

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED

DATE: 05/06/2026 SIGNATURE: [Redacted]

CASE NO. HCA11/2025

In the matter between:

NYADZENI PETER RAVHURA
 THIATHU MMBENGENI MUSUBI
 IPFI RAVHURA
 TSHIVHASE MIDYAVHATHU KENNEDY
 TSHIVHASE TRADITIONAL COUNCIL

FIRST APPELLANT
 SECOND APPELLANT
 THIRD APPELLANT
 FORTH APPELLANT
 FIFTH APPELLANT

And

TSHINETISE RAVHURA
 MAKONDE TRADITIONAL COUNCIL
 RAVHURA ROYAL COUNCIL

FIRST RESPONDENT
 SECOND RESPONDENT
 THIRD RESPONDENT

JUDGMENT

AML PHATUDI J.

INTRODUCTION

[1] The first appellant and the first respondent locked horns in litigation relating to chieftaincy of Makonde village in Limpopo Province. This impasse reminds one of African proverbs that says- “when two elephants fight, it is the grass that gets hurt”. In simpler terms, when two leaders fight, it is the followers who are compromised. The irony of this is that there will be no Makonde village without residents, and there will be no chieftaincy at Makonde village without residents. The residents find themselves at sea relating to whom to follow and honor as their chief.

[2] The first respondent’s quest to bring an end to the impasse, obtained an order interdicting the first appellant to desist from portraying as the chief. The appellant sought leave to appeal the judgment and order. Whilst the hearing of the application for leave to appeal was pending, the respondents approached the court with an application in terms of sections 18 (1) and (3) of the Superior Court Act¹ (Sup CA) with success. The appellants, expressing their dissatisfaction, filed notice of appeal in terms of section 18(4) of Sup CA, thus this appeal.

FACTS AND BACKGROUND

[3] The chronology of events is drawn from the parties’ papers filed for the purposes of this appeal. It is indicated that on 18 June 2025, the first respondent, who was the applicant in the court a quo, placed in motion, Part A of the main case under case number 2141/2025. The application was heard by Semenya DJP (court a quo), who, after hearing submissions, *ex-tempore* stated that “orders are granted as prayed for, save for prayer 1.5 and the

¹ Superior Courts Act 10 of 2013

amended cost or rather costs order that I have just granted.” The costs granted are captured on record as follows:

“Court: And as far as costs are concerned, it will have to be reserved for determination, together with part B.”

[4] A draft order was later emailed to the Judge’s secretary. The court a quo endorsed the draft order as the order of court. The draft order differed materially from the *ex-tempore* order. The draft order as endorsed bears the registrar’s signature. There are differences between the order as prayed for [in the notice of motion], and the endorsed draft order, which are well spelt out in the appellant’s papers. The draft order included words and phrases that are not in the original prayers. Other orders were added into the draft.

[5] On the 11 August 2025, the appellants filed their application for leave to appeal the court a quo’s judgment and order as pronounced in court on 18 June 2025. The respondents, in their quest to enforce the order obtained on 18 June 2025, brought an application in terms of section 18(1) read with section 18(3) of Sup CA. On 05 October 2025, the court a quo ordered that the order of the 18 June 2025 be executable, notwithstanding the pending application for leave to appeal.

[6] On 03 November 2025 the court a quo handed down its written reasons for the judgment and order pronounced on 18 June 2025, and its reasons for section 18(1) and (3) order granted on 05 October 2025. On 07 November 2025 the appellant noted an appeal in terms of section 18(4) of Sup CA.

[7] The appellant’s application for leave to appeal and the notice to appeal in terms of section 18(4) laid on the registrar’s table from 07 November 2025. Section 18(4) appeal was similarly not prosecuted. Towards the end of

February 2026, the respondent eventually took steps to alert the registrar and the judge to the non-prosecution of the section 18(4) appeal, resulting in the appeal court being constituted for a hearing on 6 March 2026.

