





IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 245823/2025

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED.
	
	28 MAY 2026
.....	.....
SIGNATURE	DATE

In the matter between:

**JOHANNES TSEKE MPHAHLELE**

Applicant

and

**THE SOUTH AFRICAN BOARD FOR SHERIFFS**

First Respondent

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

Second Respondent

**NAMEDI TSHEPO MPHAHLELE**

Third Respondent

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**JUDGMENT**

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LABUSCHAGNE J

[1] This is a continuation of litigation between the applicant and the respondents pertaining to the appointment of the applicant as Sheriff for Pretoria North East.

[2] Three judgments have been delivered, the orders of which will be referred to below. The first judgment was delivered on 22 January 2026. The second judgment was on 24 February 2026 in an application for leave to appeal the first judgment. The third judgment was also delivered on 24 February 2026 and related to contempt proceedings. Prayers 1,8,9 and 10 in the contempt proceedings were not related to contempt at all, but to a suspension of a removal decision. They were postponed sine die.

[3] What currently serves before this court are the postponed prayers referred to above and enforcement proceedings pertaining to the order in the first judgment. The further applications are:

3.1 For a suspension of a decision to remove the applicant as Sheriff by the Minister in a letter dated 20 December 2025, alternatively 3 February 2026, pending Part B proceedings;

3.2 Implementations proceedings in which the applicant seeks a declarator that the order granting leave to appeal does not suspend the interim order in the first judgment. The issue in that regard is whether the order granted is interim or final in effect.

3.3 Alternatively, and in the event of the order being suspended, an application is brought to implement the first order in terms of section 18(3) of the Superior Courts Act, 10 of 2013.

#### **PREVIOUS ORDERS GIVEN**

[4] On 22 January 2025 I gave an order in the urgent court in the following terms:

“2. Pending the finalisation of the relief sought in Part B of the application, as well as Part B of the application under case number B6834/2025, the first respondent is ordered to forthwith:

2.1 Issue the applicant with a Fidelity Fund Certificate for Pretoria North East High and Lower Courts; and

2.2 Remove any reference on the first respondent’s website to the third respondent as the Sheriff for Pretoria North East High and Lower Courts.

3. The first respondent is ordered to pay the costs of this application on Scale C.”

[5] The first respondent brought an application for leave to appeal. From the application for leave to appeal it appears that a letter of the Minister dated 20 December 2025 removing the applicant as Sheriff for Lephalale on the grounds of a lack of fitness and propriety had not been disclosed to me. Both parties were aware of this, but the letter was only written after the applicant had launched his application for the provision of a Fidelity Fund Certificate.

[6] As the letter of the Minister of 20 December 2025 did not serve before me, but was relevant, and as the Board for Sheriffs will seek to introduce this letter on appeal, I made an order in the application for leave to appeal on 20 February 2026 granting leave to appeal to the SCA, in the interests of justice and as the withholding of a relevant document was deemed to be a compelling reason why the appeal should be heard. The leave to appeal excluded the costs order granted, which order is the subject of a petition to the SCA.

[7] I made an order granting leave to appeal to the SCA against paragraph [2] of my order of 22 January 2026, but not paragraph [3]- the costs order.

[8] On 24 February 2026 I delivered a judgment in a contempt application brought by the applicant against the respondents for failure to issue him a Fidelity Fund Certificate. By the time the application for contempt was heard, the applicant had amended the notice of motion to plead the following two prayers as part of the notice of motion:

“8. Pending the final determination of the relief sought in Part B of this application as well as Part B of the application under case number B6834/2025, the second respondent’s purported decision to remove the applicant as the Sheriff of Pretoria North East and lower courts is suspended.

9. The first respondent is ordered to forthwith and unconditionally withdraw annexure JM41A, JM41B, JM41C, JM41D and JM53 to the founding affidavit by addressing correspondence in this regard to the addressees of the said letters and circular.”

[9] As the prayers had not been dealt with by the respondents at the time that I heard the contempt application, I made an order postponing *sine die* Prayers 1, 8, 9 and 10 (costs) until all papers had been exchanged.

