***REPUBLIC OF SOUTH AFRICA**

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2025-214295

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: /NO [redacted]

______________ _________________________
DATE SIGNATURE

In the application for leave to appeal in the matter between:

HLIBISILE LUCIA NYAMANE	Applicant
and	
LINGA LM (PTY) LTD	Respondent

As well as the application to execute in the matter between:

LINGA LM (PTY) LYD	Applicant
and	
HLIBISILE LUCIA NYAMANE	Respondent

In re: the urgent application of 19 November 2025 in the matter between:

LINGA LM (PTY) LYD	Applicant
and	
NEDBANK LIMITED	First Respondent

HLIBISILE LUCIA NYAMANE Second Respondent

JUDGMENT

N. S KRÜGER AJ

Practice- Application to allow non-complying confirmatory affidavits – confirmatory affidavits allege in general it confirms the affidavit in so far as it applies to the deponents- inadequate manner of confirming-deponents to confirmatory affidavit did not initial affidavit sought to be confirmed- deponents deposed to confirmatory affidavits without having read the affidavit they sought to confirm- application to allow dismissed with costs as between attorney and client-Application for leave to appeal-Application to execute pending appeal process - practice that an application to carry into effect a judgment which is subject to an application for leave to appeal, whether it was in terms of the defunct Rule 49(11) or in terms of section 18, should be heard by the court or judge who adjudicated upon the initial matter-evaluation of prospects of success to establish exceptional circumstances —Security for costs –repealed Uniform Rule of Court 49(11) replaced by section 18 of the Superior Court Act 10 of 2013- Ambit of Uniform Rule of Court 49(12) considered-Roberts v Chairman, Local Road Transportation Board, Cape Town and Another *1979 (4) SA 604 (C) re-visited and found to be applicable to Rule 49(12)- Security required to be provided only in respect of money claim or any other claim which could result in anything having to be restored.*

Introduction

[1] The parties will be referred to as in the urgent application which was heard by me on 19 November 2025. The first respondent had not opposed the urgent application. The second respondent did. *Ex tempore* I granted an interdict mandating the first respondent to restore, with immediate effect, the regular banking services and access by the applicant to the applicant's banking account, held by the first respondent, the second respondent to pay costs on a party and party scale B. The written order was signed by me on 21 November 2025.

[2] On 20 November 2025, the day after judgment but before the order was signed and uploaded to Caselines, the second respondent delivered a notice of application for leave to appeal. The application for leave to appeal was addressed to the Registrar of Appeals. However, amongst others, the second respondent failed timeously to take the required steps to cause the judgment to be transcribed. It has

now been done belatedly at the instance of the applicant's attorney. The second respondent in addition failed to file a compliance statement and failed to apply for a hearing date for the application for leave to appeal. This was done by the applicant's attorneys.

[3] On 3 December 2025 the applicant launched an urgent application for an order that my order of 19 November 2025, bearing the stamp of the registrar dated 21 November 2025, be put into operation immediately and for the costs of it to be paid by the second respondent on a party and party scale B ("*application to execute*"). The second respondent filed an answering affidavit and the applicant a replying affidavit. I note the second respondent had filed a supplementary affidavit dated 9 December 2025 with confirmatory affidavits ostensibly deposed to by Mr Alfred Nyamane and Ms Chantelle Vermeulen. According to the supplementary affidavit , the purpose was to correct the dates of the same confirmatory affidavits which were annexed to the answering affidavit. In addition, the second respond uploaded a confirmatory affidavit deposed to by Lindiwe Maria Malinga ("*Ms Malinga*").

[4] The matter was set down for hearing on 10 December 2025 following upon a letter of the deputy judge president that it be done. The heading of this letter refers to the application for leave to appeal. It was not clear to me what exactly the deputy judge president intended to be set down as his letter follows upon a letter by the applicant in respect of the application to execute. At the commencement of the hearing I made enquiries from the parties' counsel in this regard. In short I was informed by Mr Kloek, the applicant's counsel, that the application for leave to appeal did not comply with various procedural requirements such as is contained in the practice directive, but that the applicant is nevertheless ready to proceed with the application for leave to appeal. He further informed me that the applicant will also proceed with the application to execute as it expected the second respondent, should the application for leave to appeal be dismissed, to apply to the Supreme Court of Appeal for leave to appeal. The second respondent's counsel, Mr Shakung, confirmed he is ready to proceed with the application for leave to appeal, but raised several objections against the hearing of the application to execute, such as that

security of costs is required to be put up by the applicant, as well as that the hearing of the latter ought to be before a different judge.

[5] I ruled that the application for leave to appeal be heard together with the application for execution subject to argument by the parties' respective counsel. Mr Shakung presented argument on behalf of the second respondent first.

[6] When Mr Kloek presented argument on behalf of the applicant, he objected to Ms Malinga's confirmatory affidavit to the answering affidavit in the application to execute which had been uploaded to Caselines by the second respondent on the morning of the hearing of the matters. It purports to be of the second respondent's mother seeking to confirm the answering affidavit in so far as it refers to her. The affidavit is out of sequence and was filed after the replying affidavit. Mr Kloek indicated that there was no application for it to have been filed or uploaded and to be submitted into evidence. If it were to be so admitted, the applicant would be prejudiced since it would need to respond thereto. The issue was debated upon which Mr Shakung, on behalf of the second respondent, placed on record that Ms Malinga' affidavit be disregarded.[1]

[7] The issues in respect of the supplementary affidavit to the answering affidavit in the application to execute uploaded on Caselines by the second respondent on 9 December 2025 to which are annexed confirmatory affidavits by Alfred Nyimane and Chantelle Vermeulen both dated 9 December 2025 were also ventilated. It follows upon the applicant's replying affidavit in which it was pointed out that the confirmatory affidavit of Alfred Nyimane as well Chantelle Vermeulen to the second respondent's answering affidavit were dated 13 November 2025[2] which precedes the date of the hearing in the initial urgent application on 19 November 2025. Mr Kloek contended it constituted an attempt at misleading the court. At first Mr Shakung recorded he had been instructed by the second respondent's attorneys that these confirmatory affidavits also be disregarded.

