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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-111881**

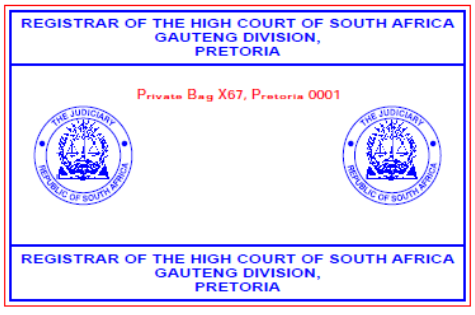
In the matter between:

Sakeliga NPC,Transvaal Agricultural Union of South Africa,CT van der Merwe Boerdery (Pty) Ltd,Twyfel Nie Plase (Pty) Ltd,Blouberg Sitrus (Pty) Ltd,Pontdrif Citrus (Pty) Ltd,Corfuscore (Pty) Ltd,Mosima Beleggings (Pty) Ltd	Plaintiff / Applicant / Appellant
and	
Minister of Water and Sanitation,Director-General of Water and Sanitation,Department of Water and Sanitation	Defendant / Respondent

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Other - Application for Leave to Appeal

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ELECTRONICALLY SIGNED BY:

Registrar of Pretoria , Gauteng Division,Pretoria

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2025-111881

In the matter between:

SAKELIGA NPC	First Applicant
TRANSVAAL AGRICULTURAL UNION OF SOUTH AFRICA	Second Applicant
CT VAN DER MERWE BOERDERY (PTY) LTD	Third Applicant
TWYFEL NIE PLASE (PTY) LTD	Fourth Applicant
BLOUBERG SITRUS (PTY) LTD	Fifth Applicant
PONTDRIF CITRUS (PTY) LTD	Sixth Applicant
CORFUSCORE (PTY) LTD	Seventh Applicant
MOSIMA BELEGGINGS (PTY) LTD	Eighth Applicant

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and

MINISTER OF WATER AND SANITATION	First Respondent
DIRECTOR-GENERAL DEPARTMENT OF WATER AND SANITATION	Second Respondent
DEPARTMENT OF WATER AND SANITATION	Third Respondent

APPLICANTS' APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the abovementioned applicants hereby apply for leave to appeal in respect of the dismissal of the declaratory relief sought to the effect that water use charges in terms of the National Water Act, 36 of 1998, in respect of water utilized for

commercial irrigation and/or other commercial purposes by private individuals or entities are subject to a three-year prescription period in terms of Section 11(d) of the Prescription Act, 68 of 1969 and that a three-year prescription period will be applicable in respect of the relevant accounts for water use of the third to eighth applicants. Leave to appeal is also sought in respect of the cost order not allowing cost to the applicants and directing that all parties should pay their own cost.

TAKE FURTHER NOTICE that leave to appeal is not sought in respect of prayer 2 of the eventual order granted. The judgment and order was handed down by the Honourable Mr Justice Raubenheimer (AJ) on 17 September 2026.

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TAKE FURTHER NOTICE that the applicants intend to apply to the above Honourable Court on a date and time to be arranged with the Registrar, for leave to appeal to the Supreme Court of Appeal, alternatively to a Full Court of this Division, with cost to be cost in the appeal.

TAKE FURTHER NOTICE that the grounds for the application and/or findings of law and/or fact in respect of which leave to appeal is sought is/are one or more of the following:

1 The Honourable Court erred in not granting the declaratory relief sought to the applicants and/or exercising any discretion it may have had in this regard in favour of the applicants;

2 The Honourable Court erred in treating the requirements for declaratory relief as absolute and/or jurisdictional requirements and erred in finding the applicants are not entitled to such relief.

3 The Honourable Court, having correctly held at paragraphs [37] and [38] that the applicants satisfied the first, jurisdictional stage of the enquiry, erred in holding at paragraphs [39] and [40] that the question of prescription was premature, academic or hypothetical merely because summons had not yet been issued and the respondents' cause of action had allegedly not yet been completed. Section 21(1)(c) of the Superior Courts Act, 10 of 2013 expressly empowers the Court to determine an existing, future or contingent right or obligation, notwithstanding that no consequential relief can be claimed. The Court accordingly erred in treating the prior institution of action proceedings as a necessary precondition to the determination of the applicants' rights.

