

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **091427/23**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
9 December 2025 _____	
DATE	SIGNATURE

In the matter between:

DEMOCRATIC ALLIANCE

First Applicant

SAREL JACOBUS FRANCOIS MARAIS

Second Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

RETIRED JUSTICE PMD MOJAPELA

Second Respondent

LEAH GCABASHE SC

Third Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] This is an application for leave to appeal against the whole judgment and order of this court delivered on 25 September 2025.
- [2] The application is premised on three main grounds, firstly, the court erred in finding that the matter is moot; secondly, the court erred in failing to deal with the merits of the application and thirdly, the court erred in awarding costs against the applicants in circumstances where the *Biowatch* principle is applicable.
- [3] The first ground dealing with mootness revolves around the question whether the first respondent or any other executive authority would in future consider appointing a retired judge to a panel of enquiry. In this respect, the facts are common cause between the parties, and the question had to be answered with reference to authorities in which the principle of mootness have been dealt with.
- [4] The applicants maintain that the court erred in applying the law as it has crystallised in the authorities to the facts in *casu*. The principles applicable to the question of mootness in a constitutional context is complex and having carefully considered the submissions on behalf of the applicants, I am of the view that the application has prospects of success.
- [5] The second ground depends on the finding in respect of mootness and logic dictates that leave must be granted in respect thereof.
- [6] Insofar as the cost order is concerned, a court has a discretion in awarding costs and a court of appeal would seldom interfere with the court's discretion. The exercise of this discretion is, however, somewhat different in constitutional litigation against the State by private parties. In the result, I am of the view that leave to appeal should also be granted in respect of the cost order.

- [7] The issues are complex and deserves the attention of the Supreme Court of Appeal.

ORDER

1. The applicants are granted leave to appeal to the Supreme Court of Appeal against the whole judgment and order of this court delivered on 25 September 2025.
2. Costs of the application is costs in the appeal.



JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

DATE HEARD:

30 October 2025

DATE DELIVERED:

10 December 2025

December 2025

APPEARANCES

Counsel for the Applicants: M Bishop
M de Beer

Instructed by: Minde Shapiro and Smith

Counsel for the First Respondent: Nalane SC
N Stein

Instructed by: State Attorney Pretoria

