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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: 2026-114014

In the matter between:

**MOSSEL BAY ANIMAL HOSPITAL**  
**BENNETT STANDER**  
**PIETER JACOBUS DE WET**

First applicant  
Second applicant  
Third applicant

and

**REINHARDT VENTER**

Respondent

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**Coram:** Van Zyl, J  
**Heard on:** 2 June 2026  
**Judgment:** 11 June 2026

**Summary:** Application for enforcement of court order pending application for leave to appeal and appeal, if leave granted – Superior Courts Act 10 of 2013 section 18(3) – restraint of trade – restraint period running out - exceptional circumstances and irreparable harm established – application granted

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**ORDER**

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1. The applicants' non-compliance with the forms, service and time periods prescribed by the Uniform Rules of Court is condoned, and this matter is dealt with as one of urgency under Rule 6(12).
2. The order dated 29 April 2026 under case number 243/2026 granted by the Honourable Madam Justice Kusevitsky, sitting in the Thembaletu local seat of this Court, is put into immediate effect as contemplated in section 18(3) of the Superior Courts Act 10 of 2013, pending the outcome of the application for leave to appeal delivered by the respondent on 8 May 2026, as well as the appeal itself, if any, and any further applications for leave to appeal and appeals.
3. The respondent shall pay the costs of this application, including counsel's fees taxed on Scale B.

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## **JUDGMENT**

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**VAN ZYL, J:**

### **Introduction**

1. Time flies, they say. This inescapable fact is the reason for these proceedings.
2. The respondent is a veterinarian, as are the applicants. They used to practice together but the relationship has broken down. On 29 April 2026 an order was granted<sup>1</sup> against the respondent for the enforcement of a restraint of trade. The order interdicted the respondent from:

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<sup>1</sup> In the Eastern Circuit Local Division of this Court, held at Thembaletu (Kusevitsky J presiding).

- “1.1 practising as a registered veterinarian relating to large animals (including dairy cows, cattle, pigs, sheep and horses) within a radius of 60 Kilometres calculated from [...] H[...] Street, Mossel Bay;*
- 1.2 having a direct or indirect interest in a business engaged in the veterinary practice relating to large animals within a radius of 60 Kilometres calculated from [...] H[...] Street, Mossel Bay;*
- 1.3 selling veterinary goods relating to large animals as defined in paragraph [1].1 above within a radius of 60 Kilometres calculated from [...] H[...] Street, Mossel Bay;*
- 1.4 having a direct or indirect interest in a business selling veterinary goods relating to large animals within a radius of 60 Kilometres calculated from [...] H[...] Street, Mossel Bay ...”*

3. The restraint is in place for a period of 1 year, calculated from 10 April 2026.
4. Reasons for the grant of what I shall call the restraint order have not yet been furnished. This notwithstanding, on 8 May 2026 the respondent lodged an application for leave to appeal in which numerous grounds of appeal are traversed over several pages – perhaps understandably so, because the respondent did not (and still does not) know the court’s reasoning in finding against him. He therefore covered all possible bases.
5. The application for leave to appeal was scheduled to be heard on 29 May 2026, but the respondent then indicated that the date was not suitable. No new arrangement has been made in this respect, and the application remains pending. As a result, the restraint order remains suspended,<sup>2</sup> but time is running on the respondent’s restraint period.
6. What is accordingly before me is an urgent application to enforce the restraint order pending the outcome of the respondent’s application for leave to appeal, as well as any appeal that may follow, and any further applications for leave to appeal as may be launched.

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<sup>2</sup> See section 18(1) of the Superior Courts Act 10 of 2013.

7. At the hearing of the present application counsel for the respondent effectively invited this Court to reconsider the matter, no doubt because the reasons for the grant of the restraint order are not yet available. I respectfully decline this invitation. Although I am grateful for the very detailed heads of argument prepared by the respondent's counsel, much of what it contains will have to be left to the court that considers the application for leave to appeal in due course, except to the extent that I am enjoined to have regard to the respondent's prospects of success in the exercise of my discretion at this stage. I revert to this aspect later in this judgment.

