

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-005180**

In the matter between:

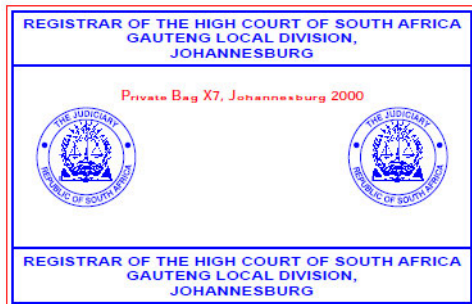
CITY OF EKURHULENI METROPOLITAN MUNICIPALITY Plaintiff / Applicant / Appellant

and

BUSINESS CONNEXION Defendant / Respondent

Judgement dated 16 April 2024 by Coram Aucamp AJ

NOTE: This document was filed electronically by the Registrar on 16/4/2024 at 3:12:35 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

AJ AUCAMP

16 APRIL 2024



CASE NO: 2024-005180

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY

Applicant

and

BUSINESS CONNEXION (PTY) LTD

First Respondent

THE SHERIFF, GERMISTON SOUTH

Second Respondent

ABSA BANK LTD

Third Respondent

Coram: Aucamp S

Heard: 31 January 2024

Delivered: 16 April 2024 – *This judgement was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10H00 on 16 April 2024.*

Summary: Suspension of execution in terms of section 18 of the Superior Court's Act, Act 10 of 2013; automatic suspension pending outcome of an application for reconsideration in terms of section 17(2)(f) of the Superior Court's Act, Act 10 of 2013.

JUDGEMENT

AUCAMP AJ



[1] On 31 January 2023 the first respondent obtained an order from this court against the applicant in the following terms:

- 1.1 declaring the agreement in existence between the applicant and the first respondent to be valid and binding;
- 1.2 declaring that the applicant was indebted to the first respondent in the amount of R85,479,535.26 together with interest thereon;
- 1.3 ordering the applicant to make payment to the first respondent of the said amount owing; and
- 1.4 ordering the applicant to pay the costs of the application.

[2] A subsequent application for leave to appeal brought by the applicant, was dismissed by the court *a quo* which dismissal was followed by an application for leave to appeal to the Supreme Court of Appeal. This application equally was dismissed.

- [3] On 21 November 2023 the applicant presented the President of the Supreme Court of Appeal with a request for reconsideration in terms of section 17(2)(f) of the Superior Court's Act, Act 10 of 2013 ("the Superior Court's Act"). In support of the aforesaid request, the applicant delivered a supplementary affidavit. The first respondent delivered its answering affidavit on 17 January 2024.
- [4] Whilst the decision of the President of the Supreme Court of Appeal was awaited, the first respondent proceeded to have a warrant of execution issued and caused for the Sheriff of this court to attach the applicant's bank account held with Absa Bank on 30 November 2023.
- [5] The bank account under attachment, according to the applicant, is of vital importance to the applicant as it is a direct banking account for the applicant's Germiston's customers. Customers who want to make direct payments to the applicant for the services rendered by it, such as rates and taxes, water and electricity, make payment into this account. Funds paid into this account are transferred daily into the applicant's Treasury account and individual consumer payments are then credited to their water and lights consumer accounts.
- [6] In addition to the attachment of the bank account, the first respondent caused for the Sheriff to attach certain motor vehicles of the applicant; 16 vehicles in total.
- [7] On 19 January 2024, two days after the filing of the first respondent's answering affidavit to the applicant's s17(2)(f) request, the first respondent's attorneys of record, advised the applicant that it had instructed the Sheriff to proceed to have the funds held under attachment, transferred into the Sheriff's Trust Account for payment to the first



respondent.

- [8] It is this threat of the Sheriff transferring the monies from the applicant's bank account to its trust account that caused the applicant to approach the urgent court for an order:

8.1 Declaring that the applicant's filing of its s17(2)(f) request on 21 November 2023 in terms of s18 of the Superior Court's Act, automatically stayed the execution of the judgment of Dlamini J;

8.2 In the alternative and the event of this court finding that the application did not have the effect of automatically staying the judgment and order of Dlamini J, ordering that the warrants of execution are stayed pending the outcome of the request made in terms of s17(2)(f) and any other appeal process.



