



**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA, MAIN SEAT)**

Appeal Case No: A2025-213512

A quo Case No:2025/164139

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED YES/NO
15/12/2025	
..... Date	 Signature

In the matter between:

NONTANDO JACQUILINE NDASHE

APPELLANT

And

IMAGAGANE CONSTRUCTION CC

FIRST RESPONDENT

NDASHE MOSES JUNIOR

SECOND RESPONDENT

STANDARD BANK OF SOUTH AFRICA N.O

THIRD RESPONDENT

JUDGMENT

NYAMBI AJ, VUKEYA J, AND FOURIE AJ CONCURRING

INTRODUCTION

- [1] On the 14th of October 2025 judgment and an order in terms of Section 18 of the Superior Courts Act, 10 of 2013, was granted by Ratshibvumo DJP in favour of the First and Second Respondents (who were the Applicants in the court a quo) The Court ordered, that an order that was granted on the 7th of October 2025 against the Appellant and the Third Respondent herein, was declared executable immediately pending appeal by the Appellant (who was the first Respondent in the court a quo).
- [2] The granting of the order accorded the Appellant an automatic right of appeal in terms of the further provisions of Section 18 as stated *supra*, hence this appeal, which is opposed by the Respondents.
- [3] The Court is satisfied that all peremptory and preliminary issues, such as the setting of security and the filing of the record, have been properly complied with. On this note the matter stood down from its initial set down date for a week in order for the full record to be filed and for the relevant documentation indicating the waiver of security to form part of the Court bundle. At the hearing of the matter, it was no longer necessary to deal with those aspects, and the Court could merely evaluate the relevant issues on appeal. The issue of security for costs has been waived

BACKGROUND

- [4] On the 07th of October 2025, the Court granted an order in favour of the First and Second Respondents, in terms of which the Second Respondent was allowed access to assets belonging to the Second Respondent and prohibiting the Appellant from preventing the Second Respondent from accessing the assets.
- [5] The First Respondent is a member of the Second Respondent (a Close Corporation), and he had sought to gain access to the assets in order to utilise them in the operation of the Second Respondent's business.
- [6] Pursuant to the granting of the order, the Appellant lodged an appeal against that order, which then prompted the 1st and 2nd Respondents (as Applicants) to bring an application for an order declaring that the order of the 07th of October 2025 be declared to be executable immediately pending the application for leave to appeal or appeal.
- [7] It was Applicants' case that a delay in the execution of the court order will result in their failure to deliver in terms of their appointment as a sub-contractor with NEWTHINGS LEFATSHE (PTY) LTD, that same will cause irreversible harm, will expose them to civil claims for breach of contract and that they are unable to obtain alternative vehicles due to lack of funds for rental.
- [8] On the 14th of October 2025, the Court, in accordance with section 18 of the Superior Courts Act, granted the order for the immediate execution of the order. In appealing that order, the Appellant, in essence is of the view that a case had not been made out by the Respondents for the execution of the order dated 07 October 2025.

APPELLANT'S SUBMISSIONS

- [9] The Appellant submitted that a case for exceptional circumstances as envisaged in section 18 of the Superior Courts Act had not been made out by the Respondents and that the Court *a quo* should not have found that the Respondents will suffer irreparable harm and that the Appellant will not suffer irreparable harm.
- [10] The Appellant placed much emphasis on the fact that the initial application was seemingly brought under the auspices of Section 18(3) of the Superior Courts Act, without having regard to Section 19(1) of the Superior Courts Act. The Appellants submit that the Respondents misappreciated the nature of the application and that they failed to set out expressly, exceptional circumstances justifying the Order being granted.
- [11] It is the Appellants' contention that, in the absence of the Court finding that exceptional circumstances existed, the Court need not evaluate the existence or absence of irreparable harm.
- [12] The Appellant further submitted that the fact that the Court *a quo* found urgency to be existent did not constitute exceptional circumstances for purpose of the Section application.
- [13] It is the Appellants' submissions that the facts as stated in the Section 18 application need to be clear and clearly stated, and whether the matter at hand is one meeting the threshold of exceptional circumstances ought not be made by mere deduction.

RESPONDENTS' SUBMISSIONS

- [14] The Respondents' submission stood directly opposite to the case as submitted by the Appellant. The Respondents submit that the Respondents were not required to, under a specific heading, deal with exceptional circumstances, and submitted that the facts as portrayed in the application, which was clearly set out in the papers justify the Order as was made in the Court *a quo*.
- [15] The Respondents opposed the views by the Appellant that the Section 18 application ought to have set out new facts beyond those initially relied on for the hearing of the main application.
- [16] The Respondents submit that the Court correctly found that the matter was of such an exceptional nature that the matter ought to be heard on an urgent basis in order to ensure that substantial redress is obtained and the same facts that render the matter urgent render the matter of such an exceptional state that a Section 18 order was warranted.