### **The relevant legal principles**

8. This application is brought in terms of section 18(1), read with section 18(3), of the Superior Courts Act 10 of 2013 (the Act).
9. The default position is that an application for leave to appeal suspends the order in respect of which leave is sought (in this case, the restraint order).
10. In terms of section 18<sup>3</sup> of the Act, an order may be enforced pending the appeal processes in exceptional circumstances. An applicant must demonstrate, too, on a balance of probabilities that he or she will suffer irreparable harm if the order is not put into effect, and that the respondent will not suffer irreparable harm if the order is put into effect.
11. The relevant principles have been summarised in various recent cases.<sup>4</sup>

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<sup>3</sup> Superior Courts Act section 18(1) and (3):

**“18 Suspension of decision pending appeal**

(1) *Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.*

(2) ...

(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.”*

<sup>4</sup> See, for example, *Maritz v Truworths Limited* [2025] ZAWCHC 508 (30 October 2025) para 8, and *Tyte Security Services CC v Western Cape Provincial Government and others* 2024 (6) SA 175 (SCA) paras 9-21.

12. First, as to “exceptional circumstances”, the concept is sufficiently flexible to be considered on a case-by-case basis. It is undesirable to attempt to lay down any general rule in respect of exceptional circumstances, and each case must be considered on its own facts. What is ordinarily contemplated by these words is something out of the ordinary and of an unusual nature, something which is unexcepted in the sense that the general rule does not apply to it; something uncommon, rare or different. It is a question of fact, not a matter of judicial discretion.
13. The existence of exceptional circumstances is a necessary precondition, or jurisdictional requirement, for the exercise of the court's discretion under s 18. If the circumstances are not truly exceptional, the application must fail.
14. The three enquiries posited in subsections 18(1) and (3), namely the existence or otherwise of exceptional circumstances and the presence and absence of irreparable harm to the parties, should not be approached as a box-ticking exercise in a compartmentalised fashion. A holistic approach is required, the overarching enquiry being whether or not there are exceptional circumstances.
15. Second, as to irreparable harm, the presence or absence of irreparable harm cannot be divorced from the exceptional circumstances enquiry. The need to establish exceptional circumstances is likely to be closely linked to the requirement that an applicant show that he or she will suffer irreparable harm if the order is not implemented immediately, and, concomitantly, that the respondent will not suffer irreparable harm if the order is implemented immediately. The two harms may be understood as two sides of the same coin; the same facts inform both enquiries.
16. Section 18(3) casts an onus on the applicant which requires proving a negative, that is, the absence of irreparable harm to the respondent. However, a respondent may attract an evidentiary burden where the facts are peculiarly within his or her knowledge.

17. Third, a court seized of an application in terms of s 18(3) retains a discretion whether or not to grant an order. This allows for a weighing-up of the respective harm to the parties. The mere presence of some irreparable harm to a respondent, irrespective of its nature and extent, and regardless of how slight or inconsequential, or that it is significantly outweighed by that of an applicant, cannot non-suit an applicant.
18. Fourth, the prospects of success in the pending appeal are relevant to the exceptional circumstances enquiry. The less sanguine a court seized of a section 18(3) application 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.
19. In *Tyte Security Services CC v Western Cape Provincial Government and others*<sup>5</sup> the Supreme Court of Appeal touched on the issue at the core of the present application:

*“In Hoffmann-La Roche & Co AG and Others v Secretary of State for Trade and Industry, Lord Wilberforce expressed the view that:*

*‘The object of [an interim injunction] is to prevent a litigant, who must necessarily suffer the law’s delay, from losing by the delay the fruit of his litigation; this is called “irreparable” damage, meaning that money obtained at trial may not compensate him.’*

*Albeit said in the context of the consideration of a wholly discretionary remedy, and thus not perfectly analogous, the sentiment expressed is not entirely without value here, inasmuch as it echoes precisely the position in which Royal finds itself.”*

20. I consider the merits of the application in this context.

### **Factual background**

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<sup>5</sup> *Tyte Security supra* para 21. My emphasis.

