



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no : 2026-003035

In the matter between:

SWARTLAND EIENDOMME (PTY) LTD

Applicant

And

AFRICAN SPIRIT LAB (PTY) LTD

Respondent

Coram: JUSTICE J CLOETE

Heard: 15 January 2026

Delivered: 21 January 2026

ORDER

1. The applicant's non-compliance with the time periods, forms and processes set out in the Uniform Rules of Court is condoned and this application is ruled to be urgent;
2. A *rule nisi* is issued calling upon the respondent and all interested persons to show cause on FRIDAY 20 FEBRUARY 2026 ('return date') why a final order should not be granted in the following terms:

- 2.1 The respondent is directed to procure, as a matter of urgency, an alternative storage facility which complies with the requirements of the City of Cape Town's Safety and Security, Fire and Rescue Department (the 'controlling authority') in respect of the substances and/or materials identified in the controlling authority's notice dated 18 December 2025, and to this end shall meet with the controlling authority to establish precisely which substances and/or materials are required to be removed from the premises from which the respondent currently conducts business ('the premises') as well as precisely what the controlling authority's requirements are;
- 2.2 Once such alternative storage facility is procured, the respondent shall forthwith cause the aforementioned substances and/or materials to be removed from the premises, and shall desist from storing any further such substances and/or materials at the premises until such time as the controlling authority is satisfied that the premises comply with its requirements.
3. The provisions of paragraphs 2.1 and 2.2 above shall operate as an interim interdict with immediate effect pending the return date.
4. Copies of this judgment and order shall be served urgently by the applicant's attorney on both the controlling authority and all tenants (save for the respondent) which currently occupy the applicant's industrial building situated at Kiepersol Park, [...] K[...] Crescent, Atlas Gardens, Contermanskloof, Cape Town.
5. All questions of costs shall stand over for determination on the return date.

JUDGMENT

CLOETE J:

[1] This opposed application came before me in the 'fast lane' of motion court on 15 January 2026, having been launched by the applicant ('Swartland')

on 9 January 2026, and served on the respondent (‘Spirit Lab’) by way of delivery to its attorney’s offices on the same date. Although Spirit Lab contended that the application was not properly served on it, it did not ask for an order striking the matter from the roll for this reason alone.

[2] Swartland seeks, as a matter of urgency, an interim interdict against Spirit Lab pending a return date, that (a) Spirit Lab is to remove all flammable, combustible and dangerous materials, including alcohol and other substances, from commercial/industrial premises leased to it by Swartland and situated at Unit [...], Kiepersol Park, [...] K[...] Crescent, Atlas Gardens, Contermanskloof, Cape Town (‘the premises’) by no later than 19 January 2026 (which has since passed) or such alternative date as the court may deem appropriate in the circumstances; and (b) Spirit Lab is to refrain from bringing onto or storing at the premises such materials unless and until the impediment contained in the notice to comply from the City of Cape Town’s Safety and Security, Fire and Rescue Department dated 18 December 2025 is removed. Swartland also seeks an order that the sheriff of the court be authorised to remove the materials in the event of Spirit Lab failing to comply with the terms of the interim interdict sought.

[3] Swartland is the registered owner of the industrial building in which the premises are situated. The premises constitute one of 12 individual units in the building, all of which are seemingly occupied by different tenants for commercial purposes. Spirit Lab conducts business as a distillery of various alcohol products including craft gin, vodka, rum, whiskey, Karoo Agave and Cape brandy.

[4] On 24 April 2025, the parties concluded a written lease agreement in respect of the premises for a period of 3 years commencing with effect from 1 April 2025. In terms of clause 1.7 of the schedule to the lease, it was recorded

that the premises would be used for the manufacture and sale of liquor products for consumption on and off the premises.

[5] Spirit Lab took occupation, and has been operating its business from the premises. The building and all its units are classified for occupancy purposes in terms of the National Building Regulations, made in terms of s 17(1) of the National Building Regulations and Building Standards Act 103 of 1977, as J2 (moderate risk storage) and G1 (office).

[6] The entire building was insured by Swartland through Paradigm Risk Consultants (Pty) Ltd ('Paradigm'). During September 2025, Paradigm's representatives conducted a site inspection of the building. Following that inspection, Paradigm issued a risk survey report on 28 September 2025. In the extract from the report annexed to the founding affidavit (its contents were not confirmed under oath by the writer of the report, and thus constitute hearsay) it was stated that the risk assessment had been conducted to identify 'any Fire and Peril exposures'.

