IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Not reportable

Case no:4657/25

In the matter between:

ISAGO @N12 DEVELOPMENT (PTY) LTD	**FIRST APPLICANT**
ISAGO PROPERTY HOLDINGS (PTY) LTD	**SECOND APPLICANT**

and

GOVERNMENT EMPLOYEES PENSION FUND	**SECOND RESPONDENT**

In re:

GOVERNMENT EMPLOYEES PENSION FUND	**APPLICANT**

and

ISAGO @N12 DEVELOPMENT (PTY) LTD	**FIRST RESPONDENT**
ISAGO PROPERTY HOLDINGS (PTY) LTD	**SECOND RESPONDENT**
PUBLIC INVESTMENT CORPORATION SOC LTD	**THIRD RESPONDENT**
THE REGISTRAR OF DEEDS, PRETORIA	**FIFTH RESPONDENT**
EDWARD NATHAN SONNENBERGS INCORPORATED	**SIXTH RESPONDENT**

Coram: Wessels AJ

Heard: 26 and 27 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 8 April 2026.

Summary: Practice and procedure – Rule 35(12) – production of documents – redacted documents – confidentiality – penalty clause – Rule 30A – production is the rule, conditions are the exception – R5 million penalty clause held

disproportionate – documents to be produced under confidentiality regime excluding penalty clause – Scale C costs awarded against GEPF.

Leave to appeal – Rule 6(5)(d)(iii) – conditional answering affidavit filed pending Rule 30A application – court a quo disregarded affidavit – proper course would have been postponement – reasonable prospects of success – 8 September orders prohibiting appeals held procedurally irregular – impact on section 34 rights – 15 September interdict granted without benefit of answering affidavit – Rule 30A subsequently granted – compelling reason under section 17(1)(a)(ii) – leave to appeal granted – direct appeal to Supreme Court of Appeal – interests of justice. Section 18(3) – suspension of interdict – R2 million monthly interest payments – interruption of cash flow – capital of R306 million remains ring-fenced – GEPF has recourse against PIC – exceptional circumstances established – suspension granted – costs of leave to appeal and Section 18 application to be costs in the appeal.

JUDGMENT

Wessels AJ

Introduction

[1] This matter concerns four applications for leave to appeal against a series of orders delivered by Masike AJ, on 4, 8, and 15 September 2025. Also before me is an application by the applicants in terms of s 18 of the Superior Courts Act 10 of 2013, seeking to suspend the operation and execution of the order of 15 September 2025 pending the finalisation of the appeal process ('Section 18 application').

[2] As will become apparent, there is a fifth application, namely the Rule 30A application launched by the applicants (collectively referred to as 'Isago') on 1 August 2025. The previous Court never heard this application. It remains pending. It is now before me, and I am required to determine it as part of the overall disposition of this matter.

[3] The main protagonists in these applications are the first applicant, Isago @N12 Development (Pty) Ltd, the second applicant, Isago Property Holdings (Pty) Ltd, as the first and second respondents (collectively, 'Isago') and the respondent, the Government Employees Pension Fund (the 'GEPF'). It should be noted that the fourth respondent in the main application, the City of Matlosana ('City of Matlosana'), although attending the proceedings, did not take part in the applications that were before me and indicated that their observance of the proceedings was focused on a possible involvement at a later stage.

[4] The four applications for leave to appeal, the Section 18 application, and the Rule 30A application were heard on 26 and 27 March 2026, following directives issued by the Hendricks JP made on 19 February 2026. I have had the benefit of comprehensive written heads of argument filed by all parties concerned, extensive oral submissions, and the voluminous record of the proceedings (about 5600 pages in extent) that served before the previous Court. The magnitude of issues that had to be considered in this matter cannot be overstated. The applications before me raised complex procedural and substantive issues that required careful consideration. Although I committed to handing down this judgment on an expedited basis, I elected to ensure that the parties received a fully reasoned judgment. For this reason, I regret that its delivery has taken longer than anticipated.

Procedural history

[5] The underlying dispute concerns a suite of agreements concluded in November 2018 between the GEPF, acting through its agent, the Public Investment Corporation ('PIC'), and Isago, relating to the acquisition of a 60% undivided share in land for a purchase consideration of R510 million. The sale of the land, to Isago by the City of Matlosana on 2 October 2007, was structured to transfer a tract of land (approximately 1,124 hectares along the N12 highway) for development, while ensuring the City of Matlosana retained control over the project's progression

[6] A part of the suite of agreements concluded between Isago, the GEPF and ENSAfrica consisted of an Escrow Agreement, which provided that R306 million of the purchase price of the land would be held in an escrow account administered by ENSAfrica, with the accrued interest to be paid to Isago upon a release notice duly executed by the GEPF.

[7] On 5 June 2025, the GEPF launched a two-pronged application ('main application'). Part A of the main application sought urgent interdictory relief pending the finalisation of a review application in Part B, in which the GEPF wants to set aside the entire suite of agreements entered into between Isago and the GEPF. The relief sought was an order interdicting ENSAfrica from disbursing any further interest payments to Isago. Isago seeks leave to appeal against the following orders of the previous court:

(a) The order of 4 September 2025 upholding a point raised by the GEPF in terms of Rule 6(5)(d)(iii) and directing that Isago's conditional answering affidavit be disregarded;

(b) The order of 4 September 2025 refusing Isago's application for a postponement;

(collectively referred to as the '4 September orders')

(c) The orders of 8 September 2025 prohibiting Isago from bringing applications for leave to appeal against the 4 September orders until the proceedings were completed, and further prohibiting Isago from appealing against that prohibition ('8 September orders'); and

(d) The order of 15 September 2025 granting the GEPF urgent interdictory relief ('15 September order').

[8] In the Section 18 application, Isago seeks an order suspending the operation of the 15 September 2025 interdict pending the appeal process.

[9] Lastly, in the Rule 30A application, Isago wants to compel the GEPF to produce the documents referred to in its founding affidavit in the main application, including the unredacted Investment Management Agreements ('the IMAs') between the GEPF and the PIC.

The facts

[10] The GEPF's case in the review application is that the 2018 sale of the immovable property was unlawful and irrational. It contends that Isago had purchased the land from the City of Matlosana in 2009 under an agreement that required Isago to develop the land and prohibited its sale to third parties except under specified conditions. It further contends that its decision to purchase was based on incorrect information provided to the PIC, that

necessary township approvals were not in place, and that the valuation of the property was fundamentally flawed.