- [9] The first respondent takes issue with urgency of the matter on the grounds that the applicant was made aware of the fact that the first respondent did not intend to hold over on the execution of the judgment pending the outcome of the s17(2)(f) request which fact was made known to the applicant as far back as 4 December 2023. Notwithstanding, the present application was only initiated on 24 January 2024. Consequently, the first respondent argues that the applicant did not act with the "*maximum expedition*" and the matter ought to be struck from the roll. It is trite that the determination of urgency is a discretionary function of the urgent court to be exercised judicially upon all the relevant facts before the urgent court. Given the nature of the issue for consideration, the interests involved to both parties and in the interest of justice I have determined and hold that the application is urgent.
- [10] Equally, the first respondent alleges that the s17(2)(f) request was filed out of time; that

the applicant has made application for condonation for the late filing thereof and as a consequence and until such time that condonation is granted, there is no request made in terms of s17(2)(f). Mr Hulley SC for the applicant submits that the application for condonation was made as a matter of extreme caution and without conceding that the application was filed out of time. The condonation application and the determination thereof is not an issue that is before me, I make no determination in relation thereto and for present purposes I will assume that a proper request in terms of s17(2)(f) was timeously filed.



THE ISSUES

- [11] It is trite that in terms of s18(1) of the Superior Court's Act, subject to subsections (2) and (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject matter of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal.¹
- [12] The crisp issue presented to this court for consideration is whether s 18(1) equally applies to a request made in terms of s17(2)(f). Put differently, does a request to the President of the Supreme Court of Appeal in terms of s17(2)(f) of the Act automatically suspend the operation and execution of the judgement pending the final decision of the President?
- [13] The applicant in the alternative and to the extent that I find that s 18(1) does not apply to a request made in terms of section 17(2)(f), I should, in any event exercise my discretion in favour of a stay of the execution pending the outcome of the s17(2)(f) request.

DISCUSSION

[14] The determination of the issues herein requires and involves the interpretation of ss 17 and 18 of the Superior Court's Act. The Constitutional Court has reiterated that statutes must be construed consistently with the Constitution in so far as the language of the statutes permits.² In *Liesching and Others v The State and Another*³ the Constitutional Court in relation to the interpretation of statutes held that:



"... Words in a statute must be read in their entire context and must be given their ordinary grammatical meaning harmoniously with the purpose of the statute. The actual words used by the Legislature are important. Judicial officers should resist the temptation "to substitute what they regard as reasonable, sensible or businesslike for words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. All statutes must be interpreted through the prism of the Bill of Rights in order to give effect to its fundamental values. This is so because section 39(2) of the Constitution requires courts to do so."

[15] This means that one must consider the words of section 17(2)(f) and section 18(1) read in the context of the whole of the Superior Court's Act, having regard to the purpose of these provisions.

[16] Sections 17 and 18 of the Act provides:

¹ Section 18(1) of the Superior Court's Act, Act 10 of 2013

² *Minister of Mineral Resources v Sishen Iron Ore Company (Pty) Ltd* [2013] ZACC 45; 2014 (2) SA 603 (CC); 2014 (2) BCLR 212 (CC) at para 40; *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd In Re: Hyundai Motor Distributors (Pty) Ltd v Smit NO* [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC) at para 22

³ [2016] ZACC 41 at [30]

"17 Leave to Appeal

(1) Leave to appeal may only be given 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 judgements on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 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.

(2)

(a) Leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division.

(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court ...

(c) An application referred to in paragraph (b) must be considered by two judges of the Supreme Court of Appeal designated by the President of the Supreme Court of Appeal and, in the case of a difference of opinion, also by the President of the Supreme Court of Appeal likewise designated.