[7] The report also noted the following. Each tenant occupies a floor area of approximately 400 square metres (there are 11 tenants and one, Medharvest Foods (Pty) Ltd, occupies two units with a combined floor area of that square meterage). Spirit Lab's storage of alcohol (about 25 000 litres had been noted at the inspection), plus the stacking height of its stored bulk packing material (in the form of cardboard boxes) constituted 'an extreme exposure to fire risk'. In order to reduce this risk, a 'flammable store to built' (it is unclear from the report what this means) and certified sprinkler system were required to be installed, along with the stacking height to be reduced to 1.7 metres.

[8] Again, unsupported by any confirmatory affidavit by a Paradigm representative, the deponent to Swartland's founding affidavit alleged that Paradigm found the risk identified to be a 'violation' and breach of Swartland's

insurance policy, and that for a party to manufacture and store alcohol at the premises, the premises would need to be compliant with a J1 classification (high risk). This allegation was followed by the bald assertions that, as a result, Paradigm terminated the insurance policy and Swartland has been unable to obtain insurance for the building from another insurer until such time as the premises are compliant with a J1 classification.

[9] A quotation was then obtained by Swartland from Whip Fire Projects on 18 November 2025 (ie, almost 2 months later) to ‘upgrade’ the premises to a J1 classification at a cost of R 3 166 100 excluding VAT. According to the deponent to Swartland’s founding affidavit, Swartland was not prepared to undertake this expense. Its representative approached Spirit Lab’s representative to discuss the possibility of concluding an addendum to the lease in terms of which Spirit Lab would undertake the expense of upgrading the fire protection system in the premises should it wish to continue with the lease. Spirit Lab was not prepared to enter into the addendum.

[10] Disputes arose *inter partes* (and there are still such disputes) about the agreed, or represented, suitability of the premises for the purpose for which they were let to Spirit Lab by Swartland; the extent, if any, of the upgrade required; and upon whom the obligation would lie to incur the expense thereof, both under the lease and the common law. Correspondence followed over a fairly extended period, which also included various demands made by Swartland for Spirit Lab to remove the offending materials from the premises. These are not disputes which I am required to determine for purposes of interim relief as will appear from what follows hereunder. What is apparent from the papers is that by early December 2025 the parties had reached an impasse.

[11] However, on 18 December 2025, officials from the City’s Safety and Security, Fire and Rescue Department attended at the premises and determined that the By-Law relating to Community Fire Safety 11257 (the ‘By-Law’) was

being contravened. On the same date, the City's Platoon Commander: Fire Safety North, issued a notice to Swartland's representative to that effect. The notice records that (a) *the premises* are being utilised for the storage of flammable substances, rendering *the building* having a deemed J1 occupancy (high risk storage) – it is unclear whether this was intended to be applicable to the entire building; (b) the warehouse used for the storage of alcohol must be upgraded to J1 occupancy which includes the submission and approval of building plans; and (c) flammable liquids in excess of 40 litres (classes (i), (ii) and (iii)) and 200 litres (class (iv)) are being stored on the premises without approval of the controlling authority (which is defined in the By-Law as meaning either a chief fire officer, a municipal manager or their respective delegates). For convenience, I will thus refer hereinafter to the Department concerned as the 'controlling authority'.

[12] Swartland was given notice to comply with 'the above provisions' by no later than 21 January 2026. It was also informed that non-compliance with the notice and the provisions of the By-Law, is an offence in terms of s 55 thereof, and that 'you' will be held liable for prosecution or a prescribed fine, or both 'for each contravention'.

[13] On 19 December 2025, Swartland's attorney addressed an urgent letter by email to Spirit Lab's attorney, annexing a copy of the notice and affording Spirit Lab a final opportunity to remove all combustible, flammable and dangerous materials from the premises by 12h00 on 7 January 2026, failing which Swartland would approach court for urgent relief. No response was received.

[14] On 6 January 2026 and in what Swartland describes as a final effort to avoid litigation, its attorney addressed a follow-up letter by email to Spirit Lab's attorney, reminding him that Swartland would approach court on an urgent basis if Spirit Lab did not comply. On 7 January 2026, Spirit Lab's representative

requested a meeting between the parties directly on 12 or 13 January 2026 in order to attempt to resolve the matter.

[15] Swartland was not prepared to risk further delay. Its attorney informed both Spirit Lab's representative and its attorney that it was obliged to approach court for urgent relief but remained open to further discussions. As it happened, after the matter was argued before me, the parties requested an opportunity before I handed down judgment for that purpose, but I was informed late on the afternoon of 19 January 2026 that they had been unable to reach agreement.