[8] This court of appeal could not proceed with the hearing on 6 March 2026 because the papers were not in order. The appeal was, by agreement between the parties, postponed to 27 March 2026, where the appeal court dealt with an in-limine point, to wit, the appellant's failure to apply for condonation for the late prosecution of this appeal. A ruling was delivered on 24 April 2026, whereafter, submissions on the merits of section 18(4) application was heard.

[9] I find it apposite to firstly determine as to whether the appellant ought to have applied for condonation for his failure to prosecute the section 18 (4) appeal timeously.

Condonation.

[10] Section 18(4)(a)(iii) is not a commonly discussed segment of the Sup CA. It must be borne in mind that Section 18 of the Superior Courts Act, 2013, has been amended and substituted by section 29 of Judicial Matters Amendment Act², Act 15 of 2023. The section, in its amended form, reads: Section 18 of the Superior Courts Act, 2013, is hereby amended by the substitution for subsection (4) of the following subsection:

²29. Section 18 of the Superior Courts Act, 2013, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) If a court orders otherwise, as contemplated in subsection (1)—

- (i) the court must immediately record its reasons for doing so.
- (ii) the aggrieved party has an automatic right of appeal to the next highest court.
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.

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

- (i) a full court of that Division, if the appeal is against a decision of a single judge of the Division; or
- (ii) the Supreme Court of Appeal, if the appeal is against a decision of two judges or the full court of the Division.”.

(4)(a) If a court orders otherwise, as contemplated in subsection (1)

- (i) the court must immediately record its reasons for doing so
- (ii) the aggrieved party has an automatic right of appeal to the next highest court
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency.
- (iv) and such order will be automatically suspended, pending the outcome of such appeal...”

[11] The amended section remains the same in substance with the main Act relating to the section under scrutiny. Reference will thus be made to the Superior Courts Act³ and not the Judicial Matters Amendment Act.

[12] Section 18 of the Sup CA governs the operation and execution of decisions pending applications for leave to appeal or appeals. The section does not provide for a time limit within which the aggrieved party must prosecute or note an appeal. The aggrieved party simply has an automatic right of appeal, and such must be dealt with by the court, as a matter of extreme urgency. Unlike in Uniform Rule 49⁴ that provides the time periods for noting and prosecuting appeals, requires condonation for non-compliance with the stipulated time frames.

[13] Section 18 is silent on time frames for noting the appeal or condonation. All that the appellant has, is the automatic nature of the right of appeal. The

³ Superior Courts Act 10 of 2013

⁴ Uniform Rules of Court

Rules regulating the conduct of the proceedings of the several Provincial and Local Divisions of the High Court of South Africa

automatic nature of the right of appeal implies the Legislature did not intend for the standard appeal framework to apply alongside its time limits or condonation in respect of this provision.

[14] The appeal court envisaged in terms of this section, still has, in my view, the inherent power to regulate its own administrative processes. This implies that the litigant, although not strictly required to exercise the right per a strict time frame, will still need to act reasonably and consistent with the urgency required. The leading decision relating hereto is *Jai Hind EMCC CC T/A Emmerentia Convenience Centre v Engen Petroleum Limited South Africa: In re: Engen Petroleum Limited South Africa v Jai Hind EMCC CC T/A Emmerentia Convenience Centre* (A5030/2022; 11752/2020) [2022] ZAGPJHC 551; 2023 (2) SA 252 (GJ) (4 August 2022).

[15] Section 18(4)(a)(iii) imposes the obligation of extreme urgency to the court that is to hear the appeal, not the appellant. On a plain reading of this section, the obligation to deal with the matter on extremely urgent basis, is not in the hands of the party invoking the right but the court. However, this does not mean that the appellant bears no obligation to pursue the automatic right of appeal it has in section 18(4)(a)(ii)⁵ urgently.

