



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

CASE NO: 2025-209746

Reportable

In the matter between:

OCEAN ARK SHIPPING LTD

First applicant

ASTRON ENERGY

Second applicant

and

**THE COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE**

Respondent

Heard: 15 May 2026; 1 June 2026

Delivered: 8 June 2026

Summary:

Application for leave to appeal and section 18(3) application – Whether interim order appealable – Final in effect – Interests of justice – Leave granted to the Supreme Court of Appeal – Section 18(3) – Test restated – Failure to prove on a balance of probabilities that the appealing party will not suffer irreparable harm if an execution order is granted – Section 18(3) application refused

ORDER

The following order shall issue:

- (a) The application for leave to appeal by the Commissioner for the South African Revenue Service (the Commissioner) against the judgment and order delivered by this Court on 24 April 2026 is granted.
- (b) Leave to appeal is granted to the Supreme Court of Appeal.
- (c) The costs of the application for leave to appeal shall be costs in the appeal.
- (d) The application in terms of Section 18(1), read with Section 18(3) of the Superior Courts Act 10 of 2013 by Ocean Ark Shipping Limited and Astron Energy (Pty) Ltd (the Section 18 application), for an order directing that the operation and execution of the order dated 24 April 2026 shall not be suspended pending the outcome of the appeal, is refused.

- (e) Ocean Ark Shipping Limited and Astron Energy (Pty) Ltd are ordered to pay the Commissioner's costs of opposing the Section 18 application, such costs to include the cost of two counsel, to be taxed on Scale C.

**JUDGMENT – LEAVE TO APPEAL AND SECTION 18(3)
APPLICATION**

HOLDERNESS J

[1] This judgment is in respect of an application for leave to appeal against the judgment and order of this Court, (the main judgment and the order respectively) handed down on 24 April 2026, to the Supreme of Appeal (the SCA), alternatively to the full court of this Division and in respect of the conditional application by the respondents in the leave to appeal application for an order in terms of section 18(3) of the Superior Courts Act 10 of 2013 (the SC Act).

[2] The applicant in the application for leave to appeal and the respondent in the conditional section 18 application (the section 18 application) is the Commissioner for the South African Revenue Service (the Commissioner, also referred to as SARS).

[3] The first and second respondents in the application for leave to appeal, and the first and second applicants in the section 18 application are Ocean Ark Shipping Ltd (Ocean Ark) and Astron Energy (Pty) Ltd (Astron) respectively.

[4] The main judgment was in respect of an urgent application for the temporary suspension of the Commissioner's decisions pertaining to the detention, seizure, and deemed importation of the Vessel belonging to the first applicant, and for the release of such Vessel, subject to the provision by the second applicant of a guarantee in respect of the value of the Vessel and any Valued-Added Tax (VAT), penalties and interest claimed by the respondent, pending the outcome of the review proceedings already launched in the Gauteng Division.

[5] The complex legal questions raised included the proper interpretation of section 10(1)(e) of the Customs and Excise Act 91 of 1964 (the Customs Act), (read with General Note F), and the lawfulness of the Commissioner's refusal to release the Vessel under section 93.

[6] In the main judgment, the court found that the revised guarantee, provided after the hearing of the main application, provides the fiscus with security that is equivalent, in all material respects, to continued physical possession of the Vessel, that the Commissioner's objections, whilst properly raised, ultimately do not render the guarantee inadequate, and that release pending the determination of the review proceedings against the guarantee appropriately and adequately protects the Commissioner's position.

The order of 24 April 2026

[7] The order of the court was as follows:

- (a) The application is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, dispensing with the ordinary forms and service provided for in these Rules.

(b) Pending the outcome of the review application instituted by the applicants in the High Court Gauteng Division (Pretoria) under case number 245199/2025, it is directed that the respondent's detention decision; seizure decision, deemed importation decision and section 93 decision (as defined in paragraph 3 of the notice of motion) are temporarily suspended.

(c) Pending the final determination of the review application, and subject to any directives by the review court in respect of the control of the Vessel, the respondent is directed to release the Vessel, the MT Essien, to the applicants subject to the following conditions:

(i) Payment by the second applicant of any reasonable charges that have been incurred in connection with the detention and seizure of the Vessel.

(ii) Provision by the second applicant of a guarantee in the amount of R398 378 772.60, being the estimated value of the Vessel, and R124 239 531.95 for any VAT, VAT penalty and interest that may be charged in respect of the alleged importation of the Vessel, as set out by SARS in the correspondence to ST Shipping and Transport Pte Ltd of 22 August 2025 issued by Lombard Insurance on behalf of the second applicant in favour of the respondent (on the terms as set out in **Annexure X1** hereto).

- (d) The respondent is to pay the costs of this application, such costs to include the costs occasioned by the employment of two counsel on Scale C.

The grounds of leave to appeal

[8] The Commissioner relies on the following grounds in the application for leave to appeal:

8.1 The Court granted a final substitutionary order, in place of the Commissioner's discretionary decision under section 93 of the Customs and Excise Act, 1964, ("the Act") not to release the vessel in terms of section 93 of the Act, by directing the release of the vessel against the provision of a guarantee, without finding that Ocean Ark and Astron Energy had a clear right to such relief. The order had the final effect of rendering moot any decision by the Review Court on a review of the Commissioner's decision under section 93 of the Act (the first ground).