[16] Section 37 (6) (ii) of the By-Law provides that '[t]he owner or person in charge of the premises may not store or use ... a flammable liquid of a danger group (i), (ii), (iii) or (iv) in excess of 200 litres, unless he has obtained a flammable substance certificate from the controlling authority'. On the papers as they stand at present, there is no dispute that the alcohol stored at the premises by Spirit Lab (which on its version at any given time varies between about 20 000 to 25 000 litres) falls into this category, and that it is not in possession of a flammable substance certificate, irrespective of Swartland's letter dated 25 April 2025 confirming that Spirit Lab is authorised by it 'to operate a liquor manufacturing business on the leased premises'.

[17] In terms of s 38 (3) of the By-Law , the controlling authority *must* refuse to issue a flammable substance certificate if the premises do not comply with the requirements of the National Building Regulations, as well as additional requirements set out in the By-Law . Accordingly, *ex facie* the By-Law, at present Spirit Lab is not able to procure such a certificate and the controlling authority has no discretion to issue one.

[18] Section 55 (1) of the By-Law stipulates that any person who (a) contravenes any of the provisions of the By-Law or fails to comply therewith; or (b) contravenes or fails to comply with any notice (or order) in terms thereof, is guilty of an offence and liable to a maximum fine or imprisonment as

prescribed in the Fire Brigade Services Act 99 of 1987. Section 21 of the Fire Brigade Services Act prescribes a fine not exceeding R10 000 or imprisonment for a period not exceeding 12 months. In addition, in terms of s 55 (2), the imposition of a penalty for any contravention may not excuse the contravention, nor must the contravention be permitted to continue.

[19] In its provisional answering affidavit, and in argument, Spirit Lab maintained that the urgency upon which Swartland relies is self-created, since on its own version it has known about the Paradigm report since 28 September 2025. There is some merit in this contention, but only up to a point. That point is the notice issued by the City's Safety and Security, Fire and Rescue Department on 18 December 2025. I do not consider it unreasonable for Swartland to have afforded Spirit Lab the opportunity of 19 calendar days after receipt of that notice, during the festive period, to remove the flammable substances referred to in the notice before launching this application. I also consider that the issue of the notice rendered the matter urgent when Spirit Lab did not respond until 7 January 2026, and then only to request a meeting to be held about a week before the deadline imposed in the notice expired.

[20] Spirit Lab also contends that it was entitled to rely on representations allegedly made by Swartland in relation to the premises being compliant with relevant legislation (including By-Laws) for purposes of its business operation, and that because Swartland only has an *obligation* to comply with the notice requirements, it is not a right in the true sense upon which Swartland can rely for interdictory relief. This submission is not supported in law. It is not only Swartland which, as owner of the premises, has an obligation to comply with the law. On the plain wording of s 37 (6) (ii), Spirit Lab must also do so as the entity in charge of the premises under the lease. According to the controlling authority, Spirit Lab is thus also in breach of the By-Law in relation to property owned by Swartland. Precisely which party is the cause of the contravention is not relevant to the controlling authority because both must comply with the law.

This court is similarly duty bound to uphold the law. Swartland's right for purposes of this application lies in the fact that it is an entity affected by the contravention of the By-Law, because it too will face criminal sanction if the contravention persists beyond 21 January 2026.

[21] Spirit Lab also argues that, although couched as interim relief, what Swartland in fact seeks is final relief. It alleges that the order sought by Swartland will effectively shut down its business operation. It will be exposed to claims by customers and possibly even Swartland itself since it will be unable to meet its payment obligations and the like. Moreover, Swartland cannot dispute that flammable products of this quantity can only be stored in premises which comply with the relevant regulations and/or By-Law. It is certainly not something that the sheriff can store at its premises. Spirit Lab maintains that, based on its previous experience, it can easily take 6 months to procure compliant alternative premises, and in the meantime its products will inevitably have to be stored at a non-compliant location, which is hardly a solution to a contravention. It is noted however that Spirit Lab did not explain to this court the steps it has taken to try to secure alternative compliant premises for storage purposes only pending the resolution of the parties' main disputes, particularly since receipt of the notice from the controlling authority.

[22] Spirit Lab makes a valid point in relation to its obligation to procure an alternative compliant storage facility, even in the absence of any disclosure of attempts it may have made to secure one. Further, in the face of its assertions regarding this, and its potential difficulty in securing such a facility in its provisional answering affidavit, one would have expected Swartland to engage meaningfully with those assertions in its replying affidavit. However, Swartland simply denied this to be the case without even attempting to explain why. It focussed rather on the risk of grave harm, not only to its property (the building) but to other tenants and occupants. The risk may indeed be grave, but

Swartland, as already stated, contented itself with placing hearsay evidence and bald assertions before this court on that score.

