



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2026-018528

1. Reportable: No 2. Of interest to other judges: No 3. Revised [REDACTED] WRIGHT J 3.3.26
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In the matter between:

SIFISO FRED LUKHELE

FIRST APPLICANT

ETHEL PLAATJIES

SECOND APPLICANT

VUYO PLAATJIES

THIRD APPLICANT

and

HUMAYL PROP LIMITED

FIRST RESPONDENT

JUNAID EBRAHIM

SECOND RESPONDENT

MARTHINUS JOHANNES KAPP

THIRD RESPONDENT

KAPP INCORPORATED ATTORNEYS

FOURTH RESPONDENT

THE STATION COMMANDER, DOUGLASDALE

POLICE STATION

FIFTH RESPONDENT

JUDGMENT – WRIGHT J – Section 18 - EXTREMELY URGENT APPEAL

1. What is before us is purportedly an appeal heard as a matter of extreme urgency under section 18(4)(a)(ii) and (iii) of the Superior Courts Act 10 of 2013. It follows that not only is the hearing on an extremely urgent basis but that judgment must be delivered on the same basis.
2. Section 18 is headed “ *Suspension of decision pending appeal* ” and reads:

“ (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.

(4)

(a) 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 an 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.

(b) "Next highest court", for purposes of paragraph (a)(ii), means—

(i) a full court of that Division, if the appeal is against a decision of a single judge of the Division; or

(ii) the Supreme Court of Appeal, if the appeal is against a decision of two judges or the full court of the Division.

(5) For the purposes of subsections (1) and (2), a decision becomes the **subject of an application for leave to appeal or of an appeal**, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules." (My emphasis). In section 1, "rules" is defined to mean the "applicable rules of court".

3. Mr Lukhele, Ms Plaatjies and Mr Plaatjies, through their attorneys, launched an urgent application on Wednesday 28 January 2026 for hearing on Friday 30 January 2026. They sought to be restored to possession of certain residential property. Their claim was one based in spoliation. They sought too, an order that the first and second respondents, Humayl and Mr Ebrahim restore the supply of disconnected electricity.

4. The application, apparently unopposed by Humayl and Mr Ebrahim at that stage, came before Wilson J on 30 January 2026. Wilson J granted restoration of Mr Lukhele, Ms Plaatjies and Mr Plaatjies to the property and ordered reconnection of the electricity.
5. Humayl and Mr Ebrahim then sought reconsideration of the order of 30 January 2026. They filed an affidavit in support of the reconsideration request.
6. On 4 February 2026, Wilson J reconsidered his original order and varied it to delete reference to the restoration of electricity by Humayl and Mr Ebrahim.

7. The relevant parts of the order of 4 February 2026 read:

" 3. The applicants' eviction on 24 January 2026, from the residential property known as [...] S[...] C[...], F[...] Estate 9[...] I[...] Road, M[...], RANDBURG ("the Property") is declared unlawful in terms of section 26(3) of the Constitution, read together with section 8(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE").

4. The first and second respondents are directed to:

4.1. restore possession of the property to the applicants with immediate effect; and

4.2. ensure that the applicants are granted full and unimpeded access to the property and their possessions, with immediate effect.

*5. The first to fourth respondents whether themselves, or through the agency of any other person, are, **pending the finalisation of the eviction application** brought by the first to fourth respondents before this court, interdicted and restrained from:*

5.1. evicting, or attempting to evict the applicants from the property without a valid order of the court, executed by the Sheriff;

5.2. instructing, authorising, permitting, or facilitating any person to evict, or attempt to evict the applicants from the property; and

5.3. interfering with the applicants' peaceful and undisturbed possession of the property, including but not limited to: changing the locks, disconnecting utilities, removing belongings, and/or intimidating the occupants." (My emphasis)

8. In my view, this order is interim. The words “ *pending the finalisation of the eviction application* ” in paragraph 5 of the order make this clear.
9. On 11 February 2026, two applications were before Wilson J. Firstly, an application by Humayl and Mr Ebrahim for leave to appeal. Secondly, an application by Mr Lukhele, Ms Plaatjies and Mr Plaatjies, under section 18 (3) for leave to execute the order made by Wilson J in their favour pending possible further appeal or attempts thereat by Humayl and Mr Ebrahim. Mr Lukhele, Ms Plaatjies and Mr Plaatjies also sought an order that electricity be restored and that Humayl and Mr Ebrahim be found in contempt of court.
10. On 12 February 2026, Wilson J dismissed the application by Humayl and Mr Ebrahim for leave to appeal and made an order under section 18 that - “ *The application for **interim execution** succeeds, to the extent that, notwithstanding the noting of any further applications for leave to appeal or appeals against my order of 4 February 2026, the applicants are forthwith to be restored to occupation of the property at [...] S[...] C[...], F[...] Estate 9[...] I[...] Road, M[...], Randburg.* ” Wilson J further ordered that “ *The application for **interim execution** is otherwise dismissed.* ” (My emphasis)
11. The wording of this order does not, in my view change the order of 4 February 2026 from an interim one to a final one. The words “ *interim execution* ” make this clear.
12. Given that the order of Wilson J, made under section 18 on 12 February 2026 was an interim order under section 18(2) and (3), there is no room for the application of section 18(4)(a) and its automatic right to an appeal as a matter of extreme urgency. The words “ *as contemplated in subsection 1-* ” in section 18(4)(a) clearly limit the operation of the automatic right to an extremely urgent appeal to cases relating to final orders under section 18(1).
13. It would appear, from a document filed on behalf of Humayl and Mr Ebrahim on 26 February 2026, that they had launched, on 25 February 2026, an application to the Supreme Court of Appeal, under section 17(2)(b), for leave to appeal the “ *judgment and orders* ” of Wilson J of 4 February 2026. There is apparently no application to the SCA in which leave is sought to appeal the order of 12 February 2026 or any part of the order. Section 17(2)(b) allows one month for an application to be lodged with the SCA.

