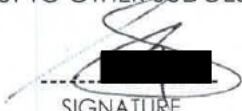


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023-062827

|                 |                                                                                   |
|-----------------|-----------------------------------------------------------------------------------|
| (1)             | REPORTABLE: NO                                                                    |
| (2)             | OF INTEREST TO OTHER JUDGES: NO                                                   |
| 6 February 2026 |  |
| DATE:           | SIGNATURE                                                                         |

In the matter between:

TAVON PROPS (PTY) LTD  
(Registration number: 2022/462761/07)

: Applicant  
[respondent in the  
application for leave to  
appeal]

and

AMON TECHNOLOGIES (PTY) LTD  
OLIVIA NGULUBE  
THEMBELANI NGULUBE

: First Respondent  
: Second Respondent  
: Third Respondent  
[Applicants in the  
application for leave to  
appeal]  
Fourth Respondent

CITY OF TSHWANE MUNICIPALITY

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JUDGMENT

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MIA J:

[1] This application is brought in terms of section 18(3) of the Superior Courts Act 10 of 2013, to declare the eviction order granted on 4 June 2024 effective and enforceable pending the finalisation of the respondents' appeal pending before the Full Court of this Division. The applicants also seek costs in the application.

[2] A summary of the background facts is necessary. The applicant became the registered owner of the property, Portion 43 (a Portion of 400) of the farm Grootfontein, 394 (Registration Division JR) Gauteng Province. The second and third respondents (the respondents) were registered as the owners of the property before the property was transferred to the applicant. The applicant has not enjoyed the benefits of ownership of the property upon registration of the property in their name. This court granted an order evicting the respondents on 4 June 2024. The respondents were granted leave to appeal the judgment. Consequently, the applicants brought an application in terms of s18(3) of the Superior Courts Act seeking an order declaring the order granted on 4 June 2024 effective and enforceable pending the respondent's application for leave to appeal.

[3] The applicants contend that unless they are permitted to evict the respondents and all persons holding under them, they are unable to obtain an income from leasing the property and in addition they fear they may not be able to recover the costs incurred for municipal services which the respondents fail to pay despite using services. The respondents maintain that they will be prejudiced if the relief sought by the applicant is granted and they were removed from the property. This is so because they have dependant children, livestock and will be prejudiced if they were to move and are not able to find accommodation. They also maintain that they are vulnerable persons, the effect being that they seek a report from the fourth respondent confirming same and offering them alternative accommodation.

[4] Section 18(3) provides:

"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.

[5] In determining whether the applicant presents exceptional circumstances, a key consideration raised by the applicant is that they will not be able to recover the expenses incurred in the interim, whilst the respondents occupy the property and do not pay the municipal expenses. In addition, they are losing rental income which they contend they may not be able to recover from the respondents.

[6] In *Incubeta Holdings (Pty) Ltd and another v Ellis and another*<sup>1</sup>, Sutherland DJP, considered the import s18(1) –(3) and the meaning of “exceptional circumstances”. Referring to *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas and another*<sup>2</sup>, in *Incubeta*, Sutherland J said:

[17] What constitutes “exceptional circumstances” has been addressed by Thring J in *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas and another* 2002 (6) SA 150 (C), where a summation of the meaning of the phrase is given as follows at 156/ - 157C [also reported at [2000] JOL 7119 (C) - Ed]:

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<sup>1</sup> 2014 (3) SA 189 (GJ)

<sup>2</sup> 2002 (6) SA 150 (C)

"What does emerge from an examination of the authorities, however, seems to be the following:

1. What 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; 'besonder', 'seldsaam', 'uitsonderlik', or 'in hoë mate ongewoon'.
2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.
3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.
4. Depending on the context in which it is used, the word 'exceptional' has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.
5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional."

[7] Sutherland DJP, opined at paragraph [21] that:

[21] The context relevant to *section 18 of SCRT* is the set of considerations pertinent to a threshold test to deviate from a default position; ie the appeal stays the operation and execution of the order. The realm is that of procedural laws whose policy objectives are to prevent avoidable harm to litigants. The primary rationale for the default position is that finality must await the last court's decision, in case the last court decides differently, the reasonable prospect of such an outcome, being an essential ingredient of the decision to grant leave in the first place. Where the pending happening is the application for leave itself, the potential outcome in that proceeding, although conceptually distinct from the position after leave is granted, ought for policy reasons, to rest on the same footing.

[8] In considering the application in terms of s18(3) and the enquiry into exceptional circumstances, Sutherland DJP noted that this was based on the facts and not a discretion applied by the court.<sup>3</sup> The consideration is whether the circumstances the parties find themselves in, is outside of the norm. At paragraph [24], Sutherland DJP explains the different approach required in the application of s18(3):

“...But *section 18(3)* seems to require a different approach. The proper meaning of that subsection is that if the loser, who seeks leave to appeal, will suffer irreparable harm the order must remain stayed, even if the stay will cause the victor irreparable harm too. In addition, if the loser will not suffer irreparable harm, the victor must nevertheless show irreparable harm to itself. A hierarchy of entitlement has been created, absent from the *South Cape* test. Two distinct findings of fact must now be made, rather than a weighing-up to discern a "preponderance of equities".

[9] The applicant is suffering the loss of income and the amounts due for municipal services. The account is in arrears and is increasing. The respondent must show irreparable harm to themselves as well. On the facts of the present case, the respondents harm in the event they are evicted will have far greater impact which extends to more than financial loss. Neither the eviction nor the recovery of monies due to the applicant for the respondent's use of utilities or the loss of rental income and the consequent expenses are unusual. The applicant should be able to recover monies from the respondents whether it is from the same source that the respondents are able to pay for private school fees or the businesses registered in the respondents' names referenced by the applicant.

[10] The parties were *ad idem* that the nature of the application was such that costs be granted on scale C. Given the history of the matter and the complexity of the dispute the higher scale is appropriate in respect of counsel's fees.

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<sup>3</sup> *Incubeta* at para[18]

[11] Accordingly, I make the following order:

1. The application in terms of section 18(3) is dismissed.
2. The applicant to pay the costs on the scale between party and party and the fees of counsel at scale C.



**S C MIA**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**DELIVERED:** *This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be **10h00** on 6 February 2026.*

**Appearances:**

On behalf of the applicant : Adv P Strathern SC  
Instructed by : Vermaak Marshal Wellbeloved Inc.  
Johannesburg

On behalf of the 1<sup>st</sup> to 3<sup>rd</sup> respondents : Adv. Manaka  
Instructed by : Cornelius JM Attorneys  
Johannesburg

Date of hearing : 15 July 2025  
Date of judgment : 6 February 2026