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

JUDGMENT

Not Reportable
Case No: A179/2025

In the matter between:

MY VOTE COUNTS NPC	First Appellant
THE DEMOCRATIC ALLIANCE	Second Appellant

And

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
THE MINISTER OF HOME AFFAIRS	Third Respondent

THE ACTING SPEAKER OF THE NATIONAL ASSEMBLY Fourth Respondent

Coram: **Ndita, J et Henney, J et Da Silva Salie, J**
Heard on: **23 January 2026**
Delivered on: **25 May 2026**

Summary:

CONSTITUTIONAL LAW – Political Party Funding Act 6 of 2018 – Electoral Matters Amendment Act 14 of 2024 – urgent constitutional litigation concerning alleged lacuna in political party donation thresholds and disclosure limits shortly before 2024 national elections – rule nisi granted by court a quo – interim operational relief refused – appeal confined to costs orders – application of Biowatch principle – substantial success by public-interest litigant – whether court a quo adopted unduly fragmented approach to costs – whether adverse costs order against appellant justified despite absence of frivolous or vexatious conduct – intervention application by Democratic Alliance dismissed – whether non-party properly mulcted in costs associated with substantive proceedings – doctrine of effectiveness considered in relation to practicality and implementation of costs-in-the-cause order by taxing master – appeal upheld – costs orders set aside and substituted.

ORDER

1. The appeal succeeds.

2. Paragraph 16(e) of the judgment and order of the court a quo is set aside and substituted with the following:

> "The prayer for the terms of the order set out above, to immediately operate as an interim order, is dismissed with costs associated therewith being costs in the cause of the rule nisi as set forth below."

3. Paragraph 16(f) of the judgment and order of the court a quo is set aside and substituted with the following:

> "The first and third respondents are to pay the costs of the rule nisi jointly and severally, to be taxed on the basis of Scale B."

4. The respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of appeal on Scale B.

JUDGMENT

DA SILVA SALIE J:

Introduction

[1] This appeal concerns the correctness of certain costs orders granted by Thulare J on 27 May 2024 under case number 10607/24 arising from urgent constitutional litigation instituted shortly before the national elections following the commencement of the Electoral Matters Amendment Act 14 of 2024 ("the EMAA"). Leave to appeal to the Full Court was subsequently granted by the court a quo on 14 April 2025. Although the appeal is confined to costs, the issues cannot be viewed in isolation from the broader constitutional and democratic setting within which the urgent proceedings arose. The litigation concerned the statutory framework regulating political party funding, disclosure obligations and donation thresholds, matters which lie at the heart of transparency, accountability and informed electoral participation in a constitutional democracy.

[2] The central question before this Court is whether the costs orders granted by the court a quo were judicially and properly exercised in circumstances where the first appellant, My Vote Counts NPC ("MVC"), obtained substantial relief through the grant of a rule nisi, and where the second appellant, the Democratic Alliance ("the DA"),

notwithstanding the dismissal of its intervention application, was nevertheless ordered to contribute towards the costs associated with the rule nisi proceedings.

Background

[3] The litigation giving rise to this appeal emerged against the backdrop of amendments to the Political Party Funding Act 6 of 2018 ("the PPFA") introduced through the EMAA, which came into operation on 8 May 2024, mere weeks before national and provincial elections. Prior to the commencement of the EMAA, the PPFA imposed an upper annual limit of R15 million on donations made to political parties by a single donor and further required disclosure of donations exceeding R100 000. Those thresholds existed by virtue of regulations promulgated under the PPFA.

[4] The amendments introduced by the EMAA materially altered the mechanism through which those thresholds would henceforth operate. The amended provisions empowered the President, after a resolution of the National Assembly, to determine the upper limit and disclosure threshold by notice in the Gazette. MVC contended in the urgent proceedings that while the old regulations had been repealed and substituted, no new thresholds had yet been determined. According to MVC, this created an immediate lacuna in the legislative framework governing political party funding.