### **THE SUSPENSION APPLICATION**

[10] I have quoted the text of the letter of the Minister dated 20 December 2025 extensively in the contempt judgment that I delivered on 24 February 2026. As the applicant's case for suspension also depends on an interpretation of the letter, I repeat the wording in full in this judgment.

“Dear Mr Mphahlele

Re: Decision on removal of office: Sheriff for Lephalale High and Lower Courts

I refer to your letter dated 02 December 2025 which serves as a response to my notice of proposed suspension and/or removal from office issued on 21 November 2025.

I have noted your explicit statement that ‘it will accordingly not serve any purpose to make written representations’ regarding your proposed suspension or removal. I accept this as a formal waiver of your right to make further representations on this matter. Accordingly, I proceed to make my final decision based on the facts at my disposal.

Your assertion that you have ‘resigned’ to assume the position of sheriff for Pretoria North East is founded on the fundamental misconception of

the legal status of that appointment. The offer of appointment extended to you on 15 September 2025 was not absolute. It was subject to strict suspensive conditions which had to be fulfilled before the appointment could vest. Specifically, the appointment letter stated:

- That you “forthwith relinquish your permanent appointment for Lephale HL”; and
- That you “are in compliance for the necessary requirements to be issued for the Fidelity Fund Certificate (“FFC”).

Our records demonstrate that you failed to fulfil these material conditions:

- You failed to relinquish for post at Lephale “forthwith” (immediately). You said you retained the post for months, only attempting to tender a conditional resignation on 02 December 2025. This failure is sufficient to render the suspensive condition unfulfilled.
- You are statutorily disqualified from holding a FFC in terms of section 33(1)(h) of the Sheriffs Act, 90 of 1986 (“the Act”) due to your previous criminal conviction. Consequently, you cannot meet the conditions regarding compliance with FFC requirements.

As these suspensive conditions were not met, the appointment for Pretoria North East lapsed by operation of law and never came into legal effect. You do not hold that office, and your attempt to use it as a basis

for resignation for Lephalale is legally incompetent. The South African Board for Sheriffs has formally notified me that your FFC for Lephalale was cancelled on 24 November 2025.

Furthermore, my office has been provided with evidence that, notwithstanding the fact that you hold no valid FFC for any jurisdiction, you have continued to perform the statutory functions of the sheriff. This includes the organising and advertising of sales in execution. I must remind you that the performance of such functions without a valid FFC is a criminal offence under section 30(1)(a) as read with section 60(1)(a) of the Act. This continued disregard for the law constitutes an aggravating factor and serves as definitive proof that you are not a fit and proper person to occupy the office of a sheriff, an office that demands the highest standard of integrity and legal compliance.

In the circumstances, I am satisfied that grounds exist for your removal. I hereby remove you from the Office of Sheriff for Lephalale High and Lower Courts with immediate effect, in terms of section 4(3)(a) of the Sheriffs Act.

Since you were appointed to the South African Board for Sheriffs in terms of section 9(2)(a) of the Act (representing the sheriffs' profession), please be advised that your removal from the Office of Sheriff be due immediately cease to hold office as a board member in terms of section 12(1)(d) of the Act.

You are directed to surrender all office files, trust account records and court process to the court manager and the board's representative immediately.

Yours sincerely

Ms Mmamoloko Kubayi, MP

Minister of Justice and Constitutional Development

20 December 2025”

[11] The applicant's contention is that the letter is only directed at removing the applicant as Sheriff for Lephalale, and not Pretoria North East. The applicant contends that this letter therefore does not constitute a removal of the applicant from the Office of Sheriff for Pretoria North East.

[12] Insofar as the position of the applicant as Sheriff for Pretoria North East was concerned, it is contended by the applicant that the Minister laboured under an error of law in assuming that that appointment had lapsed due to non-compliance with a suspensive condition. I already ruled in this regard in the first judgment, expressing a similar view as far as the Board for Sheriffs is concerned.

[13] On 03 February 2026 the Minister wrote a further letter, the content of which I quote in full:

“Dear Mr Mphahlele

Re: Status of your appointment and removal from the office of Sheriff

I refer to my letter dated 20 December 2025 and the subsequent judgment of the Gauteng Division of the High Court delivered on 22 January 2026 (case number 245823/2025). The ongoing exchange of correspondence between your legal representatives and the South African Board for Sheriffs (“the Board”) was brought to my attention.

