

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **012705/2026**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
17 FEBRUARY 2026	
DATE	SIGNATURE

In the matter between:

GABRIELLE TESS GOLIATH

First Applicant

INGRID LEHLOHONOLO MASONDO

Second Applicant

JAMES MALCOLM MACDONALD

Third Applicant

CAMPAIGN FOR FREE EXPRESSION

Amicus Curiae

and

MINISTER OF SPORT, ARTS AND CULTURE

First Respondent

**DIRECTOR-GENERAL, DEPARTMENT OF SPORTS,
ARTS AND CULTURE**

Second Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent

**MINISTER OF INTERNATIONAL RELATIONS AND
COOPERATION**

Fourth Respondent

**DIRECTOR-GENERAL, DEPARTMENT OF
INTERNATIONAL RELATIONS AND COOPERATION**

Fifth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 17 **February 2026**.

JUDGMENT

KUBUSHI, J

Introduction

[1] The crisp question in this application is whether the application concerns a case about the freedom of artistic expression and the rule of law, or whether it is about an ordinary private agreement between two parties, one being a State department.

[2] The applicants contend that the first respondent, the Minister of Sport, Arts and Culture (the Minister), censored their freedom of speech by interfering with and obstructing the implementation of the decision taken by the Independent Curatorial Selection Committee (the Selection Committee). The Selection Committee was appointed by Art Periodic South Africa (Art Periodic), a non-profit organisation, designated by the Minister as the administrative, production and fundraising platform to manage and deliver the Pavilion's 2026 Venice Biennale art exhibition.

[3] The submission by the first and second respondents (the respondents) is that this was just an ordinary private agreement between two parties, one of them being a State department.

[4] The applicants approached this Court on an urgent basis, seeking an order to review and set aside what they say is the respondents' unlawful interference with, and the obstruction of, the implementation of the decision taken by the Selection Committee, and the purported cancellation of the said decision. They further seek interdictory relief preventing the respondents from taking any steps to interfere with or obstruct the implementation of the decision.

[5] The respondents are opposing the application. They have raised a number of points *in limine* like *locus standi*, non-joinder of Art Periodic to these proceedings, and mootness. A further point *in limine*, pertaining to proper service, was raised by the

respondents in oral argument in Court. The respondents are, furthermore, challenging the application on the merits, contending that the application should be dismissed as there is no case made out for the relief the applicants seek. The respondents' application for condonation for the late filing of the answering affidavit was granted, unopposed.

[6] The third and fourth respondents have filed a notice to abide by the decision of the Court. There was also an application for the admission of an *amicus curiae*, which was granted without any opposition.

The Factual Background

[7] The factual background is gleaned partly from the heads of argument of the applicants and partly from the papers filed on record. The Government of the Republic of South Africa, through the second respondent, the Department of Sport, Arts and Culture (the Department), rents a Pavilion in the Venice Biennale Arsenale area Sale D'Armi building (the Biennale) for the display of South African artistic work, the idea being to market South African artists.

[8] In previous years, the Department ran an exhibition selection process for the South African Pavilion (the Pavilion). It tendered for submissions *via* an open call process and convened and oversaw an independent selection committee. On 5 November 2025, the Department announced that it would adopt a new approach, outsourcing this process to industry stakeholders for implementation. The new approach marked a significant evolution in the Pavilion's governance model, moving from a purely government-led process to one of sector-driven collaboration.

[9] The Department appointed Art Periodic as the implementing partner for the Arsenale for Venice Biennale Arte 2026. Art Periodic was assigned the right of use and access to the South African Pavilion space in the Arsenale for Venice Biennale for 2026, with the full responsibility for raising the execution budget, contracting production, and delivering an exhibition to international standards, aligned with the Department's protocol and oversight.

[10] Pursuant to the appointment, Art Periodic undertook to convene a working group of curators from five South African institutions to run a focused, time-bound

process to solicit short proposals from artists/curators (by invitation), assess feasibility and impact, and select the exhibitor(s) for 2026. Proposals were to be assessed on "conceptual strength, artistic vision, feasibility, and alignment with the Pavilion's mission to strengthen South Africa's international cultural presence." The Department would continue to fund the rental of South Africa's official exhibition space. Interested South Africans were encouraged to submit proposals in response to a national open call, to be published on 7 November 2025.