14. Wilson J was not seized with any application under section 18 on either 30 January 2026 or on 4 February 2026. He, for the first time, dealt with a section 18 application, brought by Mr Lukhele, Ms Plaatjies and Mr Plaatjies on 11 February 2026. Judgement was delivered on 12 February 2026 and in their favour.
15. It is difficult to see how the order of Wilson J of 12 February 2026 could be “ *the subject of an application for leave to appeal or of an appeal* ” absent an application to the SCA for leave to appeal, under section 17(2)(b). It would appear that we do not have jurisdiction to hear the present appeal. I need not dwell on this as I find that the order of Wilson J of 12 February 2026 is not appealable in any event.
16. I can find in the online court record, no notice of appeal relating to the present appeal. One may exist. I say so, because on 24 February 2026 the attorneys for Mr Lukhele, Ms Plaatjies and Mr Plaatjies filed a “ *Notice to Oppose – Automatic Appeal* ”. The point is made in the notice that the present appeal is bad in law as section 18 does not allow for the present appeal where the order sought to be appealed is interim. The point is also made that the order apparently sought to be appealed is that of 4 February 2026, rather than that of 12 February 2026.
17. Mr Mostert, for Humayl and Mr Ebrahim argued that while there is no notice of appeal, there need not be. He raised three points. Firstly, section 18(4) creates a sui generis procedure. The appeal arises as of matter of right under statute. Secondly, when the Acting Deputy Judge President, who allocated the present hearing date and appointed the bench, he was not merely doing an administrative task. He was performing a judicial task and in so doing he did away with the need for a notice of appeal. Through his actions, the jurisdiction of this bench was engaged. Thirdly, a notice of appeal is merely procedural and the lack of such notice does not detract from the right of Humayl and Mr Ebrahim to an extremely urgent appeal. These submissions are clearly without merit and nothing more need be said about them.
18. The following paragraphs in the judgment of Wilson J, of 12 February 2026, in refusing leave to appeal and in dealing with section 18(3) enforcement pending appeal place the matter in fuller context and capture, correctly in my view, apart from the apparent assumed finality of the order of 4 February 2026, the relevant law, the essential facts proved and the inferences to be drawn from them:

“ 4. Humayl’s defence to what was essentially a spoliation application was that the first applicant did not live at the property, and so could not have been evicted from it, and that the second and third applicants agreed to leave the property when

Humayl's representative, a Mr. Munchy, came to the property with other employees of Humayl and functionaries of Eskom on 24 January 2026. Eskom was there to disconnect the electricity supplied to the property. The respondents' version on the papers was that the second and third applicants quit the property of their own volition, the second applicant having expressed frustration with the first applicant's conduct in relation to the property.

5. In my judgment a quo I rejected that version as far-fetched, in light of the material common cause facts. Those facts were that the parties had been locked in a protracted dispute about the applicants' occupation of the property for at least several months. There was a rental dispute in the Magistrates' Court and there is a hotly contested eviction application pending in this court. It was plainly unrealistic to suggest that the applicants would have suddenly quit the property of their own volition having fought so hard for so long to remain there.

6. In any event, I found that, even if the respondents' version is taken at face value, I could not conclude, as the applicable law requires, that the second and third applicants' vacation of the property was free, voluntary and informed (see, generally, *Occupiers, Berea v De Wet* 2017 (5) SA 346 (CC)). On the respondents' version, the second applicant left the property having had an angry altercation with the first applicant, in which she said "I am leaving this premises with my son [the third applicant]. I had enough of your nonsense and I will not take the fall for you." This did not seem to me to be consistent with a considered, informed decision to waive the applicants' constitutional right to stay at the property unless ordered by a court to leave it.

7. Mr. Cassim, who appeared for the respondents, could not really gainsay this. He emphasised what the respondents regard as the applicants' bad faith, repeatedly referred to the first applicant as a "building hijacker", and emphasised the rental and other arrears said to have been run up on the lease. But none of this bore on the question of whether the second and third applicants consented to leave the property in the required legal sense. Even on the respondents' version, that inference cannot reasonably be drawn.

