IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 2026-024951

In the matter between:

BODY CORPORATE ASSISTANCE GAUTENG (PTY) LTD — Applicant

and

REINIER JANSE VAN RENSBURG — First Respondent

HARTLAND LIFESTYLE ESTATE HOMEOWNERS' ASSOCIATION — Second Respondent

Corum: Lekhuleni J

Summary: Section 18 (1) application for the immediate enforcement of a judgment – Applicant establishing exceptional circumstances and irreparable harm it will suffer if judgment is not enforced – Application granted.

Heard: 2 April 2026

Delivered (electronically): 13 April 2026

JUDGMENT

<u>LEKHULENI J:</u>

Introduction

[1] This is an application brought on an urgent basis in terms of Rule 6(12) of the Uniform Rules of Court, in which the applicant seeks relief that the court order

granted by Magona-Dano AJ dated 12 February 2026 interdicting and restraining the first respondent from taking employment with the second respondent and of using the applicant's confidential information be enforced pending the first respondent's leave to appeal application launched on 26 February 2026 and all appeals in terms of s 18(3) of the Superior Courts Act 10 of 2013 ('the Superior Courts Act'). In addition, the applicant sought an order that the respondents be ordered to pay the costs of the application jointly and severally in the event of opposition by the respondents.

[2] Both respondents opposed the applicant's application. They mainly averred that there is no reason to depart from the ordinary rule that applications for leave to appeal suspend the order appealed against. The respondents stated that the applicant will suffer no prejudice if the order is suspended and that the first and second respondents will suffer irreparable harm if it is not. Both respondents noted that they have excellent prospects of success on appeal.

The Parties

[3] The applicant is a Body Corporate Assistance ('BCA'), a company duly incorporated in terms of the company laws of the Republic of South Africa and having its principal place of business at St John's Street, Dormehls Drift, George. BCA is a property management and body corporate services company that helps sectional title schemes and homeowners' associations manage their affairs. It acts as a professional managing agent for these types of communities, focusing on both administrative and financial management tasks.

[4] The first respondent, Reinier Janse Van Rensburg ('Reinier') is an adult male, estate manager residing at Hartland Lifestyle estate, Hartenbos, George. Reinier was formally employed by BCA as a managing agent.

[5] The second respondent is Hartland Lifestyle Estate Homeowners' Association ('Hartland'), a former client of BCA, having its principal place of business at Hartland Lifestyle Estate, Mossel Bay, Western Cape. It comprises over 600 homes, including

a retirement village. There is a homeowner's association and three separate title schemes on the estate.

Background facts

[6] BCA employed Reinier as an estate manager on 02 December 2021. His duties were to look after all aspects of security, manage the gardens, staff, and cleaners, manage their service providers, perform handyman tasks, and enforce the rules of the Hartland estate. In summary, Reinier oversaw the day-to-day operations of Hartland. Reinier's employment with the applicant included a restraint-of-trade provision.

[7] In terms of the restraint of trade clause, Reinier agreed that he shall not within a period of two years of termination of his employment contract, enter into any management agreement or poach or otherwise contact the clients of his employer (BCA) and shall not enter into any agreement with any client of the employer even in the event such clients wish to enter into an agreement with him. In addition, the restraint clause provided that Reinier shall not directly or indirectly, for a period of two years after the termination date of his employment, either solely or jointly or on behalf of any person, corporation, company or other legal entity, be employed by or act as an agent or representative for any client of his employer. Simply put, the restraint of trade undertaking prevented Reinier from taking up employment with any client of BCA, including Hartland, for a period of two years from the date of termination of employment.

[8] Up until November 2025, BCA assisted Harland with its management functions, including administering its bank accounts, receiving levies, paying service providers, enforcing management and conduct rules, taking maintenance and repairs, taking out insurance, maintaining statutory forms, arranging annual general meetings and other meetings. Expressed differently, the Hartland was a client of BCA.

[9] On 02 December 2025, Reinier resigned from the applicant's employment. Following his resignation, BCA made a counteroffer to Reinier to continue his employment, which was rejected. Reinier indicated that he was no longer interested in remaining in the BCA's employment and stated that he intended to retire. BCA's

directors reminded Reinier on numerous occasions prior to his resignation of the restraint-of-trade provision in his employment contract, specifically that, upon termination of his employment, he will not be entitled to accept employment with Hartland, a client of the applicant. In January 2026, it came to BCA's attention that Rainier, in fact, was employed by Hartland and had received payment directly from Hartland for services rendered to it. BCA noted that since Reinier took up employment with Hartland, he has actively acted in defiance of his covenant and restraint undertaking. BCA emphasised that the restraint of trade undertaking prevents Reinier from taking up employment with any client of BCA, including Hartland, for a period of two years until February 2028.