21. The facts upon which the application was originally brought against the respondent are as follows.
22. The first applicant has a long history as a veterinarian practice in Mossel Bay and the surrounding farming communities. The second and third applicants are partners in the first applicant. The practice is divided into two sections, namely the treatment of small or domestic animals (the small animal practice), and the treatment of large (usually farm) animals (the large animal practice). The first applicant's large animal practice is well-established, comprising about 142 different farms in the area.
23. The respondent was employed as a veterinarian at the first applicant's practice as from 18 December 2020. His contract of employment included a restraint of trade provision, prohibiting him from practising as a veterinarian for a period of 1 year within 60 kilometres of the first applicant's premises.
24. In the course of his employment, the respondent serviced the first applicant's large animal clients, and over some years he got to know their names and contact details as well as their veterinary requirements (both as to services and medication). He also came to know the first applicant's pricing structure, and was able to build up a relationship with the large animal clients and their staff. In this regard, there are two aspects of particular importance:
25. First, the respondent ran the first applicant's large animal practice from his personal cell phone rather than the phone designated by the first applicant for that purpose. This means that clients had the respondent's number as a contact rather than that of the practice.
26. Second, without the first applicant's knowledge, the respondent established a WhatsApp group called "*Mosselbaai Kudde Gesondheid*" which included at least 91 of the first applicant's large animal clients.
27. The respondent was dismissed from the first applicant's employ on 10 April 2026, after a disciplinary hearing. It is not for present purposes necessary to

go into the reasons for his dismissal. The first applicant says that even before the respondent left the practice, there was reason to suspect that he would breach his restraint. This was confirmed after he had left the first applicant's employ, when he was seen at the farm of one of the first applicant's clients.

28. The respondent denies that he was at the farm on that day for the purpose of servicing on the first applicant's clients – but that is an issue (one of many) that will be debated in the application for leave to appeal. Having read the record I am inclined to agree with the applicants' counsel's submission that, although no replying affidavit was delivered in the restraint application, the nature of the respondent's denials in his answering affidavit did not invariably lead to disputes of fact invoking *Plascon Evans*.<sup>6</sup> Many were conclusions, and others were either bald or unspecific as to which part of an allegation in the founding affidavit it applied. I do not have to trawl through all of them as painstakingly as counsel for the respondent did in his heads of argument. That may be left to an appeal court in due course, if leave to appeal is granted.
29. On 23 April 2026 the first applicant launched an urgent application at this Court's local seat in Thembalethu to enforce its restraint against the respondent. The matter was heard on 29 April 2026 and, on that day, an order was granted containing a narrower version of the relief sought in the notice of motion: whereas the restraint prohibited the respondent from working as a veterinarian and selling medication for 1 year within 60 kilometres of the seat of the first applicant's practice, the restraint order interdicted the respondent only from working with large animals for 1 year within such 60-kilometre radius.
30. The respondent may, therefore, continue his work with small animals without any limitation. He is currently employed as a *locum* at the Dana Bay Veterinary Clinic in Mossel Bay.

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<sup>6</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634G-635C. The applicants sought final relief on motion.

### **Exceptionality and urgency**

31. The respondent denies that the matter is urgent, and he denies that there are any exceptional circumstances warranting the implementation of the restraint order. In my view, however, the problem faced by the applicants is immediately apparent.
32. Under the restraint order the respondent is interdicted from working with large animals until 10 April 2027. That is only ten months away. If leave to appeal is granted (whenever it will be heard, which is at present uncertain) there is no prospect that the appeal will be determined within ten months. If leave to appeal is refused and the respondent pursues his rights to apply to the Supreme Court of Appeal for leave (and a reconsideration of any refusal under section 17(2)(f) of the Act) and the Constitutional Court, those applications will not be finally adjudicated within ten months. Even if the first applicant is ultimately successful in the appeal process initiated by the respondent, it will be left with no relief.
33. The respondent, rightly so, does not dispute any of this.
34. The time element inherent in restraint cases has been held to constitute exceptionality for the purposes of section 18 of the Act. In *Incubeta Holdings (Pty) Ltd and another v Ellis and another*<sup>7</sup> it was held that:
- “In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant a consideration of putting the order into operation. The forfeiture of substantive relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of ‘exceptional circumstances’.”*
35. The court in *Fidelity Security Services (Pty) Ltd v Naidoo and another*<sup>8</sup> stated as follows:

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<sup>7</sup> 2014 (3) SA 189 (GSJ) para 27. My emphasis.

