



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

Case No: 2025-250950

In the matter between:

CAPE TOWN MINSTREL CARNIVAL ASSOCIATION

Applicant

And

CITY OF CAPE TOWN

Respondent

Neutral citation: *Cape Town Minstrel Carnival Association V City of Cape Town*
(Case no 2025-250950) [2026] ZAWCHC ... (18 February 2026)

Coram: LEKHULENI J

Heard: 31 December 2025

Delivered: 18 February 2026

REASONS FOR JUDGMENT

LEKHULENI J:

Introduction

[1] On 29 December 2025, I granted a mandatory order compelling the respondent to make available to the applicant a suitable venue within its jurisdiction for the hosting

of the applicant's Minstrel competition events, being a medium-risk gathering as contemplated in the Safety at Sports and Recreational Events Act 2 of 2010 (SASREA), on the following dates:

1 January 2026;

10 January 2026;

17 January 2026; and

24 January 2026.

[2] Pursuant to the granting of that order, the respondent applied for leave to appeal against that order, contending, inter alia, that this Court erred in granting the final relief in the form of a mandatory interdict, in circumstances where the applicant failed to establish the essential requirements for such a remedy. The respondent also asserted that this Court erred in accepting the applicant's version and discounting the respondent's evidence regarding venue availability and risk grading, and that the respondent's withdrawal of the applicant's Vygieskraal booking was lawful and compelled by SASREA. The respondent submitted that the Court failed to appreciate that SASREA compliance is mandatory and that the respondent had no discretion to permit the use of a non-compliant venue.

[3] After the application for leave to appeal was filed, the order of this Court issued on 29 December 2025 was automatically suspended in terms of s 18(1) of the Superior Courts Act 10 of 2013 ('the Superior Courts Act'). Subsequent thereto, the applicant brought an application in terms of s 18(3) read with s 18(1) of the Superior Courts Act on an urgent basis seeking an order directing that, notwithstanding the respondent's filing of its application for leave to appeal, the order granted by this Court on 29 December 2025, be immediately enforceable. In addition, the applicant sought an order that the respondent be ordered to comply with the terms of the order immediately. The applicant also sought an order directing the respondent to pay the costs of the application on a punitive scale, including all costs occasioned by the urgency of the application. The respondent opposed the application and filed the necessary answering affidavit. The s 18(3) application was subsequently enrolled for hearing on 31 December 2025 at 21h00 hours.

[4] After carefully considering the arguments presented by both parties and thoroughly reading the record, I gave an *ex-tempore*. I granted the relief requested by the applicant in terms of s 18(3) in read with s 18(1) of the Superior Courts Act, as articulated in the applicant's notice of motion. The Court also ordered the respondent to pay the costs of the application on a party-and-party scale, including counsel's costs on scale B. The respondent subsequently filed an application for leave to appeal against that order and requested this Court to provide reasons in terms of rule 49(1)(c) of the Uniform Rules of Court. I must emphasise that in the *ex-tempore* judgment that I gave on 31 December 2025, I did not just issue an order. However, I gave reasons for that order as enjoined by s 18(4)(i) of the Superior Courts Act. To the extent that I have been requested to provide reasons for that order, I will supplement those reasons already on record.

Principal submissions by the parties

[5] At the hearing of the s 18(3) application, Ms Adriaanse, counsel for the applicant, submitted that the respondent filed an application for leave to appeal against the order of this Court of 29 December 2025 and that there has been no meaningful engagement between the applicant and the respondent. Counsel submitted that time was of the essence in that if the respondent did not comply with the court order, the applicant would lose the opportunity to hold its Minstrel competition this year. Ms Adriaanse further submitted that this would cause the applicant and its members to suffer irreparable harm if the order is not granted, while the respondent won't suffer any harm whatsoever.

[6] On the other hand, Mr Kirk-Cohen SC, the respondent's counsel, submitted that the matter is not urgent. Mr Kirk-Cohen argued that the difficulty in the applicant's application was compounded by the fact that there was no request made by the applicant for a permit to hold the Minstrel competition. Counsel submitted that the respondent facilitated the applicant's compliance with all applicable event permit requirements as set out in the court order. According to Mr Kirk-Cohen, the applicant's Minstrel competition could not proceed without the necessary permit. Counsel argued that the applicant and its members failed to make out a case for an order in terms of s 18(3) and applied that the application be dismissed.

Issues to be determined

[7] From the discussion above, this Court was enjoined to determine whether, under the specific circumstances of this case, the applicant successfully established a basis for the lifting of the suspension of the order issued on 29 December 2025 as envisaged in s 18(3) read with s 18(1) of the Superior Courts Act. Simply put, the question was whether the Court should grant an execution or enforcement order in terms of s 18(3) of the Superior Courts Act.