[10] Subsequent thereto, BCA launched an urgent application to enforce its restraint of trade against Reinier. Both Hartland and Reinier opposed the application. The matter came before Magona-Dano AJ on 12 February 2026. On 18 February 2026, an order was granted which, inter alia, interdicted and restrained Rainier from taking up employment with Hartland and/or any close cooperation, partnership, or company in contravention of the restraint of trade undertaking. In addition, the court order interdicted and restrained the respondents, particularly Rainier, from utilising, communicating or publishing any of BCA's confidential information or publishing customer contact details of persons with whom BCA deals. Although the court did not furnish reasons for its order, the court upheld the restraint clause and found that BCA had a protectable interest.

[11] Pursuant thereto, on 26 February 2026, Reinier and Hartland ('the respondents') applied for leave to appeal against the order of Justice Magona-Dano. The respondents contended that the court erred in failing to find that the restraint provision was unreasonable and unenforceable, not only because BCA lacked any protectable interest, but also because it was too broad in its terms. Additionally, the respondents argued that the court a quo ought to have found that BCA's application constituted an abuse in that its aim was to frustrate the criminal investigation into the conduct of Alice Lawrence, a director of BCA.

[12] The respondents' application for leave to appeal results in the suspension of the order issued by the urgent court, which prohibited Reinier from being employed by

Hartland. Consequently, BCA has initiated this application to seek interdictory relief against Reinier and Hartland in accordance with sections 18(1) and 18(3) of the Superior Courts Act. This application aims to enforce the order granted by Magona-Dano AJ on February 12, 2026, which restrains the respondents from utilizing or publishing any of BCA's confidential information and prevents Hartland from employing Reinier. As explained above, Hartland and Reinier opposed the application and contended that BCA had no protectable interests in the matter and that it could therefore suffer no prejudice if the order of Acting Justice Magona-Dano is suspended.

[13] Both respondents asserted that from the description of the services that BCA offered to Hartland prior to the termination of its contracts and from the description of Reinier's role as the estate manager of Hartland, it will be immediately obvious that there is nothing secret, proprietary or confidential about BCA's business at all. Mr Baguley, counsel for the respondents, opined that BCA assists estates with routine management tasks and that the estate manager, in this case Reinier, looks after the day-to-day operations of the estate. Therefore, there is nothing secret, proprietary or confidential about any of this.

Applicable legal principles

[14] 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 and 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. *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.

[15] The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage 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. To obtain such

leave, the party in whose favour the judgment was given must make a special application. *Gentiruco A.G. v Firestone SA (Pty.) Ltd* 1972 (1) SA 589 (AD) at 667; *Standard Bank of SA Ltd v Stama (Pty) Ltd 1*975 (1) SA 730 (AD) at 746). A court to which an application for leave to execute is made has a wide general discretion to grant or refuse leave and, if leave is granted, to determine the conditions upon which the right to execute shall be exercised.

[16] The common-law position relating to the enforcement of a judgment despite a pending appeal has been replaced by s 18 of the Superior Courts Act. See *Van Niekerk NO (obo estate late Louw) v MEC for Health: Northern Cape Province* [2025] 3 All SA 552 (NCK) para 13. The applicant in this matter seeks relief in terms of section 18(1) read with 18(3) of the Superior Courts Act, which provides:

> '(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.
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> (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.'

[17] Section 18(1), read with 18(3), 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 is not granted, and thirdly, the applicant must prove that the respondent will not suffer any irreparable harm if the enforcement order is granted.

[18] In *Tyte Security Services CC v Western Cape Provincial Government and others* 2024 (6) SA 175 (SCA) para14, Ponnan JA, writing for the unanimous court, took a more nuanced and less formalistic approach to the application of s 18(1) as read with s 18(3) of the Act. Before the SCA, it was argued that it was for an applicant for

an execution order under s 18 to establish *three separate, distinct and self-standing requirements*: first, the existence of exceptional circumstances; second, that the applicant would suffer irreparable harm if the order were not made; and, third, that the party against whom the order was made would not suffer irreparable harm if the order were made. It was also contended that if any one of such requirements had not been met, the court had to refuse the application. It was also contended that the second and third requirements had to be approached as isolated enquiries: there was no question of weighing up the irreparable harm of one as against the other.