*“In so far as the requirement of exceptional circumstances is concerned, the courts have in applications for leave to execute on an interdict enforcing a restraint of trade agreement given considerable weight to the fact that if the order was not put into operation, the relief would be forfeited by the applicant because of the short duration of the restraint which would inevitably expire before exhaustion of the appeal process.”*

36. This Court has, very recently, held as follows in *Body Corporate Assistance Gauteng (Pty) Ltd v Janse Van Rensburg and another*:<sup>9</sup>

*“If the operation of the judgment of the court a quo remains suspended pending the determination of the leave to appeal process. (sic) In any subsequent petitions or appeals, a substantial portion of the restraint period will have expired before BCA is able to enforce its rights. In those circumstances, the judgment will effectively become hollow and academic, as the very purpose of the restraint would be defeated by the passage of time.”*

37. The respondent relies on what was stated in *Twenty Four Motors CC t/a Ford Ermelo v Venter and others*<sup>10</sup> in support of his argument that the present matter is not exceptional merely because it involves a restraint of trade:

*“[22] In L’Oreal South Africa (Pty) Ltd v Kilpatrick and Another (L’Oreal), the Court held that:*

*‘In the case of a restraint of trade interdict, it is the immediate protection of the protectable interest of the applicant that is critical to the application even having any purpose. It is all about the elimination of continued risk, which in the case of a protectable interest relating to confidential information can only be achieved by interdicting employment of the individual respondent with the competitor where such respondent is so employed (which is the case in the current matter). If an applicant manages to pass the quite substantial hurdle of convincing a Judge to exercise the Judge’s discretion in the applicant’s*

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<sup>8</sup> [2016] ZALCJHB 60 (3 February 2016) para 7. My emphasis.

<sup>9</sup> [2026] ZAWCHC 183 (13 April 2026) para 25. My emphasis.

<sup>10</sup> [2024] ZALCJHB 232 (27 February 2024) (see paras 19-37 in relation to exceptional circumstances).

*favour, it is in my view untenable that all this effort and the very objective that needs to be achieved is thwarted by the respondent party simply proceeding with an appeal. It is, in my view, the nature of restraint of trade proceedings that in itself must contemplate 'exceptional circumstances'.*

*[23] Exceptionality is fact-specific and exceptional circumstances cannot be assumed or accepted merely because the matter involves a restraint of trade. Each case must be decided on its own merits and L'Oreal is not authority for a position that when the matter involves a restraint of trade, the existence of exceptional circumstances follows as a matter of fact."*

38. There is no quibble with this when the case is considered as a whole. The court in *Twenty Four Motors* took a strong view on the merits of the application for leave to appeal and the prospects of success on appeal. There was, in its view, a good chance that the restraint orders granted would be set aside on appeal. It was *inter alia* for that reason that no exceptional circumstances were found to exist.<sup>11</sup> The court accordingly granted leave to appeal and refused the employer's section 18 application. As matters turned out, the subsequent appeal to the Labour Appeal Court was unopposed, and the restraint orders were set aside.<sup>12</sup>
39. In the present matter, the court granting the restraint order has not yet given reasons for its decision.<sup>13</sup> The respondent nevertheless applied for leave to appeal. I therefore questioned counsel on how the respondent's prospects on appeal should be determined, in other words, in the absence of reasons, would this determination entail effectively reconsideration the restraint application? Counsel for the respondent, whilst insisting that the respondent had excellent prospects, recognised that this was not called for. Counsel for the applicants referred me to *Maritz v Truworths*:<sup>14</sup>

*"[33] In Afriforum, the SCA confirmed that the prospects of success on appeal are relevant to the enquiry into the existence or otherwise of exceptional*

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<sup>11</sup> *Twenty Four Motors supra* paras 30-37, read with para 58.

<sup>12</sup> *Venter and Others v Twenty Four Motors CC ta Ford Ermelo* [2024] ZALAC 32 (28 June 2024).

<sup>13</sup> I am advised that reasons have been requested.

<sup>14</sup> *Supra* paras 33-34.