- (d) *The judges considering an application referred to in paragraph (b) may dispose of the application without the hearing of oral argument, but may, if they are of the opinion that the circumstances so require, order that it be argued before them at a time and place appointed, and may, whether or not they have so ordered, grant or refuse the application or refer it to the court for consideration.*
- (e) *Where an application has been referred to the court in terms of paragraph (d), the court may thereupon grant or refuse it*
- (f) *The decision of the majority of the judges considering an application referred in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.*
- (3) *An application for special leave to appeal under section 16(1)(b) may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after the decision sought to be appealed against, or such longer period as may on good cause be allowed, and the provisions of subsection (2)(c) to (f) shall apply with the changes required by the context.*
- (4) *The power to grant leave to appeal –*
- (a) *is not limited by reason only of the fact that the matter in dispute is incapable of being valued in money; and*
- (b) *is subject to the provisions of any other law which specifically limits it or specifically grants or limits any right of appeal.*
- (5) *Any leave to appeal may be granted subject to such conditions as the*



court concerned may determine, including a condition –

(a) limiting the issues on appeal; or

(b) that the appellant pay the costs of the appeal.

(6)

(a) If leave is granted under subsection (2)(a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider



(i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal or the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.

(b) Any direction by the Court of a Division in terms of paragraph (a). may be set aside by the Supreme Court of Appeal of its own accord, or on application by any interested party filed with the registrar within one month after the direction was given, or such longer period as may on good cause be allowed, and may be replaced by another direction in terms of paragraph (a).

(7) Subsection (2)(c) to (f) apply with changes required by the context to any application to the Supreme Court of Appeal relating to an issue connected with an appeal."

"18 Suspension of decision pending appeal

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgement, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.



(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1) –

(i) the court must immediately record its reasons for doing so;

(ii) the aggrieved party has an automatic right of appeal to the next highest court;

(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

(iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsection (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application

for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.”

[17] Section 17, as its heading implies, deals with appeals generally whereas s18 deals with the suspension of judgement and orders whilst the appeal process unfolds.

[18] An ‘appeal’ applicable to courts of law means a complaint, and a judicial examination by a higher court of a decision of an inferior court. The higher court, in general terms, then approves, correct or set aside the judgement of the inferior court.⁴

[19] The purpose of section 18 is to suspend any decision regarding a pending application for leave to appeal or an appeal. The rationale behind the suspension, is to prevent an injustice by curing errors or mistakes. Prior to the commencement of section 18 under the Superior Court’s Act, the common law prevailed. In *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd*⁵ Corbett JA stated:



*“Whatever the true position may have been in the Dutch Courts, and more particularly the Court of Holland (as to which see Ruby’s Cash Store (Pty) Ltd. Estate Marks and Another, 1961 (2) SA 118 (T) at pp. 120 – 3), it is today the accepted common law rule of practice in Courts that generally the execution of a judgement is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgement cannot be carried out and no effect can be given thereto, except with the leave of the Court which granted the judgement. To obtain such leave the party in whose favour the judgement was given must make special application. (See generally *Oliphants Tin “B” Syndicate v De Jager*, 1912 AD 477 at p. 481; *Reid and Another v Godart and Another*, 1938 AD 511 at p 513; *Gentiruco A.G v Firestone SA (Pty) Ltd.*, 1972 (1) SA 589 (AD) at p. 667; *Standard Bank of SA Ltd v Stama (Pty) Ltd.*, 1975 (1) SA 730 (AD) at p. 746) The purpose of this rule as to the suspension of a judgement on*

⁴ *Sita v Olivier* 1967 2 SA 442 (A) 447 -448

⁵ 1977 (3) SA 534 (A) at 544H – 545A

the noting of an appeal is to prevent irreparable damage from being done to the intending appellant, either by levy under a writ of execution or by execution of the judgement in any other matter appropriate to the nature of the judgement appealed from (Reid's case, *supra*, at p 513). The Court to which application for leave be granted, to determine the conditions upon which the right to execute shall be exercised (see Voet, 49.7.3; Ruby's Cash Store (Pty) Ltd. Estate Marks and Another, *supra* at p 127). This discretion is part and parcel of the inherent jurisdiction which the Court has to control its own judgement (cf Fisser v Thornton, 1927 Ad 17 at p 19). In exercising this discretion, the Court should in my view, determine what is just and equitable in all circumstances. . ."