[8] The court found it fit to stand the matters down for Mr Shakung to confirm his attorney's instructions in this regard. When the matter resumed, Mr Shakung

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[1] It is uploaded at CL 090-1*ff*

[2] “"AA4" and "AA3" to the answering affidavit, CL08-41*ff*

informed the court there had been a change of heart in that the second respondent seeks a postponement to address the issues in respect of the confirmatory affidavits of Alfred Nyimane and Chantelle Vermeulen by affidavit. Mr Kloek, on behalf of the applicant, consented to an adjournment. I then ordered the matter be adjourned to 14 January 2026, the second respondent to file a substantive application for the confirmatory affidavits to be allowed. Costs occasioned by the adjournment were reserved.

[9] The second respondent duly filed a substantive application for the confirmatory affidavits of Ms Vermeulen and Mr Nyamane "…*annexed to the main application…*" to be admitted. She also sought an order *"…that any non-compliance with the rules of procedure when the main application was filed and the confirmatory affidavits were annexed…"* be condoned. An answering affidavit was filed by the applicant to whom the second respondent replied. The main application referred to cannot be other than the application to execute.

[10] Accordingly, on 14 January 2026 the matters were heard. After the conclusion of argument, the matter was postponed for judgment, particularly for me to consider the respective parties extensive argument, including the issue of security as envisaged in Rule 49(12). Towards that end I deemed it necessary for transcripts to be obtained of the proceedings of 10 December 2025 and 14 January 2026. Regrettably, procuring same took much longer than expected.

Application to allow confirmatory affidavits to the second respondent's answering affidavit in the application to execute

[11] During argument Mr Shakung on behalf of the second respondent conceded the initial confirmatory affidavits in the application to execute falls foul of requirements. Amongst others, the confirmatory affidavits had been commissioned before the answering affidavit by the second respondent had been commissioned. They are dated 13 November 2025, some three weeks before the filing of the answering affidavit. In my view the concession was correctly made.

[12] The application to execute was served on 3 December 2025 by e-mail. An answering affidavit was filed on 5 December 2025 to which the applicant replied on 9 December 2025. The second respondent filed a supplementary affidavit on 9

December 2025 wherein "*revised confirmatory affidavits*" of Mr Nyamane and Ms Vermeulen were delivered because they had been incorrectly dated in the answering affidavit. According to the founding affidavit in the application for the confirmatory affidavit's to be allowed, it is stated that the 'he' and 'she' part on Ms Vermeulen's affidavit were corrected. The deponent to the founding affidavit, who is the second respondent's attorney, also stated that the initial confirmatory affidavits were the same confirmatory affidavits used in the previous application as the answering affidavit was similar to the earlier one. This is incorrect- only part of the answering affidavit corresponds with the previous answering affidavit.

[13] Attached to the founding affidavit are two e-mails both dated 8 December 2025, addressed respectively to Ms Vermeulen and Mr Nyimane. The confirmatory affidavit of each is annexed to the e-mail with the message to commission the revised confirmatory affidavit. The answering affidavit is not attached to either of the e-mails. In consequence, the applicant in its answering affidavit alleges that neither Mr Nyamane nor Ms Vermeulen read the answering affidavit, although they state in the revised confirmatory affidavits that they did. In reply, this is not addressed by the second respondent. Instead, it is alleged that the answering affidavit and the averments therein should stand in that such averments are sufficient to support the dismissal of the application to execute without the confirmatory affidavits.

[14] I now turn to the consideration of the application to allow the confirmatory affidavits. At best for the second respondent, there is a general denial of numerous paragraphs of the applicant's answer, but the applicant's pertinent positive averments are not specifically or expressly addressed. Nor is there, as one might have expected, any evidence put up that the deponents to the confirmatory affidavits had indeed received the founding affidavit, or an explanation of the fact that only the confirmatory affidavits were sent to them and not the answering affidavit. During argument Mr Shakung conceded the answering affidavit was not attached to the e-mail requesting the revised confirmatory affidavits to be signed. He also conceded there was no proof the deponents to the confirmatory affidavits had seen a previous answering affidavit which corresponds in part with the answering affidavit they now purport to confirm.

[15] Significantly, the answering affidavit does not bear the initials of either of the deponents to the respective confirmatory affidavits. The inescapable conclusion is that the deponents did not have sight of the answering affidavit. In consequence the statements therein that the deponents had read the answering affidavit and confirm its contents in so far as it pertains to them is not correct. It is misleading.

[16] In addition, the confirming affidavits do not set out what each of the deponents thereto seeks to confirm in the answering affidavit. In *Kalil NO and Others v Mangaung Metropolitan Municipality and Others*[3] the Supreme Court of Appeal held that such confirmatory affidavits are a slothful means of placing evidence before a court. The actual witnesses of an event are expected to depose to the facts.

[17] In *Blue Crane Route Municipality v Storm and Others*[4] it was alleged that, amongst others, certain respondents were party to unlawful conduct. In the answering affidavit, these allegations were denied by some of the respondents. In the replying affidavit the version of the first and fifth respondents were denied. It was alleged that the deponents to confirmatory affidavits will confirm they were active participants. The confirmatory affidavits which merely sought to confirm a replying affidavit in so far as it pertained to the deponents without elaboration and without reference or detail to the conduct of the first and fifth respondents. With reference to *Kalil*, Ragunanan J disregarded the confirmatory affidavits.

[18] In these circumstances, I am of the view that the application to allow the confirmatory affidavits and condone non-compliance with the Rules has no merit and stands to be dismissed. The manner in which the confirmatory affidavits came to pass is disappointing and worthy of censure.

Application for leave to appeal

[19] In her application for leave to appeal, the second respondent raises various grounds for leave to appeal. In summary these are that the court erred in finding the matter is urgent and that the applicant had established grounds for the granting of the interdict sought; the court ought to have found there existed disputes of fact as to who founded the applicant, who incorporated it and who were the directors thereof;

[3] 2014 (5) SA 123 at [32]
[4] (1582/2023) 2 AECMKHC 119 (October 2023) at [19] – [26]

the court should have found that an amount of R 1 995 012,25 of the payment made by ESKOM to the applicant went missing or is not accounted for;[5] the court erred in ordering the second respondent to pay costs and should have struck the matter off the roll for lack of urgency with the applicant to pay the costs. The second respondent concluded it is in the interests of justice that the appeal be allowed as contemplated in section 17(1)(a) and (ii) of the *Superior Courts Act*. ("*the Act*").[6]

[20] I stand by what I have stated in the *ex tempore* judgment at the hearing of the urgent application on 19 November 2025 and the reasons for the judgment recorded therein.

