and objectives of the PPFA, as amended are inadequate for the proper exercise of the discretion. Nor has it set out what further factors are required for the proper and competent exercise of the presidential discretion.
- [42] Therefore, we are of the view that there is no merit in this challenge.
- [43] After the coming into effect of the EMAA on 8 May the disclosure threshold and the upper limit was removed. However, the President did not issue simultaneous proclamations to set new upper limits and disclosure thresholds, which he has recently done
- [44] As a result of the erstwhile lacuna, the applicant launched an urgent application. On 27 May 2024 the court as per Thulare J held that the EMAA is *prima facie* unconstitutional on account of the lacuna it created and on 16 August the Court confirmed the rule *nisi* issued on 27 May 2024 and it granted the interim relief. This resulted in the upper limit and disclosure threshold being reinstated pending the either the finalisation of these proceedings or the determination of the upper limit and disclosure threshold by the President.
- [45] Thulare J, in reinstating the donation limitation and disclosure threshold, found that there was a rational and reasonable basis for the disclosure threshold and donation limitation.
- [46] The disclosure threshold and donation limitation constitute legislative facts which a court should be slow to interfere with.
- [47] The President and the National Assembly have recently set a donation limitation and disclosure threshold, which currently stands unchallenged.
- [48] The applicant sought an order declaring the president's failure to determine the upper donation limit and disclosure threshold upon the enactment of the

EMAA or within a reasonable time thereafter in terms of regulation 7 and 9 irrational, unlawful, unconstitutional and invalid, and that the failure by the National Assembly forthwith after the enactment of the EMAA to enable the president to do so is likewise irrational, unlawful, unconstitutional and invalid. This challenge has been rendered moot by the President's recent determination of the upper donation limit and disclosure threshold.

- [49] In light of the uncontested submissions by the DA that its operating expenses run to hundreds of millions of rand and that the preparations of elections are enormously expensive – the DA spent approximately R322 million on campaigning for the 2024 elections and approximately R550 million on the 2019 elections, the argument cannot be sustained that the donation limit of R15 million is unreasonably high or capable of influencing the behaviour of political parties.
- [50] Furthermore, it must be recognised that donations to political parties allow citizens to participate in the party's activities thus giving expression to section 19(1)(h) of the Constitution.
- [51] Donations to political parties also impact on section 16 of the Constitution as it amounts to a general expression of support for the candidate and his/her views. This accords with the ruling that the right to freedom of expressions should not be interpreted narrowly.⁸ Furthermore, it was held that the ability to donate to political parties gives expression of the right to freedom of association, as set out in section 18 of the Constitution.
- [52] The applicant also seeks an order declaring section 12(2)(d)(ii) of the PPFA, as amended inconsistent and constitutionally invalid. This section required the accounting officer appointed by a political party to prepare a statement showing all donations and membership fees, and any levy imposed by the political party on its elected representatives during that financial year.

⁸ *De Reul v Director of Public Prosecutions (Witwatersrand Local Division)* [2003] ZACC 19; 2004 (1) SA 406 (CC) at paragraph [48]

- [53] The challenged provisions of the PPFA, including section 12(2)(d)(ii) can only be struck down if it is found to limit constitutional rights and if that limitation cannot be justified. This is an objective enquiry. It is trite that the applicant would have to establish facts on which it relies for its claim of infringement of the particular rights in question.⁹
- [54] On the papers filed on record, the applicant has failed to establish any facts that show why or how section 12(2)(d)(ii) of the PPFA, as amended infringes particular constitutional rights. Similarly, with sections 12(3)(c) and 22 of the PPFA, as amended.
- [55] The applicant also challenges the PPFA, as amended on the basis that it does not address related parties who make donations. However, the applicant does not set out what would constitute related parties or how this should be established or how a shared intention of related parties is to be ascertained or established. This challenge is speculative and so vague as to prevent a proper response thereto, let alone regulation thereof.
- [56] The applicant requires that all donations be disclosed because the aggregate thereof can affect party behaviour. The relief sought in this regard is defective as it relies on speculation in the absence of established facts.
- [57] Furthermore, the Electoral Commission published the sum of small donations received by a political party each year. Thus, a voter can ascertain how much a political party receives in small donations. This is not good enough for the applicant, who want the identity of the donors to be disclosed without showing why this disclosure is necessary for the exercise or protection of constitutional rights.
- [62] It follows, therefore, that the application stands to be dismissed.

⁹ *Ferreira v Levin NO 1996 (1) SA 984 (CC)* at paragraph 44

[63] Regarding costs, the applicant argued that if it were successful, it would have been entitled to costs on a punitive scale. Conversely, they argued that the principle set out in *Biowatch Trust v Registrar Genetic Resources and others*¹ (*Biowatch*) applies.

[64] The first, second, third, 20th and 21st respondents do not seek any costs against the applicant. The only other respondent that participated in these proceedings is the 19th respondent. Although we are of the view that *Biowatch* does not apply and that costs should ordinarily follow the result, as the 19th respondent participated in these proceedings of their own accord, and exercising our discretion insofar as it relates to costs, we are of the view that no order as to costs should be made.

Order

[65] The following order shall issue:

1. The application is dismissed with no order as to costs.

N ERASMUS
JUDGE OF THE HIGH COURT

I agree

HM SLINGERS
JUDGE OF THE HIGH COURT

I agree

M HOLDERNESS

JUDGE OF THE HIGH COURT

Appearances:

For the applicant: