



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

Reportable

Case 2026-138228

In the matter between:

UMKHONTO WESIZWE PARTY

First Applicant

UNITED AFRICANS TRANSFORMATION

Second Applicant

And

MATAMELA CYRIL RAMAPHOSA

First Respondent

VUYOLWETHU ZUNGULA

Second Respondent

AFRICAN TRANSFORMATION MOVEMENT

Third Respondent

THE ECONOMIC FREEDOM FIGHTERS

Fourth Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fifth Respondent

**CHAIRPERSON OF THE IMPEACHMENT
COMMITTEE**

Sixth Respondent

In re:

MATAMELA CYRIL RAMAPHOSA

Applicant

And

**SPEAKER OF THE NATIONAL ASSEMBLY AND SIX
OTHERS**

Respondents

Coram: Le Grange J, Francis J et Davis J

Heard: 21 August 2026

Delivered: 28 August 2026

Summary: Application for leave to appeal against an interim interdict restraining public hearings in a s 89 impeachment enquiry — s 17(1) of the Superior Courts Act 10 of 2013 — the conditions in paras (a), (b) and (c) are cumulative — appealability governed by the interests of justice and going to the jurisdiction of the court of appeal, which a grant of leave below does not bind — meaning of “falls within the ambit of section 16(2)(a)” in s 17(1)(b) — the description of the class of case is directed to the court of first instance, the discretion to hear a moot appeal is reserved to the court of appeal — same result on the alternative construction — order lapsing before any appeal can be heard — *stare decisis* and earlier full bench decisions of the same Division sitting at first instance — leave refused notwithstanding that two of the grounds raise unsettled questions of law.

ORDER

1. Leave to appeal is refused.
2. The costs of this application stand over for determination by the court hearing the review under case number 2026-119182.

JUDGMENT ON LEAVE TO APPEAL

FRANCIS, J: (LE GRANGE ADJP et DAVIS J concurring):

Introduction

[1] On 24 July 2026, this Court, sitting as a court of first instance constituted of three judges, restrained the Speaker of the National Assembly ('the Speaker') and the Chairperson of the Impeachment Committee ('the Chairperson') from proceeding with public hearings under rule 129M of the Rules of the National Assembly. The restraint operates pending the determination of the first respondent's ('the President's') review of the report of the s 89 Independent Panel dated 30 November 2022, under case number 2026-119182.

[2] The Court was divided. I would have refused the interdict, for the reasons given in the first judgment. Davis J took the opposite view, and Le Grange ADJP concurred with her in a separate judgment. That division is relevant only insofar as it forms part of the applicants' case for leave to appeal. It does not alter the present enquiry. An application for leave to appeal is not an occasion to revisit the merits of the order, and a dissent is not itself a ground of appeal.

[3] The sixth and seventh respondents in the interdict application, the uMkhonto weSizwe Party and United Africans Transformation, are the applicants seeking leave to appeal the judgment and order. They rely on both elements of s 17(1)(a) of the Superior Courts Act 10 of 2013 ('the Act'). The Speaker and the Chairperson neither support nor oppose the application.

[4] The application was heard out of the ordinary course and under shorter time limits. We are indebted to counsel for keeping their submissions brief and focused.

The order and its duration

[5] Two features of the order are important. First, it is narrow. It restrains only the holding of public hearings under rule 129M and leaves the Committee free to continue with its preparatory activities. Second, the order terminates automatically upon the determination of the review, after which it falls away without the need for a further order.

[6] The review is set down for hearing from 2 to 4 September 2026.

[7] The current state of the impeachment proceedings was placed before us from the Bar without objection. The Committee's terms of reference are not yet fulfilled and fall to be considered on 1 September 2026. The President has objected to the proposed chief evidence leader, and a legal opinion has been sought. No assistant evidence leaders had been appointed. Once the evidence leader briefs the Committee on the Panel report, a call for evidence, statements, and witness lists will follow. No hearing under rule 129M is thus imminent.

The statutory test

[8] Section 17(1) of the Act provides that leave to appeal may be given only where the judge or judges concerned are of the opinion that:

(a)(i) the appeal would have a reasonable prospect of success, or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration; and

(b) the decision sought on appeal does not fall within the ambit of s 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[9] The structure of the section matters. Paragraphs (a), (b) and (c) are not alternatives. The word "and" stands at the end of each of the first two, and all three must be satisfied before leave may be given. An applicant who shows reasonable prospects or a compelling reason why the appeal should be heard satisfies paragraph (a) and no more.