[emphasis added]



- [20] Rule 49(11) of the Uniform Rules of Court, which was repealed with effect from 22 May 2015, merely restated the common law:⁶

"Where an appeal has been noted or an application for leave to appeal against or to rescind, correct, review or vary an order of a court has been made, the operation and execution of the order in question shall be suspended, pending the decision of such appeal or application, unless the court which gave such order, on the application of a party, otherwise directs."

- [21] S 18(1) accordingly, as was the position in terms of the common law and Rule 49(11), was to allow for a process whereby the complainant (the applicant for leave to appeal or an appellant) lodged by an unsuccessful party in a lower court is afforded the opportunity to have the judgment of the lower court scrutinised by the higher court (the appeal) and during which process the execution of the judgment is suspended.
- [22] The purpose of the common law principles as well as Rule 49(11) and s18(1) is to prevent irreparable damage from being done to the complainant whilst the appeal

process runs its course.

- [23] A decision, in terms of section 18(5) of the Superior Court's Act, becomes the subject of an appeal for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the applicable rules of court. This applies to an application for leave to appeal or an appeal to the full court, the Supreme Court of Appeal and the Constitutional Court. Put differently, an applicant for leave to appeal is protected against execution throughout the appeal process up and until all appeal processes have been exhausted unless a court under exceptional circumstances orders otherwise.



- [24] Prior to the coming into operation of s 17(2)(f), there was no further step that could be taken within the Supreme Court of Appeal after a refusal by it of leave to appeal. The next possible step was an approach to the Constitutional Court. Its core purpose is to prevent an injustice by curing errors or mistakes and to consider circumstances which, if known when leave to appeal was refused, would have resulted in a different outcome. Equally, in *Pieter Pietertjie Liesching and Another v The State and One Other*⁷ Musi AJ held:

"[54] *The proviso in section 17(2)(f) is very broad. It keeps the door of justice ajar in order to cure errors or mistakes and for the consideration of a circumstance, which, if it was known at the time of the consideration of the petition might have yielded a different outcome. It is therefore a means of preventing an injustice. This would include new or further evidence that has come to light or became known after the petition had been considered and determined.*"

⁶ *United Reflective Converters (Pty) Ltd v Levine* 1998 (4) SA 460 (W) at 463F

⁷ [2016] ZACC 41 at para [54]

[emphasis added]

[25] The Constitutional Court in *Cloete and Another v S*⁸ held:

"[33] Seen in context, as previously held by this court in Liesching I, the s 17(2)(f) procedure is part of the appeal process. It involves making a judicial determination on a defined legal issue between the litigating parties. The President's decision under s 17(2)(f) of the Act thus falls comfortably within the judicial function and purpose of the Supreme Court of Appeal leave-to-appeal process, in this instance, to be exercised by one judge of that court, its President."



[26] The Constitutional Court in *Pieter Pietertjie Liesching and Another v The State and Another*⁹ was considering whether an appeal against s 17(2)(f) lies to the Constitutional Court. One of the arguments made against the proposition of an appeal lying to the Constitutional Court, was that the decision made by the President was not a decision of a 'court' as contemplated in s 167(6)(b) of the Constitution of the Republic of South Africa. The Constitutional Court rejected the attempted distinction. The Constitutional Court however found for other reasons that such a decision was not appealable to the Constitutional Court. More importantly, *Pieter Pietertjie Liesching supra* serves as authority that an application in terms of s 17(2)(f) 'is part of the appeal process'.

[27] On a proper interpretation of ss17 and 18 of the Superior Court's Act, applying the principles as stated read with the authorities referred to the position seems to be that (a) s17(2)(f) is part of the appeal process (b) that it is intended to keep the door of justice ajar in order to cure errors or mistakes and (c) that it serves as a means of preventing an injustice. The very same qualities that one finds in an application for leave to appeal

⁸ 2019 (2) SACR 130 (CC)

and/or an appeal.