[21] Regarding urgency, the thrust of the second applicant's argument was that urgency was self-created in that an alleged similar matter involving the same parties were removed from the role of the Mpumalanga Division of the High Court in Middleburg on 28 October 2025 to afford the parties an opportunity to enter into an out of court settlement. It is not correct that matter was between the same parties. The applicants to that matter were the second respondent herein and Mr Nyamane who is her father. The respondents were Mr Nkabinde and the first respondent. The applicant in the urgent application was not a party to that matter. It did not concern the restoration of the applicants banking services as in the urgent application.

[22] In an e-mail dated 22 October 2025, the first respondent confirmed the amount of R 6 394 001,37 in the applicant's account had been secured but could not be held indefinitely and will be released on 29 October 2025. It was not released on that date. In an e-mail dated Friday, 31 October 2025, the first respondent confirmed that amount has been secured pending the final resolution of the dispute between the parties or upon receipt of a court order. The applicant further alleged that its creditors are to be paid and raised the possibility of liquidation proceedings being launched against it should payment not be made.

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[5] ESKOM is said to have paid the applicant R 8 349 013,62 of which only R 6 394 001,37 was paid into the applicant's account with the first respondent.

[6] 10 of 2013: "*(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—*
(a)
(i)the appeal would have a reasonable prospect of success; or
(ii)there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;"

[23] The urgent application was launched on 11 November 2025 and served the following day. In the circumstances, in the exercise of my discretion, I held the application to be urgent. In my view the exercise of such discretion is a discretion in the true, narrow or strict sense in that the court may either have struck the matter from the role for lack of urgency, held it to be urgent and adjudicate upon it or may have dealt with it otherwise for example by postponing it should circumstances have so dictated.[7] It is our law that in such a case interference by a court of appeal is constrained. As held by the Constitutional Court in *Giddey NO v JC Barnard & Partners*[8] :

> *The ordinary approach on appeal to the exercise of a discretion in the strict sense is that the appellate court will not consider whether the decision reached by the court at first instance was correct, but will only interfere in limited circumstances; for example, if it is shown that the discretion has not been exercised judicially or has been exercised based on a wrong appreciation of the facts or wrong principles of law".*

[24] It appears to me that no meritorious case has been made by the second respondent that in holding the matter to be urgent I failed to exercise my discretion judicially, applied wrong principles of law or based on a wrong appreciation of the facts.

[25] The second respondent argues that a compelling reason for leave to appeal to be granted is because it is of public importance. This is because the ESKOM had communicated that an amount of R 8 349 013,62 million would be paid to the applicant for materials delivered. An amount of R 6 394 001,37 was paid into the applicants account. It is alleged the difference namely R 1 995 012,25 went missing or is not accounted for. The second applicant typifies this as being mysterious to the extent that it substantiates a compelling reason for granting leave to appeal.

[26] I disagree. The first respondent was at liberty to oppose the urgent application. It is reasonable to assume that it would have done so had there existed

[7] A discretion in the loose or wide sense is when the court is entitled to have regard to a number of disparate and incommensurate features.
[8] [2006] JOL 18229 (CC) para [19]; *Trencon Construction v Industrial Development Corporation* 2015 (5) SA 245 CC at [83]

any reason to do so. They elected not to do so. In an e-mail dated 13 November 2025, the ESKOM records, amongst others, that some of the items were delivered to the site and were quality checked on 6 October 2025 according to its procedures. The supplier then submits its invoice which is checked by its finance department against the order, delivery note and other documents after which payment is made. Proof of delivery notes were attached to the e-mail.

[27] In addition, the applicant annexed to its founding affidavit a tax invoice addressed to the ESKOM for R 8 349 013,62, together with a delivery note. A payment advice addressed to it for that sum recording the due date as 21 October 2025 is also attached. The second respondent has not presented any cogent evidence of anything untoward in the relationship between the applicant and the ESKOM which may warrant her allegations in this regard. No affidavits were presented of any person on behalf of ESKOM substantiating the second respondent's allegations. It is no more that unsubstantiated speculation.

[28] A second respondent contended that a dispute of fact exists as regards the shareholding of the applicant, who incorporated it as well as who its directors were. It is not borne out by the facts of the matter.

[29] A copy of the Disclosure Certificate: Companies and Close Corporations issued on 5 September 2025 records Mr Nkabinde, the deponent to the founding affidavit, as being the sole director of the applicant and its incorporator as having been the second respondent's mother, Ms Lindiwe Maria Malinga. Mr Nkabinde is also recorded as having 100% ownership/controlling interest of the applicant. The applicant alleges that Mr Nkabinde purchased all shares in the applicant from the second respondent's mother. This is substantiated by a copy of a sale of shares agreement dated 12 November 2024 annexed to the founding affidavit recording the sale of 1000 shares by Ms Malinga to Mr Nkabinde. A certified copy of a share certificate is annexed to the founding affidavit. It records its date of issue as 13 November 2024 and certifies Mr Nkabine as the registered holder of 1000 fully paid common shares with no par value in the applicant.

[30] The second respondent failed to present any share certificate in substantiation of her allegation that she has been the only shareholder of the

applicant since she established and registered it. She attached to her affidavit a copy of a CIPC issued on 21 April 2021, which is the registration date of the applicant, recording Ms Malinga as being a director of the applicant. Also attached is a copy of one page of a CIPC abridged certificate for annual return issued on 5 September 2025. It records Mr Nkabinde as director and Ms Malinga as the incorporator of the applicant. A copy of what purports to be a Lexis Nexis WinDeed search dated 23 October 2025 is also annexed. It reflects Mr Nkabinde as being an active director of the applicant, that Ms Malinga had resigned as a director on 28 July 2022 as did Senzo Style Mkabela who resigned on 13 November 2024 and Anastasia Grace Nyambi who apparently was a non-executive director but resigned on 25 November 2024. Mr Nyamane's status as director is recorded as being "invalid code". He is not a party to these proceedings.