[16] The required “urgency”- meaning “expeditiously”, loses its meaning if the appellant “expeditiously” notes the appeal but takes no further steps to prosecute it, and cannot simultaneously assert that the court has failed to deal with it urgently. The right and obligation are correlative. Put differently, a court must deal with the matter urgently once the appeal is placed properly before it. The appellant must take the necessary persistent steps to place it there. If

⁵Section 18(4)(a)(ii)- the aggrieved party has an automatic right of appeal to the next highest court.

persistent knocking at the registrars' or Heads of court doors is tantamount to negging, so be it if the aim is to ensure speedy resolute for either execution or not of the court order.

[17] Section 18 governs the operation and execution of decisions pending applications for leave to appeal or appeals. Generally, the operation and execution of such a decision is suspended pending the outcome of the appeal, unless the court orders otherwise in exceptional circumstances.

[18] Section 18(3) provides that a court may only grant such an order if the applicant proves, on a balance of probabilities, that it will suffer irreparable harm if the order is not granted, and that the other party will not suffer irreparable harm if it is granted.

[19] Section 18(4)(a)(iii) imposes a peremptory obligation on the court hearing the appeal. It "must deal with" the appeal "as a matter of extreme urgency." The phrase "extreme urgency" is not defined in the Act. It is materially different in degree from "urgency" as understood in ordinary motion court practice under Uniform Rule 6(12)⁶. "Extreme" denotes a degree of urgency that is higher than merely urgent.

[20] Urgency in the ordinary sense⁷ requires that the applicant cannot be afforded substantial redress in due course and an immediate relief is necessary to prevent harm that would vitiate the purpose of the application. Extreme urgency, on the plain language of the provision, demands more than this. To ascertain what "extreme urgency" means need not be a new interpretive exercise. In *Jai Hind*, the court adopted a literalist approach and

⁶ Rule 6(12) (b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.

⁷ Rule 6(12)(b)

held that “[e]xtreme urgency means just that. The rationale is imbedded in the premise of section 18; being, the immediate implementation of an order to ensure its efficacy and concomitantly, the need to resolve any dispute about whether that should happen extremely quickly.”

[21] In *Jai Hind*, the Deputy Judge President of that Division, was asked to intervene, the hearing was accelerated as contemplated by the section, albeit not as promptly as the applicant would have preferred. The court characterised a delay of three months between the grant of the section 18(3) order and the section 18(4) appeal hearing as “unacceptable.” This establishes an outer bound on permissible delay. It does not, however, supply a precise positive standard. The court further observed, by way of a remark in obiter, that a period of 20 to 25 court days may represent what a well-administered Division ought to be able to achieve in a similar situation. That observation is not within the text of the section but gives a sense of the timeframe the phrase “extreme urgency” contemplates.

[22] I agree with appellants’ counsel⁸ submission that *Jai Hind* is persuasive authority and cannot definitively bind this court. However, through an exercise not unlike that undertaken in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), it is demonstrable that the conclusion reached in *Jai Hind* is the most appropriately desirable.

[23] In *Endumeni*, Wallis JA clarified the approach to statutory interpretation as follows:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a

⁸ Adv. Sikhwari SC Counsel for the appellant

whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words used. To do so regarding a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."⁹

[24] Applying the above approach to the ordinary meaning in section 18(4)(a)(iii), directs the court to deal with the matter on extremely urgent basis. The language is unambiguous and bears its full ordinary grammatical meaning. It denotes the highest degree of urgency. However, section 18(4) cannot be read in isolation. Section 18(1) establishes an *ex lege* suspension of execution. Section 18(3) permits departure from that position only where exceptional circumstances and irreparable harm are demonstrated. This is a high threshold. Sections 18(4)(a)(i) up to (iii) create a sequence of successive steps aimed, on their face, at expediting the hearing.

[25] It is apparent, if not clear, that the purpose of section 18(4)(a)(iii) is to ensure that the automatic right bestowed on the prospective appellant, of appeal in section 18(4)(a)(ii) is not rendered fruitless by delay. A section 18(3)

⁹ *Endumeni* at para 18.

order authorises execution that departs from the norm¹⁰. The section 18(4) appeal is the corrective mechanism¹¹. Its usefulness is diminished if the hearing is not obtained expeditiously.

