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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION: PRETORIA)

Date: 18 July 2025

Case number: 097988-2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 18 July 2025

SIGNATURE

In the matter between:

SABLE PLACE PROPERTIES 106 (PTY) LTD

First Applicant

REDEFINE PROPERTIES LTD

Second Applicant

TADVEST COMMERCIAL (PTY) LTD

Third Applicant

And

VISA SECURITY GROUP (PTY) LTD

First Respondent

MINISTER OF POLICE

Second Respondent

JUDGMENT

MINNAAR AJ.

[1] On 17 June 2025, and under case number 081761-2025, the first respondent lodged an application for leave to appeal. This was in response to an order I had granted earlier that day in the urgent court ('the urgent application').

[2] The granted order was in accordance with a draft order that the applicants' counsel handed up in court. The following relief, relevant to the first respondent, was granted:

a. That the first respondent, and any other persons, entities or bodies, and employees, as the case may be, acting through the first respondent, is hereby ordered to forthwith vacate the applicants' property at H[...] Office Park, 9[...] B[...] Road, Vorna Valley, Sandton, Gauteng.

b. That the first respondent, and any other persons, entities or bodies, as the case may be, acting through, or under the first respondent, are hereby restrained, and interdicted, from attending upon the applicants' property at H[...] Office Park, 9[...] B[...] Road, Vorna Valley, Sandton, Gauteng, with the aim and sole, or other purpose of:

- i. Demanding that the applicants employ them as security service providers, at the applicants' property at H[...] Office Park, 9[...] B[...] Road, Vorna Valley, Sandton, Gauteng; and
- ii. Frustrating, and interfering with, the applicants' business thereat; and

- iii. Harassing and intimidating tenants, employees and security service providers of the applicants; and
 - iv. Interfering with, harassing or intimidating the applicants' managers, and/or security service providers; and
 - v. Without limiting the generality of the aforesaid, prohibited from doing anything whatsoever related to or in connection with the harassment, intimidation and assault of the applicant's employees, its security or other contractors, tenants and security service provider and preventing the applicants' security and other contractors from performing their daily duties and functions.
- c. That the first respondent be ordered to pay the costs of this application on scale C in terms of Rule 67, read with Rule 69.

[3] Together with the application for leave to appeal, the first respondent also sought written reasons for the order. These were provided on 24 June 2025. The first respondent's application for leave to appeal was not supplemented on receipt of the written reasons.

[4] On 25 June 2025, the applicants lodged this application in terms of section 18(1) and 18(3) of the Superior Courts Act, 10 of 2013 ('the Section 18 application').

[5] Section 18 applications are by their very nature urgent.¹ As such, I directed that both the application for leave to appeal and the Section 18 application were to be heard on 1 July 2025. For reasons that will be dealt with later in this judgment, the applications were not argued on 1 July 2025. Both applications were postponed to 9 July 2025 for argument.

[6] In terms of the Section 18 application, the applicants are seeking urgent relief that the order of 17 June 2025 and the judgment of 24 June 2025

¹ *Caterpillar Financial Services South Africa (Pty) Ltd v Zero Azania (Pty) Ltd* (57252/2021) [2023] ZAGPJHC 1117 (2 October 2023) at para 14; *Downer v Zuma and Another* (12770/22P; 13062/22P) [2023] ZAKZPHC 75 (3 August 2023) at para 10.

shall operate pending the outcome of the appeal process, including the application for leave to appeal and any appeal noted, if any.

[7] The first respondent delivered an answering affidavit, and the applicants delivered their replying affidavit.

[8] Section 18(1) to (3) reads:

“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 judgment, 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.”

[9] From the wording of section 18(3), read with section 18(2), it is evident that a party who seeks a departure from the ordinary rule that a final order is suspended pending an appeal, need to prove three things, namely:

- a. The existence of exceptional circumstances;
- b. Proof, on a balance of probabilities, that he or she will suffer irreparable harm if the interim order is not suspended; and

c. Proof, on a balance of probabilities, that the respondent (i.e. the party in whose favour the interim interdict was granted) will not suffer irreparable harm if the interim order is suspended.