I wish to restate and confirm my decision as initially communicated on 20 December 2025. My decision remains unchanged in that your purported “resignation” dated 02 December 2025 was legally competent and of no force or effect.

As you failed to fulfil the material suspensive conditions of the Pretoria North East appointment, specifically the immediate relinquishment of your Lephalale post and compliance with Fidelity Fund Certificate (“FFC”) requirements, the appointment for Pretoria North East lapsed by operation of law.

Consequently, at the time of my decision to remove you, you were the incumbent Sheriff for Lephalale high and lower courts. Your removal from that office under section 4(3)(a) of the Sheriff’s Act, 90 of 1986 (“the Act”) was a valid exercise of statutory power.

It is necessary to address the judgment of 22 December 2026. The administrative act of your removal from the Office of Sheriff took place on 20 December 2025, or in the month prior to the delivery of judgment. The court was requested to

regulate the status of an appointment that had already lapsed and an individual that had already been removed from the profession.

“For the avoidance of any doubt, I hereby confirm that you have been removed from the Office of Sheriff for all jurisdictions with the Republic of South Africa.

The Office of Sheriff is one of high trust and integrity. A finding that an individual is no longer a fit and proper person to hold the office of Sheriff in one jurisdiction, resulting in formal removal, renders that individual by fact, ineligible to hold office in any other jurisdiction.

I may further remind you that your removal from the Office of Sheriff resulted in your immediate and automatic cessation as a member of the South African Board of Sheriffs in terms of section 12(1)(d) of the Act.

Any continued performance of the statutory functions of the Sheriff, in any jurisdiction, without a valid appointment and current FFC, constitute a criminal offence under section 60 of the Act. You are once again directed to comply with the handover instructions issued on 20 December 2025.

Yours sincerely

Ms Mmamoloko Kubayi, MP

Minister of Justice and Constitutional Development

Date: 3 February 2026”

**WAS MR MPHABLELE REMOVED AS SHERIFF FOR PRETORIA NORTH EAST BY MEANS OF THE LETTER OF 20 DECEMBER 2025?**

- [14] This letter is to be interpreted by the court in the context in which it was written. The letter of 03 February 2026 is a clarification of the letter of 20 December 2025.
- [15] Considering the letter of 20 December 2025 in isolation, its text is consistent with an intention to remove Mr Mphahlele as Sheriff from his appointment in Lephalale. However, what motivates this removal is the lack of trust which the Minister expresses in the applicant and the finding that, by virtue of his conduct he is no longer a fit and proper person to carry the Office of Sheriff. As a further consequence of the aforesaid, the Minister removed Mr Mphahlele from the Board for Sheriffs.
- [16] As the Minister was under the impression that his appointment to Pretoria North East had lapsed by operation of law, the letter was aimed at ensuring that he holds no office as a Sheriff or as a Board Member in terms of the Sheriffs Act.
- [17] The applicant contends that the Minister never had the intention of removing him from his appointment from Pretoria North East due to the aforesaid error of law. She assumed that position had lapsed.

[18] In any interpretation exercise the text is the starting point, and an interpretation that is not consistent with the reasonable meaning of the text will falter (see **Chapman's Bay Estate Home Owners Association v Lötter** ano [2024] ZASCA 153 at par 28).

[19] However, the text demonstrates:

19.1 A fundamental breakdown in trust by the Minister in the character qualities of Mr Mphahlele required for being appointed as the Sheriff. It is the result of that assessment, that he was removed from the Board of Sheriffs. The basis for this removal is inconsistent with Mr Mphahlele being a sheriff. The purpose of the letter was clearly to ensure a clean slate as far as the applicant was concerned to ensure that he holds no office as Sheriff at all.

19.2 Taking into account the context, the purpose and the text of the letter (particularly the basis for his removal as Board Member) the effect of the letter, as a matter of interpretation and by necessary implication, was to remove Mr Mphahlele as Sheriff for Pretoria North East.