[26] An interpretation that dilutes "extreme urgency" to something approaching ordinary urgency would manifestly diverge from the patent intention of the legislature. The legislature deliberately placed the standard above the threshold of normal urgency. On its own, it showed the importance of expediting the appeal hearing. Any interpretation producing a contrary result would be insensible within the meaning of the *Endumeni* caution. Put differently, it renders the words nugatory. That is against interpretational practice.

[27] A court applying the *Endumeni* approach to section 18(4)(a)(iii) arrives independently at the same interpretation adopted by Sutherland DJP in *Jai Hind*. The persuasive authority of *Jai Hind* is therefore not accepted merely on the basis that it is a reported or reportable Full Court judgment of a coordinate Division. It is accepted because its conclusion is compelled by the correct application of the interpretive methodology which is binding upon this court.

[28] I, based on the above contention, asked myself a question- should there be a standard time frame or period read in? Will it be appropriate to read-in any time frames to the section? *Jai Hind* itself identified the absence of a uniform procedural guideline for the hearing of section 18(4)(a)(iii) appeals as a practical problem. To resolve it, they called for a directive from the Judge President to address it. No such directive of general application has been issued. The present matter therefore raises directly whether this court may,

¹⁰ Leave to appeal or the pending appeal suspends the court order

¹¹ To retain the status quo-Suspension of the Court Order

while determining this appeal, read-in or write-in or prescribe a unified procedural standard.

[29] The answer requires a distinction between two different exercises, one of which has already been conducted above. The first is statutory interpretation attributing meaning to "extreme urgency" on *Endumeni* principles. The second is the supplementing text of the statute by way of reading in. The latter is not undertaken lightly even in the Apex Court.

[30] Writing in, as a formal constitutional remedy, is provided for under section 172(1)(b) of the Constitution, where a provision is constitutionally insufficient. Here, no constitutional blemish is present to correct. It is not an invalid provision the court is faced with, but an open ended one. Thus, the remedy of reading-in is respectfully not suited to curing the lack of specificity in the section. It can be accepted that the High Court has a wide berth to regulate its own administrative processes, of which this is a part.

[31] A court exercising appellate jurisdiction is not confined to formal constitutional remedies when developing the common law or giving practical effect to a statutory obligation. The lacuna we seem to be having in this matter, comparatively with other matters lacking adequate procedural guidance, the court may simply pass a directive to set out how the process may be undertaken for this Division. This must be done, bearing in mind that the legislature excluded a time frame ostensibly to account for various contexts and infrastructure realities. These can require an appellant to conduct themselves appropriately as contrasted against the extreme urgency it expects from the court.

[32] What this court can appropriately do, without crossing swords with the legislature into its legislation, is confirm the qualitative standard, endorse the *Jai Hind* interpretation as correct, and direct that in this Division¹², the obligation of extreme urgency requires the Head of Court to be approached immediately upon the noting of the appeal, with the hearing to be convened at the earliest date this Local Division's circumstances permit. That which I thought of "writing-in" or "reading-in" is not necessary. An appropriate "Directive" is a practical content to an existing obligation in the context of this Local Division.

[33] In my view, a procedural step required to give effect to section 18(4)(a)(iii), is that the appellant must approach the Head of Court as soon as the conditions in section 18(3) are met. The subsequent steps are administrative on the court's side and include: (i) approaching the head of court while simultaneously filing the notice of appeal and appeal index, (ii) compiling an appeal record, preparing the physical record where Caselines¹³ is not available (Thohoyandou Local Division), and (iii) the issuing of further directives to set a date for the hearing and/or require the submission of heads of argument.