[11] Part A of the main application, brought on an urgent basis, was set down for hearing on 8 August 2025. Isago did not file an answering affidavit by the deadline of 30 June 2025 set in Part A of the GEPF's notice of motion. Instead, it delivered three notices in terms of Rule 35(12) calling for the production of documents referred to in the GEPF's founding affidavit, including the IMAs between the GEPF and the PIC.

[12] On 16 July 2025, Isago served a notice in terms of Rule 30A calling upon the GEPF to comply with the Rule 35(12) notices. On 1 August 2025, Isago launched a Rule 30A application to compel production of the outstanding documents. That application sought an order that Isago would deliver its answering affidavit within 15 court days of the date on which the GEPF complied with the production of the documents sought in terms of Isago's Rule 35(12) notices.

[13] The GEPF did not file an answering affidavit to the Rule 30A application but did file a notice of intention to oppose. The Rule 30A application essentially remained unopposed, but the previous court had not heard it.

[14] When the main application initially served before Reddy J on 8 August 2025, logistical difficulties prevented it from proceeding. Reddy J directed that a complete set of papers be filed and postponed the main application. The main application was subsequently allocated to Masike AJ ('the previous Court') and was heard on 4, 8, and 15 September 2025.

[15] On 22 August 2025, Isago delivered a conditional answering affidavit in response to the main application, more than six weeks after the deadline imposed by the GEPF in Part A of its notice of motion. The affidavit was delivered subject to the reservation that Isago would supplement the answering affidavit once the relief sought in the Rule 30A application had been granted. No application for condonation accompanied the filing of the conditional answering affidavit. The GEPF responded to the conditional answering affidavit, on 28 August 2025, with a notice in terms of Rule 6(5)(d)(iii). Isago furthermore brought a postponement application applying to postpone the main application, premised on the production of the documents in terms of the Rule 30A application.

The 4 September orders

[16] On 4 September 2025, the previous court heard argument on the Rule 6(5)(d)(iii) notice and the postponement application and made two orders: that the conditional answering affidavit of Isago is disregarded; and dismissed the application for postponement with costs ('4 September orders').

[17] In the written reasons for the first order, handed down on 16 October 2025, the previous court, inter alia, held that Isago had not applied for condonation for the late filing of its answering affidavit, and that in the absence of such an application, that court could not come to its assistance. The previous court relied on the principle that where a party is out of time, it must apply for condonation.

[18] In the reasons for refusing the postponement, handed down on 8 October 2025, the previous court found that Isago's conduct was not bona fide and that the application was being used as a tactical manoeuvre to delay

the hearing of Part A. The court noted that Isago had elected to ignore the time periods set out in the notice of motion and had failed to bring its Rule 30A application on an urgent basis when the opportunity arose.

The 8 September orders

[19] When the proceedings resumed on 8 September 2025, Isago indicated that it intended to apply for leave to appeal against the 4 September orders. The previous court ruled that it was undesirable for a matter to be handled in such a manner, because the record will be incomplete and that the application for leave to appeal should be brought at the end of the matter. The previous court then made an order that Isago may not bring applications for leave to appeal against the judgment and orders made on 4 September 2025 until the proceedings then pending before that court were completed.

[20] When Isago indicated that it would seek leave to appeal against that very order, the previous court also prohibited that, stating that his earlier ruling would also apply.

The 15 September order

[21] On 15 September 2025, the previous court handed down its order on the merits of Part A. It found that the matter was urgent, that the GEPF had established a prima facie right to the relief sought, and that the requirements for an interim interdict had been satisfied. It was accordingly ordered that ENSAfrica be interdicted from disbursing any further interest payments to Isago pending the finalisation of the review application. Written reasons for this order were provided on 12 December 2025.

Rule 30A: application

[22] Before addressing the applications for leave to appeal, it is necessary to determine the Rule 30A application that is properly before this Court. Isago launched the Rule 30A application on 1 August 2025. It moves for an order in the following terms:

(a) An order that the GEPF shall, within 10 days, comply with the first Rule 35(12) notice served on 20 June 2025 by providing the applicants with an unredacted copy of the IMA concluded during March 2022 as referred to in paragraph 13.1 of the founding affidavit;

(b) An order that the GEPF shall, within 10 days, comply with the third Rule 35(12) notice served on 10 July 2025 by providing to the Isago with: the two addenda to the IMA entered into between the GEPF and the PIC in 2007; and the document referred to as 'the Investment Portfolio Structure, Risk Parameters, Benchmark and Fees'.

(c) An order that the documents be provided subject to a confidentiality regime as set out in the notice of motion.

(d) An order that Isago shall, within 15 court days of the date on which the GEPF complies with the production orders, deliver their answering affidavit in the main application.

[23] In the founding affidavit in support of the main application, the GEPF made extensive reference to the IMAs between it and the PIC. In this regard, paragraph 13.1 of the founding affidavit states:

'13.1 GEPF and the PIC concluded an Investment Management Agreement ('IMA') in terms of which PIC was granted power of attorney by GEPF, as an investment manager, with the authority to act as GEPF's agent in managing and administering GEPF's investment portfolio within the constraints specified in the IMA and specifically Annexures A & B, and subject to any policies of GEPF which are appended to the IMA. Given the confidentiality and sensitivity of the information in the IMA, the same will be made available to the above Honourable Court under a lock and key arrangement, if necessary.'

[24] On 20 June 2025, Isago served the first Rule 35(12) notice on the GEPF's attorneys. The notice called for production of, inter alia, the IMA referred to in paragraph 13.1 of the founding affidavit, the power of attorney granted by the GEPF to the PIC, the annexures to the IMA, and the policies appended thereto. On 24 June 2025, Isago served a second Rule 35(12) notice calling for production of further documents referred to in the founding affidavit, including the PAIA request and response, the 21 files prepared for counsel, and other documents. On 4 July 2025, the GEPF responded. It produced a redacted version of the 2022 IMA. No explanation was given for the redactions. No unredacted version was produced.