19.3 There is a public interest component to the context of the letter that cannot be overlooked. The contention of the applicant amounts to him clinging to a position that is one of high trust in circumstances where the Minister had lost trust in the applicant. The administration of justice is fundamentally pillared on the Constitution and public trust. The rule of law is served when duly appointed sheriffs of high character execute court orders. Public trust is undermined where a sheriff no

longer meets the character qualities required of his position, according to the Minister, but clings to his position. It is for this further reason that I conclude that the applicant was removed as sheriff in all jurisdictions by the letter of 20 December 2025.

[20] If I were mistaken in this regard, any doubt was removed by means of the letter of 03 February 2026 which confirms the breakdown in trust between the Minister and Mr Mphahlele and the fact that he was not viewed as fit and proper to hold office as Sheriff anywhere in the country.

[21] My conclusion is therefore that Mr Mphahlele was removed as Sheriff on 20 December 2025. Whether as an act of confirmation, or viewed independently, the letter of 3 February clarifies and restates his removal from office.

[22] A question may very well be asked how this finding is reconcilable with the judgment delivered on 22 January 2026.

[23] It needs to be stated categorically that, had the facts of the letter of 20 December 2025 been disclosed to this court, the outcome in the judgment would have been different.

[24] There are two reasons why this is stated:

24.1 The removal letter would stand as administrative action in terms of the **Oudekraal** principle and would be a bar to the relief ordered.

24.2 The Minister's letter with the finding that Mr Mphahlele lacked character qualities consistent with the appointment as Sheriff for

Lephalale, resulting in his removal from the Board, while under the erroneous assumption that his appointment for Pretoria North East had lapsed, constitute an attempt to ensure that the applicant is not a Sheriff at all after 20 December 2025. Viewed in its context, the letter of 20 December 2025 is a retraction of the appointment of the applicant as Sheriff in all jurisdictions, including Pretoria North East. The letter of 3 February 2026 is an overt rejection of Mr Mphahlele as sheriff in any jurisdiction. That is what would have undone his appointment, in terms of his appointment letter of 25 September 2025.

**MUST THE REMOVAL OF MR MPHAHLELE BE SUSPENDED PENDING PART B PROCEEDINGS?**

[25] In order to establish a case for the suspension of the removal decision, the applicant would need to establish the requirements for an interim interdict. In the context of the interim relief pending a review, he would need to show strong grounds of review that are likely to succeed in Part B (See **EFF v Gordhan 2020 (6) SA 325 (CC) par [42]**)

[26] I am mindful thereof that the review court would have a power and jurisdiction to determine this issue on the facts serving before it and that this assessment would not be binding on the review court.

[27] The basis on which the applicant asserts its prima facie right, i.e. strong prospects of success in the review, is the following:

27.1 The letter of 20 December 2025 only effects the removal of Mr Mphahlele from his appointment to Lephalale.

27.2 The Minister had the subjective intention of only removing him from the position to Lephalale in circumstances where she laboured under an error of fact and/or law regarding the validity of his appointment to Pretoria North East. She assumed that it had lapsed. I found that his appointment required a retraction, with reference to the applicant's letter of appointment.

[28] In my judgment of 22 January 2026 I found that the Minister had laboured under of an error of law in assuming that the appointment to Pretoria North East had lapsed. As stated, I found that an act of retraction was required, as these were the conditions under which the applicant had been appointed.

[29] At the time of granting the relief on 22 January 2026:

29.1 It was common cause between the parties, confirmed by counsel for the Board for Sheriffs, that there had been no act of retraction of the appointment of the appellant in the position of Pretoria North East. This was a false position to advance.

29.2 Both parties were aware of the letter of 20 December 2025 but failed to disclose it.

[30] If the prospects of success before a review court are assessed, and particular whether a suspension of the removal decision would be confirmed or not, the following considerations came into play:

30.1 The letter of 20 December 2025, interpreted as set out above, aims at ensuring that Mr Mphahlele is not a Sheriff at all in any jurisdiction.

30.2 The finding that he is no longer fit and proper, and falls to be removed from the Board of Sheriffs, is inconsistent with this continued position as Sheriff for Pretoria North East.