[34] On the common facts established in this case, being the date of an appeal noted on 07 November 2025, and the constituting of an appeal court at the end of February 2026, was indeed a period of three, and unacceptable on the face of it. In *Jai Hind*, the court found that a period of three months is an unacceptable period of delay. The appellant in this case noted an appeal within 3 days from the date of handing down of the reasons for the judgment and order. The three months period between 7 November 2025 to February

¹² Thohoyandou Local Division

¹³ Divisions where Caseline is in place, *Jai Hind*' proposition may be followed.

2026, can, in my view, be attributed to the registrars and/or the Head of court of this Division for not constituting the Full Court expeditiously.

[35] The court in this Division, unlike that in *Jai Hind*, does not have the benefit of Caselines nor a dedicated workspace due to Repair and Renovation (R&R) project at its main building.

[36] The urgency set out in section 18(4)(a)(iii) rests on the court and not the appellant. The appellant is, however, not exonerated from ensuring that the appeal is heard expeditiously and of what degree of speedy turnaround time they may expect from the court in convening the hearing in section 18(4)(a)(iii).

[37] There is thus, in my view, no need for condonation application because the section does not prescribe the time frames or periods upon which a litigant is required to adhere to save for lodging the appeal expeditiously for the court to deal with urgently. However, each case must be dealt with on its own merits.

Merits

[38] A court granting an order in terms of section 18(3) of the Sup CA, putting into operation an order of court pending a potential appeal, must be satisfied that a party that applies for such an order, must prove, on a balance of probabilities, that he/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.

[39] As I indicated earlier in paragraph [3], the court a quo granted an order “as prayed for in the notice of motion”. A draft order, which was sent via email,

was, at a later stage, endorsed, effectively replacing the one pronounced in court on record. .

[40] The respondent relied solely on the order stipulated in the “draft order” when applying for execution of the order pending the appellants’ appeal. The appellant, as one of his grounds for this appeal, is that the court a quo misdirected itself by granting the application of the respondents while there is glaring evidence of the fact that the court order dated 18 June 2025 was not granted in court.

[41] On perusal of the record and having heard the submissions, it is clear what was ordered is not what was prayed for. The prayers sought before the court a quo stated:

PART A.

- 1.1 This matter be heard as urgent in terms of Rule 6(12) of the Uniform Rules of Court, dispensing with all forms of service and the time frames provided for by the Uniform Rules of this Honorable Court.
- 1.2 The first respondent be prohibited to engage in administrative or leadership functions that are expressly reserved for the Headman of Makonde Village.
- 1.3 The first respondent be prohibited to operate as a Headman and/or a Regent of Makonde Village.
- 1.4 The first respondent be prohibited to alienate or sell land or sand of Makonde village to any person or company/institution.
- 1.5 The first respondent be prohibited to erect or build structures or authorise permission to erect structures or building or cause anybody to erect structures or building within the jurisdiction of Makonde Village.

- 1.6 The first Respondent be ordered to surrender or handover to the first Applicant of Makonde Village all the documentations and the stamps that he is currently using as a headman or a regent and further be ordered not to make a new headman or regent stamp for Makonde Village.
- 1.7 The first respondent be ordered not to appoint or instruct the second and the third respondents or any other person to execute land-related transactions or to perform administrative functions expressly reserved for the Headman of Makonde Village.
- 1.8 The first respondent be prohibited to write and stamp any letter confirming residence or business of any person residing or carrying business in Makonde village.
- 1.9 The first to third respondents be prohibited to invade and/or encourage unknown persons to invade land, to de-bush land and to sell the land in Makonde Village.
- 1.10 The third respondent be ordered to desist from uttering that the Headman of Makonde Village is the First Respondent to any other person.
- 1.11 The second Respondent be prohibited to act as a secretary to the first respondent in relation to the performance sale of land and writing the residential and business confirmation letters of Makonde Village.
- 1.12 The fourth to sixth respondents be ordered not to process or approve any application for alienation of land or any other application brought to their offices for processing or approval if the documents are signed and stamped by or on behalf of the first Respondent or any other person except the first Applicant in respect of the land of Makonde village.
- 1.13 Directing that service of this order on the respondents and any other party who elects not to participate in these proceedings be effected by the Sheriff of this court, local newspapers, local radio stations and by loudspeaker notification at Makonde village and neighbouring villages.