[25] On 10 July 2025, Isago addressed a letter to the GEPF's attorneys, noting that the redacted IMA was inadequate and that the founding affidavit had also referred to a 2007 IMA. Isago invited the GEPF to indicate the terms of the 'lock and key arrangement' it had envisaged in its founding affidavit. Simultaneously, they served a third Rule 35(12) notice calling for production of the 2007 IMA, its addenda, and the Investment Portfolio Structure document.

[26] On 14 July 2025, the GEPF responded. It stated that the request was not relevant to any triable issue in Part A or Part B of the GEPF's application.

It nevertheless produced a redacted version of the 2007 IMA. Again, no explanation was given for the redactions. On 16 July 2025, Isago served a Rule 30A notice on the GEPF, calling on it to comply with the first and third Rule 35(12) notices within 10 days. The GEPF did not comply. On 1 August 2025, Isago launched the Rule 30A application. The GEPF filed a notice of intention to oppose on 5 August 2025. However, it did not file an answering affidavit. For more than seven months, the application remained unopposed without an answering affidavit. In the meantime, on 29 July 2025, the GEPF's attorneys sent a draft 'lock and key agreement' to Isago's attorneys. The terms were restrictive in that they allowed for inspection only at the GEPF's offices, under supervision, with no copying permitted. Isago rejected this and proposed its own confidentiality regime.

[27] On 30 October 2025, the Hendricks JP made an order pursuant to an agreement between Isago and the GEPF. Paragraphs 3 to 5 of that order provided:

'3.THAT: In respect of Part B of the Review Application and subject to paragraphs 4 and 5 below, the First Respondent ('the GEPF'), will produce the documents in respect of which production is sought in the Rule 30A application, under a confidentiality regime to be agreed in writing between the GEPF, the First Applicant (Isago @N12) and the Second Applicant (Isago Holdings).

4. THAT: The GEPF will produce the documents in respect of which production is sought in the Rule 30A application, under the agreed confidentiality regime, within 10 days after the date on which the confidentiality regime is agreed in writing.

5. THAT: If the GEPF, Isago@N12 and Isago Holdings are unable to agree to the confidentiality regime, then any of the parties shall be entitled to approach the Office of

the Judge President for a preferential hearing of the interlocutory application on a date to be determined by the Office of the Judge President.'

[28] On 13 November 2025, Isago's attorneys wrote to the GEPF's attorneys, attaching a draft confidentiality agreement and requesting a response by 14 November 2025. The GEPF's attorneys responded on 14 November 2025, stating that it was considering the proposal and would revert as soon as possible. No substantive response followed. On 26 November 2025, Isago again requested a response. None was forthcoming.

[29] On 26 January 2026, Isago again wrote to the GEPF's attorneys, reminding them of the Judge President's order and requesting their changes to the confidentiality agreement by 22 January 2026. The letter warned that if no agreement was reached by 23 January 2026, Isago would approach the Judge President for a hearing date. In a letter dated 22 January 2026, the GEPF's attorneys responded. They provided a draft Non-Disclosure Agreement that contained, for the first time, a penalty clause. Clauses 9.1.2 and 9.1.3 provided:

'9.1.2 to demand payment of a penalty for such breach in the amount of R5 million from the Receiving Party

9.1.3 The penalty for breach shall be payable by the Receiving Party to the Disclosing Party within 15 days from the date on which the breach occurred.'

[30] The penalty clause had not appeared in any earlier draft. It was not mentioned in the GEPF's founding affidavit or in any of its previous correspondence. It appeared for the first time on 22 January 2026, more than seven months after the first Rule 35(12) notice and nearly six months after the Rule 30A application was launched.

[31] On 30 January 2026, Isago responded, raising concerns about the penalty clause and other aspects of the draft Non-Disclosure Agreement. Isago enquired whether the GEPF was insistent on retaining the penalty clauses. The GEPF responded on 5 February 2026, stating that '[t]he penalty is a subject of negotiation as between the parties' and inviting Isago to table a counter-proposal. On 4 March 2026, Isago wrote again, stating:

> 'Our clients view the imposition of the unreasonable conditions to the disclosure of documents which form the subject matter of the NDA, to constitute an ongoing oppression of our clients' legal entitlements and the continued insistence on the part of your client, to deprive ours of their rights to a fair hearing.
>
> For example, clauses 9.1.2 and 9.1.3 impose unreasonable conditions to our clients' entitlement to have access to the documents concerned.
>
> Our clients one last time implore your client to, without the imposition of draconian terms, make these necessary documents available.
>
> Please indicate whether your client will agree to the deletion of clauses 9.1.2 and 9.1.3 of the NDA to enable us to take final instructions.'

[32] No substantive response was received. On 10 March 2026, Isago approached Hendricks JP for a preferential hearing date. The matter was allocated to me for hearing on 26 and 27 March 2026. On 20 March 2026, three court days before the hearing, the GEPF delivered its answering affidavit in the Rule 30A application. The answering affidavit runs to 21 pages and sets out the GEPF's opposition.

Rule 30A: the legal framework

[33] Rule 35(12) of the Uniform Rules provides that any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or a transcription thereof.

[34] The purpose of Rule 35(12) was described in *Protea Assurance Co Ltd v Waverley Agencies CC* [1] as follows:

'That Rule plainly entitles a litigant to see the whole of a document or tape recording and not just the portion of it upon which his adversary in the litigation has chosen to rely. That entitlement, unlike the entitlement to general discovery for which Rule 35(1) provides, does not arise only after the close of pleadings in a trial action, or after both answering and replying affidavits have been filed in motion proceedings: it arises as soon as reference is made in the pleading or affidavit to a document or tape recording. It is inherent in that that a litigant cannot ordinarily be told to draft and file his own pleadings or affidavits before he will be given an opportunity to inspect and copy, or transcribe, a document or tape recording referred to in his adversary's pleading or affidavits.'

[35] The Supreme Court of Appeal ('SCA') has emphasised that a court's discretion in terms of Rule 35(12) is not unfettered. In *Caxton and CTP Publishers and Printers Limited v Novus Holdings Limited* [2], the SCA held that where documents are referenced, relevant, and not privileged, the application for their production must, in the ordinary course, necessarily

[1] *Protea Assurance Co Ltd v Waverley Agencies CC* 1994 (3) SA 247 (C) 249B-D.
[2] *Caxton and CTP Publishers and Printers Limited v Novus Holdings Limited* (219/2021) [2022] ZASCA 24; [2022] 2 All SA 299 (SCA) (9 March 2022) para 79.

succeed. Confidentiality alone does not permit refusal; it merely justifies the imposition of appropriate limits.