Discussion

[8] For the sake of completeness, the relevant part of s 18 of the Superior Courts Act provides as follows:

'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] It is an established common law rule of practice in our Courts that generally, the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out. *Cash*

Crusaders Franchising (Pty) Ltd v Cash Crusaders Franchisees 2024 (4) SA 141 (WCC) para 57. No effect can be given thereto, except with the leave of the Court which granted the judgment. To obtain such leave, the party in whose favour the judgment was given must make a special application as the applicant did in this matter. *Gentiruco A.G. v Firestone SA (Pty.) Ltd* 1972 (1) SA 589 (AD) at 667; *Standard Bank of SA Ltd. v Stama (Pty) Ltd* 1975 (1) SA 730 (AD) at 746). This common law rule has been codified and incorporated in section 18 of the Superior Courts Act.

[10] The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable harm from being done to the intending appellant, either by levy under a writ of execution or by execution of the judgment in any other manner appropriate to the nature of the judgment appealed from. *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 545A-C. It is trite that the court to which an application for leave to execute is made has a wide general discretion to grant or refuse leave and, if leave be granted, to determine the conditions upon which the right to execute shall be exercised. *South Cape Corporation (Pty) Ltd v Engineering Management Services (supra)* at 545B-C.

[11] Importantly, s 18 stipulates three prerequisites for an enforcement order which must be established on a balance of probabilities. *Firstly*, exceptional circumstances must exist for an enforcement order to be granted. *Secondly*, the applicant must show that it would suffer irreparable harm if the order granted, in this case, the mandatory interdict is not enforced, and *thirdly*, the applicant must prove that the respondent will not suffer any irreparable harm if the enforcement order is granted. An applicant for an execution order must prove all three requirements. In other words, all these three requirements must be fulfilled for an execution order to be granted. (*Cash Crusaders Franchising, supra* para 59). I propose to deal with these requirements in turn *ad seriatim*.

Exceptional Circumstances

[12] Courts have always eschewed any attempt to lay down a general rule as to what constitutes and qualifies as exceptional circumstances. See *MV Ais Mamas Seatrans*

Maritime v Owners, MV Ais Mamas, and Another 2002 (6) SA 150 (C) at 156H – 157C; *Incubeta Holdings (Pty) Ltd and Another v Ellis and Another* 2014 (3) SA 189 (GJ) para 16. The reasons being that the enquiry is factual in nature. An exceptional circumstance is a fact that gives rise to a deviation or departure from the general rule that final orders are suspended pending appeal. The standard is flexible and depends on the facts of each case. *Ntlemeza v Helen Suzman Foundation* 2017 (5) SA 402 (SCA) at paras 37-39. *Seatrans Maritime v Owners, MV AIS MAMAS, and Another* 2002 (6) SA 150 (C) at 156F. Exceptional circumstances must arise from the facts and circumstances of the case.

[13] In the present matter, and pursuant to the reasons I gave in the main application, I hold the view that the applicant has proven exceptional circumstances for the granting of an order in terms of s 18(3). It cannot be disputed that the Minstrel competition and the carnival are cultural traditions that date back to the early years of colonisation and slavery in the Cape. This tradition has been observed annually for many decades and holds significant meaning for both the applicant and its members. It is celebrated only at the beginning of January each year. Once that time passes, the celebration loses its significance. It cannot be postponed to mid-year, as doing so would dilute the essence of this special occasion. Postponing the event indefinitely would also infringe on the applicant and its members' rights to celebrate their culture and tradition.

[14] Significantly, it was not disputed at the hearing of this matter that costs have been incurred for the planning and preparation of the event. The transport for the applicant's participants has been arranged. Security for the event, judges, and medics have been secured. Various arrangements that involved planning and preparation had been invested in the intended competition. A suspension of the order, in my view, would cause irreparable harm to the applicant and have far-reaching consequences to the 2000 members of the applicant's association who have also incurred costs in preparation for the competition as detailed herein below.

[15] It bears emphasis that the applicant is a non-profit organisation, and the participants in this event come from extremely disadvantaged backgrounds and communities. The resources they invested in preparing for this competition hold

immense value for them, representing not just financial expenditure but also a heartfelt commitment to seizing this opportunity. In my opinion, the investment and planning they made in preparing for this competition is significant to them and should not be easily discounted. Notably, the date for the Minstrel competition has been set and made known to all members of the applicant well in advance. The participants of the competition have taken leave in contemplation of the competition. Clothes and apparel for the competition have been sewn in preparation for the competition. When the respondent confirmed the booking, the applicant excitedly informed its 2000 members, who eagerly prepared for the upcoming competition. According to the applicant, this communication inspired excitement and readiness among all participants. The applicant also confirmed the competition with vendors and suppliers and invested significant resources in planning and preparing for the event. Evidently, the applicant's members invested their scarce resources and energy in preparing for this event.