*circumstances. The prospects of success on appeal will inevitably vary from case to case. At one end of the spectrum, a proposed appeal may be clearly vexatious, enjoying no prospects of success whatsoever. At the other end of the spectrum, success on appeal may be a racing certainty. It seems to me that, at either end of the spectrum, where the prospects of success may be assessed with relative ease and accuracy, strong or weak prospects of success must weigh heavily in the exceptional circumstances enquiry, and the choice of the court whether or not to implement the judgment pending appeal will be clear-cut.*

*[34] In between the two ends of the spectrum, however, where the prospects of success on appeal are uncertain and cannot be gauged without an in-depth engagement with the merits which anticipates the work of the appeal court, the prospects of success on appeal will, perforce, carry less weight in the exceptional circumstances enquiry, which will focus more on the presence and absence of irreparable harm to the parties.”*

40. In other words, in middle-of-the road matters, a court should focus on the aspect of harm to the parties rather than on the prospects of success on appeal. The present case is such a matter. *Twenty Four Motors*, by contrast, fell on one of the extreme ends of the spectrum.
41. When the time aspect is considered together with the issue of harm (as it has to be under the relevant legal principles referred to earlier) I agree with the applicants' counsel's submissions that the first applicant has made out a proper case in relation to exceptionality. A damages claim is not viable in these circumstances:

*“Turning next to the irreparable harm that the applicant contends it will suffer, I am satisfied that the applicant has no alternative way of protecting itself and its proprietary interests against the competition with the subject of the restraint agreement. The harm that the applicant will suffer if leave to execute is not granted is self-evident, since if leave to execute is refused, the first respondent's contractual undertakings and the interdict granted by the court will be worthless. The prospect of any reparation of harm by way of damages is remote. Damages would be difficult to quantify and prove in an instance where what is sought to be protected is an investment in customer relationships and the value of each contract the applicant*

*concludes with its customers. ... in restraint cases, damages are not an appropriate alternative remedy precisely because the relief sought aims to compensate for the ineffectiveness of that remedy ...*<sup>15</sup>

42. This state of affairs also renders this application urgent. The facts speak for themselves. If the first applicant is forced to bring its section 18 application in the ordinary course, it will obviously not obtain sufficient redress. The application for leave to appeal was delivered on 8 May 2026. This section 18 application was instituted 10 days later, on 19 May 2026, after the respondent had indicated that argument of the application for leave to appeal on 29 May 2026 would not suit him. Had the application for leave to appeal been argued and refused within a short period of time after the grant of the restraint order, the section 18 application would not have been necessary.
43. The applicants cannot in these circumstances be criticised for the 10-day lapse between the delivery of the application for leave to appeal and the institution of this application.

### **Irreparable harm**

44. No reasons have yet been given, but it is safe to assume that the restraint order would not have been granted unless the court was satisfied that the restraint was enforceable and – to the extent set out in the order – reasonable, that the first applicant had protectable interests in the form of customer connections and confidential information, that the respondent was threatening those protectable interests or could threaten them, and that the first applicant had no satisfactory alternative remedy.
45. This Court is not sitting as an appeal court, and it will only concern itself with the merits of the restraint application for the purposes of considering the question of exceptionality. I have referred to the approach in *Maritz v Truworths*, which I endorse, and which avoids the usurpation of the appeal

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<sup>15</sup> *Fidelity Security supra* para 8. My emphasis.

court's role. In *Body Corporate Assistance Gauteng (Pty) Ltd v Janse Van Rensburg*<sup>16</sup> this aspect was dealt with as follows:

*“[26] In these circumstances, BCA will suffer irreparable harm if the order remains suspended. In contrast, the respondents will suffer no irreparable harm if execution is granted, particularly in circumstances where Justice Magona-Dano has already determined that the restraint is valid and enforceable. The respondents argued that BCA has no confidential information, trade secrets, customer protection, business methodology, or proprietary interests. I must stress that this court is not sitting in this matter as an appellate court in respect of the decision granted by Magona-Dano AJ. When granting the judgment, Justice Magona-Dano found that the applicant had established protectable proprietary interests, including trade connections, trade secrets, and pricing structure. Simply put, and at the risk of repetition, the court a quo has already found that BCA possesses a protectable proprietary interest, including its confidential information, which is worthy of protection.”*

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

46. In the present case, too, there is a strong likelihood that the respondent is misusing the first applicant's confidential information and providing veterinarian services to its large animal clients. The respondent has not expressly stated that he is not servicing those clients. Instead, what he has

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<sup>16</sup> *Supra* paras 26-27. My emphasis.

chosen to do is provide what counsel referred to as *pro forma* denials. I have already referred to this earlier in this judgment.

