



**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,

First respondent

MR. ALAN WINDE N.O., OR HIS

SUCCESSOR IN TITLE

**SPEAKER OF THE WESTERN CAPE
PROVINCIAL PARLIAMENT, MR.**

Second respondent

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**

**OFFICE OF THE COMMISSIONER OF
THE ENVIRONMENT**

Fourth respondent

SOUTH AFRICAN NATIONAL PARKS

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

JUDITH ANNE SOLE

Ninth respondent

**WILDLIFE ANIMAL PROTECTION
FORUM OF SOUTH AFRICA**

Tenth respondent

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.

[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:
 - (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.

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.

[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-established³:

- 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.

[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

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.

guidelines contain the very management tools which the applicants seek to interdict under the Action Plan.

[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 urgency⁴:

‘[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.’

[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

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

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.

[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 Court⁵ 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.

[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 rules³ (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.’

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.

[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 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.

[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.

[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.

[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 habituated⁷, 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.

[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.

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).

[76] In terms of s 55(2)(d) and (e) of the National Environmental 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, 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).

[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

[83] The Apex Court held¹⁰:

‘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.

⁸ *National Treasury and Others v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) (OUTA), para 46

⁹ *Id* at para 46.

¹⁰ Para 47.

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.

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.

[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.

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.

[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.

[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 NEMA¹⁵ 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:

¹⁴ *Giant Concerts* at para 43.

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.

‘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.

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 following¹⁸:

- (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.

¹⁷ *Lawyers for Human Rights and Other v Minister of Home Affairs and Others* 2004 (4) SA 125 (CC).

¹⁸ At paras 16 – 18.

(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.

[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'.

[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").

¹⁹ *Tavakoli v Bantry Hills* 2019 (3) SA 163 (SCA) para 26.

[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 view²⁰ 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.

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.

[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.’

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 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.

[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.

[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 found²⁴ 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.

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.

[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 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:

²⁵ *LFN Registrar* para 12.

²⁶ *Id.*

‘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 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.

[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.

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.

[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.

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.

[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.

[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

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.'

[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

[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*.

“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.

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