APPLICABLE LEGAL PRINCIPLES AND ANALYSIS

- [17] Section 18 of the Superior Courts Act provides as follows:

"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 of 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 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.'*

[18] From the reading of section 18(1), it is clear that the court has the authority to make an order departing from the ordinary rule that orders are suspended where there is an appeal. The section, however, puts a proviso that such authority may be exercised by the court under exceptional circumstances. The exceptional circumstances in any particular case must be within the context and facts of that case.

[19] It is clear from the provision of section 18(3) that, with the prerequisite of exceptional circumstances, as prescribed in section 18(1), for the court to order the immediate execution of an order pending an appeal, the party seeking such order, must additionally prove on a balance of probabilities that he or she will suffer irreparable harm if the court does not order the immediate

operation of the said order, and that on a balance of probabilities, the Respondent stands to suffer no irreparable harm if the order is not suspended.

[20] The requirements for an order in terms of section 18 are therefore succinctly prescribed and section 18(4) thus places a duty upon a court that makes an order for the immediate execution of an order, to record its reasons for ordering as such. The intention of the legislature would have been nothing other than allowing the other party to immediately and easily ascertain how the court arrived at its decision, as a remedy under 18(4) for the aggrieved party is an automatic right of appeal and to be afforded urgent redress with access to court.

[21] The dictates of section 18(4) are that where an appeal is lodged under this section, the court hearing the appeal must deal with it on an extremely urgent basis. The aim is to accord urgent redress to both parties, as the order for the immediate execution of an order is suspended under this section, where there is an appeal, thus putting the party who had been granted the order, in the default position of his or her awarded order being suspended pending the appeal.

[22] In as far as the meaning of exceptional circumstances is concerned, the grammatical meaning thereof means "circumstances that are out of the ordinary" and the courts have in various case law, both in criminal and civil cases, made strides to define the concept of 'exceptional circumstances', and in all such cases, what stands out, is the fact that extra-ordinary factors must be found to exist.

[23] In the case of **S v Peterson 2008 (2) SACR (C) 355**, the court held that:

“Generally speaking, “exceptional” is indicative of something unusual, extraordinary, remarkable, peculiar or simply different but that because of varying degrees, it will therefore depend on the context and on the particular circumstances of the case under consideration.”

[24] It is thus a crucial consideration that in each case, the finding of exceptional circumstances will depend on the context and on the particular circumstances and facts of the case that is before the court at any given point. There is no ‘one glove fits all’ approach, in the consideration of exceptional circumstances.

[25] In **University of Free State v Afriforum and Another 2018 (3) SA 428 (SCA)** in par 12-13, the Supreme Court of appeal stated the following:

‘[12] The concept of ‘exceptional circumstances’ introduced by s 18(1), was considered by Mpati P in Avnit v First Rand Bank Limited [2014] ZASCA 123, in the context of s 17(2)(f) of the Act which provides that in exceptional circumstances’ the President of this court may refer a decision on an application for leave to appeal to the court for consideration. Mpati P held that upon a proper consideration of s 17(2)(f), the President will need to be satisfied that the circumstances are ‘truly exceptional’ before referring a matter for consideration.

[13] Whether or not ‘exceptional circumstances’ for purposes of s 18(1) are present, must necessarily depend on the peculiar facts of each case. In Incubeta Holdings para 22 Sutherland J J put it as follows:

‘Necessarily, in my view, exceptionality must be fact-specific. The circumstances which are or may be “exceptional” must be derived from the actual predicaments in which the given litigants find themselves.’

[26] As this Court has found in the matter of *Skhosana v The State, Middelburg (Local Seat)*, Bail Appeal Case Number: BA10/2025, although the wording seems to burden an Applicant in a bail process with some or other exceptional hurdle to cross, the principle need not be over evaluated than anything else, being the normal burden of proof, which is one of a balance of probabilities. During the engagement at Court with the respective legal representatives, this was equated to, if a hundred grains of sand were to be placed on a weighing scale, the Applicant in a bail application in respect of Schedule 6 needs the Court to find that at least 51 grains of sand are on her side of the scale. Simply because the wording "exceptional circumstances" presents itself does not mean that the threshold suddenly changes to something that would equate to being beyond reasonable doubt or beyond all doubt. It is, in keeping with the same metaphor, the 51 grains of sand that should be so out of the ordinary that they outweigh the 49 grains of sand that represent the interest of justice,

[27] Sight should, however, not be lost that there are 3 requirements that must be met, in order to succeed in an application as envisaged in Section 18(1) & (3), and those are;

- a) The existence of exceptional circumstances;
- b) Proof on a balance of probabilities, that Applicant will suffer irreparable harm if the order is not granted
- c) Proof on a balance of probabilities that the Respondent will not suffer irreparable harm if the order is granted.