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4 The Honourable Court erred in finding that there is no real dispute between the parties. There is a clear dispute and, in any event, declaratory relief can also be granted in the absence of a dispute.

5 The Honourable Court erred in mischaracterising the dispute only as a complaint about "harassment". The dispute is a crystallised dispute of law. The respondents, in their letter of 13 May 2024 (annexure "FA12"), expressly asserted that water use charges "do not constitute a debt as contemplated by the Prescription Act, but an obligation arising out of the Constitution", rejected the applicants' position, and demanded payment of the full arrears with interest. The respondents maintained that position in their answering papers and in argument. The Court made no finding on this evidence or dispute.

6 The Honourable Court erred in finding that the respondents' ongoing collection and enforcement measures, threats and demands against the individual applicants who hold water accounts do not amount to, or form part of, the dispute between the parties.

7 The Honourable Court erred in finding that a dispute will only arise when summons is issued in respect of the water use charges. Ordinarily, disputes arise first and litigation ensues thereafter. There is a Constitutional right to have such disputes decided in a court of law (after they arise). A dispute may arise before proceedings are instituted and does not depend for its existence upon the institution of action proceedings.

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8 The Honourable Court erred in finding that the issue of prescription can and/or should only arise and/or be adjudicated on when summons is issued and the applicants raise prescription as a special plea. The question can and should be answered in these proceedings. The question will not change.

9 The Honourable Court erred in treating prescription as a procedural defence that becomes relevant only once summons is issued and a special plea is delivered. In terms of section 10(1) of the Prescription Act, 68 of 1969, if the water use charges constitute debts contemplated by that Act, such debts are extinguished by prescription upon the lapse of the applicable period of time. Whether the alleged debts of the third to eighth applicants are in principle subject to a three-year prescription period is accordingly a legal question concerning existing rights and obligations and does not depend upon the prior issue of summons or any other process.

10 The Honourable Court erred in finding that the respondents' cause of action had not yet been completed, or that it was premature, academic or hypothetical to determine the issue. The respondents themselves claim the relevant amounts as due and payable, have demanded payment thereof together with interest, and continue to take steps to recover those amounts. Those facts are inconsistent with the finding that the respondents' cause of action has not yet been completed.

11 The Honourable Court erred in finding that the question of prescription "will only arise when summons is issued", in that it overlooked that the respondents do not require the institution of action proceedings before taking enforcement measures in respect of water use charges. Section 59(3) of the National Water Act authorises the charging of interest and the restriction or suspension of water supply or authorisation for non-payment, while section 60 provides that a water use charge, including interest, is a charge upon the land to which the water use relates and may be recovered from the current owner. The respondents' letters of demand further threaten credit bureau listing, publication of debtors' names and the discontinuation or restriction of services. The respondents are therefore able to continue collection and enforcement measures without first placing the prescription dispute before a court, rendering the "special plea" alternative inadequate.

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12 The Honourable Court erred in conflating prayer 1 and prayer 2 of the notice of motion and in applying the respondents' contention, recorded at paragraph [18], that "whether a debt has prescribed depends on the facts" to prayer 1. Prayer 1 raises a question of statutory interpretation, namely whether water use charges under the National Water Act, 36 of 1998 constitute debts contemplated by the

Prescription Act, 68 of 1969 and, if so, whether the three-year prescription period in section 11(d) applies. That question is distinct from the account-specific question whether particular charges claimed from the third to eighth applicants have in fact prescribed.

13 The Honourable Court erred in failing to determine the substantive question of law notwithstanding that it was fully argued and notwithstanding that the respondents relied upon authority said to support a materially different legal position. The resulting legal uncertainty itself favoured an authoritative determination of the issue.

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14 The Honourable Court erred in failing to consider or to make any finding in respect of the position of the first and second applicants. They hold no water accounts, no summons can ever be issued against them, and the "special plea" route identified by the Court is accordingly not available to them at all. They litigate in terms of section 38 of the Constitution in the interests of their members, supporters and in the public interest. The Court's ratio provides no basis for dismissing prayer 1 at their instance.

