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**BIOWATCH COURT RULING: GROSS MISCARRIAGE OF
ENVIRONMENTAL JUSTICE**

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Several environmental groups in South Africa have slammed the Supreme Court of Appeal's ruling that threatens to financially strangle Biowatch SA, a non profit organisation acting in the public interest.

Biowatch was substantially successful in an application for access to information concerning the regulation of GMOs in SA in a lower court in 2005. Yet Judge Dunn, sitting in the lower court, ordered Biowatch to pay the legal costs of Monsanto. In making this finding, the judge departed from the widely accepted principle that "costs should follow the result." This provided an opportunity to severely punish Biowatch and create a chilling effect on public interest groups seeking redress in the interests of the public or the environment.

Biowatch appealed against this judgement and was represented pro bono by the Legal Resources Centre. In delivering the judgement for the appeal court, Judge Mynhardt ordered Biowatch to foot the entire legal bill for the multinational agrochemical and gene giant, Monsanto, and all of the appeal costs. This amount is expected to run close to R 1 million in legal costs.

According to Mariam Mayet of the ACB, "The appeal court's ruling may be the death knell for litigation by brave and vociferous environmental groups acting in the public or environmental interests. This result could not be more welcome for multinational companies like Monsanto and other polluters."

Judge Mynhardt also placed an unduly restrictive interpretation on the 'litigation friendly' provisions of the National Environmental Management Act (NEMA), which allows a court to not impose a cost order against a public interest group when it is unsuccessful in litigating in the interests of the public and the environment.

"In our view, this case provided the appeal court with the opportunity to invoke the NEMA provisions, but it failed to do so. Instead Judge Mynhardt's ruling implies that public interest groups who are unsuccessful in litigating against the state in the interests of the environment may only be absolved from paying legal costs where the state is derelict in its legal duty to protect the environment, even where the law is found to be wanting." said Vanessa Black of Earthlife Africa.

Glenn Ashton, chair of the Steering Committee of SAFeAGE said, "In addition to punishing public interest groups, these 'blood costs' will serve to further swell the already bloated coffers of monopolistic transnational corporations. It is apparent that the law has failed to serve the public interest, but protects the interests of powerful corporations."

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