[19] In considering this argument, the court observed that as a point of departure consideration of each of the three requirements is not a hermetically sealed enquiry and can hardly be approached in a compartmentalised fashion. The court stated:

> '[14] [E]ven accepting that the legislature has employed the words 'in addition [to exceptional circumstances] proves on a balance of probabilities' in s 18(3), it would be passing strange that, if an applicant comes short in respect of either the *second* or *third* requirements, it would nonetheless still be able to successfully meet the exceptional circumstances threshold. The use of the words 'in addition proves' in s 18(3) ought not to be construed as necessarily enjoining a court to undertake a further or additional enquiry. The overarching enquiry is whether or not exceptional circumstances subsist. To that end, the presence or absence of irreparable harm, as the case may be, may well be subsumed under the overarching exceptional circumstances enquiry. As long as a court is alive to the duty cast upon it by the legislature to enquire into, and satisfy itself in respect of, exceptional circumstances, as also irreparable harm, it does not have to do so in a formulaic or hierarchical fashion.'

[20] The court went on to say:

> '[15] Although it has been postulated that the *second* and *third* are distinct and discrete enquiries, they are perhaps more accurately to be understood as being two sides of the same coin. The same facts and circumstances, which by that stage ought largely to be either common cause or undisputed, will inform both enquiries. The logical corollary of an applicant suffering irreparable harm will invariably — but not always — be that the other party has not. The enquiry into each can thus hardly be mutually exclusive, particularly because, as far as the *third* is concerned, unlike the *second*, the onus cast upon an applicant would be to prove a negative, in accordance with the usual civil standard. This suggests that, as with the exceptional circumstances enquiry, a court considering both the *second* and *third* must have regard to all of the facts and circumstances in any particular case. Insofar as the *third* goes, although s 18(3) casts the onus (which does not shift) upon an applicant, a respondent may well attract something in the nature of an evidentiary

> burden. This would be especially so where the facts relevant to the *third* are peculiarly within the knowledge of the respondent. In that event it will perhaps fall to the respondent to raise those facts in an answering affidavit to the s 18 application, which may invite a response from the applicant by way of a replying affidavit.' (footnotes omitted)

[21] In the *Tyte Security* case, as can be seen from the passages quoted above, the SCA recognises the fact that in most cases the irreparable harm would be subsumed into the 'exceptional circumstances'. In those circumstances, one would of necessity rely on the same facts to establish both requirements. *Van Niekerk NO (obo estate late Louw) v MEC for Health: Northern Cape Province* [2025] 3 All SA 552 (NCK) para 26.

Discussion

[22] In this matter, I propose first to consider the overarching exceptional circumstances inquiry. It is important to recognise that the existence of 'exceptional circumstances' is a prerequisite for the exercise of the court's discretion under s 18. If the circumstances are not truly exceptional, that is the end of the matter. The application must fail. It has long been accepted that it is 'undesirable to attempt to lay down any general rule' in respect of 'exceptional circumstances' and that each case must be considered upon its own facts. See *Norwich Union Life Insurance Society v Dobbs* 1912 AD 395 at 399; *Tyte Security Services CC v Western Cape Provincial Government and others* 2024 (6) SA 175 (SCA) para 12.

[23] In *MV Ais Mamas Seatrans Maritme v Owners MV Avis Mamas* 2002 (6) SA 150 (C) at 156H-J, Thring J summarised the approach to be followed. He said that '(w)hat is ordinarily contemplated by the words 'exceptional circumstances' is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different. In *Incubeta Holdings (Pty) Ltd v Ellis* 2014 (3) SA 189 (GJ), Southerland J, noted that exceptionality must be fact specific. The circumstances which are or may be exceptional must be derived from the actual predicament in which the given litigants find themselves.

[24] It is common cause that BCA, the applicant herein, employed Reinier. It is also common cause that the employment contract contained a restraint of trade clause. Reinier was restrained from taking employment with BCA's client for a period of two years after his employment was terminated. Reinier and Hartland are fully aware of the restraint clause and have acted in defiance thereof. This behaviour continues. The urgent court found that the behaviour of the two respondents was unlawful and that BCA had a protectable interest and hence granted the interdict against Reinier and the Hartland. Moreover, the judgment of the court a quo imposes a restraint of trade that is inherently time-bound. The restraint period is limited to 24 months and runs from the termination of Reinier's employment on 30 January 2026, meaning that the restraint expires on 01 February 2028.

[25] If the operation of the judgment of the court a quo remains suspended pending the determination of the leave to appeal process. In any subsequent petitions or appeals, a substantial portion of the restraint period will have expired before BCA is able to enforce its rights. In those circumstances, the judgment will effectively become hollow and academic, as the very purpose of the restraint would be defeated by the passage of time. Moreover, it is within the respondents' rights to vindicate their appeal rights. Clearly, even if the application for leave to appeal is refused, the respondents may petition the SCA in terms of their constitutionally guaranteed right in s 34 of the Constitution. Such a petition, like an application for leave to appeal, will suspend the operation of the judgment. The appeal process could therefore continue for a significant period, in fact, beyond the restraint period, during which the applicant will remain without the protection afforded by the judgment of the urgent court.