Proceedings before the court a quo:

[5] MVC accordingly approached the urgent court contending that, absent judicial intervention, there existed at least temporarily no effective upper limit on donations to political parties and no enforceable disclosure threshold. MVC maintained that this state of affairs undermined constitutional values of openness, accountability and transparency. Furthermore, it impaired the ability of voters to exercise informed electoral choice in the period immediately preceding the elections.

[6] It was against this background that MVC sought a rule nisi calling upon interested parties to show cause on a return date why an order should not be made final deeming the pre-existing thresholds of R15 million and R100 000 respectively to remain operative pending either constitutional proceedings challenging the validity of the amendments or the lawful determination of fresh thresholds in terms of the amended statutory framework. MVC further sought that the rule nisi operate immediately as interim relief pending the return date.

[7] The DA thereafter sought leave to intervene in the urgent proceedings. The DA contended that, as a registered political party directly affected by the legislative regime regulating political funding, it possessed a direct and substantial interest in the proceedings. While disputing MVC's contention that a lacuna existed, the DA simultaneously sought alternative declaratory relief which would, in practical effect,

preserve the operation of the existing thresholds pending proper determination under the amended statutory scheme.

Judgment a quo

[8] The judgment a quo considered the nature and purpose of a rule nisi. The court a quo emphasised that the urgent proceedings before it did not constitute the final adjudication of the constitutional issues raised by MVC and held that fuller ventilation of the issues was appropriate on the return date, after notice to interested parties and broader participation in the litigation process.

[9] In considering the DA's intervention application, the court a quo observed that the DA's opposition appeared directed not merely at whether MVC had established a prima facie case for interim intervention, but rather at the ultimate determination whether a lacuna in fact existed. The court a quo remarked that the DA was *"ahead of its time"* in seeking definitive findings which properly belonged to the return date court. The court a quo further observed that the court on the return date might well be exposed to what it described as an *"expanded festival of ideas"* as interested parties enriched the jurisprudential debate concerning the interpretation and constitutional implications of the amended statutory framework.

[10] The judgment a quo traversed developments within the National Assembly following the commencement of the EMAA. In particular, the court a quo referred to the National Assembly Order Paper of 9 May 2024, which expressly recorded that, absent resolutions authorising the President to determine the relevant thresholds, “a gap in the law” would arise concerning donation caps and disclosure obligations. The National Assembly thereafter contemplated resolutions intended to enable the President to determine fresh thresholds under the amended statutory framework. In my view, the significance of those developments lies in the fact that Parliament itself initially proceeded on the footing that uncertainty existed regarding the continued operation of the pre-existing thresholds following the commencement of the EMAA. The evolving position adopted within Parliament accordingly reinforced, rather than undermined, MVC’s contention that the amendments had generated sufficient constitutional and regulatory uncertainty to warrant urgent judicial scrutiny and fuller ventilation on the return date.

[11] Importantly, the court a quo expressly accepted that MVC had established a prima facie case warranting the grant of a rule nisi. In doing so, the court a quo recognised that the amendments introduced by the EMAA had repealed and substituted the prior regulatory framework governing the upper limit on donations and the disclosure threshold. The court a quo further accepted that uncertainty existed regarding the immediate operation and practical implementation of the amended provisions pending determination of fresh thresholds by the President following a resolution of the National Assembly. It was against this background that the court a quo concluded that the

issues raised by MVC warranted fuller ventilation on the return date after interested parties had been afforded an opportunity to be heard.

[12] The court a quo accordingly granted the substantive rule nisi relief sought by MVC. The non-joinder objections raised against MVC were rejected. The DA's intervention application was dismissed. However, the court a quo refused the prayer that the rule nisi operate immediately as interim relief pending the return date. In doing so, the court a quo drew a distinction between, on the one hand, the grant of a rule nisi to preserve the dispute and permit fuller ventilation of the constitutional and regulatory issues on the return date and, on the other, the granting of operative interim relief which would effectively revive and enforce the pre-existing donation thresholds pending final determination of the matter.

The costs orders

[13] The court a quo thereafter granted the costs orders which now form the subject matter of this appeal. MVC was ordered to pay the costs associated with the refusal of interim operational relief, while the first and third respondents together with the DA were ordered to pay the costs associated with the rule nisi proceedings.