[10] The threshold is demanding. A reasonable prospect requires a sound rational basis for concluding that the appeal has a realistic chance of success. A merely arguable case or one that is not hopeless is insufficient (see *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/15) [2016] ZASCA 176 para [17]).

Appealability

[11] On the issue of appealability, the President's first answer, taken in the heads of argument filed on his behalf, is that the order is not appealable at all. Measured against the attributes identified in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I-533A, the answer would be a short one. The order is not final in effect, it is not definitive of the rights of the parties, and it does not dispose of any

part of the relief claimed in the review. That is no longer the enquiry. During argument, Mr Budlender, the President's counsel, correctly accepted that the old Zweni attributes do not provide the governing test.

[12] In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* [2022] ZACC 34; 2023 (1) SA 353 (CC), the Constitutional Court held that appealability is now determined by the interests of justice and whether the order constitutes a decision for purposes of s 16(1)(a) of the Act. What is decisive, even where the Zweni attributes are not fully met, is where the interests of justice lie in the particular case, and whether an order lacking one or more of those attributes is a decision for the purposes of s 16(1)(a) of the Act (*Lebashe* para [45]). The enquiry involves no discretion. It is a value judgment on a question of law. The Supreme Court of Appeal has said the same of interim restraints in particular. In *Eskom Holdings Soc Ltd v Lekwa Ratepayers Association and Others; Eskom Holdings Soc Ltd v Vaal River Development Association (Pty) Ltd and Others* (870/20) [2022] ZASCA 10; 2022 (4) SA 78 (SCA) para [7], adopting what Meyer AJA had earlier said sitting as Meyer J in *Old Mutual Ltd and Others v Moyo and Another* [2020] ZAGPJHC 1 para [103], it held that although it is generally not in the interests of justice to permit an appeal against an interim interdict, there are limited circumstances in which the interests of justice dictate that such an order be appealable, and that whether they exist is a fact-specific enquiry. In that matter, the parties agreed that the interdicts were appealable, and the Court accepted the concession (*Eskom* para [6]).

[13] On occasion, the nature and effects of an order have rendered interim orders appealable (see, for example, *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC)). An interim order

restraining Parliament in the exercise of the accountability function assigned to it by s 89 of the Constitution is a grave intrusion upon the exercise of public power and affects Parliament's constitutional accountability function. That consideration weighs in favour of appealability. Against that stands the features I have already set out. The order is narrowly circumscribed. It does not restrain the Committee from doing what it is currently able to do. It lapses when judgment is delivered in a review to be heard in the next week. And the two respondents whom it binds have not objected to it in this Court.

[14] It is unnecessary for the purposes of this judgment to determine whether the order is appealable, and I shall assume in the applicants' favour that it is. The Supreme Court of Appeal, if called upon, will ultimately determine the issue.

Section 17(1)(b): the decision sought on appeal

[15] Section 17(1)(b) requires that the decision sought on appeal does not fall within the ambit of s 16(2)(a). That subsection provides that a court of appeal may, in its discretion, dismiss an appeal on the grounds that the decision sought will have no practical effect or result, save where exceptional circumstances justify a hearing.

[16] The decision sought on appeal in this matter is the setting aside of the interim interdict. That interdict lapses when judgment in the review is delivered, and the review is to be heard in the next week. Leave, were it given, would be followed by the preparation and lodging of a record, the filing of heads, and enrolment before the Supreme Court of Appeal. Even on an expedited basis, the applicants say they would seek, and, assuming the President of that Court acceded to the request, an appeal will not realistically be heard before the review is decided. Mr Mpofu, who

appeared for the applicants, did not contend otherwise. His answer lay elsewhere. There were three of them.

[17] The first was that mootness cannot be tied to a future and uncertain event. No court, he said, can predict how long another court will take to decide a complex matter, and one iteration of this litigation took some eighteen months.