- 1.14 That the applicants be allowed to file their supplementary affidavits in relation to Part B of this application should it prove necessary post Part A of this application being heard and finalised.
- 1.15 That the first to third respondents be ordered to pay the costs on a punitive attorney and own client scale, such cost to include the cost of the counsel.
- 1.16 That the court orders further and/or alternative relief.

[42] Whereas the “draft order” stipulates:

1. This court condones the Applicants’ failure to comply with the ordinary -----to forms, services and time periods and permitting application to be brought on an urgent basis in terms of Rule 6(12) of the Uniform Rules of this Honorable Court.
2. The first Respondent is prohibited from engaging in any administrative or leadership functions that are expressly reserved for the Headman of Makonde Village.
3. The first Respondent is prohibited from operating or functioning as a Headman and/or a Regent of Makonde Village.
4. The first Respondent is prohibited from alienating, allocating, or selling land and sand of Makonde Village to any person, company, or institution.
5. The first Respondent is prohibited from erecting or building structures, or authorizing permission to erect structures or buildings, within the jurisdiction of Makonde Village, except where he has been given land lawfully and has legitimate permission to occupy.
6. The first Respondent is ordered to immediately surrender or handover to the first Applicant all documentation and stamps currently in his possession and used as a Headman or Regent of Makonde Village. Should he fail to do so, the Sheriff of this court is instructed to dispossess same from him or any person in possession of the stamps or documentation and provide them to the first Applicant.

7. The first Respondent is ordered not to create or make new Headman or Regent stamps for Makonde Village.
8. The first Respondent is ordered not to appoint or instruct the second and third Respondents, or any other person, to execute land-related transactions or to perform administrative functions expressly reserved for the Headman of Makonde Village.
9. The first Respondent is prohibited to write and stamp any letter confirming residence or business of any person residing or carrying business in Makonde village.
10. The first to third Respondents are prohibited to invade and/or encourage unknown persons to invade land, to de-bush land and to sell the land in Makonde Village.
11. The third Respondent is ordered to desist from uttering that the Headman of Makonde Village is the First Respondent to any other person.
13. The second Respondent is prohibited to act as a Secretary to the first Respondent in relation to the performance of sale of land and writing the residential and business confirmation letters of Makonde Village.
14. The fourth to sixth Respondents are ordered not to process or approve any application for allocation or alienation of land, sand mining or any other application brought to their offices for processing or approval if the documents are signed and stamped by or on behalf of the first Respondent or any other person except the first Applicant in respect of the land of Makonde village.
15. The fourth and fifth Respondents are ordered not to instruct the first to the third Respondents or any other person to alienate or allocate land of Makonde Village to any other person or institution/company.
16. The service of this order on the Respondents and any other party who elects not to participate in these proceedings be effected by the sheriff of this court, local newspapers, local radio stations and by loudspeaker notification at Makonde village and neighboring villages.

17. The Applicants are allowed to file their supplementary affidavits in relation to Part B of this application should it deem necessary.

18. The costs are reserved pending finalization of Part B of this application.

[43] Counsel for the appellant brought to the fore the discrepancies between the orders prayed for and the orders set out in the draft that has been made an order of court. Certain words and or phrases have been included in the draft which were not in the notice of motion. It was further demonstrated that orders 7,8,10,11,13 and 14 were never sought as prayers in the notice of motion. Arising from this scenario, the issue is whether an order granted when the judge was *functus officio* is executable pending appeal. Putting it differently, is such an order executable.