[10] In *Tyte Security Services CC v Western Cape Provincial Government and Others* 2024 (6) SA 175 (SCA) at paragraph 9 it is stated that the Supreme Court of Appeal has examined the requirements for the implementation of an execution order pending an appeal in *University of the Free State v AfriForum (AfriForum)*;² *Ntlemenza v Helen Suzman Foundation*;³ *Premier of Gauteng v Democratic Alliance*;⁴ *Knoop v Gupta (Knoop)*;⁵ and, in *Zuma v Downer and Another*.⁶

[11] In paragraph 10 of *Tyte*, the Supreme Court of Appeal states:

“Whilst there are indeed statements in those judgments that would appear to support counsel's fundamental hypothesis, they seem to have been made in passing. They thus call for closer examination in this matter. An important point of departure, so it seems to me, is that consideration of each of the so-called three requirements is not a hermetically sealed enquiry and can hardly be approached in a compartmentalised fashion.”

[12] In *Afriforum* the Supreme Court of Appeal has explained that section 18 *“places a heavy onus on the applicant”* and does not seek merely to codify the common law but to *“introduce more onerous requirements”*.⁷

[13] The existence of ‘exceptional circumstances’ is a necessary prerequisite for the exercise of the court’s discretion under section 18. If the circumstances are not truly exceptional, that is the end of the matter. The

² *University of the Free State v AfriForum and Another* 2018 (3) SA 428 (SCA)

³ *Ntlemenza v Helen Suzman Foundation and Another* 2017 (5) SA 402 (SCA)

⁴ *Premier for the Province of Gauteng and Others v Democratic Alliance and Others* [2021] 1 ALL SA 60 (SCA)

⁵ *Knoop NO and Another v Gupta (Execution)* 2021 (3) SA 135 (SCA)

⁶ *Zuma v Downer and Another* 2024 (2) SA 356 (SCA)

⁷ *Afriforum* at para 11

application must fail and falls to be dismissed. If, however, exceptional circumstances are found to be present, it would not follow, without more, that the application must succeed.⁸

[14] In paragraph 12 of *Tyte* it is stated:

"It has long been accepted that it is 'undesirable to attempt to lay down any general rule' in respect of 'exceptional circumstances' and that each case must be considered upon its own facts.⁹ In MV Ais Mamas Thring J summarised the approach to be followed. He said that '(w)hat is ordinarily contemplated by the words "exceptional circumstances" is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different . . .'.¹⁰

[15] In paragraph 13 of *Tyte*, the Supreme Court of Appeal stated:

"What constitutes irreparable harm is always dependent upon the factual situation in which the dispute arises, and upon the legal principles that govern the rights and obligations of the parties in the context of that dispute. It was accepted in Knoop that '(t)he need to establish exceptional circumstances is likely to be closely linked to the applicant establishing that they will suffer irreparable harm if the . . . order is not implemented immediately'.¹¹ The same, I dare say, can be said of its counterpart, the absence of irreparable harm to the respondent. In that sense, the presence or absence of irreparable harm, as the case may be, can hardly be entirely divorced from the exceptional circumstances enquiry. It would perhaps be logically incoherent for a court to conclude, on the one hand, in favour of an

⁸ *Tyte* at para 11

⁹ *Norwich Union Life Insurance Society v Dobbs* 1912 AD 395 at 399.

¹⁰ *MV Ais Mamas: Seatrans Maritime v Owners, MV Ais Mamas, and Another* 2002 (6) SA 150 (C) at 156H – J.

¹¹ *Knoop* at para 47

applicant that exceptional circumstances subsist, but, on the other, against an applicant on either leg of the irreparable harm enquiry.”