[16] In my view, the cumulative effect of all the circumstances mentioned above, gives rise to the exceptionality contemplated in s 18(1) of the Act. The respondent has the means and resources to assist the applicant in securing a venue that is safe and meets all SASREA requirements. The non-application for the permit cannot, in my view, be used as a barrier to the applicant exercising their cultural rights. The application for a permit, with the assistance of the respondent, could be fast-tracked, as it was confirmed on record at the hearing of this application that the respondent had a similar application fast-tracked in the past. I therefore conclude on this point that the applicant established exceptionality as envisaged in s 18(1) of the Act. I turn to consider the two remaining requirements envisaged in s 18(3) of the Act. I will address them jointly as they are inextricably intertwined.

Has the applicant shown that it will suffer irreparable harm without the execution order and that the respondent won't suffer harm if it is granted?

[17] Section 18(3) requires the applicant for an execution order to establish that it will suffer irreparable harm if the order is not granted and that the respondent will not suffer irreparable harm if the order is granted. These two requirements must be established on a balance of probabilities. The judgment of *University of the Free*

State v Afriforum and Another 2018 (3) SA 428 (SCA) at para 18, indicates that the requirement of irreparable harm to the applicant and no irreparable harm to the respondent, unlike the common law position, does not involve a balancing exercise between the two but must both be established on the balance of probabilities. In *Knoop NO and Others v Gupta and Others* 2021 (3) SA 135 (SCA) at para 48, the Court noted that if the applicant cannot show that the respondent will not suffer irreparable harm by the grant of the execution order, that is fatal.

[18] The applicant avers that unless the order is enforced, the applicant will suffer irreparable harm. Further, that the respondent will not suffer irreparable harm if the order is granted. As mentioned earlier, the Court has been informed that numerous preparations have been made for this event. People have taken leave for this competition, transportation has been arranged, service providers have been hired and compensated, judges for the competition have been secured, and security measures have been put in place to ensure a smooth event. Additionally, 2,000 members of the applicant have invested resources in preparing and planning for this competition.

[19] As foreshadowed above, this competition is annual, and it is a heritage for the applicant and members of its association. In my view, the applicant will suffer irreparable prejudice if the order remains suspended. Importantly, if the order is not enforced, the applicant and its members will be denied the right to participate in their culture and heritage, which is guaranteed by the Constitution. On the other hand, I am of the opinion that there is no harm whatsoever that will be suffered by the respondent if the suspension of the order is lifted.

[20] I must also stress that the respondent has placed nothing before the Court to indicate whether it will suffer any harm or not if the suspension order is lifted. I accept that the onus is on the applicant to prove the three requirements mentioned above. However, in this case, the respondent had a duty to assist the applicant in exercising their cultural rights and heritage. The applicant and its members cannot realise these rights without the applicant's intervention. To this end, at the very least, the respondent must have placed information before the Court why the lifting of the suspension would affect it negatively. The respondent's counsel submitted that the

respondent remains firmly committed to supporting the Minstrel tradition and its rich culture and heritage. This commitment is highly commendable. However, the respondent must comply with this Court's order to demonstrate its commitment in this regard.

[21] I am mindful that this application was brought on an urgent basis; however, I expected, at the very least, the respondent to have placed before the Court evidence under oath as to why it could not comply with the order of 29 December 2025. The respondent placed nothing before the Court other than the exchange of communication between its legal representative and the applicant's attorney.

[22] Given all these considerations, the Court was satisfied that the applicant succeeded in making out a case for the execution of the order in terms of s 18(3) read with s 18(1) of the Superior Courts Act.

Order

[23] In the result, the following order was granted:

23.1 Notwithstanding the respondent's filing of an application for leave to appeal against this Court's order, it is ordered that in terms of s 18(3) read with s 18(1) of the Superior Courts Act 10 of 2013, the mandatory interdict granted by this Court on 29 December 2025 is hereby made immediately enforceable.

23.2 The respondent was ordered to immediately comply with the terms of that order.

23.2 The respondent was ordered to pay the costs of this application on a party and party basis, including the costs of counsel on scale B.

LEKHULENI J

JUDGE OF THE HIGH
COURT

APPEARANCES

For the Applicant: Adv Adriaanse

Instructed by: Roelf Jumat Attorney Inc

For the Respondent: Adv Kirk-Cohen SC

Adv Wynne

Instructed by: Timothy and Timothy Attorneys