[44] The *functus officio* doctrine holds that once a court has pronounced its final judgment on a matter it exhausts any authority it had over the matter. It cannot thereafter revisit, vary, or supplement its order save in narrowly defined circumstances recognised by law, such as correction of an error¹⁴, or where a statute directly preserves that power. This is elucidated on in *Firestone v Gentiruco*.¹⁵

[45] On the facts relayed, the court a quo pronounced its order *ex tempore* on 18 June 2025. The order was complete and operative on that date and at that moment. The draft order, which was subsequently submitted by the respondents and endorsed by court, bearing the registrar's signature, differed materially from the *ex-tempore* order as it contained words and/or phrases

¹⁴ Compare with Rule 42 of the Uniform Rules of this Court

¹⁵ *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A)

that were ordered and were not part of the original order pronounced on record in court, and not as prayed for in the notice of motion.

[46] It is suggested that to the extent that the endorsed draft order is inconsistent with the notice of motion and the *ex-tempore* order, that is an impermissible variation of a final order by a court that was already *functus officio*. A court cannot then expand, or countenance an expansion, broader than what it initially allowed. The consequence is then that the additional portions are unauthorised even if already executed in terms of section 18(3). *Candid quaestio*¹⁶. On this leg alone, the appeal stands to be upheld.

[47] There is just one other worrying issue that was raised at the hearing of the section 18(1) application, which the court a quo found as an exceptional circumstance. It was averred that Makhafola J granted an order in favour of the respondents, which resulted in the appellant being found guilty of contempt of court and sentenced accordingly. The first appellant was released pursuant to his application for leave to appeal. It was averred that to date, the said application still pends. Counsel representing the parties confirms that they are still waiting for dates upon which the applications will be heard.

[48] Counsel for the appellant submits that the duty to set applications for leave to appeal down, rest with the Judge concerned, or, in the absence of the trial judge, or any other Judge with the direction of the Head of court of the Division¹⁷. Counsel submits that to date, the appellants are still waiting for the trial Judge or Head of court to direct as to when, how and by which Judge the application will be heard. Counsel opines that it is a misdirection on the part of the court a quo to find that the pending application(s) for leave to appeal

¹⁶ It is the end of the matter.

¹⁷ Section 17 (2) (a) Leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division

constitute exceptional circumstances, especially when emphasised that ‘they embody an element of contempt of court orders, which undermines the effectiveness and legitimacy of the judicial system’... and amount to abuse of court processes...which proves that the [appellant] previously applied for leave to appeal court orders which he never got to prosecute’¹⁸.

[49] I cannot agree more that a Judge or Judges or the Head of court must provide litigants with dates and times upon which applications for leave to appeal their judgments and orders must be heard. I loath to deal with the misdirection stated above, because I will be rubbing in the obvious to the extreme. Failure to prosecute applications for leave to appeal stalls, not only putting in operation the court orders, but the finalisation of the litigants’ disputes. In this case, Makonde residents will continue to being compromised, for as long as the first appellant and first respondent continue with their unending litigation¹⁹.

Costs

[50] In *Mphephu-Ramabulana and Another v Mphephu and Others*,²⁰ Kampepe J states that determination of costs is no longer a usual recitation-“costs follow the event”. She indicates that “it is not correct to begin the enquiry by a characterisation of the success of the parties”, but “the starting point should be the nature of the issues”.²¹

[51] The determination of costs occasioned by the appellant’s failure to file and prosecute this appeal on time, resulting in the respondents preparing the appeal record which we found to be incomplete, is the starting point. The

¹⁸ Court a quo’s findings

¹⁹ If the two elephants continue with their fight, the grass will continue to be hurt

²⁰ *Mphephu-Ramabulana and Another v Mphephu and Others* [2021] ZACC 43

²¹ Para [81]

appellant noted an appeal on 07 November 2025 but did not put any efforts to ensure that it is prosecuted promptly, warrants consideration.