[36] This approach was affirmed by the Constitutional Court in *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as Amicus Curiae) In re: Masetlha v President of the Republic of South Africa and Another*[3], wherein it was held that where there is a claim of confidentiality over information sought to be discovered, a court has a discretion to impose appropriate limits to balance the competing interests.

[37] In *Democratic Alliance and Others v Mkhwebane and Another*[4] The SCA confirmed that documents in respect of which there is a direct or indirect reference in an affidavit or its annexures, that are relevant, not privileged and are in the possession of the party from which they are requested, must be produced. It was further held that where a party relies on a document in an affidavit, that reliance is a primary indicator of relevance. The right conferred by Rule 35(12) is a procedural right that underpins the constitutional right to a fair trial under s 34 of the Constitution. A party that refers to a document in an affidavit cannot refuse to produce it on the ground that it is confidential, unless it is privileged. Confidentiality is not a bar to production; it is a matter to be managed by an appropriate confidentiality agreement, not by a refusal to produce.

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[3] *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as Amicus Curiae) In re: Masetlha v President of the Republic of South Africa and Another* (Independent (CCT38/07) [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC) (22 May 2008) para 27.

[4] *Democratic Alliance and Others v Mkhwebane and Another* (1370/2019) [2021] ZASCA 18; [2021] 2 All SA 337 (SCA); 2021 (3) SA 403 (SCA) (11 March 2021) para 28.

[38] This procedural right gives effect to the constitutional guarantee of a fair trial under s 34 of the Constitution. A litigant cannot be expected to answer a case without sight of the documents on which the opposing party relies. In *Vodacom (Pty) Ltd v Makate*[5] the Constitutional Court emphasised the importance of procedural fairness in ensuring that a litigant's right to a fair hearing is not hollowed out by procedural obstruction.

Rule 30A: analysis

[39] The GEPF's founding affidavit makes extensive reference to the IMAs. The IMAs are central to its case. The founding affidavit in support of the main application states that the IMA constitutes the necessary authority for the PIC to conclude transactions on behalf of GEPF. The GEPF applies for relief against the PIC in Part B. To this extent, the IMAs are plainly relevant. The GEPF has produced only redacted versions of the IMAs and has provided no explanation for the redactions and has not claimed privilege. It has not identified any valid objection to production.

[40] The GEPF's assertion that the IMAs are not relevant to any triable issue in Part A or Part B is untenable. The IMAs govern the relationship between the GEPF and its agent, the PIC. The GEPF seeks to set aside the transactions based on the PIC's alleged negligence and misconduct. The IMAs define the scope of the PIC's authority and the terms of its mandate. On this pretext, the IMAs are relevant. Even if the IMAs were not relevant to Part A (a proposition I need not decide), they are undoubtedly relevant to Part B. The GEPF cannot

[5] *Vodacom (Pty) Ltd v Makate* [2025] ZACC 13.

pick which parts of its application the IMAs are relevant to. As it has referred to the IMAs, it must produce them.

[41] The GEPF is not doing Isago a favour by agreeing to produce the documents, it is fulfilling a legal obligation. As was held in *Protea Assurance*[6], the right to inspect arises as soon as reference is made to the document. It is not conditional on the disclosing party's willingness to do so.

[42] The parties have agreed on all aspects of the confidentiality regime except two clauses: 9.1.2 and 9.1.3, which impose a R5 million penalty for breach. The GEPF argues that the penalty clause is an appropriate mechanism to protect its commercially sensitive information. Isago argue that it is draconian and unreasonable.

[43] In my view, the penalty clause is not appropriate in the context of court-ordered discovery. Firstly, the GEPF already has adequate protection, as set out in clause 9.1.1 of the Non-Disclosure Agreement, which provides for interdictory relief. If the Isago breach the confidentiality regime, the GEPF can approach the court for an interdict. Any order made by this court is enforceable by contempt proceedings. The GEPF also has a claim for damages if it suffers loss as a result of a breach. The penalty clause adds nothing to these remedies except a financial deterrent. Secondly, the penalty clause is disproportionate. R5 million is a substantial sum, not linked to any estimate of potential loss. Any breach would trigger it, however insignificant. This is not a liquidated damages clause that represents a pre-estimate of loss; it is a penalty in the true sense. Thirdly, the timing of the penalty clause is telling. It was not mentioned in the GEPF's founding affidavit, nor was it

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[6] *Op cit* fn1.

mentioned in its initial 'lock and key' proposal of 29 July 2025. It appears for the first time on 22 January 2026, more than seven months after the first Rule 35(12) notice. This casts doubt over the GEPF's bona fides in introducing the penalty clause as a genuine protection measure. Fourthly, the GEPF's delay in producing the documents undermines its claim to equitable relief. Isago have been requesting these documents since June 2025, but the GEPF has resisted throughout. It has now, on the eve of the hearing, introduced a penalty clause as a condition of production. These actions of the GEPF do not bear the hallmarks of good-faith negotiations.

[44] The principle laid down in *Caxton*[7] is that production is the rule, conditions are the exception. Where conditions are imposed, they must be reasonable and necessary. A penalty clause of R5 million for breach of a confidentiality regime in litigation is not necessary. The existing remedies are sufficient. Where conditions are imposed, they must be reasonable and necessary, and a court must be careful not to place undue or unnecessary limits on a litigant's right to a fair hearing.

[45] The GEPF filed a notice of intention to oppose on 5 August 2025 and filed an answering affidavit only on 20 March 2026. The application is therefore opposed. However, the opposition is narrow in that the GEPF does not oppose the production of the documents, it opposes only the deletion of the penalty clause. The delay in producing the documents and the late introduction of the penalty clause are factors that this Court may take into account in exercising its discretion under Rule 30A. In substance, the GEPF

[7] *Op cit* fn 2.

seeks to impose an unjustified condition on production. Isago is entitled to production without that condition.

[46] The parties have agreed on all other aspects of the confidentiality regime. The agreed terms are set out in Isago's draft of 13 November 2025, which was annexed to the Rule 30A application. The GEPF has not objected to any of those terms except the penalty clause.