[11] On 1 December 2025, Art Periodic announced the appointment of the Selection Committee, comprising four respected members of the arts sector, including academics, museum owners, and art reporters. On 7 November 2025, the Art Periodic published an open call for proposals for the 2026 South African Pavilion. Curators were invited to respond to the overarching curatorial vision for the 2026 Biennale with "concepts that capture the vitality, nuance, and complexity of South African art today", offering multiple interpretations of what cultural ownership might mean in a global context. On 24 November 2025, the applicants responded to the open call with a proposal for an exhibition, comprising three filmed performances of *Elegy*. On 6 December 2025, Art Periodic announced that the applicants' proposal had been unanimously selected by the Selection Committee. The Selection Committee issued a statement in support of the appointment of the applicants to represent South Africa at the Biennale.

[12] On 22 December 2025, the Minister wrote a letter to Art Periodic in which he raised his concerns about the applicants' proposal. He noted that the proposal "centres on the subject of Palestine, including in ... the Nakba, the Israeli occupation, and the ongoing conflict, in Gaza and the West Bank". The letter further stated that the subject matter is "highly divisive", not aligned to the Department's mandate of social cohesion, nation-building, and constructive dialogue, and is not rooted in South African experience. The Minister called for these aspects to be excised, as it appeared that the proposed curatorial direction departed fundamentally from the Department's expectation. He also stated that he has instructed the Department to consider available options including the possible termination of South Africa's participation in the Biennale. He requested an urgent response to that letter from Art Periodic. When no response was received by 2 January 2026, and the concerns raised in the letter of 22 January 2026 remained unattended to, addressed another letter to Art Periodic in

which he informed Art Periodic that: "it would not be wise or defensible for South Africa to support an art installation against a country currently accused of genocide while we as South Africa are also fielding unjustified accusations of genocide". In the same letter, the Minister terminated the partnership between Art Periodic and the Department. He said that the Department would resume "direct management" of the South African Pavilion and "use the platform for a positive message that will help to repudiate the lies and misinformation that South Africa is a genocidal country".

[13] On 4 January 2026, the applicants addressed a letter to the Minister, in which they explained the content of the work *Elegy* is all about. And, further stating that the request to remove the aspects of the piece relating to the deaths of women and children in Gaza violated the right to freedom of expression. They asked the Minister to "respect the decision taken by the Selection Committee pursuant to a transparent public process". On 20 January 2026, in response to a letter of demand by the applicants, the Minister stated that the Department intended to proceed with its own arrangements for the South African Pavilion. He complained, among other things, that Art Periodic had failed to seek or obtain the Department's approval, that South Africa was engaged in international court proceedings "aimed at the cessation of hostilities and the de-escalation of violence", and that the Department had a policy of prioritising new artists when allocating opportunities for representation on global platforms. On 22 January 2026, the applicants launched this application.

Preliminary Issues

[14] I deal first with the preliminary issues raised by the respondents. The first being the point *in limine* on the standing of the applicants before this Court, which might be dispositive of the matter.

[15] The respondents argue that the applicants lack the requisite *locus standi* to sue them in these proceedings. The contention is that the Minister never took any decision to select the applicants' artwork for exhibition at the Biennale in the South African Pavilion. The only relationship that the Department had was with Art Periodic and it was a contractual relationship, which could be terminated in terms of the normal principles of the law of contract. The applicants were never a party to the said

relationship or agreement. Accordingly, they have no right in law to compel performance by the Department under the said agreement.

[16] The argument went further that the respondents never requested or mandated Art Periodic, or anyone, to select artists or curators to exhibit at the Biennale's SA Pavilion. The respondents only allowed Art Periodic to have access to the Pavilion to showcase South African art following an application to the respondents from Art Periodic. Accordingly, there was never any agreement with the applicants, nor did the respondents take any decision in favour of, or against the applicants, which would have entitled the applicants to bring these proceedings against them, so it was argued. The respondents, as such, submit that, for this reason alone, this application falls to be dismissed with costs.

[17] In response to this argument, the applicants argue that the respondents' allegation that the applicants lack standing, because the Minister "never took any decision to select the applicant's artwork for exhibition at the Biennale", is not the correct test. The contention is that the Minister's interference with, and purported cancellation of, the binding decision by the Selection Committee threatens the applicants' right to exhibit at the 2026 Biennale. As a result, the applicants' rights and interests are directly and adversely affected by the conduct of the respondents. Applying the broad and generous approach to standing which is required under the Constitution, there can be no doubt that the applicants have a direct and substantial legal interest which is affected by the conduct of the first and second respondents and accordingly are entitled to approach this Court, so it was argued.