[18] That submission misconstrues the relevant enquiry. Section 17(1)(b) does not require this Court to specify a date. It requires only an assessment of the current circumstances and the likely effect of the decision sought. Nor does the comparison with the earlier litigation assist. What took eighteen months was a matter that travelled to the apex court. In the present matter, the review is fully prepared and scheduled for a three-day hearing, much of which has already been canvassed over two days of argument and in a judgment emanating from this Court. Although the precise date of the review judgment cannot be predicted, it is highly improbable that the Supreme Court of Appeal will adjudicate this interim order before the review is decided.

[19] The second answer was that the President has reserved the right to seek a further stay pending appeals against the judgment in the review, so that the restraint may in truth run for years. That reservation was recorded in the first judgment at paras [49] and [68] and was treated there as an aggravating feature of the relief sought.

[20] The argument is a criticism of the relief granted. It does not advance the case for leave. A stay of pending appeals against the review judgment would be a different order, sought on different facts and at a different time, and it would be granted or refused on its own merits. If granted, it could be challenged in its due

course. What it could not do is revive an order that has already lapsed. The President's heads record that he sought to restrain the hearing only pending judgment in the review, and Mr Budlender confirmed that position from the Bar, though he stopped short of an undertaking. Taking the President's position as it stands, this Court cannot give leave on the strength of an application that may never be brought and, if brought, may not succeed.

[21] The third answer is the substantial one. Mootness, Mr Mpofu submitted, is no absolute bar. An appellate court retains discretion to decide a discrete legal issue of public importance, even when the decision will have no practical effect between the parties. That discretion belongs to the Supreme Court of Appeal, and this Court should not foreclose its exercise by refusing leave (see *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA) para [5]).

[22] The premise is correct as far as it goes. The discretion exists, and section 16(2)(a)(i) confers it on a court of appeal. *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* (104/2022) [2023] ZASCA 35 (31 March 2023) para [18] says as much in terms.

[23] *Solidariteit* does not carry the matter beyond that, because it was concerned with a different situation. The impugned regulations there had been repealed before the matter was heard in the High Court, so that the cause of action had ceased to exist before judgment in the court of first instance. What the Supreme Court of Appeal held at para [18], is that a court in that position has no claim before it to adjudicate, and that its function is to determine cases which present live issues (quoting *Minister of Justice and Correctional Services and Others v Estate Late Stransham-Ford* [2016] ZASCA 197; 2017 (3) SA 152 (SCA) paras 25 and 26).

That is not the position here. The proceeding before us is still live. What is said to lack practical effect is not this application, but the decision sought on appeal. *Solidariteit* tells us where the discretion under s 16(2)(a)(i) lies. It does not answer the question before us.

[24] Nor do I rest on any proposition that this Court may not consider how another court would exercise its discretion. The answer to Mr Mpofu's submission lies elsewhere. It is to be found in the words of s 17(1)(b) itself.

[25] Section 17(1)(b) does not ask whether the Supreme Court of Appeal would dismiss the appeal. It asks whether the decision sought on appeal falls within the ambit of s 16(2)(a). An ambit is a description of a class. The class is described in s 16(2)(a)(i), which speaks of issues that are of such a nature that the decision sought will have no practical effect or result. The same subsection then confers a power, exercisable at the hearing of an appeal, to dismiss on that ground alone. The Legislature has separated the description of the class from the power to act upon it. Section 17(1)(b) directs the description to the court of first instance and leaves the power to act upon it to the appellate court.

[26] This conclusion is not in conflict with *Lebashe*. That judgment displaced the common-law test, the *Zweni* attributes, which had been used too rigidly. Section 16(2)(a) is a statutory provision, not a common-law provision, and s 17(1)(b) requires that it be complied with before this Court may grant leave. The interests of justice cannot override a law set by the Legislature.

[27] The question is therefore a narrow one. It is not a question of whether an appeal would or should be entertained. It is whether the issues are of such a nature that the decision sought will have no practical effect or result.

[28] That question is not limited to just these parties. As the Constitutional Court stated in *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC) para [11], a prerequisite for the exercise of the discretion is that any order which the court may make will have some practical effect either on the parties or on others. So, the applicants' argument about public importance is not necessarily excluded by s 17(1)(b).