[23] Moreover, if the risk is indeed that grave, one has to wonder why Swartland was still engaging with Spirit Lab in December 2025. It did not seem to consider the grave risk to other tenants and their property to be so great between September 2025 and December 2025 that it was required to take immediate and urgent steps to protect them by approaching this court for the urgent relief now sought. It is one thing to attempt to resolve a matter in good faith before resorting to litigation. It is quite another where the risk to life and property is such that – as Swartland now asserts – this court must come to its immediate aid, in the face of a clear material dispute of fact *inter partes* which has been ongoing for months.

[24] That being said, this court cannot countenance what is considered by the controlling authority to be unlawful conduct, even leaving aside the potential criminal sanction that will follow if the offending materials are not removed by 21 January 2026. Spirit Lab maintains that such a sanction is usually no more than R5000, or a sentence of 6 months imprisonment, and that in practice the latter is never imposed. However, the deponent to Spirit Lab's provisional answering affidavit stated that this is what he had been informed, without disclosing the source of that information or obtaining a confirmatory affidavit, and it thus also constitutes hearsay.

[25] Having considered the parties' respective submissions, I find as follows. Swartland has established at least a *prima facie* right. In its capacity as owner of the premises, it is liable for the contraventions of the By-Law irrespective of whether it is in breach of the lease as Spirit Lab contends. Swartland has a well-grounded and reasonable apprehension of harm if an interim interdict is not granted. It is facing criminal sanction for that contravention. Swartland has no adequate alternative remedy to avoid criminal sanction. The only way in which

it can comply with the notice issued by the controlling authority by 21 January 2026 is to have the offending materials removed from the premises while the dispute between the parties rages on. It has asked Spirit Lab to do so. Spirit Lab has not complied. Swartland cannot take the law into its own hands by entering the premises and removing the offending materials. Accordingly, Swartland, despite the shortcomings in its case I have referred to earlier, has met the requirements for interim interdictory relief.

[26] However this relief, of necessity, must be linked to Spirit Lab, even on a short-term basis, being able to find an alternative location to store its offending materials which complies with the relevant regulatory requirements, and which it must do as a matter of urgency. If this is not permitted, this court will effectively be sanctioning a further contravention, which will similarly expose Spirit Lab (and the owner or other person in charge of unsuitable premises) to criminal sanction.

[27] I accept that this is not optimal, but Swartland only has itself to blame on this score, having formed the view as far back as September 2025 that it was not only endangering its own property as a result of the allegedly identified grave fire risk, but also the lives and property of its other tenants, and there is no evidence on the papers before me that Swartland has even notified those other tenants of the risk they face. If Swartland has not already notified them, this court expects it to do so forthwith, since I am also not prepared to countenance any such risk as a result of the order I will make. Whatever fallout comes from that notification, and whatever steps the controlling authority takes to compel compliance with its notice while Spirit Lab is sourcing appropriate alternative storage premises, are matters beyond this court's control. It is of course open to Swartland to assist Spirit Lab to source appropriate alternative premises pending the return date, even on a without prejudice basis, but it has made no tender in this regard so as to assist the court in setting an appropriate deadline either.

[28] **The following order is made :**

6. The applicant's non-compliance with the time periods, forms and processes set out in the Uniform Rules of Court is condoned and this application is ruled to be urgent;
7. A *rule nisi* is issued calling upon the respondent and all interested persons to show cause on FRIDAY 20 FEBRUARY 2026 ('return date') why a final order should not be granted in the following terms:
 - 7.1 The respondent is directed to procure, as a matter of urgency, an alternative storage facility which complies with the requirements of the City of Cape Town's Safety and Security, Fire and Rescue Department (the 'controlling authority') in respect of the substances and/or materials identified in the controlling authority's notice dated 18 December 2025, and to this end shall meet with the controlling authority to establish precisely which substances and/or materials are required to be removed from the premises from which the respondent currently conducts business ('the premises') as well as precisely what the controlling authority's requirements are;
 - 7.2 Once such alternative storage facility is procured, the respondent shall forthwith cause the aforementioned substances and/or materials to be removed from the premises, and shall desist from storing any further such substances and/or materials at the premises until such time as the controlling authority is satisfied that the premises comply with its requirements.
8. The provisions of paragraphs 2.1 and 2.2 above shall operate as an interim interdict with immediate effect pending the return date.
9. Copies of this judgment and order shall be served urgently by the applicant's attorney on both the controlling authority and all tenants (save for the respondent) which currently occupy the applicant's industrial building situated at Kiepersol Park, [...] K[...] Crescent, Atlas Gardens, Contermanskloof, Cape Town.

10. All questions of costs shall stand over for determination on the return date.

J I CLOETE

Judge of the High Court

Appearances

Counsel for applicant: A Kantor SC with L Van Dyk

Instructed by: Lang Attorneys

For Counsel for respondent: J P Steenkamp

Instructed by: BDP Attorneys