[52] It is common cause that the respondent is the one who initiated the hearing of this appeal because finalisation of chieftaincy is itchy like a mosquito bite bump on him. The appellant, failed to ensure that the appeal record before court is complete, well bound and paginated as it is expected of a *dominis litis*. I frown upon such a conduct more especially that it leaves the other party being mulcted with costs by his legal team. It leaves the litigant out of pocket. This appeal court had to cause parties to agree on rectifying the record notwithstanding the urgency the matter required. I find costs occasioned by the postponement on 06 March 2026 be on the doorstep of the appellants.

[53] The costs of an in-limine point determined on non-condonation of the late filing of this application has already been pronounced and need no further determination. It was found that costs followed the event.

[54] The respondents' reliance on the 'draft order' which was endorsed later after the court had adjourned, leaves much to be desired. Counsel for the respondent concedes that once a court has pronounced its final judgment on a matter, it exhausts any authority it had over the matter. It cannot thereafter revisit, vary, or supplement its order save in narrowly defined circumstances recognised by law such as correction of an error²² or where a statute directly preserves that power. The respondent might not have foreseen this coming, but his legal representative ought to have known that the consequence of the additional portions in the 'draft order' is unauthorised, even if already executed in terms of section 18(3). Nonetheless, the respondents failed to apply for

²² Rule 42

other remedies at his disposal than to pursue opposition of the appeal. The respondents kept on with their dragging of the appellants this far. Costs should thus be on the respondents' doorstep.

[55] In the ultimate, the appellant succeeds and entitled to the costs of this application but for the costs occasioned by the postponement on 06 March 2026.

[56] In the result, I find it appropriate to order the following.

ORDER

56.1 The point in limine on condonation is dismissed, with costs on party and party Scale B

56.2 The appellants' appeal is upheld

56.3 The order handed down by Semanya DJP on 03 November 2025 in terms of section 18(1) read with section 18(3) ordering "the operation and execution of the order of this court shall not be suspended by the respondents' application for leave to appeal filed on the 11 August 2025" including the costs order thereof, is set aside and replaced with the following:

"The applicants' application in terms of section 18(1) read with section 18(3) of the Superior Courts Act, Act 10 of 2013, is dismissed with costs on party and party Scale B"

56.4 The appellant is ordered to pay the respondents' costs occasioned by the postponement of this appeal on 06 March 2026, on party and party, including the costs of two counsel, where applicable, on Scale B

56.5 The respondents are ordered to pay the appellants' costs of this appeal on party and party, including costs of two counsel, where employed, on Scale B

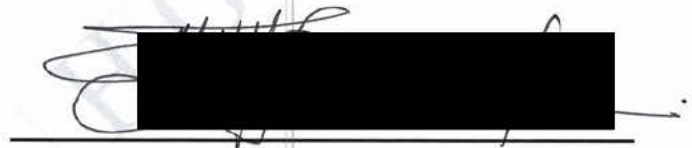


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JUDGE OF THE HIGH COURT

I agree

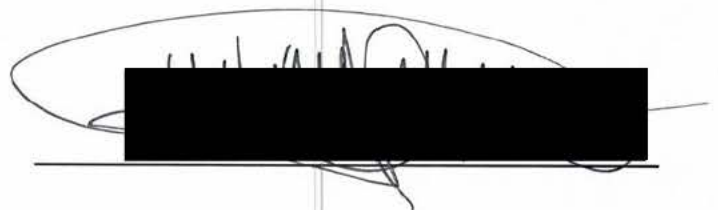


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T.C TSHIDADA

JUDGE OF THE HIGH COURT

I agree



[Redacted signature]

H. MUSHWANA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES**FOR THE APPELLANT : Adv. M.S. Sikhwari SC****INSTRUCTED BY : Makamu MF Attorneys****C/O Tshigomana UM Attorneys****makamuattorneys@gmail.com****FOR THE RESPONDENT : Adv M. Musetha****INSTRUCTED BY : Munzhedzi M. Attorneys****Tmavudza@npa.gov.za****HEARD : 06, 27 March and 24 April 2026****JUDGEMENT : 05 June 2026**

Judgement delivered on:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be on 05 June 2026.