[47] In these circumstances, it is appropriate to order that the documents be produced under the confidentiality regime proposed by Isago, which excludes the penalty clause.

Rule 30A: costs

[48] The GEPF has delayed the production of these documents for nine months. It failed to file an answering affidavit in the Rule 30A application for more than seven months and introduced the penalty clause late, prolonging the resolution of the dispute. It has caused Isago to incur unnecessary costs.

[49] In these circumstances, the GEPF should pay the costs of this application as Isago has been substantially successful. The costs should be on Scale C, as the matter is complex and has demanded the attention of senior counsel.

Application for leave to appeal: the 4 September order

[50] Having determined the Rule 30A application, I now turn to the applications for leave to appeal. The first two applications concern the 4

September order: the order disregarding Isago's conditional answering affidavit, and the order refusing Isago's postponement application.

[51] In my view, the determination of the Rule 30A application alters the backdrop against which these orders must be assessed. Isago's conditional answering affidavit was filed on 22 August 2025, more than six weeks after the deadline of 30 June 2025. On the face of it, this was clear non-compliance. However, the conditional answering affidavit was filed in the context of a pending, unopposed Rule 30A application that expressly sought an extension of time for the delivery of the answering affidavit. The legal principles governing this situation are derived from *Potpale Investments (Pty) Ltd v Mkhize*[8] and *Caxton*[9]. In *Potpale,* it was held that the delivery of a Rule 35(12) notice does not automatically suspend time limits. The court stated the following:

'The delivery of the rule 35 notice did not suspend the period in which the defendant was obliged to deliver a plea or other document referred to in rule 22. When he was confronted with a rule 26 notice, he was put to an election. He could either have done his best to plead and so have defeated the bar or he could have applied to extend the time within which to plead and to compel production of the documents for that purpose. If he had pleaded, it would have been open to him to apply to compel delivery of the documents and, if so advised, to thereafter seek to amend his plea.'

[52] In *Caxton*[10] the SCA approved the mechanism for launching a Rule 30A application coupled with an express prayer seeking an extension of time. The court stated at paragraph 78:

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[8] *Potpale Investments (Pty) Ltd v Mkhize* (11711/2014) [2015] ZAKZPHC 55; 2016 (5) SA 96 (KZP) (15 December 2015) para 23.
[9] *Op cit* fn 2.
[10] *Op cit* fn2 para 85.

'There is nothing in the language of rules 35(12) and 30A to suggest that once a demand has been made for the production of the documents to which the rule 35(12) notice relates, the party seeking such documents is excused from complying with the timeframes prescribed in terms of Uniform Rule 6(5)(d)(ii)[66] or 6(5)(e),[67] as the case may be. In Potpale Investments (Pty) Ltd v Mkhize,[68] Gorven J rightly observed that the delivery of a notice in terms of rule 35(12) or (14) does not suspend the period referred to in rule 26 or any other rule. Whilst there is much to be said for the view expressed by the learned Judge, sight should however not be lost of the fact that it is open to the court, in the exercise of its discretion, to extend the time periods prescribed in terms of the rules whenever a proper case therefor has been made out by the party seeking such indulgence. Indeed, this is what Uniform Rule 27 itself contemplates.'

[53] Isago seem to have done precisely what *Caxton* endorsed. It filed a Rule 30A application that included an express prayer for an extension of time. The GEPF did not oppose it. The application was pending before the same court when the previous Court made the orders of 4 September 2025.

[54] Isago's argument that the previous court was aware of the Rule 30A application and that it was unopposed is compelling. The GEPF argues that the Rule 30A application was not set down for hearing and therefore could not be considered pending in a procedural sense. This is a compelling counterargument, but it does not address the fundamental point, namely that the previous court was seized of a formal, unopposed application for an extension of time. The proper course, in my view, would have been to postpone the main application pending the determination of the Rule 30A application.

[55] Instead, the previous court disregarded Isago's conditional answering affidavit without considering the existence of the pending application for

extension of time, and refused Isago's postponement application. In my opinion, Isago has reasonable prospects of success on appeal.

[56] Accordingly, leave to appeal against the 4 September orders is granted.

The application for leave to appeal: the 8 September orders

[57] The 8 September orders are controversial. While I fully appreciate the legitimate concern of the previous court about avoiding piecemeal litigation and ensuring that appeals do not disrupt the orderly progress of proceedings, the orders made went significantly further. The orders of 8 September 2025 prohibited Isago from bringing applications for leave to appeal against the 4 September order until the proceedings were completed and further prohibited Isago from appealing against that prohibition. The right of appeal is a fundamental aspect of the right of access to courts enshrined in s 34 of the Constitution. A court has the power to control its own processes and to discourage piecemeal litigation. In *Take & Save Trading CC and Others v The Standard Bank of SA Ltd* [11], the SCA remarked:

'A judge is an administrator of justice, he is not merely a figure head, he has not only to direct and control the proceedings according to recognised rules of procedure but to see that justice is done.' The same applies to civil proceedings: a judge is not simply a 'silent umpire'.A judge is not a mere umpire to answer the question "How's that?" Lord Denning once said. Fairness of court proceedings requires of the trier to be actively involved in the management of the trial, to control the proceedings, to ensure that public and private resources are not wasted, to point out when evidence is irrelevant, and to refuse to listen

[11] *Take & Save Trading CC and Others v The Standard Bank of SA Ltd* (21/2003) [2004] ZASCA 1; 2004 (4) SA 1 (SCA); [2004] 1 All SA 597 (SCA) (27 February 2004) para 2.

to irrelevant evidence. A supine approach towards litigation by judicial officers is not justifiable either in terms of the fair trial requirement or in the context of resources.'

[58] The SCA further remarked[12]:

'In any event, an appeal *in medias res* in the event of a refusal to recuse, although legally permissible, is not available as a matter of right and it is usually not the route to follow because the balance of convenience more often than not requires that the case be brought to a conclusion at the first level and the whole case then be appealed.'

[59] This statement recognises that while appeals in the course of proceedings are not generally encouraged, they are not prohibited. In my opinion, the 8 September orders did not merely regulate the hearing of the application(s) before the previous court, they prohibited Isago from bringing such applications for leave to appeal at all. When Isago indicated that it would seek leave to appeal against that prohibition, the previous court also prohibited such an appeal. The 8 September orders may generally impact on Isago's constitutional rights entrenched in s 34 of the Constitution. Isago makes a strong argument for the position that these orders were procedurally irregular and have reasonable prospects of success on appeal.