[29] Between these parties, setting aside an order that has already lapsed gives the applicants nothing. Beyond them, what is sought is an authoritative statement of the law governing interim restraints on the exercise of public power, to guide courts and litigants in matters yet to come. That has value. But it is not a practical effect or result within the meaning of s 16(2)(a)(i). It is an advisory opinion, and a court does not give one (see *Solidariteit* at para [12]).

[30] A related matter was put to Mr Mpofu from the Bench. The order restrains the Speaker and the Chairperson. Neither seeks leave, nor does either support this application. What practical result, then, would the applicants derive from setting the order aside? His answer was that the parties he represents have a direct interest in the enquiry going forward and that, between them, they represent millions of South Africans. I do not doubt the interest. Parties represented in the Assembly have a genuine stake in the exercise of the accountability function conferred on that House by s 89, and the constituencies behind them are considerable.

[31] The answer, however, addresses a different question. Sufficiency of interest goes to standing, and standing is not in issue. What s 16(2)(a)(i) asks is whether the decision sought will have a practical effect or result. A party may have a substantial interest in an order and still gain nothing from its reversal. That is the position

here. The order does not bind the applicants. It binds two office-bearers who have not complained of it, and it will in all likelihood have expired before any appeal is heard.

[32] I am, accordingly, of the view that the decision sought on appeal falls within the ambit of s 16(2)(a). Section 17(1)(b) is not satisfied, and this Court has no power to give leave.

[33] The applicants may, of course, petition the Supreme Court of Appeal under s 17(2)(b). It holds the discretion under s 16(2)(a) which this Court does not, and it will form its own opinion on the questions I have addressed. Nothing in this judgment is intended to foreclose that. I deal with the grounds below so that the Court, in considering any petition, has our view of them.

Section 17(1)(c): the real issues

[34] There is an independent and, in my view, compelling reason why the application cannot succeed. Section 17(1)(c) is not satisfied. The order does not dispose of the issues in the review. The real dispute between the parties is whether the Independent Panel report falls to be set aside. That review is already enrolled for hearing from 2 to 4 September 2026.

[35] An appeal against the interim restraint would not decide that issue. It would not advance its adjudication, nor shorten the road to a final answer. It would run alongside the review, at further cost to the parties and to the court, and, on the current timetable, the review judgment would overtake it.

[36] Section 17(1)(c) is not satisfied merely because an appeal may resolve an interlocutory question correctly. The question is whether the appeal would lead to a

just and prompt resolution of the real issues between the parties. On the facts before us, it would not. The review is the proceeding in which those issues will be determined.

The grounds of appeal

[37] My conclusions under paragraphs 17 (1) (b) and (c) make it unnecessary to determine whether the applicants have a reasonable prospect of success on their grounds of appeal. Still, I address the principal grounds, both to explain why the conclusion does not rest on an artificial threshold and to identify the issues which may arise should the applicants petition the Supreme Court of Appeal.

Jurisdiction

[38] The first ground is that this Court lacked jurisdiction to restrain an impeachment process already under way. The Court was unanimous in rejecting that contention. *Zuma v Minister of Police and Others* [2021] ZAKZPHC 40 is distinguishable. There, the applicant sought to stay execution of an order of the Constitutional Court. Here, the relief was directed at the Independent Panel report, which was not an order of the Constitutional Court and is the subject of a review before a court in this Division. The applicants' notice of appeal does not engage with that distinction. This ground does not establish a reasonable prospect of success.

[39] The submission that the matter falls within the Constitutional Court's exclusive jurisdiction under s 167(4)(e) of the Constitution calls for careful consideration. That provision confers exclusive jurisdiction on the Constitutional Court to decide that Parliament or the President has failed to fulfil a constitutional

obligation. The application before this Court, however, is a review of the report of an Independent Panel appointed under the National Assembly's rules, coupled with interim relief ancillary to that review. The fact that the relief may affect the operation of Parliament does not, without more, bring every such review within s 167(4)(e). On the case as presented to this Court, I am not persuaded that this ground establishes a reasonable prospect of success.

***Res judicata* and issue estoppel**

[40] The second ground is *res judicata* or issue estoppel arising from *Economic Freedom Fighters and Another v Speaker of the National Assembly and Others* (CCT 35/24) [2026] ZACC 17. The Constitutional Court's judgment determined the constitutional validity of rule 129I and the validity of the National Assembly's vote of 13 December 2022. It did not finally determine the merits of the President's review of the Independent Panel report. In particular, for purposes of the review, the judgment does not finally determine whether the Panel correctly construed and applied rule 129G. What the Constitutional Court said concerning the Panel may bear on the strength of the review; it does not, in itself, establish the definitive effect contended for. I, accordingly, do not regard this ground as establishing a reasonable prospect of success.