[31] No indication is contained in any of the above mentioned attachments to the second respondent's answering affidavit as to the shareholding or beneficial ownership of the applicant. Significantly, the resignation dates of Mkiabela and Nyambi follows within weeks of sale of share agreement alleged to have been entered into between Mr Nkabinde and Ms Malinga on 12 November 2024.

[32] Section 51(1) of the *Companies Act*[9] pertains to the registration and transfer of certified securities. It stipulates a certificate evidencing any certified securities of a company is proof that the named security holder owns the securities, in absence of evidence to the contrary.[10] The meaning of "*Securities*" includes shares.[11] Regarding the proof provided by the shares certificates, the *Companies Act* determines it is admissible in evidence as an admission of the facts in or on it by the person who appears to have made it unless the contrary is proved.[12] In the absence of cogent

[9] 71 of 2008

[10] "*51 Registration and transfer of certificated securities*

(1) A certificate evidencing any certificated securities of a company-

(a)…

(c) is proof that the named security holder owns the securities, in the absence of evidence to the contrary…."

[11] *Companies Act*, section 1

[12] *Companies Act section "221 Proof of facts*

(1) …

(2) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it."

evidence to the contrary, it becomes conclusive proof of the facts in it or on it by the person who appears to have made it.

[33] In the light of the above, the second respondent's allegation that she has been the only shareholder and the incorporator of the applicant is wholly unsubstantiated and not sustainable. The same applies to the alleged appointment of her father as director, regard being had to the prevailing circumstances and in particular her not having shareholding or being a director of the applicant.

[34] It is common cause that it was the second respondent who caused the first respondent to, as she puts it "…*put the Nedbank Account on hold…*" In the circumstances, she clearly not being a director of the applicant and not holding shares therein according to the documents referred to above, the legal basis upon which she interfered in the banking relationship between the applicant and the first respondent is at best fopaque if not palpably erroneous. It is my view that no plausible evidence has been advanced in this court as to the existence of any right she had to do so.

[35] There is no merit in the second respondent's argument that the applicant had not established grounds for granting the interdict sought. It is common cause the applicant held the account with the first respondent. The relationship between an account holder with its banker is that of a debtor and a creditor. In consequence, the applicant has personal rights and duties pertaining to the first respondent. Conversely, the first respondent has personal rights and duties relating to the applicant. The nature and extent of these respective rights and duties are provided for in their agreement (mandate) with one another as well as statutes, the legal principles and customs appertaining to banking law.[13] Personal rights concerns the relationship between persons, whereas real rights are primarily concerned with a

[13] *Guilio v First National Bank of South Africa* 2002 (6) SA 281 (SCA) [17], [18] with reference to *S v Kearney* 1964 (2) 495 (A) at 502H – 503A: "*Now it has long been judicially recognised in this country that the relationship between bank and customer is one of debtor and creditor. When a customer deposits money it becomes that of the bank, subject to the bank's obligation to honour cheques validly drawn by the customer*". This *dictum* was most recently applied in *Standard Bank of South Africa Ltd v Echo Petroleum CC* 2012 (5) SA 283 (SCA) at [27] – [28]

res.[14] .Personal rights are enforceable between the immediate parties whom respectively bear these rights and duties towards one another as opposed to real rights, which is enforceable against the entire world. The Constitutional Court, Froneman J writing for the majority, held as follows:[15]

> "*The central pillar of the distinction is that the real rights are absolute in the sense that they are enforceable against the whole world whereas a personal right is relative in that it can be enforced against a particular person. However, this distinction is irrelevant to the claim for an interdict. It makes no difference whether the right is real or personal. All that is required is proof of a clear right, in order to satisfy one of the three requirements for the granting of a final interdict.*"
>
> "*The fact that a personal right is relative in the sense that only a particular person is directly bound by it does not mean that third parties may violate the right with impunity. This is not a controversial proposition. It is also not disputed that a personal right may be relied on for purposes of seeking an interdict.*"

[36] When money is deposited into the account of its client, the bank becomes a debtor and its client becomes its creditor in respect thereof. The bank, as debtor, is obliged to repay the deposited funds upon demand. A bank is obliged to give effect to the instructions of its client. Pending payment, the bank has a fiduciary duty to its client to act with care as well as abiding with confidentiality of the relationship.

[37] In the result, the applicant has a clear right to the funds deposited into its account and that it be paid to the applicant or another, depending upon its instructions from the applicant. It is common cause that the first respondent at the instance of the second respondent had caused the first respondent to put a hold on the monies deposited thereby denying the applicant its rights. It is also common cause that the applicant demands payment of the monies held in its account from the first respondent in terms of its rights. In consequence, it is established that the rights of the applicant in this regard has been, and continues to be breached.

[38] The applicant is a going concern. The second respondent has not seriously contested that the applicant's creditors are normally paid by way of debit orders and

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[14] *Absa Bank Litd v Keet* 2015 SA 474 SCA at [20]." *The High Court in Staegemann (para 16) was correct to say that the solution to the problem of prescription is to be found in the basic distinction in our law between a real right (jus in re) and a personal right (jus in personam). Real rights are primarily concerned with the relationship between a person and a thing, and personal rights are concerned with a relationship between two persons.*" It was applied in *Bondev Midrand (Pty) Ltd v Pulling and Another* 2017 (6) SA 373 (SCA) A thing as legally defined.

[15] *Massmart (Pty Ltd V Pick n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 at [89] and [90]

direct transfers between the end of the month and the eighth day of the month. Debit orders may be paid, but only whilst funds are available. The first respondent had stopped the applicants internet access to the account, consequently Mr Nkabinde is unable to establish, at least as at the time of the hearing of the urgent application, if sufficient funds are available in this regard. In the circumstances, I am persuaded the applicant suffers a continuing violation of its rights for which it is unlikely an alternative remedy exists to adequately compensate the loss suffered.

[39] The issue of costs falls within the discretion of the court. It is discretion in the strict sense. It is trite that costs generally are awarded to the successful party. I found no reason to depart from this general rule.