30.3 The reviewing court would have the benefit of the letter of 03 February 2026, which confirms the aforesaid assessment and is in itself and act of retraction of the appointment of Mr Mphahlele as Sheriff for Pretoria North East.

[31] The Board for Sheriffs contend that Mr Mphahlele's failure to disclose his past conviction for all the years that he has been a Sheriff, up to 2025, is in itself an indication that he had been disqualified in terms of section 33 of the Sheriffs Act all along.

[32] The cumulative effect of these considerations are such that they detract from the prospects of the applicant succeeding in Part B proceedings.

[33] If I am mistaken in finding that the applicant has not established a prima facie right in these proceedings, the aforesaid considerations are reasons why a

court, exercising discretionary relief in Part B proceedings, may decline to come to the assistance of Mr Mphahlele.

[34] In light of the aforesaid assessment, it is unnecessary to deal with the further requirements of an interim interdict.

[35] It suffices to state that the application for suspension of the Minister's decision to remove Mr Mphahlele (whether that decision is limited to the letter of 20 December 2025 or includes the letter of 03 February 2026), fails and the removal decision will be left undisturbed pending Part B proceedings.

[36] So too does the remaining relief sought fail , as it hinges on a suspension being granted.

**HAS THE BOARD'S NOTICE OF LEAVE TO APPEAL SUSPENDED THE ORDER GRANTED ON 22 JANUARY 2026?**

[37] The applicant contends that the order granted is an interlocutory order not having the effect of a final judgment in the context of section 18(2) of the Superior Courts Act, 10 of 2013. It is contended that the order was not suspended by the filing of the application for leave to appeal or the leave granted.

[38] Section 18(2) reads:

“(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final

judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.”

[39] The applicant contends that the order was not suspended by the filing of a notice of leave to appeal (sec 18(1) of the Superior Courts Act, 10 of 2013). But if I were to find that it was suspended, it applies for implementation in terms of section 18(3) of the Act.

[40] The first question to be decided is therefore whether the order granted is an interlocutory order not having the effect of a final judgment. As the order granted was **pendente lite**, it is clearly interlocutory. The issue is whether it is final in effect.

[41] One of the tests for finality is whether the order granted will be revisited in subsequent proceedings. In this instance the relief sought in Part B seeks a confirmation of the order granted, ostensibly indicating that it would be revisited.

[42] In this application this test is useful for determining whether a decision is interlocutory or not, but not necessarily whether it is final in effect.

[43] In terms of **Zweni v Minister of Law and Order** 1993 (1) SA 533 (A) at 532 I to 533 B – the court found that an order is appealable if it has three attributes:

43.1 It must be final in effect and not susceptible of alteration by the court of first instance;

43.2 It must be definitive of the rights of the parties; and

43.3 It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

[44] What is to be assessed in the effect of the order and to determine whether that effect is final. The phrase “final in effect” was considered by the SCA in **Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation** 2018 (6) SA 440 (SCA) at para [47]. The court found that “final in effect” means that an issue in the suit has been affected by the order such that the issue cannot be revisited either by the court of first instance of that hearing the action”.

[45] In **Metlika Trading Ltd v Commissioner for the South African Revenue Service** 2005 (3) SA 1 (SCA) an interlocutory order had been granted directing the return of an aircraft to South Africa against the backlog of a tax dispute in which SARS sought as declarator that the aircraft was owned by persons against whom income tax assessments had been raised. Streicher JA found that the order was final in effect for the following reasons:

“[22] ... Whether or not the aircraft should be returned to South Africa and whether or not the other orders relating to the aircraft should be granted is not an issue in the action pending which the interdict was granted. ...

[24] The order that steps be taken to procure the return of the aircraft to South Africa, as well as the other orders relating to the aircraft, were intended to have immediate effect, they will not be

reconsidered at the trial and not be reconsidered on the same facts by the court a quo. For these reasons they are in effect final orders. ...”

[46] A Fidelity Fund Certificate is valid for one year only. A Sheriff may not perform the duties of a Sheriff without a valid Fidelity Fund Certificate. The relief granted excludes the third respondent from performing duties as Sheriff.