[16] Referring to paragraph 17 of *Tyte*, counsel for the first respondent submitted that the Supreme Court of Appeal held that any irreparable harm (or even the potentiality of irreparable harm) to a respondent, no matter how slight, would irredeemably tip the scales against an applicant. It is further submitted that the Supreme Court of Appeal, in addition, stated that unless there was no or zero irreparable harm to a respondent, the Section 18 application had to fail.¹²

[17] Paragraph 17 of *Tyte* does not contain such a finding. If regard is had to paragraphs 16, 17 and 18 of *Tyte*, it is clear that the Supreme Court of Appeal noted submissions made by counsel and that the finding of the Supreme Court of Appeal was made in paragraph 18 thereof. Paragraph 18 of *Tyte* reads:

*“Counsel did not shrink from the logical consequence of the contention, namely that **such a mechanistic approach, which rested on the supposition that the second and third had to be approached as isolated enquiries, may well strip a court of any discretion that it may possess or that it could give rise to a manifestly inequitable conclusion, which could serve to undermine the rule of law. This approach, if it is to be favoured, would disregard entirely the rationality, reasonableness and proportionality yardsticks that have become important touchstones in our jurisprudence. It likely would also, to all intents and purposes, set the bar so high as to render the remedy illusory.** Counsel was, however, willing to accept that there must always remain a residual discretion. What exactly was meant by a residual discretion, or when precisely it was to be exercised, remained opaque. **However, on the acceptance of a discretion, even a residual one, the argument against a weighing-***

up evaporates. If the argument were correct, the court would have no discretion to grant relief under s 18, whatever the consequences or however irreparably disastrous to an applicant.”
(my emphasis).

[18] It is thus evident from *Tyte* that the second and third requirements are not to be approached as isolated enquiries as this would strip a court of any discretion that it may possess or that it could give rise to a manifestly inequitable conclusion, which could serve to undermine the rule of law. The court has the discretion to grant the relief under Section 18.

[19] In paragraphs 19 to 21 of *Tyte*, the Supreme Court of Appeal discussed ‘irreparable harm’ and stated:

[19] Irreparable harm, it has been said in a somewhat different context, is more than a rationale — it is a critical factor in testing the claim for an interlocutory injunction.¹³ The nature of irreparable harm is not easy to define. RJ Sharpe points out:

‘The rationale for requiring the plaintiff to show irreparable harm is readily understood. If damages will provide adequate compensation, and the defendant is in a position to pay them, then ordinarily there will be no justification in running the risk of an injunction pending the trial. While it is easy to see why this requirement should be imposed, it is difficult to define exactly what is meant by irreparable harm.’¹⁴

[20] Over a century ago Innes JA, after referring to Van der Linden's Institutes, where the essentials for an interdict application had been enumerated, had this to say:

‘That element [the injury feared must be irreparable] is only introduced by him in cases where the right asserted by the applicant, though prima facie established, is open to some doubt. In such cases he says the

¹³ PM Perell ‘The Interlocutory Injunction and Irreparable Harm’ (1989) 68 The Canadian Bar Review 538 at 540.

¹⁴ RJ Sharpe *Injunctions and Specific Performance* (1983) at 77. Cited in PM Perell *id.*

*test must be applied whether the continuance of the thing against which an interdict is sought would cause irreparable injury to the applicant. If so, the better course is to grant the relief if the discontinuance of the act complained of would not cause irreparable injury to the other party.*¹⁵

Interim interdicts (akin to interlocutory injunctions) are regular fare in our courts. They provide a flexible and most useful tool in the aid of justice. Our courts have accordingly come to accept that the remedy should not be granted if there is a danger that it may work an injustice.