The framing of the relief

[41] The third ground rests on three complaints. The first is that interdictory relief was not available to stop a process already begun. The first judgment took the reading of the notice of motion most favourable to the President, treated the relief as a stay of the continuation of the enquiry, and found against him even on that

footing. The applicants gain nothing from a construction which, on the Court's own reasoning, made their position stronger.

[42] The second complaint is that the President amended his relief in argument without complying with Uniform rule 28, and has infringed s 34 of the Constitution. There was no amendment. The President narrowed the relief he sought, and he did not need to amend his notice of motion to do that. The Court was dealing with an interim interdict, and it was entitled to entertain the narrower relief as long as the parties had the opportunity to address it (see *Hotz and Others v University of Cape Town* 2017 (2) SA 485 (SCA) fn 8). The applicants had that opportunity in argument. They pointed to no prejudice, and I can see none. As to s 34 of the Constitution, which is the right to have a legal dispute resolved in a fair public hearing, no argument was advanced to explain how it was infringed, and I do not understand how it could have been. In my view, to hold a party to relief he no longer seeks would serve nothing.

[43] The third complaint is that the order permitted a disguised collateral review of the Chairperson's refusal to halt the process, contrary to *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) and *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC). The premise is wrong. The President did not proceed collaterally. He instituted a direct review of the report, under a separate case number, and sought interim relief ancillary to it. Whether he should instead have attacked the Chairperson's decision goes to the availability of alternative remedies. In my view, none of the three complaints has a reasonable prospect of success.

Non-joinder and misjoinder

[44] The non-joinder and misjoinder grounds likewise do not, on the material before this Court, establish a reasonable prospect of success. The President was the applicant and was fully before the Court. Whether he should also have been cited in an official capacity depends upon the legal nature of the relief and the interest said to require separate citation. The applicants have not demonstrated that the absence of such citation caused the non-joinder of a party with a direct and substantial interest in the order. Nor have they shown that the Panel members, who are cited in the review and abide by it, have a direct and substantial interest in the interim order.

[45] The challenge to the form of the order is likewise insufficiently particularised to establish a reasonable prospect of success. The order identifies the conduct restrained, the office-bearers restrained, and the duration of the restraint by reference to the review. The applicants have not demonstrated in what respect the order is incapable of being understood or complied with.

Stare decisis

[46] The applicants' reliance on stare decisis raises a more substantial question. A court of first instance is ordinarily bound by a decision of a court of coordinate jurisdiction unless satisfied that the earlier decision is clearly wrong (*Patmar Explorations (Pty) Ltd and Others v Limpopo Development Tribunal and Others* [2018] ZASCA 19; 2018 (4) SA 107 (SCA) para [3]). The Constitutional Court has likewise emphasised the rule-of-law importance of adherence to precedent in *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another* [2010] ZACC 19; 2011 (4) SA 42 (CC) para [28].

[47] The applicants relied on *Public Protector v Speaker of the National Assembly and Others* (2107/2020) [2020] ZAWCHC 117 and *Public Protector of South Africa v Speaker of the National Assembly and Others* (8500/2022) [2022] ZAWCHC 117. Both were decisions of full courts of this Division sitting at first instance. In each, the Court declined to restrain a removal enquiry under s 194 of the Constitution pending a challenge to its lawfulness.

[48] Those decisions therefore required express treatment. They could have been followed, distinguished, or held to be clearly wrong, but in each case, reasons were required for the course adopted. The failure to engage with them was a defect in the reasoning of the majority judgment of this Court, which the applicants were entitled to identify on appeal.

[49] That does not, however, mean that the earlier decisions necessarily govern the present case. A s 194 removal enquiry and a s 89 process are not identical. The s 89 process at issue here involves an Independent Panel report and an Impeachment Committee process that does not, by itself, finally determine the President's removal. Whether that distinction is sufficient to distinguish the earlier cases is arguable. I do not decide the question. Even assuming, in the applicants' favour, that this ground gives rise to a reasonable prospect of success, the requirements of s 17(1)(b) and (c) remain unsatisfied.