[47] In **Cronshaw and Another v Fidelity Guards Holdings (Pty) Ltd** 1996 (3) SA 686 (A) a restraint of trade interdict was granted against a security guard employed by Fidelity Guards who was formerly employed by Coin Security (subject to a restraint of trade). In that matter the court found that the issues in the interim interdict were exactly the same issues that were to be decided in the trial, pending which the interdict had been operative.

[48] The applicant relies on **Cronshaw** for contending that the order granted is not final in effect.

[49] In **Cronshaw**, Schutz JA consider the principle that time run cannot be undone as an indicator whether an order is final in effect or not. At page 691 he states:

“We were addressed, as have been many courts before, on the prejudice that is suffered by the subject of an interim interdict, which prejudice is argued to render the working of such interdict final, in the sense that time run cannot be recalled, and that the harm done cannot be retrieved. That such prejudice is often suffered is not in issue. That the harm caused is retrievable is by no means true in all cases ...

There is a further explanation of a rule that allows such prejudice without prompt appeal. It is that the prospective harm is one of the factors that must be judged by the court of first instance in weighing the balance of convenience ... This is a responsible and often difficult balancing, premised as it is on the distinct possibility that the order be wrongly granted, because of the incomplete information available to the judge, and sometimes the haste with which such matters have to be dealt with. If the grant of an interim interdict were appealable and leave were to be granted (the test being reasonable prospects of success) the interim order would be stayed. Such a stay would be destructive of the main object of an interim interdict – to maintain the status quo pending the final determination of the main case.

The stay may in turn lead to what is called an application for leave to execute (to put the order into operation again) where considerations similar to those already weighed under the balance of convenience would have to be re-assessed. The court of first instance would then be required to reach a decision, on imperfect information, a second time, all with regard to the interim situation. If it be postulated that leave to appeal can and has been granted, the appeal court would have to reconsider that situation without being in a position to reach a final decision. From a practical point of view it seems preferable that the merits of the interdict be left for final determination at the trial, and that the interim relief, to which the balance of convenience is relevant, be considered once only.

The net effect of a contrary rule, allowing an appeal against the grant of interim orders, could be the undermining of a necessarily imperfect procedure, which is nonetheless usually best designed to achieve justice.”

[50] The aforesaid considerations raised by Schutz JA confirm that the suspension of an interim order which was granted after a due weighing of available information should not be undone by a pending appeal. It presupposes that the court weighed the granting of the interdict against the absence of the interdict and assessed it on the available (if incomplete) facts to obtain an immediate effect.

[51] In **Cipla Agrimed**, paragraph [47] the court stated:

“Cipla seized on the phrase ‘final in effect’ in the present matter. It argued that the patent will have run its course by the time the main action comes to be considered. This is precisely the argument raised and rejected in Cronshaw. It boils down to the argument that Cipla is prejudiced because ‘time run cannot be recalled’. However, it has been consistently held that ‘final in effect’ means that an issue in the suit has been affected by the order such that the issue cannot be revisited either by the court of first instance or that hearing the action. The kind of prejudice relied on by Cipla was decisively rejected as a basis for appealability as far back as *Globe and Phoenix (Gold Mining Company Ltd v Rhodesian Corporation Ltd)*. I know of no case where it has rendered a matter appealable.”

- [52] The applicant's contention is that the question whether the applicant should be issued with a Fidelity Fund Certificate will form the subject matter of Part B and will thus "be reconsidered on the same facts" which implies that the order is not "final in effect" and that the operation and execution of the order is accordingly not suspended pending the Board's appeal.
- [53] This contention loses sight of the fact that the order granted and the assessment of all the requirements of an interim interdict took place without the court being apprised of a vital preceding occurrence. The fact that the Minister had removed the applicant by means of a letter on 20 December 2025 had not been disclosed. The question whether an order is final in effect in such circumstances is determined by not only the principles in **Zweni, Cipla Agrimed** or **Cronshaw**, but by the interest of justice.
- [54] On the interpretation of the aforesaid letter set out supra, the applicant had been removed as Sheriff for Pretoria North East by necessary implication by means of the letter of 20 December 2025. Alternatively, it, or the letter of 3 February 2026, constituted a retraction of his appointment in the context of his letter of appointment of 25 September 2025.
- [55] It suffices to state that the issue of the Fidelity Fund Certificate will not be considered in Part B proceedings on exactly the same facts that served before this court.
- [56] In light of the aforesaid, and in the interests of justice, I conclude that the order granted is final in effect and that it was suspended by means of the filing of an application for leave to appeal.