[28] In ***Tyte Security Services CC v Western Cape Provincial Government and Others 2024 (6) SA 175 (SCA)*** it was stated in par 10 that;

'...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.'

[29] The Supreme Court of Appeal in *Tyte*, further stated in para 13 that:

“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 ‘the 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’. The same I dare say, can be said of its counterpart, the absence of irreparable harm, as the case may be, can hardly be entirely divorced from exceptional circumstances enquiry. It would perhaps be logically incoherent for a court to conclude, on the other hand, in favour of an applicant that exceptional circumstances subsist, but on the other, against an applicant on either leg of the irreparable harm inquiry.”

[30] The issue to be determined by this Court, is whether the court a quo correctly held that the requirements for the enforcement of an order under section 18 of the Superior Courts Act had been established or not.

[31] It must further be noted that this Court will only interfere with the Court a quo's judicial discretion if it is found that the Court misdirected itself in the application of the facts and or the law in granting its order.

[32] Turning to the facts and circumstances of the matter. In its Judgment, the Court a quo, in respect of exceptional circumstances, stated that;

“The question of exceptional circumstances becomes much easier to deal with when this matter came before the Court as an urgent application and this court having ruled already that the matter is urgent. It will be very rare to have a matter that is urgent, yet at a later stage it

appears there are no exceptional circumstances, although this is not impossible, but in most instances one would find that once it is a ruling or finding to the effect that an application is urgent, that on its own would in most instances also translate to mean there are exceptional circumstances to allow the matter to be heard"

- [33] In referring to the facts found to be constituting exceptional circumstances, the court highlighted the fact that company will fail to operate unless it has access to all its assets.
- [34] It is thus accordingly an incorrect reading of the Court's reasoning, by the Appellant, when they contend that the court only found that there are exceptional circumstances because the matter is urgent. The court was clear in that, although it is not impossible not to find exceptional circumstances when the matter is urgent, but in most instances one would find that there are exceptional circumstances once a ruling of urgency is made.
- [35] The court proceeded in its judgment to state that the Appellant did not seem to have any interest in the matter when the main application was dealt with, having also denied having taken possession of the assets.
- [36] What the court further stated in its judgment, was that; *'...it shows clearly that if the close corporation does not continue operating, the 1st applicant will suffer prejudice or substantial harm of which there may not be substantial redress in the normal course of events'*.
- [37] Court further held that: *even after the distribution of assets to the beneficiaries, it is the Applicant who will suffer more as there was also a will wherein all the interests in the company appeared to have been bequeathed*

to the 2nd Applicant. And that there is no indication or suggestion that the 1st Respondent will suffer any prejudice and without any prejudice, I do not see how it there would any irreparable harm that the 1st Respondent will suffer when there is no interest displayed in respect of these assets.'

- [38] The Judge stated as part of the facts of the case that the Applicant had a tender, as a subcontractor, which they were not able to execute without the assets, and that by the time the matter is finalised on appeal, the tender may no longer be there.
- [39] From the reading of the Court a quo's judgment, as alluded to above, the Court did record what it considered as facts and circumstances that constituted exceptional circumstance within the context of the case, and the Court further commented on the aspect of irreparable harm, in respect of the Applicant and the Respondent, and so the Court granted the order.
- [40] Having regard to the facts of the matter and keeping with the metaphor as stated in the matter of *Skhosana v The State*, the question is accordingly whether the submissions pertaining to the commercial prejudice that the Respondents would suffer were of such an exceptional state that those grains of sand would tip the scale in favour of the Respondents. The Court *a quo* found that it did, and this Court is similarly convinced that those facts constitute facts on which exceptional circumstances may be held.

RULING

- [41] This Court is satisfied that the Court *a quo* and Honourable DJP in granting the order, applied itself to the facts and the prescripts of section 18 to the letter, and accordingly did not misdirect itself in any manner.

[42] For the reasons stated herein, the appeal stands to be dismissed.

[43] There is no reason why cost should not follow the outcome.

[44] Consequently, this Court makes the following order:

ORDER

1. The appeal is dismissed
2. The Appellant shall pay the costs of the application on a party and party Scale B.


TLL NYAMBI

ACTING JUDGE OF THE HIGH COURT

I agree


LD VUKEYA

JUDGE OF THE HIGH COURT

I agree


HF FOURIE

ACTING JUDGE OF THE HIGH COURT

This judgment was handed down electronically by circulation to the parties' legal representatives by email

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