[60] Resultantly, leave to appeal against the 8 September orders is granted.

The application for leave to appeal: the 15 September order

[61] The 15 September order granted the GEPF urgent interdictory relief in terms of Part A of its application, interdicting ENSAfrica from disbursing any further interest payments to Isago pending the finalisation of the review

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[12] *Op cit* fn 11 para 4.

proceedings. The GEPF contends that the interdict was correctly granted on the merits. It argues that it established a prima facie right to protect pension fund assets, that it would suffer irreparable harm if the interest payments continued, that the balance of convenience favoured preservation of the funds and that it had no alternative remedy.

[62] However, the 15 September order was premised on the procedural framework brought about by the earlier orders. Isago's conditional answering affidavit was disregarded. Its Rule 30A application (which sought an extension of time) was not taken into account and its postponement application was refused. The result was that the previous court hearing, Part A, did so without the benefit of Isago's version of the facts.

[63] Having now granted the Rule 30A application, Isago will, in due course, be entitled to file its answering affidavit. The foundation upon which the 15 September 2025 interdict was granted may be fundamentally altered. There is therefore a compelling reason, within the meaning of section 17(1)(a)(ii) of the Superior Courts Act, why the appeal should be heard. In any event, Isago has reasonable prospects of success on appeal against the 15 September order.

[64] In the result, leave to appeal is granted.

Appeal forum

[65] Given the complexity of the legal issues raised, the substantial public interest in the proper administration of justice, and the fact that this matter involves novel questions regarding the interplay between Rule 30A and Rule 6(5)(d)(iii), I am of the view that it is appropriate for any appeal to lie directly

to the Supreme Court of Appeal rather than to the Full Court of this Division. The interests of justice favour a direct appeal to the Supreme Court of Appeal, which is best placed to provide definitive guidance on these procedural questions and to ensure the expeditious finalisation of this protracted litigation. In terms of section 16(1)(a) of the Superior Courts Act, read with section 17(2)(d), leave to appeal to the Supreme Court of Appeal is accordingly granted

Section 18 application

[66] Isago applies for an order suspending the operation and execution of the 15 September 2025 interdict pending the finalisation of the appeal process. The interdict, granted by the previous Court, restrains Edward Nathan Sonnenbergs Incorporated from disbursing any further funds from the escrow account to Isago, effectively ceasing monthly interest payments of approximately R2 million.

Section 18 application: legal framework

[67] Section 18(1) of the Superior Courts Act[13] provides that 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. This is the default position. Section 18(3) permits a court to order otherwise, that is, to put an order into operation pending appeal, only if the party seeking such relief proves, on a balance of probabilities:

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[13] Superior Courts Act 10 of 2013.

(a) that it will suffer irreparable harm if the court does not so order; and

(b) that the other party will not suffer irreparable harm if the court so orders.

[68] In *Incubeta Holdings and Another v Ellis and Another*[14] the court held that the following in relation to exceptional circumstances:

'Necessarily, in my view, exceptionality must be fact-specific. The circumstances which are or may be 'exceptional' must be derived from the actual predicaments in which the given litigants find themselves. I am not of the view that one can be sure that any true novelty has been invented by Section 18 by the use of the phrase. Although that phrase may not have been employed in the judgments, conceptually, the practice as exemplified by the text of Rule 49(11), makes the notion of the putting into operation an order in the face of appeal process a matter which requires particular ad hoc sanction from a court. It is expressly recognised; therefore, as a deviation from the norm, ie an outcome warranted only 'exceptionality'.

[69] Although the enquiry is fact-based as set out in *Incubeta*, the SCA in *University of the Free State v Afriforum and Another*[15] clarified that the enquiry is not a mechanical one. The prospects of success on appeal are relevant to the question of whether exceptional circumstances exist, and the court must weigh all relevant factors, including the nature of the relief granted and the potential for prejudice to either party. The court stated the following:

'It is further apparent that the requirements introduced by ss 18(1) and (3) are more onerous than those of the common law. Apart from the requirement of 'exceptional circumstances' in s 18(1), s 18(3) requires the applicant 'in addition' to prove on a balance of probabilities that he or she 'will' suffer irreparable harm if the order is not made, and that the other party

[14] *Incubeta Holdings and Another v Ellis and Another* (2013/ 30879) [2013] ZAGPJHC 274; 2014 (3) SA 189 (GSJ) (16 October 2013) para 22.

[15] *University of the Free State v Afriforum and Another* (929/2016) [2016] ZASCA 165; [2017] 1 All SA 79 (SCA); 2018 (3) SA 428 (SCA) (17 November 2016) para 10.

'will not' suffer irreparable harm if the order is made. The application of rule 49(11) required a weighing-up of the potentiality of irreparable harm or prejudice being sustained by the respective parties and where there was a potentiality of harm or prejudice to both of the parties, a weighing-up of the balance of hardship or convenience, as the case may be, was required. Section 18(3), however, has introduced a higher threshold, namely proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted and conversely that the respondent will not, if the order is granted.'

[70] *Autumn Skies Resources and Logistics (Pty) Ltd v Genet Manganese (Pty) Ltd In re: Genet Manganese (Pty) Ltd v Minister of Mineral Resources and Others*[16] the full court emphasised that the irreparable harm enquiry is a sine qua non: if either question is answered in the negative, the existence or non-existence of exceptional circumstances is moot. Only once the irreparable harm hurdle is crossed does the court proceed to consider whether exceptional circumstances justify the deviation.

Section 18 application: nature of the 15 September order

[71] Before considering the section 18 application, it is necessary to determine the nature of the order that is the subject of the applications for leave to appeal. Mr Konstantinides SC, who appeared for Isago, submitted that this Court must expressly state whether it finds the 15 September order to be final in effect or interlocutory in nature. I agree that this determination is essential, as it concerns both the test for leave to appeal and the procedural consequences for the s 18 application.

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[16] *Autumn Skies Resources and Logistics (Pty) Ltd v Genet Manganese (Pty) Ltd In re: Genet Manganese (Pty) Ltd v Minister of Mineral Resources and Others* (47060/2017) [2019] ZAGPPHC 559 (25 October 2019) para 26.