In addition, the applicants contend that they are afforded standing in these proceedings in terms of section 38 of the Bill of Rights, which provides that "[a]nyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed...". They argued that they are allowed standing in their own interest as envisaged in section 38(a) of the Constitution. This, as the argument went, is so because their rights to expression have been infringed. They, in that regard, have *locus standi* because the conduct of the Minister directly implicates their entitlement to display their artwork at the Biennale, which infringes their section 16 constitutional rights, so it was argued.

[18] In support of their argument, the applicants relied on *Kruger v President of the Republic of South Africa and Others*,¹ where the majority of the Constitutional Court held that, in order to facilitate the protection of the Constitution, the generous approach to standing applies even when section 38 of the Constitution is not directly applicable. They, in that regard, contended for the application of the broad and generous approach to standing which is required in the Constitution. There can be no doubt that the applicants have a direct and substantial legal interest which is affected by the conduct of the respondents and are therefore entitled to approach the Court, so it was argued.

[19] The quintessential question in this regard is whether the applicants have standing to bring this application against the respondents. Underlying this question is whether the applicants' section 16 constitutional rights and interests are directly and adversely affected by the respondents' conduct in terminating the relationship or agreement with Art Periodic.

[20] The applicants rely on the decisions in *Kruger*,² *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*³ and *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others*⁴ to bolster their argument that a generous approach should be applied by this Court to the question of standing in this case. In this regard, they are correct. It is now settled that even where own-interest standing is at issue, courts should adopt a "broad approach" in order to facilitate the protection of the Constitution.⁵

[21] It is not in dispute that the applicants are acting in their own interest and that this Court must apply a broad approach to the question of standing. The applicants must, however, show that their section 16 constitutional rights and interests have been directly and adversely affected by the conduct of the respondents.

[22] The conduct complained about is that the respondents are interfering with or obstructing the implementation of the decision of the Selection Committee, which gives them access to exhibit their artwork at the Biennale. The conduct of the respondent in

¹ 2009 (1) SA 417 (CC).

² *Id.*

³ 1996 (1) SA 984 (CC).

⁴ [2012] ZACC 28.

⁵ *Ferreira* above n 3.

this regard is the termination of the agreement or the relationship that the respondents had with Art Periodic.

[23] Did the said termination of the agreement adversely affect the rights and interests of the applicants? I do not think so. I say so because the only decision that the Minister withdrew is the contractual relationship in terms of which Art Periodic was granted access to the Pavillion by the Minister. Such a decision, in my view, did not interfere with the selection or cancel the selection of the applicants' artwork. This, it could not do because there was no relationship between the Minister and/or the Department and the applicants. Because there was no relationship, contractually or otherwise, between the respondents and the applicants, the Minister would not have the authority to interfere with the relationship between Art Periodic and the applicants, which was a relationship or agreement separate from that of the respondents and Art Periodic.

[24] The challenge for the applicants is that they approach this case on the basis that administrative law is applicable, hence their contention that the decision of the Selection Committee is an administrative action in terms of Promotion of Administrative Justice Act 3 of 2000, which the Minister must review to have it set aside if he is not happy with it. They place reliance in this regard on the *Oudekraal* principle. which states that an unlawful or invalid administrative act remains valid and binding until it is formally set aside by a court of law. They place reliance in this regard on the *Oudekraal* principle. which states that an unlawful or invalid administrative act remains valid and binding until it is formally set aside by a court of law.

This approach is not correct, as it was shown in *Government of the Republic of South Africa v Thabiso Chemicals (Pty) Ltd*⁶ where it has been held that a contractual relationship between the parties is not affected by the principles of administrative law. Once this principle has been established, it stands to reason that the applicants' case, which is formulated from that perspective, must fail.

⁶ 2009 (1) SA 163 (SCA) at para 18.