[27] Moodley AJ in MEC for Co-Operative Governance and Traditional Affairs, KZN v Nquthu Municipality and Others¹⁰ faced with the very same question, held that section 18(1) did not apply to a request made in terms of s17(2)(f). In arriving at the aforesaid conclusion, the court, relying on the dictum expressed in S v Liesching¹¹, held that:

27.1 The majority judgement in Liesching recognised that s 17(2)(f) is a departure from the ordinary course of an appeal process and that under s17, in the ordinary course, the decision of two or more judges refusing leave to appeal is final.



27.2 It does not afford litigants a parallel appeal process in order to pursue additional bites at the proverbial appeal cherry; it is not intended to afford litigants a further attempt to procure relief that has already been refused.

27.3 The minority judgement found that it was important to distinguish between an application for leave to appeal to the Supreme Court of Appeal in terms of s17(2)(b) and an application under s17(2)(f); it is stated that the latter is not an application for leave to appeal – it is an application to the President for the referral of a decision of the court, refusing leave to appeal, to the court for reconsideration.

27.4 The reconsideration of a decision refusing leave to appeal is not the consideration of an appeal on the merits but rather a reconsideration of the decision refusing leave to appeal.

⁹ [2016] ZACC 41; 2017 (2) SACR 193 (CC)

¹⁰ 2021 (1) SA 432 [insert]

¹¹ 2019 (4) SA 219 (CC) (2019) (1) SACR 178; 2018 (11) BCLR 1349; [2018] ZACC 25; 2018 JDR 1448

27.5 Subsection 18(2) does not suspend the operation and execution of a decision that is an interlocutory order not having the effect of a final judgement which is the subject matter of an application for leave to appeal or of an appeal.

27.6 S18 does not deal with what effect an application against a refusal of a petition to the Supreme Court of Appeal will have on an order granted by a lower court; if the legislature intended that such an order would be suspended pending the outcome of the reconsideration application, one would have expected it to make provision for this in the Act.



[28] Firstly, there is no doubt that the decision of the two judges considering the application for leave to appeal to the Supreme Court of Appeal is final. That in itself, is not determinative of the issue at hand. As confirmed in *Liesching supra*,¹² a refusal of the application for leave to appeal does not mean that it is the end of the road for the petitioner. Such an applicant may still file an application for leave to appeal, as part of the appeal process with the Constitutional Court and in which event section 18 will be applicable.

[29] Secondly, the principle relied upon by Moodley AJ, that section s17(2)(f) does not afford litigants a parallel appeal process in order to pursue additional bites at the proverbial appeal cherry or that it is not intended to afford litigants a further attempt to procure relief that has already been refused, is not understood. S 17(2)(f) only becomes available to a litigant once the application for leave to appeal to the Supreme Court is refused. Notionally, a litigant may invoke s17(2)(f) and simultaneously apply for leave to appeal the Constitutional Court in which event the possibility of a parallel appeal process may

¹² Pieter Pietrtjie Liesching and Another v The State and Another [2016] ZACC 41 at para [61]

present itself. The parallel appeal process does not exist where a litigant only applies in terms of s17(2)(f). Equally, Kathree-Setiloane AJ in *Sv Liesching and Others*¹³ inter held:

"It is important to distinguish between an application for leave to appeal to the sca in terms of s 172(2)(b) of the Superior Courts Act and an application under ss (2)(f). The latter is not an application for leave to appeal. It is an application to the President for the referral of a decision of the court, refusing leave to appeal, to the court for reconsideration. It is another bite at the cherry for an unsuccessful litigant to have the refusal of its application for leave to appeal reconsidered by the sca in referral by the President in exceptional circumstances."

[emphasis added]



[30] Thirdly, the distinction drawn between an application for leave to appeal and a request made in terms of s17(2)(f), in my view was not drawn with the intention to establish the principle that s18 applied to the one and not to the other. Instead, the distinction was drawn in order to establish the requirements applicable to each, i.e prospects of success as far as an application for leave to appeal was concerned and exceptional circumstances in relation to a s17(2)(f) request. Ultimately, I am of the view that s18 applies to the appeal process and not only to an application for leave to appeal or an appeal. As such the distinction for present purposes is of no consequence.