8. Were it otherwise, any spontaneous decision to leave one's home taken in the heat of the moment in the presence of a landlord's representative against the background of a tenancy dispute would ground an inference of consent. Obviously, that cannot be. There is no prospect that a court of appeal would conclude that the decision allegedly made to quit the property in this case was free, voluntary and informed.

9. It is the respondents' version that the first applicant no longer resides at the property because the records of a credit reference agency dug up by the respondents' attorney specifies a different address for him. I regarded that version as improbable in my judgment a quo, given that there is an eviction application pending against the first applicant in which his residence at the property is acknowledged, and given also that he has fought tooth and nail to retain possession of the property in those proceedings. There mere fact that a different address appears on the records of an organisation with no direct knowledge of or involvement in the dispute is of no moment. Mr. Cassim could not persuade me that there was any prospect that a court of appeal would decide otherwise.

10. For all these reasons, the application for leave to appeal stands no prospects of success, and will be dismissed.

Interim execution

11 Subsections 18 (1) and (3) of the Superior Courts Act 10 of 2013 permit the execution of a final order granted at first instance pending any appeal against it, provided that three jurisdictional requirements have been met. These requirements are that there are exceptional circumstances justifying such execution; that the applicant for interim execution will suffer irreparable harm if interim execution is not permitted; and that the respondent will suffer no irreparable harm if it is.

12. *In this case there are clearly exceptional circumstances, in that the respondents' prospects of success on appeal are very weak (see Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd 2024 (2) SA 574 (GJ), paragraph 13).*

13. *It seems to me that the applicants are suffering irreparable and ongoing harm in that they have been deprived of possession of a property they occupied as their home suddenly and without due process of law. Every day that this situation is allowed to continue constitutes irreparable harm. The very purpose of the spoliation proceedings that resulted in the order I granted was to promptly reverse an unlawful act of dispossession while a background dispute about the applicants' right to occupy the property is determined. It would be perverse indeed if the respondents were permitted to short-circuit that process by keeping the applicants out of the property while pursuing a meritless appeal based on the fanciful suggestion that the applicants spontaneously abandoned that dispute.*

14. *There can be no irreparable harm to the respondents in executing my order pending appeal. If, against all appearances, the proposed appeal is pursued further and succeeds, the applicants will have to leave the property. In any event, if the eviction application the respondents are presently pursuing against the applicants has the merit Mr. Cassim claims, then the respondents' true remedy seems to me to lie in the pursuit of that application. During argument Mr. Cassim informed me that the documents relevant to that application have been exchanged, and that the registrar has been asked to allocate a date for the hearing of the application. On the lead times currently applicable to opposed motions in this court, the respondents can presently expect to be allocated a date on or shortly after 1 June 2026 – long before any appeal against my order would be heard. “*

19. *What is not before us now is the question of which side is ultimately to succeed in the pending litigation relating to eviction. What might have been before us now is the important principle that no person may be evicted against his or her will without due process.*

20. Given that no appeal lies against the order of Wilson J of 12 February 2026, for the reasons given above, we may not consider the appeal and it must be removed from the roll.

21. Given that the order of Wilson J of 4 February 2026 was interim in nature, any attempt at an appeal by Humayl and Mr Ebrahim of that order would not suspend the order of 4 February 2026, for the reasons set out above, unless they successfully sought, under section 18(3), that Mr Lukhele, Ms Plaatjies and Mr Plaatjies not be allowed onto the premises pending appeal. The section 18(3) application by Mr Lukhele, Ms Plaatjies and Mr Plaatjies may have been unnecessary but that is water under the bridge.

22. On costs, Mr Magoma for Mr Lukhele, Ms Plaatjies and Mr Plaatjies sought costs, on a punitive scale, against Humayl and Mr Ebrahim. He also sought that these costs be paid also by Mr Kapp and his firm, the attorneys for Humayl and Mr Ebrahim. I would not order either punitive costs or costs to be paid personally by attorneys. While not all of the arguments raised deserved serious consideration, some did.

ORDER

1. The matter is removed from the roll.
2. The costs of Mr Lukhele, Ms Plaatjies and Mr Plaatjies, including those of counsel where so employed, are to be paid jointly and severally by Humayl Prop (Pty) Ltd and Mr Junaid Ebrahim. Scale C applies.



WRIGHT J



TWALA J

I agree



NOKO J

I agree

HEARD : 27 February 2026

DELIVERED : 3 March 2026

APPEARANCES :

APPELLANTS Mr M Mostert

Instructed by Kapp Attorneys Inc

tienie@kappas.co.za

litigation@kappas.co.za

Humayl and Mr Ebrahim

Mr T Magoma

Instructed by

Q Sato Attorneys Inc

Tshimangadzo@satoattorneys.co.za

Tshimangadzo1@gmail.com