[21] In F Hoffmann-La Roche v Secretary of State for Trade and Industry Lord Wilberforce expressed the view that:

*'The object of [an interim injunction] is to prevent a litigant, who must necessarily suffer the law's delay, from losing by the delay the fruit of his litigation; this is called "irreparable" damage, meaning that money obtained at trial may not compensate him.'*¹⁶

Albeit said in the context of the consideration of a wholly discretionary remedy, and thus not perfectly analogous, the sentiment expressed is not entirely without value here, inasmuch as it echoes precisely the position in which Royal finds itself."

[20] In the urgent application, the applicants alleged that there was no agreement between the applicants and the first respondent. The first respondent placed reliance on a partly written, partly oral, alternatively tacit agreement between the first respondent and Abreal Property Management ('Abreal') (which is now Strive) and/or Keypoint Intelligence (Pty) Ltd ('Keypoint'). It is the first respondent's case that the purported agreement was concluded in February 2021.

¹⁵ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

¹⁶ *F Hoffmann-La Roche & Co AG and Others v Secretary of State for Trade and Industry* [1975] AC 295 ([1974] 12 All ER 1128) at 355 (AC) and at 1146 (All ER).

[21] In the urgent application, I found that the first respondent failed to prove that a contract, spanning 5 (five) years, was concluded back in 2021. I further found that there is no objective evidence to support the first respondent's contention. For instance, the first respondent's participation in the tender process is further indicative that there was no existing agreement as relied on by the first respondent. My conclusion was that there was no *nexus* between the applicants and the first respondent. On the same date as this judgment, I will deliver the judgment in the application for leave to appeal: this application for leave to appeal is dismissed.

[22] The first respondent did not wait for any time to pass before lodging its application for leave to appeal. The application for leave to appeal was filed within hours of the urgent order being granted. Effectively, this resulted in the suspension of the urgent order's execution. On receipt of the written reasons, the first respondent did not supplement its grounds for leave to appeal. The application for leave to appeal was couched in a broad sense to include allegations that I erred in entertaining the application as an urgent application and that I erred in granting costs on Scale C. It was only in the first respondent's supplementary heads of argument and submissions that the grounds of appeal on costs and urgency were abandoned. The aspects of urgency and costs are both discretionary issues in which a Court of Appeal would not easily interfere; yet the first respondent included them and persisted therewith. The first respondent will take all steps it deems necessary to remain in occupation of the premises despite my order.

[23] I am satisfied that exceptional circumstances exist herein. Fidelity was awarded the security contract after its successful participation in the tender process, and as such, the applicants should be allowed to implement the contract they have with Fidelity.

[24] On the requirements of irreparable harm to the parties, the following is stated in paragraph 15 of *Tyte*:

‘Although it has been postulated that the second and third are distinct and discrete enquiries, they are perhaps more accurately to be understood as being two sides of the same coin. The same facts and circumstances, which by that stage ought largely to be either common cause or undisputed, will inform both enquiries. The logical corollary of an applicant suffering irreparable harm will invariably — but not always — be that the other party has not. The enquiry into each can thus hardly be mutually exclusive, particularly because, as far as the third is concerned, unlike the second, the onus cast upon an applicant would be to prove a negative, in accordance with the usual civil standard. This suggests that, as with the exceptional circumstances enquiry, a court considering both the second and third must have regard to all of the facts and circumstances in any particular case. Insofar as the third goes, although s 18(3) casts the onus (which does not shift) upon an applicant, a respondent may well attract something in the nature of an evidentiary burden.¹⁷ This would be especially so where the facts relevant to the third are peculiarly within the knowledge of the respondent. In that event it will perhaps fall to the respondent to raise those facts in an answering affidavit to the s 18 application, which may invite a response from the applicant by way of a replying affidavit.’

[25] I am satisfied that, on a balance of probabilities, the applicants stand to suffer irreparable harm if the order is not granted. Absent an agreement with the first respondent, the applicants have no control over the first respondent and the applicants and their tenants will be left at the mercy of the first respondent.