[72] The 15 September order, granted by the previous court, interdicts and restrains ENSAfrica from disbursing any further portion of the funds held under its control and administration pursuant to the Escrow Agreement to Isago or any other party pending the finalisation of the review application in Part B. Of importance is that the order does not dispose of the review application itself. It is an interdict pendente lite, granted to preserve the status quo and protect the funds pending the final determination of the parties' rights in the review proceedings.

[73] In *Zweni v Minister of Law and Order*[17], the SCA held that for an order to be appealable as a judgment or order, it must have three attributes: it must be final in effect and not susceptible to alteration by the court of first instance; it must be definitive of the rights of the parties; and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. Importantly, as the *Constitutional Court held in National Treasury v Opposition to Urban Tolling Alliance* [18], the test for appealability is now included within the broader interests of justice standard. An interim order may be appealable even if it does not possess all three attributes, if the interests of justice so require.

[74] Applying these principles, I find that the 15 September 2025 order is interlocutory in nature as it does not ultimately determine the parties' rights. It does not dispose of the review application, and it is capable of being altered by the court of first instance as circumstances change. The aforementioned are all hallmarks of an interlocutory order.

[17] *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) 532I-533A.
[18] *Constitutional Court held in National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) para 25.

[75] However, an interlocutory order may nonetheless be appealable if the interests of justice require it. In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*[19], the Constitutional Court held that an interim order restricting free speech was sufficiently invasive and far-reaching that it was in the interests of justice for the grant of the interim order to be treated as a decision for the purposes of s 16(1)(a) of the Superior Courts Act. The court found that an interdict restricting free speech constitutes a grave intrusion on a constitutional right, and where there is a likelihood that the life of the interim interdict might be extended even longer than it had already existed, it was sufficiently invasive and far-reaching that it was in the interests of justice for the grant of the interim order to be appealable[20].

[76] Similarly, in the present application, the interdict halts the payment of the monthly interest amounting to approximately R2 million. It affects Isago's ability to meet its ongoing obligations and to continue its development projects. The interdict has been in place since September 2025, and absent an appeal, it would remain in place pending the finalisation of the review proceedings, a process that could take many months, if not years. In these circumstances, the interests of justice dictate that the order be appealable, notwithstanding its interlocutory nature.

[77] Having found that the order is interlocutory but appealable in the interests of justice, the test for leave to appeal under s 17(1)(a) of the Superior

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[19] *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* (CCT 39/21) [2022] ZACC 34; 2022 (12) BCLR 1521 (CC); 2023 (1) SA 353 (CC) (22 September 2022).
[20] *Ibid* para 46.

Courts Act applies. I have already granted leave to appeal, having found reasonable prospects of success and compelling reasons to hear the appeal.

[78] Because the order is interlocutory and not final, the default position under s 18(2) of the Superior Courts Act is that its operation and execution are not suspended pending the appeal. Isago accordingly bears the onus in terms of s 18(3) to prove that it will suffer irreparable harm if the interdict is not suspended, and that the GEPF will not suffer irreparable harm if it is suspended. I turn now to consider that application.

[79] As I have already granted leave to appeal in respect of the 15 September 2025 interdict, the question now is whether that interdict should be suspended pending the appeal. In resolving this question, I must apply the two-stage test set out above.

Section 18 application: irreparable harm to Isago

[80] Isago argues that it will suffer irreparable harm if the interdict is not suspended. The interest payments that have been halted were its primary source of income. The cessation of these payments, it submits, has halted development projects, eliminated employment opportunities, and left it unable to meet ongoing expenses.

[81] In *Masinga and Others v Chief of the South African National Defence Force and Others*[21] it was held that dire personal financial circumstances, including the threat of losing houses and motor vehicles, are sufficient to establish irreparable harm for purposes of s 18(3). In brief, the court

[21] *Masinga and Others v Chief of the South African National Defence Force and Others* (51/2021) [2022] ZASCA 1; [2022] 4 BLLR 305 (SCA); (2022) 43 ILJ 805 (SCA); [2022] 2 All SA 399 (SCA) (5 January 2022).

recognised that the applicants, who were members of the SANDF, were in a disadvantageous position compared to other employees because they were excluded from the speedy dispute-resolution procedures provided for in the Labour Relations Act. This, in itself, constituted exceptional circumstances warranting the enforcement of the order pending appeal.

[82] The present case is analogous. Isago has placed evidence before this Court that it is a development company whose operations depend on the regular flow of funds from the escrow account. The interdict has effectively halted its ability to meet its obligations. While the GEPF disputes the extent of the alleged harm, I accept that the interruption of cash flow of this magnitude, approximately R2 million per month, constitutes irreparable harm in the sense contemplated by s 18(3). In my assessment, I also take into account that Isago has been receiving interest payments since shortly after the conclusion of the sale agreement with the GEPF – a period of more than 6 years. If the interdict remains in place pending the appeal, and Isago ultimately succeeds in the review proceedings, the harm it has suffered during the interim period cannot be undone.

Section 18 application: absence of irreparable harm to GEPF

[83] The GEPF argues that it will suffer irreparable harm if the interdict is suspended, as the funds may not be recoverable if the review succeeds. It points to Isago's refusal to provide security or guarantees, and argues that the indemnity from the PIC does not cover recovery of the principal amount.

[84] I do not agree with this submission. The capital amount of R306 million remains ring-fenced in the escrow account. No part of the capital has been disbursed to Isago. The interdict, to which I have granted leave to appeal,

prevents further disbursements of interest. If the interdict is suspended, the interest payments would resume. But critically, they would accrue to the benefit of whichever party ultimately succeeds in the review proceedings. If the GEPF succeeds in the review, it will have recourse to the capital amount. If Isago succeeds, it will be entitled to the accrued interest.

[85] Moreover, as I have found herein on the Rule 30A issue, the GEPF has recourse against the PIC under the IMAs. While the full scope of the indemnity may be disputed, the GEPF has not established that it would have no recourse at all. For the purposes of the Section 18 application, it is sufficient to find that the GEPF has some recourse against the PIC and that the capital amount remains preserved. This supports the finding that the GEPF will not suffer irreparable harm if the interdict is suspended pending appeal.