47. In the founding affidavit, for example, the first applicant claims that the respondent is using its confidential information and servicing its clients. The respondent commences his answer with a denial, but it appears from the rest of the paragraph that what he is really denying is that the information is confidential. Where the first applicant claims that the respondent is providing large animal services to its clients and selling medication, the respondent answers with a denial but proceeds to criticise the first applicant's failure to provide details as to the "*dates, times, circumstances, or persons to whom I allegedly rendered large-animal veterinary services to.*" The denials only go half-way. There is no statement to the effect that he is not providing services or selling medication to any of the applicant's large animal clients.
48. On the papers, this must be because the respondent is servicing those clients, since he knows who they are and has their contact details. They have his cell phone number, and he runs a WhatsApp group about large animal health. Almost a hundred of the first applicant's clients are members of the group. The respondent, moreover, does not believe that the restraint is enforceable or valid, he does not believe that the first applicant has any protectable interests, and considers that its client information is not confidential, and he considers that the relationships he has with the first applicant's clients were fostered by himself.
49. In these circumstances, for the purposes of the restraint, the first applicant need only demonstrate the potentiality of harm, that is, it must show on a balance of probabilities that there is a likelihood that harm will be suffered.<sup>17</sup> This it has done.
50. In terms of the restraint order, the respondent may attend to small animals. He argues, however, that his current *locum* employment at Dana Bay

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<sup>17</sup> *Minister of Social Development, Western Cape v Justice Alliance of South Africa and another* [2016] 34 (1 April 2016) para 25.

Veterinary Clinic does not provide him with sufficient income, and for that reason the restraint order should not be implemented.

51. This can mean nothing else but that the respondent intends to continue servicing the first applicant's large animals if the order is not implemented, because the order does not preclude him from working with large animals beyond the 60-kilometre radius. He does not say that he has any large animal clients within the 60-kilometre radius who are not the first applicant's clients, and he does not service Dana Bay Veterinary Clinic's large animal clients.
52. Counsel for the respondent had no counter-argument to this.
53. The only way that an implementation of the restraint order could therefore harm the respondent is if he intended to service the first applicant's large animal clients. When that happens, the first applicant suffers financial harm which is irreparable because of the accepted difficulties in proving the quantum of a damages claim in this context.
54. Should the restraint order be put into effect, the respondent may continue his *locum* work at Dana Bay Veterinary Clinic. There is nothing on the papers to suggest that his current income there would never improve or that he would not obtain other *locum* positions. The respondent may undertake small animal work anywhere, and he may undertake large animal work beyond the stipulated 60-kilometre radius. He may also sell medication relating to small animals anywhere, and he may sell medication relating to large animals beyond the 60-kilometre radius.
55. The Supreme Court of Appeal in *Tyte Security*<sup>18</sup> described the respective parties' harm as the two sides of the same coin:

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<sup>18</sup> *Supra* para 15. My emphasis.

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

56. The present case is a good example of this. The first applicant has, on the facts, established on a balance of probabilities that it will suffer irreparable harm, and that the respondent will not suffer a similar fate.

### **Conclusion and costs**

57. The applicants have made out a case for the relief sought.
58. In accordance with the general rule, the respondent must bear the costs of the application, including the costs of counsel taxed on Scale B of the applicable tariff.

### **Order**

59. In the premises, it is ordered as follows:
- 1. The applicant’s non-compliance with the forms, service and time periods prescribed by the Uniform Rules of Court is condoned, and this matter is dealt with as one of urgency under Rule 6(12).**

2. The order dated 29 April 2026 under case number 243/2026 granted by the Honourable Madam Justice Kusevitsky, sitting in the Thembaletu local seat of this Court, is put into immediate effect as contemplated in section 18(3) of the Superior Courts Act 10 of 2013, pending the outcome of the application for leave to appeal delivered by the respondent on 8 May 2026, as well as the appeal itself, if any, and any further applications for leave to appeal and appeals.
  
3. The respondent shall pay the costs of this application, including counsel's fees taxed on Scale B.

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**P. S. VAN ZYL**  
**Judge of the High Court**

**Appearances:**

**For the applicants:**

Instructed by:

Mr D. Baguley and Ms K. Damonse  
Herbie Oosthuizen & Associates

**For the respondent:**

Instructed by:

Mr T. E. Lotz  
Millers Attorneys