[26] In these circumstances, BCA will suffer irreparable harm if the order remains suspended. In contrast, the respondents will suffer no irreparable harm if execution is granted, particularly in circumstances where Justice Magona-Dano has already determined that the restraint is valid and enforceable. The respondents argued that BCA has no confidential information, trade secrets, customer protection, business methodology, or proprietary interests. I must stress that this court is not sitting in this matter as an appellate court in respect of the decision granted by Magona-Dano AJ. When granting the judgment, Justice Magona-Dano found that the applicant had

established protectable proprietary interests, including trade connections, trade secrets, and pricing structure. Simply put, and at the risk of repetition, the court a quo has already found that BCA possesses a protectable proprietary interest, including its confidential information, which is worthy of protection.

[27] The suspension of the judgment pending appeal means the respondents remain free, during the appeal process, to utilise the applicant's confidential information and trade connections. In contrast, BCA remains unable to enforce the restraining order. Crucially, Reinier was an employee of BCA and occupied a position in which he had extensive knowledge of the applicant's confidential information, including its client base, pricing structures, financial management, and proprietary business methodologies. His employment in circumstances connected to a former client of BCA creates a real and ongoing risk that such information may be utilised to BCA's detriment. The longer Reinier remains in the employment of Hartland, the previous client of BCA, the greater the threat it poses to BCA's confidential information and trade customer connections, given that he will have ample opportunity and temptation to expose that information and exploit those connections to the benefit of Hartland and to his personal advantage. Clearly, this behaviour will cause irreparable harm and damage to the applicant.

[28] I must also emphasise that the restraint order does not preclude Reinier from working and earning a living. It only interdicts and restrains him from taking employment with a client of BCA, which is prohibited by the restraint clause that Reinier signed freely and voluntarily. The principle *pacta sunt servanda* (agreements, freely and voluntarily concluded, must be honoured) is still one of the cornerstones of the law of contract. Unless a contract is illegal or contrary to public policy, it will be enforced strictly in accordance with its terms. As foreshadowed above, the court has already determined that the agreement is enforceable and granted an interdict.

[29] I am mindful that Reinier relocated from the Drakensberg to Mossel Bay, specifically to take up long-term employment at Hartland. I am also cognisant that he relocated at considerable personal and financial cost for his job. I am also thoughtful of the salary he receives from Hartland; however, I must point out that Reinier took employment with Hartland with the full knowledge of the restraint clause. What

compounds the difficulty in Reinier's case is that the applicant did not terminate Reinier's employment but offered him an alternative position on the same remuneration, which he declined. Despite claiming an intention to retire, Reinier was already employed by Hartland in January 2026, before his employment with the applicant terminated.

[30] The respondents continued to use and possess the very information and protectable interest that the court order prohibited. Given the extremely competitive nature of the property management industry in which the applicant operates, maintaining strong, confidential customer relationships is crucial. To this end, I agree with the views expressed by Mr Riley, counsel for the applicant, that BCA has no alternative means of protecting its confidential information, trade secrets, customer connections, pricing structures, business methodology and other proprietary interests against the unlawful competition of the respondents.

[31] Importantly, Hartland, the current employer of Reinier, was BCA's client. Hartland operates in the same closely related property development industry as the applicant. The harm to BCA will be almost impossible to quantify if this application is refused. Moreover, even if BCA were able to quantify its damages, there is no realistic prospect that it could recover those damages from Reinier.

[32] Considering all the facts presented to this Court, I believe that the irreparable harm BCA will suffer is significantly greater than any potential prejudice the respondents may suffer. Therefore, BCA has successfully established the requirements outlined in s 18(1) read with s 18(3) of the Superior Courts Act.

Order

In the result, the following order is granted:

32.1 The order granted by Magona-Dano AJ dated 12 February 2026 interdicting and restraining the first respondent from taking up employment with the second respondent and of using the applicant's confidential information is thereby immediately enforced in terms of s 18(3) of the Superior Courts Act pending the application for leave to appeal launched on 26 February 2026 and further appeal process, if any.

32.2 The respondents are directed to pay the costs of this application on a party and a party scale jointly and severally, including the costs of counsel on scale B.

LEKHULENI JD

JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant: Adv Riley

Instructed by: Van Zyl and Johnson Attorneys

For the first and second respondents: Adv Baguley

Instructed by: Herbie Oosthuizen & Associates