[40] Leave to appeal may only be granted where a court is of the opinion that the appeal would have a reasonable prospect of success, which prospects are not too remote[16]. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.[17] An applicant for leave to appeal is obliged to convince a court of a realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless will not suffice. All things considered, I am of the view the second respondent has fallen short of that hurdle.

[41] I have considered the papers filed of record and the grounds set out in the application for leave to appeal as well as the parties' extensive arguments for and against the granting of leave to appeal. I have further considered the submissions made in their respective heads of argument and the authorities referred to by the respective parties.

[42] In applying the relevant principles to the grounds advanced in the notice of leave to appeal and in argument, I conclude that the appeal would not have a reasonable prospect of success as contemplated in s17(1)(a) and (ii) of the Act.

[43] It follows that the application for leave to appeal must fail. There is no basis to deviate from the normal principle that costs follow the result.

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[16] *Ramakatsa and Others v African National Congress and Another* [2021] JOL 49993 (SCA) para [10]

[17] *Smith v S [2011] ZASCA 15; Member of the Executive Council for Health, Eastern Cape v Mkhitha* [2016] JOL 36940 (SCA) 176, [16] - [17]

Application to execute

[44] *In limine* the second respondent argues this court does not have jurisdiction to adjudicate upon the application to execute. This issue has been dealt with previously in the urgent application. It was not raised in her notice of application for leave to appeal. Be that as it may, the first respondent's main place of business and registered address, which was not specifically denied,[18] falls within the area of jurisdiction of this court. The jurisdictional facts in the application to execute remain the same as in the urgent application.

[45] She further alleged that the application to execute ought to be heard before another judge. Mr Kloek for the second respondent referred me to the unreported case of *Emfuleni Local Municipality and Another v ESKOM Holdings SOC LTD and Another.*[19] The court pointed out that it is a long established practice that an application to carry into effect a judgment which is subject to an application for leave to appeal, whether it was in terms of the defunct Rule 49(11) or in terms of section 18, should be heard by the court or judge who adjudicated upon the initial matter. It is an eminently sensible practice in my view.

[46] *Airy and Another v Cross Border Road Transport Agency and Others*[20] also offers support for Mr Kloek's argument and the case referred to by him. The matter served before Tuchten AJ (as he then was) who adjudicated upon the matter. Applications for leave to appeal and cross appeal were delivered. *In limine* a point was raised that Tuchten AJ should not hear the matter as he was an acting judge at the time of the hearing and his appointment has lapsed. In dismissing the point, the judge stated that a judge who made the order under attack will more often than not already have done a substantial part of the work required for the proper adjudication of the application, whilst another judge would have to reiterate much of the work. Tuchten J also found that the issue of the provision of security is an aspect of, and has a connection with the main application, as has the application for leave to appeal.[21] He held the matter be heard by him.

[18] The applicant was only put to the proof of the first respondent's registration number
[19] (76183/2019) [2022] ZAGPPHC (14 October 2022) at [31]- [32]
[20] 2001 (1) SA 737 (T)
[21] *Airy* [7]-[14]

[47] I am acquainted with the proceedings preceding the section 18(1) application and consider myself best poised to consider the application to execute. In the result, I am satisfied that the matter may be adjudicated upon by me.

[48] The default position relating to the effect of the appeal process is that the order being appealed against is suspended. A court may order execution pending the appeal as provided for in section 18 of the Act. The pertinent subsections applicable are as follows:

> "*(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*…
>
> *(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.*"

[49] Apart from exceptional circumstances, it is further required that an applicant prove on a balance of probabilities it would suffer irreparable harm if interim execution is not ordered and that the appealing party would suffer no irreparable harm if it was.[22]

[50] As to whether or not the prospects of success in the pending appeal should be taken into consideration is contentious, but now seems to have been settled. In *Incubeta*[23] Sutherland J (as he then was) held it was not.[24] In *The Minister of Social Development Western Cape and Others v Justice Alliance of South Africa and Another* [25] Binns-Ward J (Fortuin and Boqwane JJ concurring) held to the contrary:

> "*. . . the less sanguine a court seized of an application in terms of s 18(3) is about the prospects of the judgment at first instance being upheld on appeal, the less inclined it will be to grant the exceptional remedy of execution of that judgment pending the appeal. The same quite obviously applies in respect of a court dealing with an appeal against an order granted in terms of s 18(3)*"

[22] In *Incubeta Holdings (Pty) Ltd and Another v Ellis and Another* 2014 (3) SA 189 (GJ) at [16]
[23] Above at [22]
[24] *Liviero Wilge Joint Venture and Another v Eskom Holdings Soc Ltd* [2014] ZAGPJHC 150 (12 June 2014) at [30]
[25] [2016] ZAWCHC 34. At {27} and [28]

[51] In *University of the Free State v AfriForum and Another*[26] agreed with the approach in *Justice Alliance*. It held the prospects of success in an appeal are relevant in deciding whether or not to grant the exceptional relief of allowing the operation of the order pending appeal.

[52] In *Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd and a similar* appeal,[27] the facts in a nutshell were that the applicant had sold construction vehicles to the respondents in terms of installment sale agreements. Upon default in continuing payment of installments, the agreements were terminated. The applicant obtained judgment for the return of the vehicles whereupon the respondents sought leave to appeal. This caused the applicant to apply for execution pending the appeal. The court granted an order accordingly, which triggered an appeal by the respondents to the full bench. In applying the stipulations of section 18(1) and (3), Opperman J, writing for the majority, with reference to previous somewhat conflicting judgments,[28] held that assuming section 18 has not expunged a courts common law discretion, there appears no reason why prospects of success should not be taken into account, both to determine exceptionality as well as a factor to be considered in exercising the discretion to enforce a court order pending an application to the Supreme Court of Appeal for leave to appeal.[29]

[53] Opperman J warned against a too strict interpretation of these subsections in the face of overwhelmingly weak prospects for success on appeal coupled with the absence of irreparable harm to the prospective appellants my blunt the effectiveness of the order of a court below. Significantly, in conclusion, she states:

> "*A discretion is the means to regulate the process of enforcement of orders pending appeal and to address the concerns raised in the first judgment in respect of the protection of the vulnerable. What is, however, also important is to recognise that commerce is the backbone of the economy, and that we are to encourage investment in our economy. Our courts have a role to play and must be seen to enforce our own orders once it is apparent that such order is unlikely to be interfered with on appeal.*"

[26] 2018 (3) SA 428 (SCA) ([2017] 1 All SA 79 at [14] – [15]
[27] 2024 (2) SA 574 GJ 574
[28] *University of the Free State v AfriForum and Another* ; [2016] ZASCA 165 [14] – [15]; *Knoop NO v Gupta (Execution)* 2021 (3) SA 135 (SCA) ([2021] 1 All SA 17) [49] –[50]
[29] *Zeno* [41]

[54] In so far any doubt remains as to whether or not the prospects of success on appeal are relevant in determining whether an order should be granted in allowing the operation or execution of an order pending appeal, I am aligned with the view that it does.