[31] Fourthly, the fact that the merits of the matter are not to be considered at a request in terms of s17(2)(f) but rather the presence of exceptional circumstances does not detract from the purpose of the request, i.e that it is intended to keep the door of justice ajar in order to cure errors or mistakes and to serve as a means of preventing an injustice

[32] Fifthly, I am not convinced that the nature of a s17(2)(f) is interlocutory of nature and that

¹³ 2019 (4) SA 219 (CC) at para [35]

the exception to s18(2) does not apply thereto.

- [33] Finally, and as far as the intention of the legislature is concerned Moodley AJ expresses the view the view that if the legislature intended for s18 to apply equally to s17(2)(f) the legislature would have provided for it in express terms. The conclusion reached in this instance fails to have regard to the entire process of interpretation, to establish the meaning within the entire context of the Superior Court's Act and relevant provisions. To mention an example, in *Pieter Pietertjies Liesching and Another v The State and Another*¹⁴ the Constitutional Court was called upon to determine whether, notwithstanding the express wording contained in s1 of the Superior Court's Act excluding an appeal in a matter regulated in terms of the Criminal Procedure Act, 1977 or in terms of any other criminal procedural law, s17(2)(f) was available to a litigant in a criminal matter for the purpose of leading further evidence. To this extent it was held:¹⁵



[62] The first respondent's contention that Chapter 5 of the SCA Act does not apply, at all, to criminal proceedings is not contextually supported by a careful reading of section 1 of the SC Act...

[63] ...

[64] The interpretation that section 17(2)(f) may be utilised by litigants in criminal or civil proceedings to adduce further evidence after a petition had been dismissed eradicates that anomaly. It also preserves the applicants' right to equal treatment before the law and is in conformity with the command in section 39(2) of the Constitution."

- [34] The aforesaid finding was made notwithstanding the purported express exclusion by the legislature to exclude s17(2)(f) from criminal appeals.

[35] In the result I find that s18 of the Superior Court's Act applies to a request made in terms of s17(2)(f) of the same Act and that the execution of the underlying judgment or order is suspended pending the final determination thereof by the President of the Supreme Court of Appeal.

[36] Notwithstanding the aforesaid findings and even if I am wrong on the applicability of s18(1) as far as and in relation to a s17(2)(f) request, I would have stayed the execution pending the announcement of the President's decision. S173 of the Constitution provides any Superior Court with an inherent jurisdiction to regulate its own processes in the interest of justice. S173 provides:



"The Constitutional Court, the Supreme Court of Appeal and the High Court each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."

[37] In *South African Broadcasting Corp Ltd v National Director of Public Prosecutions*¹⁶ the nature of the inherent power of the Superior Courts under section 173 is described as follows:

*"The power in section 173 vests in the judiciary the authority to uphold to protect and to fulfil the judicial function of administering justice in a regular, orderly and effective manner. Said otherwise, it is the authority to prevent any possible abuse of process and to allow a Court of act effectively within its jurisdiction."*¹⁷

¹⁴ [2016] ZACC 41

¹⁵ It at para [62]

¹⁶ [2006] ZACC 15; 2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC)

¹⁷ It at para 90

account the interests of justice. Madlanga J invoked the Constitutional Courts inherent power and, after and, after being satisfied that it was in the interest of justice to do so, stayed proceedings for the eviction of the applicant pending the finalisation of associated proceedings.

RELIEF

[39] In the result I make the following order:

39.1 It is declared that the applicant's request made to the President of the Supreme Court of Appeal in terms of section 17(2)(f) of the Superior Court's Act, Act 10 of 2013 on 21 November 2023 stayed the execution of the judgment and order of Dlamini J pursuant to and in terms of section 18(1) of the Superior Court's Act, Act 10 of 2013.

39.2 The first respondent is ordered to pay the applicant's costs, such costs to include the costs of two counsels where so employed.



S AUCAMP

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

¹⁸ [2017] ZACC 25; 2017 (5) SA 456 (CC); 2017 (10) BCLR 1261 (CC) at para 67

HEARD ON: 31 January 2024
DATE OF JUDGEMENT: 16 April 2024

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