Section 18 application: exceptional circumstances

[86] Having found that Isago will suffer irreparable harm if the interdict is not suspended, and that the GEPF will not suffer irreparable harm if it is suspended, I turn to the question of whether exceptional circumstances exist to justify the deviation from the default position.

[87] The following circumstances, taken together, are exceptional:

(a) The GEPF has been directed to produce the unredacted Investment Management Agreements and related documents under a confidentiality regime. These documents are central to the review proceedings. Isago has not yet had the opportunity to file its answering affidavit in the review application. The Rule 30A judgment will now clear the path for that to occur.

(b) The Rule 30A judgment has altered the procedural landscape. The GEPF's conduct in withholding the documents and in introducing the penalty clause as a condition of production has caused significant delay. It would be unjust to maintain the interdict pending the appeal when Isago has not yet been afforded a full opportunity to answer the case against it.

(c) The capital amount remains secure. The GEPF's concern about recoverability is addressed by the preservation of the R306 million in the escrow account. The suspension of the interdict prejudices no party, as the interest payments, if they resume, will simply accrue to the benefit of the ultimate successful party.

[88] In *Incubeta Holdings*[22], the court held that the forfeiture of substantive relief due to procedural delays constitutes exceptional circumstances warranting the operation of an order pending appeal. In that case, a restraint of trade order was granted pending the appeal because the short duration of the restraint would otherwise expire before the appeal process was exhausted. The court stated the following[23]:

'In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant a consideration of putting the order into operation. The forfeiture of substantive relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of 'exceptional circumstances.'

[89] The same principle applies in the present application. If the interdict remains in place pending the appeal, Isago will be deprived of the benefit of the interest payments for a prolonged period. Even if it ultimately succeeds

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[22] *Op cit* fn14.
[23] *Op cit* fn14 para 27.

in the review, there is a strong possibility that the harm caused by the interruption of its cash flow might not be fully compensable in damages. This is precisely the kind of predicament that s 18(3) is designed to address.

Section 18 application: conclusion

[90] Having granted leave to appeal, and having determined that Isago is entitled to file its answering affidavit after production of the documents, the balance of convenience favours suspension of the interdict pending the appeal. The capital amount of R306 million remains ring-fenced. If interest payments resume, they will accrue to the benefit of whichever party ultimately succeeds in the review proceedings. The GEPF, if it succeeds in the review, will have recourse to the capital amount and to the PIC under the IMAs. The Section 18(3) application is accordingly granted.

Costs

[91] The GEPF has opposed all applications for leave to appeal and has been unsuccessful in its opposition. However, there is no clear aspect of the facts before me to justify deviating from the usual rule that the costs of the application for leave to appeal should be costs in the appeal. The Section 18 application is intimately connected to the applications for leave to appeal. Both arise from the same underlying dispute and seek relief that is contingent on the outcome of the appeal process. In these circumstances, the costs of the Section 18 application shall also be costs in the appeal.

Order

[92] In the premises, I make the following order:

A. Rule 30A application

1. Production of Documents

   a. The respondent shall, within 10 days of the date of this order, comply with the first Rule 35(12) notice served by the applicants on 20 June 2025, by providing the applicants with an unredacted copy of the Investment Management Agreement concluded during March 2022 as referred to in paragraph 13.1 of the founding affidavit deposed to by Mr Musa Mabesa on 26 May 2025.

   b. The Respondent shall, within 10 days of the date of this order, comply with the third Rule 35(12) notice served by the applicants on 10 July 2025, by providing to the applicants:

      i. The two addenda to the Investment Management Agreement entered into between the Respondent and the Public Investment Corporation SOC Ltd in 2007, as referred to in paragraph 7.2 of the statement of Mr Abel Sithole; and

      ii. The document referred to as 'the Investment Portfolio Structure, Risk Parameters, Benchmark and Fees' as referred to in paragraph 7.3 of the statement of Mr Abel Sithole.

2. Confidentiality Regime

a. The documents referred to in paragraphs 1.1 and 1.2 above shall be provided subject to the confidentiality regime set out in annexure 'K' to the founding affidavit in the Rule 30A application, which regime is hereby adopted as an order of court.

b. For the avoidance of doubt, clauses 9.1.2 and 9.1.3 of the draft Non-Disclosure Agreement circulated by the respondent (GEPF) on 22 January 2026 are not part of the confidentiality regime and shall not be enforced.

3. Extension of Time

a. The applicants shall, within 15 court days of the date on which the respondent complies with paragraphs 1.1 and 1.2 above, deliver their answering affidavit in the main application under case number 4657/2025.

4. The respondent shall pay the costs of this application on Scale C.

B. Applications for leave to appeal

5. Leave to appeal is granted to the applicants against the whole of the order made by Masike AJ on 4 September 2025 in terms of which

the conditional answering affidavit of the applicants was disregarded.

6. Leave to appeal is granted to the applicants against the whole of the order made by Masike AJ on 4 September 2025 dismissing the applicants' application for postponement.

7. Leave to appeal is granted to the applicants against the whole of the orders made by Masike AJ on 8 September 2025, prohibiting the applicants from bringing applications for leave to appeal until the proceedings are completed and prohibiting them from appealing against that prohibition.

8. Leave to appeal is granted to the applicants against the whole of the order made by Masike AJ on 15 September 2025, granting the relief sought in Part A of the main application.

9. Leave to appeal, as granted in paragraphs 5 to 8 herein is granted to the Supreme Court of Appeal.

10. The costs of the applications for leave to appeal shall be costs in the appeal.

C. Section 18 application

11. The operation and execution of the order made by Acting Judge Masike on 15 September 2025 are hereby suspended with immediate effect pending the finalisation of the appeal process.

12. Costs shall be costs in the appeal.

[redacted]

M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For applicants	:Adv N Konstantinides SC
Instructed by	:Van Hulsteyns Attorneys
	:Sandown
	:c/o Labuschagne Attorneys
	:Mahikeng
For second respondent	:Adv C Erasmus SC
	:Adv T Motau SC
	:Adv R Tshetlo
Instructed by	:Norton Rose Fulbright South Africa Inc
	:Sandton
	:c/o Tlou Attorneys
	:Mahikeng

For fourth respondent	:Adv N Laubscher
	:Lourens Bezuidenhout Inc
	:Klerksdorp
	:c/o Maree & Maree Attorneys
	:Mahikeng