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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No. A 105/2025

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: 12 March 2026

SIGNATURE:

In the matter between:

ZAISAN KAIHATSU (PTY) LTD

FIRST APPELLANT

MOKOENA, NOKUTHULA

SECOND APPELLANT

And

CASSIM, ZAHEER N.O.

FIRST RESPONDENT

SIMBITHI HOLDINGS (PTY) LTD

SECOND RESPONDENT

GROUP OF PERSONS ON AND/OR

THIRD RESPONDENT

OCCUPYING THE PREMISES SITUATED AT
4[...] S[...] AVENUE, BRYANSTON,
JOHANNESBURG

Coram: Millar et Swanepoel JJ et Mzuzu AJ

Heard on: 4 March 2026

Delivered: 12 March 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 08H00 on 12 March 2026.

ORDER

It is Ordered:

- [1] The appeal is dismissed.
 - [2] Each party is ordered to pay its own costs.
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JUDGMENT

MILLAR J (SWANEPOEL J & MZUZU AJ CONCURRING)

[1] This is an appeal in terms of s 18(4)(ii) of the Superior Courts Act¹ (the Act). It is an automatic appeal against the judgment of Makhoba J, who granted an order in terms of s 18(3) putting into operation an eviction order. The application in terms of s 18(3) was made at the same time as an application for leave to appeal had been brought against the eviction order by the parties against whom that order had been made.

[2] An interesting feature in the present application, is that the first and second appellant, as cited in the s 18(3) application and in this appeal, were not parties to the initial proceedings in the court *a quo*.

[3] Two issues arise in this appeal –

[3.1] Firstly, it is common cause that after the dismissal of the application for leave to appeal the eviction order, none of the respondents who were cited in those proceedings pursued any further application for leave to appeal. The eviction order, against the parties who were cited is accordingly, a final order.

[3.2] Secondly, whether in consequence of the fact that the eviction order is not subject to an appeal, notwithstanding the citing of the appellants for the first time in the s 18(3) application and the exercise of their right to appeal it, it is nonetheless moot because the eviction order is not subject to any appeal.

[4] Firstly, s 18 of the Act provides that—

“(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.

¹ 10 of 2013.

- (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] An order in terms of s 18(3) is ancillary to an order in terms of s 18(1). Unless the operation of a court order is suspended, or it is anticipated that an application for leave to appeal will be made which will have the effect of suspending it, no order in terms of s 18(3) will be of effect.

[6] It may be that pending an application for leave to appeal an order was made, as presumably was anticipated in the present instance, however once the initial application for leave to appeal was dismissed by the court a quo and no further

steps were taken to pursue a further application for leave to appeal to the Supreme Court of Appeal, the eviction order became a final order of court. The order granted in terms of s 18(3), being an ancillary order, whose effect depends upon an underlying appeal, simply does not have any life in the absence of such an appeal. This is what has occurred in the present instance and for this reason alone, the appeal falls to be dismissed.

- [7] Turning now to the second issue. The appellants were not specifically cited as respondents in the eviction application. They were joined for the first time in the s 18(3) application. The respondents argued that the appellants were by implication part of the group of persons cited as the third respondent in that application.
- [8] The third respondent was cited as “*GROUP OF PERSONS ON AND/OR OCCUPYING THE PREMISES SITUATED AT 4[...] S[...] AVENUE, BRYANSTON, JOHANNESBURG*. “*Inexplicably*, even though the appellants had presumably been identified as forming part of the “group” of persons cited as the third respondent, no application was made to join them to the eviction proceedings. Instead, they were cited for the very first time in the s 18(3) proceedings. This was an error because the order in terms of s 18(3) depends for its entire existence, upon there being an underlying order that is subject to appeal. It is self-evident that if a party is not cited, a court order cannot be made against them.
- [9] The respondents contend that the appellants were involved in the main action and fall within the “group” cited as the third respondent. In fact, they were not specifically cited and therefore, to do so for the first time in the application in terms of s 18(3) was incorrect.²

² *Costa v Korte and Another; In Re: Korte and Another v Mitrewood Products CC and Others* (19524 / 2019) [2022] ZAGPJHC 1245 (19 December 2022) at para 33.

- [10] Given that the respondents were aware of the existence of the appellants at the time when the application for leave to appeal the eviction order was granted, it was incumbent upon them, believing that the appellants were to be subject to the eviction order, to ensure that they were properly joined in those proceedings. Of course, if the appellants were always part of the persons cited in the eviction proceedings and had received proper notice of the proceedings, the order made would be effective against them. By the same token, if that order affected them, their remedy was to apply for leave to appeal that order. It did not occur.
- [11] The general principle is that a matter is moot when a judgment handed down by the court will have no practical effect on the parties.³ This frequently occurs when there is no existing or live controversy between the parties,⁴ as is the case in the present instance. Whether or not the appellants are part of the “group” or not, may be a matter for interpretation of the eviction order but is certainly not an issue insofar as the present appeal in terms of s 18(4)(ii) is concerned.
- [12] Accordingly, in the absence of a pending application for leave to appeal or appeal, the s 18(3) order is of no moment since there is no longer any live dispute between the cited parties to the eviction proceedings. It follows that the appeal against the s 18(3) order is moot.
- [13] In regard to costs, both parties approached this appeal under the misapprehension that the s 18(3) order was of effect. For this reason, it is appropriate that neither party should be mulcted with costs. It is for this reason that the costs order will be one where each party is to pay its own costs.
- [14] In the circumstances it is ordered:

³ *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* (104/2022) [2023] ZASCA 35 (31 March 2023) at para 12.

⁴ *Solidariteit* above at para 12.

- [14.1] The appeal is dismissed.
- [14.2] Each party is ordered to pay its own costs.

A MILLAR

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I AGREE,

JC SWANEPOEL

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I AGREE,

S MZUZU

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD ON:

4 MARCH 2026

JUDGMENT DELIVERED ON:

12 MARCH 2026

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