The appellants' submissions

[14] On appeal, MVC submitted that the court a quo materially misdirected itself in relation to costs. Counsel submitted that the litigation was quintessential constitutional litigation directed at issues of democratic accountability, electoral transparency and constitutional governance. MVC argued that the litigation fell squarely within the ambit of the principle enunciated in ***Biowatch Trust v Registrar, Genetic Resources and Others 2009 (6) SA 232 (CC)*** and that no basis existed to depart from the ordinary constitutional protections applicable in such litigation.

[15] MVC further contended that the court a quo failed to appreciate properly that it had achieved substantial success in the urgent proceedings. Although the prayer that the rule nisi operate immediately was refused, MVC nevertheless secured the substantive rule nisi relief which constituted the central objective of the urgent application. Counsel submitted that the interim operational relief was ancillary to the broader proceedings and intrinsically connected to the substantive relief ultimately granted.

[16] The DA similarly submitted that once its intervention application had been dismissed, it could not properly be mulcted in costs associated with substantive proceedings in which it had not been admitted as a party. The DA argued that the order compelling it to contribute to the costs associated with the rule nisi was inconsistent with established principles governing costs orders against non-parties.

Legal principles applicable to costs in constitutional litigation

[17] It is trite that costs orders fall within the discretion of the court of first instance and that appellate courts interfere only in exceptional circumstances, where such discretion was not exercised judicially, where material misdirection occurred, or where the result is plainly wrong. Importantly, constitutional litigation has generated important refinements to ordinary costs principles, particularly where private litigants seek to vindicate constitutional rights or challenge state conduct.

[18] The Constitutional Court in ***Biowatch*** recognised that adverse costs orders in constitutional litigation may deter litigants from approaching courts to vindicate constitutional rights and hold the state accountable. The Constitutional Court accordingly held that successful private litigants in constitutional matters should ordinarily recover their costs from the state, while unsuccessful private litigants ought not ordinarily to be mulcted in costs unless their conduct is frivolous, vexatious or manifestly inappropriate.

[19] The present litigation plainly bore the hallmarks of constitutional litigation contemplated in ***Biowatch***. MVC approached court in circumstances involving alleged deficiencies in legislation regulating political funding transparency immediately before national elections. The litigation implicated constitutional values of openness, accountability and informed electoral participation. Indeed, the court a quo itself

repeatedly recognised the constitutional significance and public importance of the issues raised.

[20] Significantly, there was never any finding by the court a quo that MVC's litigation was frivolous, abusive, reckless, vexatious or manifestly inappropriate. To the contrary, the judgment demonstrates careful engagement with MVC's concerns and acceptance that the issues warranted judicial scrutiny and fuller ventilation upon the return date.

[21] Nor can the proceedings properly be characterised as proceedings in which MVC was unsuccessful. MVC secured the principal relief sought in the urgent court, namely the grant of the rule nisi. The procedural objections raised against MVC failed. The court a quo expressly recognised that the issues raised by MVC warranted further adjudication. While MVC did not succeed in obtaining immediate interim operation of the rule nisi, that aspect of the relief remained ancillary to and dependent upon the substantive rule nisi proceedings.

[22] The difficulty with the approach adopted by the court a quo is that it isolated the refusal of interim operational relief from the broader complexion and overall outcome of the litigation. Constitutional litigation of this nature must be assessed holistically. The enquiry is not whether every procedural component of the litigation succeeded, but whether the litigation (as a whole) constituted genuine constitutional litigation responsibly pursued and substantially successful in substance.

[23] The court a quo's own reasoning demonstrates that MVC succeeded in placing before the court sufficiently weighty constitutional concerns to warrant urgent judicial intervention through the mechanism of a rule nisi. The court a quo accepted that uncertainty existed within the statutory framework. It accepted that the matter warranted fuller ventilation. It rejected the principal procedural objections advanced against MVC. Against that backdrop and having regard to those findings, an adverse costs order against MVC cannot be sustained.