[55] In *MV Ais Mamas v Seatrans Maritime v Owners, MV Ais Mamas*[30] the meaning of 'exceptional circumstances' was considered in the context of the provisions of section 5(a)(iv) of the *Admiralty Regulation Act*[31] which concerns a court's power to order an examination of various things in order to procure evidence. It was considered to be something of an unusual nature, out of the ordinary; something which is exceptional to the general rule of application, something uncommon, rare or different. It must arise out of or be incidental to the matter at hand and is a factual issue, not dependent upon the exercise of judicial discretion. Where a statutory provision allows for departure of a fixed rule, a strict meaning ought to be given to the phrase.

[56] In considering the meaning of 'exceptional circumstances' upon which an application for leave to appeal may be referred to the court for reconsideration, it was decided by the Supreme Court of Appeal in *Avnit v First Rand Bank Trading, inter alia, as Westbank and Wesbank Aviation Finance* that the circumstance must be "truly exceptional"[32]

[57] With the above in mind, I turn to the facts and allegations at hand.

[58] The applicant contends the application for leave to appeal is part of a tactical delay to avoid the first respondent restoring normal access by the applicant to its bank account, In the absence of restoration to the bank account, the applicant alleges its business cannot continue for a variety of reasons to which I will return below. The existence of the applicant and its employees are at stake. It could take up to a year for an appeal of this nature to be concluded should it be heard by a full court. In consequence, the harm suffered by the applicant would be irreparable whilst the second respondent has failed to advance grounds upon which it may be averred she might suffer any irreparable harm.

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[30] 2002 (6) 150 (C) at 156 I*ff*
[31] 105 of 1983
[32] [2014] JOL 32336 (SCA) at [6]

[59] Applicant's case is that it had concluded a loan agreement on 3 March 2025 with Eagle and Springbok Group (Pty) Ltd ("*Eagle*") for working capital to comply with a purchase order from ESKOM to source and deliver goods to the latter. The applicant's bank statement reveals R 8 349 013,62 was received from ESKOM on 21 October 2025. On the same day a debit is reflected on the bank statement for payment of R 1,8 million as well as R 150 000,00 towards payment of a loan. It is explained that though the monies are indicated as having been paid, it never flowed to the intended beneficiary as the account was put on hold. Little more than a month later a letter of demand as envisaged in section 344(f) read with section 345 of the *Companies Act* was received from Eagle's attorneys. It demands payment of or security for payment of R 1,8 million lent and advanced to the applicant during the period August 2025 to September 2025, the applicant having undertaken to make payment by the end of October 2025 and having failed to do so.

[60] In addition the applicant is unable to deliver further goods to ESKOM which is outstanding in terms of the purchase order as it needs to pay suppliers of the goods. An e-mail dated 1 December 2025 was received from an ESKOM representative demanding items be delivered in terms of the purchase order and proof be provided of purchases from the applicants suppliers, in lieu of which the purchase order stands to be deleted.

[61] The applicant is unable to comply with the demand received form Eagle's attorneys. In consequence, it is at risk of being subjected to liquidation proceedings. It is unable to purchase from suppliers the items demanded by ESKOM as a result of the denial of access to its account and the relevant monies deposited therein.

[62] On the one hand the second respondent alleges she has been "*the only shareholder in* [the applicant] *since I established and registered the Company*",[33] and that as "*…the founder and only shareholder of the Company I stand as an interested and affected party in the subject of this litigation.*"[34] I have already dealt with the allegation as to her alleged shareholding.

[33] Paragraph 32 and 99, amongst others, of the answering affidavit in the application to execute as well as paragraph 14 of the answering affidavit in the urgent application
[34] Paragraph 104 of the answering affidavit in the application to execute

[63] On the other hand she also alleges "*A decision was taken to reinstate my father as 10% shareholder and director of the applicant with the deponent* <u>*remaining with 90% shareholding*</u>"[35] No further detail is given- who took the decision is not revealed, nor the date upon which such decision was taken and what the price of the shares would have been, what the nature of the shares would be and if it was paid for. The necessary implication of this allegation is that Mr Nkabinde at that time was 100% or at worst 90% shareholder of the applicant. It patently contradicts what the second respondent stated in her answering affidavit to the urgent application in response to Mr Nkanbinde's allegation that he is the sole director of the applicant, having acquired the shares from Ms Malinga, who had incorporated the applicant, in terms of a sale of shares agreement as evidenced by a shareholders certificate. She alleged the shares agreement and shareholders certificate were a sham.[36] I find the second respondent's version, such as it is, palpably implausible in this respect. She has no rights in respect of the relationship between the applicant and the first respondent as either shareholder or director. It appears to me that her alleged interest in the matter is contrived.

[64] The second respondent contends the threat of liquidation proceedings is more apparent than real because Eagle is not at arms-length from the applicant: Eagle happens to be Mr Nkabinde's security company which he runs with his brother. She relies on a copy of a COR39 document issued by the CIPC. It is dated February 2022 and records a change of directors from one Mbele who has resigned and records the addition of Mr Bongani Innocent Nkabinde as director. The date of his appointment is 3 February 2022. The applicant denies the deponent to the founding affidavit, Mr Nkabinde, is involved in Eagle.