[25] The applicants have referred this Court to the judgments in *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others*⁷ and *City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd and Others*⁸ as an indication that agreements of the nature entered with Art Periodic are normally concluded by State departments and organs of state with private companies. It seems they also wanted to infer that such agreements, once concluded, confer some of the functions of the State department or organ of state to the private companies and, as such, private companies perform public functions akin to the State department or an organ of state to which it is contracted to.⁹ They also sought to show the bindingness of the decisions by entities, like the Selection Committee, that exercise public power.

[26] The applicants' argument however ignores what the court in *City Power*¹⁰ said regarding the exercise of public power:

"A mere reliance on the fact that City Power is a private company does not take into account the fact that these entities are usually established for the sole purpose of performing public functions as required in terms of section 86E. In terms of section 86E(1) a municipality may establish a municipal entity only for the "purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers" and where the functions of such a municipal entity would benefit the local community. The public nature of the functions performed by City Power and the restrictions imposed on such municipal entities by the Municipal Systems Act distinguish them from other private entities."

[27] Art Periodic was not established by the respondents as a State department for the sole purpose of managing the Biennale Pavilion. It, thus, cannot fall within the category of private companies like City Power, which have been established for the sole purpose of carrying out the mandate of the organ of state that established them. For that reason, Art Periodic cannot be said to have been exercising a public power or acting on behalf of the respondents. No such power formed a term of the agreement between it and the respondents. Therefore, the applicants' argument that the Selection Commission, when exercising its power to select the applicants, was doing so on

⁷ 2014 (1) SA 604 (CC).

⁸ 2015 (6) BCLR 660 (CC).

⁹ Id.

¹⁰ Id at para 20.

behalf of the respondents, has to be rejected. It is evident that the Minister had entered into an agreement with Art Periodic and assigned to it access to the Biennale Pavilion. This agreement, in my view, was an ordinary private agreement between two parties.

[28] It follows that there is no evidence on the papers before this Court that the conduct of the Minister, in terminating the agreement with Art Periodic, directly and adversely affected the applicants' rights of expression or any of their rights and interests.

[29] The Constitutional Court in *Giant Concerts*¹¹ held that:

[1] "The own-interest litigant must therefore demonstrate that his or her interests or potential interests are directly affected by the unlawfulness sought to be impugned."

[30] The applicants have failed to demonstrate that their rights or interests are directly affected by the alleged unlawful conduct of the respondents, which they sought to impugn. They, therefore, have no *locus standi* in these proceedings.

[2]

[31] The Constitutional Court in *Giant Concerts*¹² held that:

[3] "When a party has no standing, it is not necessary to consider the merits, unless there is at least a strong indication of fraud or other gross irregularity in the conduct of a public body."

[32] I would, therefore, say nothing more about the other preliminary issues and the merits. In any event, the question of whether the application concerns a case about the freedom of artistic expression and the rule of law, or whether it is about an ordinary private agreement between two parties, one being a State department, provides an answer to all the preliminary issues as well as the merits. The issues are all intertwined. Having found that this application is about an ordinary private agreement between two parties, one being a State department, all the issues raised in the points *in limine* as well as on the merits, are disposed of.

Costs

¹¹ Above n 4 at para 43.

¹² Above n 4 at para 58.

[33] The respondents, as the successful parties, are contending for costs, including costs of two counsel on a punitive scale against the applicants. The contend further that the principle accorded to costs in *Biowatch Trust v Registrar, Genetic Resources, and Others*¹³ does not apply in this matter. The applicants' case is not based on a genuine constitutional issue, so it is argued. I agree, a contractual dispute between the respondents and Art Periodic cannot be said to be about constitutional issues. I, however, do not think that the respondents are entitled to a punitive cost order. The applicants had a right to approach court for relief which they thought they were entitled to. There is no abuse of process that calls on this Court to penalise them.

[34] No costs are sought against the *amicus curiae* even though he tried to align himself with the applicants' case.

Order

- [35]
1. The application is dismissed.
 2. The First, Second and Third Applicants are ordered to pay the costs of this application, including costs of two counsel, one senior and one junior on scale C.


E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

¹³ 2009 (6) SA 232 (CC).

For the Applicants:	A HASSIM SC
	Adv N Ferreira
	Adv N Sibozza
Counsel for Campaign for Free Expression	Adv B Winks
For the 1 st and 2 nd Respondents:	ZZ Matebese SC
	Adv A Shude
Date of the hearing:	11 February 2026
Date of judgment:	17 February 2026.