[26] The submission that the application should fail if the applicants have not been able to prove that the first respondent will not suffer irreparable harm has been dispelled by the finding in *Tyte*. I have considered the irreparable harm the first respondent contends it will suffer (reputational harm in the security industry and rendering services without payment). These alleged

¹⁷ *MV Tarik 3: Credit Europe Bank NV v The Fund Comprising the Proceeds of the Sale of the MV Tarik 3 and Others* [2022] 4 All SA 621 (SCA) ([2022] ZASCA 136) paras 24 – 34.

harm can be fully addressed in a damages claim if the first respondent so elects. The harm relied on by the first respondent is not sufficient to prevent the Section 18 relief from being granted.

[27] Should the first respondent elect to pursue its appeal further by way of special leave to the Supreme Court of Appeal, I am not convinced that it would have prospects of success.¹⁸

[28] In the premises, it follows that the Section 18 application should be granted.

Wasted costs: 1 July 2025:

[29] In terms of the applicants' notice of motion, it was stated: '*... that the applicants intend to make application on 1 July 2025 at 08h30, or as soon after that as counsel for the applicants may be heard and, after the application for leave to appeal brought by the first respondent against the applicants before the Honourable Mr Justice Minnaar AJ.*'

[30] In the confirmatory affidavit by Mr Manentsa, the first respondent's attorney, it is confirmed that the Section 18 application was served electronically on their offices at 10h23 on 26 June 2025.

[31] In terms of the application, the first respondent was required to deliver an answering affidavit by 27 June 2025 at 12:00. The first respondent only delivered its answering affidavit on 4 July 2025.

[32] On 27 June 2025, the applicants' attorney made a widely shared note on Caselines stating: "*Please take notice that the matter has been removed from the Roll by notice – Notice of Removal appears on 020-1 to 020-3 as same is before Honourable Minnaar AJ as per correspondence which appears at 074-1 to 074-4*'

¹⁸ *Afriforum* at para 14 and 15

[33] There are conflicting versions of what was understood by this widely shared note. Suffice it to state that the words '*the application is withdrawn*' do not appear in this note; I do not deem it necessary to elaborate on the conflicting versions.

[34] When the Section 18 application was called on 1 July 2025, there was no answering affidavit by the first respondent. This, despite the service of the application on 26 June 2025 and the request to deliver an answering affidavit by 27 June 2025 at 12:00.

[35] In the confirmatory affidavit by Mr Manentse, no explanation is provided as to why the answering affidavit was only delivered on 4 July 2025.

[36] The absence of an answering affidavit and heads of argument by the first respondent in the Section 18 application caused both the application and the application for leave to appeal to be postponed to 9 July 2025 for argument.

[37] I can see no reason why the applicants should be out of pocket for the wasted costs of 1 July 2025, and it follows that the first respondent will be liable for these costs.

Costs:

[38] There is no reason why costs should not follow the outcome.

[39] The applicants are seeking costs on the scale as between attorney and client, alternatively, that costs be awarded on Scale C.

[40] There is no justification for punitive costs. Both sides employed senior counsel, and as such, I deem it appropriate to award costs on Scale C.

[41] Consequently, I make the following order:

1. The application is regarded as urgent in terms of Rule 6(12).
2. The operation and execution of the order granted on 17 June 2025, under case number 081761-2025 by this Court against the first respondent is not suspended pending the finalisation of any subsequent appeal(s), or the expiry of the period for the launching of any subsequent appeal(s).
3. The first respondent to pay the costs of this application, inclusive of the wasted costs occasioned on 1 July 2025, such costs to be taxed on Scale C.

Minnaar AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

For the applicants: Adv G T Avvakoumides SC
 Instructed by Mark Efstratiou Inc

For the first respondent: Adv P G Cilliers SC with Adv T Ngakane
 Instructed by Adams & Adams

Heard on: 9 July 2025
Date of judgment: 18 July 2025