[65] The second respondent provides no facts in substantiating allegations that Eagle is run by the director and shareholder of the applicant. Nor is any evidence presented that the applicant and Eagle are in collusion with one another as to the existence of the debt alleged by the applicant and the letter of demand threatening liquidation. The mere fact that the director of Eagle and the director of the applicant are related in and of itself does not substantiate the second respondent's allegations.

[35] In the passive form. The underlining is mine
[36] At paragraphs 95 to 98

To my mind, in the absence of any cogent evidence, it remains no more than speculation.

[66] The answering affidavit states that in so far as allegations are not addressed. It should be taken as denied. Throughout the affidavit pertinent allegations in the founding affidavit were not specifically addressed and a bare denial repeated recorded regarding such allegations. For example, the applicant's allegation that it was at risk of ESKOM cancelling is purchase order and that the applicant was short of funds, were not specifically addressed save for a bare denial. Paragraphs in which the applicant alleged that remaining items were still to be delivered to ESKOM, were certain items remained to be delivered as set out in a specified list were not replied to *in seriatim* at all. I am not persuaded that the bare denials in this regard establish real factual or *bona fide* disputes.[37] The second respondent seeks to create the impression she was involved in the day to day management of the applicant. One might have reasonably expected her then to have greater knowledge in this regard and to have set same out in particularity in her answering affidavits.

[67] Aspersions cast by the second respondent that dealings with ESKOM are questionable due to information she had received from sources inside ESKOM does not bear scrutiny. It is at best hearsay evidence which I am loathe to abide in the absence of any confirmatory affidavits from the alleged sources or anybody else on behalf of ESKOM. The more so in the light of ESKOM's e-mail dated 13 November 2025 recording that some of the items were delivered to the site. Proof of delivery notes were attached to the e-mail.

[68] In the circumstances I find on a preponderance of probability that truly exceptional circumstances had been established. In addition, I am satisfied the second respondents chances of success on appeal are poor taking into account the prevailing circumstances and in particular the fact that she is not a director of the applicant nor a shareholder.

[69] I am satisfied the applicant will suffer irreparable harm should the order not be granted as prayed for. On the other hand, I am decided the second respondent has

[37] *Wightman t/a JW Construction v Headfour (Pty) Lt d and Another* [2008] 2 All SA 512 (SCA), 2008 (3) SA 371 (SCA) at [13]

failed to show she will suffer any harm should the order be granted, in particular because she has failed to cogently indicate she has any rights as against the applicant. ESKOM is not a party to the proceedings. In any event nothing appears from its correspondence with the applicant that they had any objection to the payment of the monies into the applicant's account.

[70] Having considered the papers, I can find no plausible facts upon which I may find the application not to be granted. The preponderance of probabilities favors the applicant in my view.

[71] The second respondent *in limine* sought to contest the urgency of the application to execute. I am decided it is urgent for the same reasons mention in my *ex tempore* judgment in the urgent application. In this matter, urgency arose no later than the application for leave to appeal on 20 November 2025 and the signing of the order on 21 November 2025. The application to execute was filed on or about 3 December 2025. I am satisfied it was done with due haste. Further reasons for urgency are found in the facts pertaining to the matter which I have dealt with above.

Security

[72] It was submitted on behalf of the second respondent that in the event of the court granting interim execution, it should be directed that the applicant furnish security in terms of Rule 49(12) of the Uniform Rules of Court for the restitution of any sum obtained upon execution.[38] Argument on behalf of both parties were presented in this respect and the issue of whether security should be required or not was ventilated.

[73] Rule 49(11), which was repealed with effect from 22 May 2015 without any replacement in the Uniform Rules of Court, prescribed the suspension of an order made pending appeal, unless the court which gave such order on application of a

[38] It read: *Where an appeal has been noted or an application for leave to appeal against or to rescind, correct, review or vary an order of court has been made, the operation and execution of the order in question shall be suspended, pending the decision of such appeal or application, unless the court which gave such order, on application of a party, otherwise directs.*

party otherwise directs. Suspension of a decision pending appeal is now regulated by Section 18 of the Act.[39]

[74] Rule 49(12) reads:

> "*If the order referred to in sub rule (11) is carried into execution by order of court, the party requesting such execution shall, unless the court otherwise orders, before such execution enter into such security as the parties may agree or the registrar may decide for the restitution of any sum obtained upon execution. The decision registrar decision shall be final*"

Unfortunately, to date, the rule makers omit expressly addressing and providing for the repeal of Rule 49(11) and the effect it has on Rule 49(12) with due regard to the provisions of section 18 of the Act. Section 18 does not deal with the provision of security for the restitution of any sum obtained upon execution.[40]

[75] In short, Mr Shakung for the second respondent argues that security is required in respect of the remaining amount paid by the first respondent into the applicant's account according to the bank statement. The second respondent contends the loan agreement is a sham and that the applicant's dealings with ESKOM are not above board. Any liquidation proceedings against the applicant will be contested by the second respodent. It appears the second respondent fears the remaining amount might be dissipated. In such event, should an appeal eventually be successful, the amount would no longer be available and the second respondent and ESKOM thereby prejudiced.

[76] Mr Kloek doubted Rule 49(12) was applicable when an application to execute was brought because section 18 does not require security to be put up. He nevertheless referred me to the judgment in *Incubeta*,[41] where the court in ordering execution pending appeal, made an order directing the parties to take the steps

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[39] The implications of this are far reaching. Amongst others a statutory prescription will be treated differently by a court than those contained in a rule of court, for one thing, in respect of condonation for non-compliance.

[40] The provisions of section 18(4) in particular:

" *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.*"…

[41] Reference at footnote 18

contemplated in Rule 49(12) in respect of security. The issue of security was not considered in the judgment and appears not to have been in issue. In considering the circumstances of the litigants, Sutherland DJP simply stated that security under Rule 49(12) is available.

[77] To my mind, an important reason for providing security upon the granting of an application to execute or for a decision to operate pending appeal , is to preserve the *status quo* until final determination of the disputes between the parties upon the conclusion of the appeal process. Thereby dissipation of the subject of the appeal is prevented and the result of an appeal in favour of a successful appellant does not run the risk of becoming futile. I am of the view that Rule 49(12) does apply in respect of an application in terms of section 18. However, that is not the end of the matter.