[24] Viewed holistically, the proceedings bore all the hallmarks of genuine constitutional litigation responsibly pursued in the public interest. The substantial success achieved by MVC through the grant of the rule nisi, coupled with the absence of frivolousness, vexatiousness or abuse, rendered the resultant adverse costs order difficult to reconcile with the Biowatch principle. In these circumstances, interference on appeal with the discretion in respect of costs as exercised by the court a quo is justified.

The costs order granted against the DA

[25] The appeal brought by the DA ought similarly to succeed. Once the DA's intervention application was dismissed, the DA was not admitted as a substantive party to the proceedings relating to the grant of the rule nisi. While the DA undoubtedly participated actively in argument and advanced submissions opposing MVC's interpretation of the legislation, the dismissal of its intervention application carried important procedural consequences.

[26] It is trite that a litigant who has been refused intervention cannot thereafter be treated as a substantive party for purposes of costs associated with the principal proceedings. The court a quo, however, ordered the DA jointly liable for the costs associated with the rule nisi notwithstanding the dismissal of its intervention application.

[27] Properly considered, the inclusion of the DA in the rule nisi costs order constituted a material misdirection. The DA's participation occurred within the broader setting of constitutional litigation concerning electoral transparency and political funding regulation. The submissions advanced by the DA cannot be characterised as frivolous or vexatious. The court a quo itself engaged extensively with those submissions. However, once intervention was refused, the DA could not be mulcted in costs associated with substantive proceedings to which it was not admitted. In those circumstances, the subsequent costs order gives rise to difficulty.

The practical implementation of costs orders and the doctrine of effectiveness

[28] Counsel for MVC submitted that fairness would best be served either by directing that costs associated with the refusal of interim operational relief become costs in the cause or alternatively that each party bear its own costs associated with that aspect of the proceedings. During argument, counsel further submitted that an order that each party to pay its own costs, would, in practical terms, create unnecessary difficulties for the taxing master in attempting to distinguish and allocate costs associated exclusively

with the refusal of the interim operational relief from those incurred in relation to the broader rule nisi proceedings.

[29] Counsel submitted that the intertwined nature of the urgent proceedings rendered such apportionment unduly burdensome when attempting to separate costs incurred. It seems to me that there is merit in that submission. A costs order should, insofar as possible, be framed in a manner capable of practical and effective implementation. An order which is difficult to apply in taxation, or which leaves uncertainty as to the allocation of recoverable costs, risks undermining the doctrine of effectiveness. Neither the taxing master nor the parties should be left in a position where the execution of the order becomes speculative or unduly burdensome in separating costs incurred in relation to closely interwoven aspects of the same urgent proceedings.

Conclusion

[30] It follows that fairness and the applicable constitutional principles are best served by directing that the costs associated with the refusal of interim operational relief be costs in the cause of the rule nisi. That approach appropriately recognises the constitutional nature of the litigation, the substantial success achieved by MVC in securing the rule nisi, and the absence of frivolousness or abuse.

[31] The costs associated with the rule nisi properly remain payable by the first and third respondents in accordance with the order granted by the court a quo, save that the DA ought not to have been included within that order.

Order

[32] In the result, I would make an order as follows:

[32.1] The appeal succeeds.

[32.2] Paragraph 16(e) of the judgment and order of the court a quo is set aside and substituted with the following:

> "The prayer for the terms of the order set out above, to immediately operate as an interim order, is dismissed with costs associated therewith being costs in the cause of the rule nisi as set forth below."

[32.3] Paragraph 16(f) of the judgment and order of the court a quo is set aside and substituted with the following:

"The first and third respondents are to pay the costs of the rule nisi jointly and severally, to be taxed on the basis of Scale B."

[32.4] The respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of appeal on Scale B.

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G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION

I agree

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R.C.A. HENNEY

JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION

I agree and it is so ordered.

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T. NDITA

JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION

Appearances

For First Appellant:	Adv. M Dafel
	Sandton
Instructed by:	Webber Wentzel Sandton
For Second Appellant:	Adv. P Olivier
Instructed by:	Minde Schapiro & Smith Inc.
For First to Fourth Respondents:	State Attorney Cape Town
	Ref: Ms Karjiker