**MUST THE INTERIM ORDER BE IMPLEMENTED?**

[57] The applicant, as an alternative, contends that exceptional circumstances exist warranting the interim implementation of the order granted on 22 January 2026.

[58] There are three requirements for such an implementation order. The applicant must establish:

58.1 Exceptional circumstances;

58.2 That the applicant will suffer irreparable harm if the order is not made;  
and

58.3 That the party against whom the order is made will not suffer irreparable harm if the order is made.

[59] These separate requirements are however considered in an integrated process and not in a compartmentalised fashion (see **Tyte Security Services CC v Western Cape Provincial Government and Others** 2024 (6) SA 175 (SCA) at paragraphs [9] to [10]).

[60] The applicant's prospects of success in the envisaged review should be taken into account to determine exceptionality and as a factor in exercising the court's discretion to enforce the order (**Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd** 2024 (2) SA 573 (GJ) at paragraph [41]).

[61] The applicant's prospects of success in the pending review against the order granted will be influenced by the non-disclosure of the letter of 20 December 2025 by both parties and the assurance given to this court at the time of hearing the application that it was common cause between the parties that there had been no retraction of the applicant's appointment. In these circumstances I cannot find that there are exceptional circumstances favouring the interim implementation of the order in terms of section 18(3).

[62] If I am mistaken in this regard, the implications of the implementation of the interim order would be to freeze out the third respondent for as long as the part B proceedings take. This effectively means that the entire 2026 would have passed by the time a judgment in part B proceedings is obtained. The issue of mootness would arise in the review in circumstances where the clock cannot turn back for the third respondent.

[63] The applicant has therefore failed to establish that the third respondent will not be prejudiced by the interim implementation.

[64] As far as the Board for Sheriffs is concerned, the interim implementation is sought in the face of a decision by the Minister to remove the applicant as Sheriff from all jurisdictions, an issue on which I have expressed an opinion supra. The applicant had been removed by necessary implication by means of a letter of 20 December 2025. His removal from all jurisdictions was confirmed in a letter of the Minister of 03 February 2026.

[65] The implementation of the interim order raises legality concerns on the part of the Board of Sheriffs. These legality concerns relate to the applicant's fitness

and propriety. As far as the Minister is concerned, the interim implementation will have the effect of a court endorsement of the applicant as Sheriff where the Minister has lost her trust in the applicant and removed him from office in all jurisdictions.

[66] In these circumstances the applicant has failed to establish that the respondents will not be prejudiced by the putting into operation of the order granted pending an appeal and/or finalisation of Part B.

[67] In the premises the section 18(3) application falls to be dismissed.

### **CONCLUSION**

[68] For the reasons set out supra, I come to the following conclusions:

68.1 The Minister removed the applicant as Sheriff for Pretoria North East on 20 December 2025, as confirmed on 03 February 2026.

68.2 The aforesaid removal decision will not be suspended pending the finalisation of the review thereof.

68.3 The order granted on 22 January 2026 is an interlocutory order that is final in effect, which was suspended upon the filing of an application for leave to appeal.

68.4 The suspended order will not be implemented in terms of section 18(3).

[69] In the premises I make the following order:

1. Paragraphs 8, 9 and 10 of the amended notice of motion in the contempt proceedings are dismissed.
2. The applicant to pay the costs pertaining to the aforesaid on a party and party scale, Scale C.
3. The applicant's application in terms of section 18(3) for interim execution of the order of 22 January 2026 is refused with costs.
4. The applicant to pay the costs of the section 18(3) application on a party and party scale, Scale C.

  
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**LABUSCHAGNE J**

JUDGE OF THE HIGH COURT

**APPEARANCES:**

COUNSEL APPLICANT : ADV SATHEKGE  
INSTRUCTED BY : GUSTAF DREYER