Compelling reasons

[50] The applicants rely, in the alternative, on s 17(1)(a)(ii). They identify two important and unsettled questions. The first concerns the relationship between *Economic Freedom Fighters v Gordhan and Others*; *Public Protector and Another v Gordhan and Others* [2020] ZACC 10; 2020 (6) SA 325 (CC) and the later

discussion in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* [2022] ZACC 44; 2023 (4) SA 325 (CC) ('*Eskom CC*') concerning the level at which a prima facie right should be assessed in interim interdict proceedings. The second concerns the weight that may be given, in the balance of convenience, to the possibility that an operative decision may later be set aside, having regard to *Oudekraal* and *Kirland*.

[51] These are not trivial questions. In *Economic Freedom Fighters v Gordhan and Others* para [42], the Constitutional Court stressed the need for strong prospects on the underlying review where interim relief restrains the exercise of public power. In *Eskom CC*, Madlanga J, writing for the majority, cautioned against pitching the prima facie right enquiry at the level of a clear right (see para 245). At para [251], he explained that where the legal question is complex or novel, a court may conclude that there is prima facie enough pointing to the determination of that question in the applicant's favour. The judgments therefore warrant reconciliation in an appropriate case. I do not, however, regard this application as the appropriate vehicle for undertaking that reconciliation.

[52] Importance does not by itself constitute a compelling reason to hear this appeal. The question under s 17(1)(a)(ii) is whether there is a compelling reason why this appeal should be heard in its present procedural setting. Here the interim order is likely to have lapsed before the appeal is heard; the underlying review will already have been determined; and the review judgment may itself be the subject of further appellate proceedings.

[53] The legal questions identified by the applicants will not disappear. They may recur when an interim restraint against the exercise of public power is challenged in a case in which the answer will have operative consequences. Such a case may

provide a better vehicle for their authoritative determination than an appeal whose practical subject will already have disappeared.

[54] The suggested conflict within this Division does not alter that conclusion. The two earlier full-court decisions ought to have been addressed. Whether the judgment under appeal is reconcilable with them, and whether any irreconcilability amounts to conflicting judgments for purposes of s 17(1)(a)(ii), need not be decided here.

[55] It is also relevant that, on 12 August 2026, the Constitutional Court refused direct leave to appeal against the interim order in this matter. That refusal does not determine the merits, does not create *res judicata* and does not bind this Court in relation to an application for leave to the Supreme Court of Appeal. It is still a procedural fact concerning the same order and the same imminent review. The basis on which the Constitutional Court declined to entertain the matter at that stage was the impending determination of the review and the likelihood that the interim order would thereby become moot. The factual basis for that assessment has, if anything, become stronger. I treat the refusal as relevant, but not determinative, to the present enquiry.

[56] There is, in my view, no compelling reason why this appeal should be heard in its present form.

Costs

[57] The President seeks the costs of this application, including the costs of two counsel on scale C. The applicants seek an order that costs follow the appeal.

[58] Costs ordinarily follow the result, and the unsuccessful party is liable for costs. Two considerations lead me to adopt a different course. The first is that the costs of the interdict application already stand over for the court hearing the review, and the issues raised in this application are so closely connected to those in the review application that it would be artificial to separate them. The second is that the applicants raised real questions about the restraint of Parliament in the exercise of its constitutional accountability function, and they relied on matters on which this Court was divided and which may yet require final determination.

[59] In those circumstances, it is appropriate to stand the costs of this application over for determination by the court hearing the review.

Order

In the result, the following order is made:

1. Leave to appeal is refused.
2. The costs of this application stand over for determination by the court hearing the review under case number 2026-119182.

M FRANCIS

Judge of the High Court

A LE GRANGE
Acting Deputy Judge President of the High Court

D M DAVIS
Judge of the High Court

Appearances:

For the First and Second Applicants (MK and UAT):

Adv Dali Mpofu SC

Adv Katlego Monareng

Adv Boitumelo Khokho

Instructing Attorneys

KMNS Inc.

For the First Respondent (President):

Adv Geoff Budlender SC

Adv Ndumiso Luthuli

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