[78] It was further argued that Rule 49(12) is not applicable in any event because the applicant does not seek execution. What it seeks is restoration of its rights of full access to its account. It is not 'execution' properly so called.

[79] The repealed Rule 49(11) stipulated "…*the operation and execution of the order in question shall be suspended…*" Section18(1) refers to "…*the operation and execution of a decision*…" which is similar to a high degree. Rule 49(12) uses the phrase "…*carries into execution*.." in defining when security is required. It does not refer to the operation of an order which leaves some doubt if the putting into operation of an order other than to execute was intended to fall within the ambit of Rule 49(11).

[80] It appears little case law exist that may be of assistance. In *Laufer v Shawzin*[42] the court considered Rule 49(11) as it then was. Sub rule (b) thereof at that time was the equivalent of the present Rule 49(12) including the passage "*… for the restitution of any sum obtained in such execution…*"[43] In *Laufer* an appeal was

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[42] 1968 (3) SA 378 (W) at 379C

[43] It read:" *(a) Where an appeal has been noted or an application for leave to appeal against or to rescind, correct, review or vary an order of a superior court has been made, the operation or execution of the order in question shall be suspended pending the decision of such appeal or application unless the court which gave such order otherwise directs on the application of any party.*
(b) If the order referred to in para. (a) is carried into execution in terms of any direction of the court, the party causing such execution shall, unless the court otherwise orders, before such

noted against an order granting leave for the applicant to take her minor children from the jurisdiction of the court for permanent residence in Canada. The applicant asked that the order be put into operation immediately. Hiemstra J found the court may do so in that Rule 49(11)(a) applied to all judgments. In coming to that conclusion, he remarked:

> "*Sub-rule (11) (b) seems to presuppose that such a direction will only be made in money judgments, but there is no doubt that it applies to all judgments. The reference to money in para. (b) relates only to judgments which happen to sound in money.*"

The reference in the passage to '*a direction*' refers to a court directing an order made not be suspended as provided for in Rule 49(11)(a). It appears the learned judge distinguished the factuality of R 49(11)(b) relating only to judgments sounding in money from applying to Rule 49(11)(a) which he found applies to all judgments.

[81] In *Roberts v Chairman, Local Road Transportation Board, Cape Town and Another*[44] the court below granted an order declaring null and void the decision of a respondent in granting an increase in bus fares. An appeal was noted upon which the applicant, as a matter of urgency, applied for the judgment to be given effect. Friedman J, Watermayer AJP concurring, held that Rule 49(11) as it then was deals only with security *de restituendo* and that the subject matter of the proceedings before them does not deal with a money claim or any other claim which could result in anything having to be restored. In the result there is no scope for the introduction for security *de restituendo*.

[82] *Airy* concerned an order granted for the return of a mechanical horse and trailer which had been seized and were held in a police compound. The learned judge expressed strong doubt that the Rule pertaining to security[45] has application to the case. In any event, he considered that the applicants ought not to be required to furnish security.[46]

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execution, enter into such security as the parties may agree or the registrar may decide for the restitution of any sum obtained upon such execution. The registrar's decision shall be final.'

[44] 1979 (4) SA 604 (C) at 609

[45] Rule 49(11) as it then was

[46] At [26]

[83] To my mind the authority of the judgments in *Laufer and Roberts* extends to the interpretation of Rule 49(12) as it presently reads. I am satisfied that the requirement for security to be provided is limited to claims sounding in money or any other claim which could result in anything to be restored. I believe it to be a sensible and justifiable measure against what the effect would be should it be of unlimited application to all judgments. What "*sum*" should security be provided for in family matters when an order determines where children may reside as in *Laufer*, or which school they should or how access to them is applied? The same apply to judgments such as in *Roberts* as well as where restraint orders are granted and a multitude other types of orders not sounding in money.

[84] The right the applicant seeks to enforce does not sound in money. The possibility of the remaining money being withdrawn does not bring the applicant's claim within the ambit of Rule 49(12) by virtue of it being "*any other claim which could result in anything having to be restored*". The security envisaged in Rule is towards restitution. The rights to the remaining money belong to the applicant, not the second respondent. Restitution is not *apropos* the second respondent.

[85] Even if I am wrong as to the effect and ambit of Rule 49(12), I am not inclined to abide the second respondent's insistence that I order the applicant to provide security. To the contrary. Rule 49(12) provides for the court to order that security not be given. In this respect I considered the totality of the papers pertaining to this issue. In particular, the applicant, a juristic person, holds the rights to the money in its account. It is not the second respondent's money, for lack of a better expression. As stated before, restitution does not apply to her. Nor does it apply to ESKOM because it is not a party to these proceedings. I am satisfied the applicant need not provide security.

Conclusion

[86] Having considered the papers and counsels' arguments and submissions, I make the following orders:

a. The substantive application to allow the confirmatory affidavits of Mr Nyamane and Ms Vermeulen and to condone non-compliance with the

Rules is dismissed with costs to be paid by the second respondent on the scale as between attorney and client;

b. The costs occasioned by the postponement on 10 December 2025 of the hearing of the application for leave to appeal and the application to execute are to be paid by the second respondent on Scale B;

c. The application for leave to appeal is dismissed with costs to be paid by the second respondent on scale B;

d. In respect of the application in terms of section 18 of the *Superior Court Act* 10 0f 2013:

   i. Condonation for non-compliance with the time periods, forms and manner of service ordinarily prescribed by the Rules of Court of Court are condoned and the application is heard by way of urgency;

   ii. The order granted on 19 November 2025 bearing the stamp of the registrar dated 21 November 2025 is put into operation immediately;

   iii. The second respondent shall pay the costs of this application on a party and party scale B.

e. The applicant is not required and need not provide security as envisaged in Uniform Rule of Court 49(12).

[redacted]

N S KRÜGER

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA JOHANNESBURG

Electronically submitted
Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties / their legal representatives by e-mail and by uploading it to the electronic file of this

matter on CaseLines. The date of the judgment is deemed to be **14 April 2026**

Counsel for the applicant:	Adv J W Kloek
Instructed by:	Van Wyk Oosthuizen Attorneys
Counsel for the first respondent:	Adv M Shakung
Instructed by:	Nxumalo Green Attorneys Inc
Date of judgment:	14 April 2026