15 The Honourable Court erred in deciding the application on the basis that the Protection from Harassment Act, 17 of 2011 affords the applicants an alternative remedy, in that:

15.1 the point was not raised by the respondents in their papers or in argument (see paragraphs [16] to [20] of the judgment);

15.2 an interdict against harassment cannot determine the legal question in issue between the parties, namely whether water use charges are subject

to a three-year prescription period, and is therefore not an alternative remedy in the relevant sense;

15.3 the said Act is not designed as a mechanism for resolving disputes of law between persons and organs of state regarding the enforcement of statutory charges; and

15.4 in any event, the availability of an alleged alternative remedy is one factor in the exercise of the discretion and not a bar to declaratory relief.

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16 The Honourable Court erred in the exercise of its discretion in that, having correctly identified at paragraph [26] that utility, finality, alternative remedies and public policy are the relevant considerations, it considered only the existence of a "real dispute" and an alternative remedy, and failed to consider:

16.1 utility, in that the order would finally determine the legal question between the parties and avoid or materially reduce a multiplicity of proceedings concerning the same question of law. On the papers, prayer 2 concerns the accounts held by six applicants, while the first and second applicants represent the interests of other water users who may be affected by the same legal issue;utility, in that the order would settle the question *res iudicata* between the parties and obviate a multiplicity of proceedings on an identical question of law.

16.2 finality, in that the declaratory order would be binding upon the parties and would also, in the interest of justice, determine the legal question concerning the applicability of the Prescription Act to water use charges;

16.3 justice and convenience, the practical significance of the order, and the avoidance of piecemeal litigation and inconsistent judgments in various courts, it being the effective and just course to determine a single, fully argued question of law in one application rather than in a multiplicity of actions;

16.4 the public interest in legal certainty for a national class of commercial water users and in an organ of state conducting its revenue collection lawfully; and

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16.5 the respondents' own prior admission of 29 October 2021 that charges prescribe after three years and their subsequent repudiation of that position.

17 The Honourable Court's discretion was accordingly exercised without proper regard to material relevant considerations and on the basis of considerations that were treated as effectively decisive when they were not, constituting a misdirection entitling an appeal court to interfere.

18 The Honourable Court's refusal of declaratory relief is inconsistent with its own findings, in that:

18.1 at paragraph [10] it found that water use charges are by statute not a tax, levy or duty, which disposes of the only basis on which section 11(a) could apply; and

18.2 at paragraphs [41], [42] and [44] and in paragraph 2 of the order it required the respondents to furnish itemised statements identifying "the period of measurement of the usage".

19 The Honourable Court erred in failing to interpret and apply section 21(1)(c) of the Superior Courts Act in the light of sections 34, 38 and 39(2) of the Constitution and the interests of justice. The effect of the judgment is that judicial determination of a live question of law is made dependent upon the election of an organ of state whether and when to institute action, notwithstanding that the respondents continue to assert and enforce the disputed legal position.

20 The Honourable Court erred in failing to have regard to the position of the respondents as organs of state bound by sections 195(1) and 237 of the Constitution, in that the effect of the judgment is to permit an organ of state to assert a contested legal position in writing, to enforce it against private parties by extra-judicial means, while avoiding judicial determination of that position by electing not to institute action, at the expense of the public purse and of the water users concerned.

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21 In respect of costs, the Honourable Court erred in:

21.1 ordering each party to pay its own costs when the applicants achieved substantial success, having been granted prayer 3 substantially in full (paragraph 2 of the order) in the face of the respondents' opposition recorded at paragraph [20];

21.2 failing to apply the Biowatch-principle to constitutional litigation brought by private parties and public-interest litigants against organs of state; and

21.3 furnishing no reasons for the costs order.

TAKE FURTHER NOTICE that the applicants contend that the appeal would have a reasonable prospect of success as contemplated in section 17(1)(a)(i) of the Superior

Courts Act, 10 of 2013, and alternatively that there are compelling reasons why the appeal should be heard as contemplated in section 17(1)(a)(ii).

SIGNED AND DATED AT PRETORIA ON 8 OCTOBER 2026.

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
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AND TO: **THE STATE ATTORNEY**
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