8.2 The Court made a fundamental misdirection by granting an order on a guarantee that was not before the Honourable Court on the record of the proceedings and in respect of which no submissions were invited or heard from the Commissioner (the second ground).

8.3 The Court erred in considering that the guarantee upon which the order was made, place the Commissioner in the same position as if the vessel had not been released (the third ground).

8.4 The Court misdirected itself in not determining the legal question whether or not the vessel was liable to forfeiture on the common cause facts (fourth ground).

8.5 To the extent that the relief was interim relief, the Honourable Court failed to apply the test for a *prima facie* right with respect to a finding that the Ocean Ark and Astron Energy should, as opposed to could, obtain final relief, on the facts alleged by them together with those facts alleged by the Commissioner which were admitted by Ocean Ark and Astron Energy or which they could not dispute:

8.5.1 The vessel was brought to South Africa in 2023 for the purpose of operating in South Africa to perform coastwise traffic and did so until the date of its detention. As a matter of common cause fact, the vessel was imported without due entry having been made and thus liable to forfeiture.

8.5.2 The claim of Ocean Ark to be an innocent owner was correct by reason of the fact that it acquired ownership of the vessel approximately 12 months after it had been imported into South Africa at a time when it was already liable to forfeiture.

(i) Notwithstanding Ocean Ark's innocence in relation to events at the time of importation, it did not disclose evidence of what it was aware at the time it became the owner, nor did it disclose what due diligence investigations it undertook.

- (ii) Ocean Ark protected itself against the possibility of seizure by stipulating warranties in the contract whereby it acquired rights in the vessel.
- (iii) In relation to seizure and forfeiture being disproportionate:
 - (a) Ocean Ark had acquired its rights in the vessel for little more than 50% of its market value.
 - (b) Ocean Ark had disposed of its interest in the vessel under a financing transaction for the acquisition price together with interest.
 - (c) Ocean Ark's interest in the vessel was limited to security for the outstanding capital and interest charges.
 - (d) There was no evidence of the outstanding balance of Ocean Ark's exposure, either to the Commissioner, when release was sought under section 93, or to the Court.
 - (e) No evidence was given as to the existence or absence of other securities for Ocean Ark's exposure.
 - (f) No evidence was given as to what Ocean Ark's unrecovered loss would be if the vessel were not released at any time.
 - (g) There was no evidence as to why Ocean Ark was not indemnified for loss under the warranties in its purchase

agreement or in terms of the provisions of its finance agreement (the fifth ground).

8.6 In relation to irreparable harm:

8.6.1 There was no evidence of irreparable harm in the interim on the part of Ocean Ark.

8.6.2 Astron Energy as a time charterer had no legal interest in the proceedings.

8.6.3 Astron Energy failed to prove a contractual obligation to pay for services that were not being rendered by reason of the detention and seizure of the vessel.

8.6.4 Astron Energy's contract was in any event to expire in the middle of 2026 (sixth ground).

8.7 To the extent that the relief was truly interim relief, the Court misdirected itself in relation to costs, applying the principal applicable to final relief whereas in matters of the grant of interim relief the ordinary rule is that the costs are reserved for determination by the court dealing with the final relief (the seventh ground).

[9] The court in the main judgment ordered that pending the outcome of the review, the Commissioner's detention, seizure decision, deemed importation decision and section 93 decisions are temporarily suspended, and that subject to any directives by the review court in respect of the control of the Vessel, the

respondent is directed to release the Vessel, the MT Essien, to the applicants subject to the conditions set out in paragraph (c) of the order.

[10] The central issue in the application for leave to appeal is that by ordering the release of the Vessel against the revised guarantee, the court granted a final substitutionary order that pre-empted the statutory discretion vest in the Commissioner by Section 93 of the Act, thereby rendering the pending review moot.

Applications for leave to appeal generally

[11] Section 17(1)(a)(i) of the SC Act provides that leave to appeal may only be where the appeal would have a reasonable prospect of success. The use of the word ‘would’ in subsection 17(1)(a)(i) of the SC Act imposes a more stringent threshold in terms of the SC Act.¹

[12] Ocean Ark and Astron oppose the leave to appeal and have brought a conditional application under section 18(3) of the SC Act, the determination of which is subject to whether this Court grants leave to appeal.

[13] The SCA recently reaffirmed² that ‘an interim order may be appealable, taking into account a range of factors. The *Zweni* requirements play an important role in determining the issue of appealability in a particular case, but they are not immutable. The interests of justice continue to play a substantial role in the inquiry.’

¹Compared to the provisions of the repealed Supreme Court Act 59 of 1959.

² In *MV “Tai Harmony” and Another v Sure Success Steamship S.A and Another (MV Tai)* (953/2024 ; 923/2024) [2026] ZASCA 60; [2026] 2 All SA 460 (SCA (28 April 2026) at para 68.

[14] An interim order may be appealed against if the interests of justice so dictate, even if it does not possess all three attributes set forth in *Zweni v Minister of Law and Order*,³ ‘but has final effect or is such as to dispose of any issue or portion of the issue in the main action or suit, or if the order irreparably anticipates or precludes some of the relief which would or might be given at the hearing, or if the appeal would lead to a just and reasonable prompt resolution of the real issues’.⁴

[15] Referring to *MV “Tai Harmony” and Another v Sure Success Steamship S.A and Another*⁵ (*MV Tai*), a decision of the Supreme Court of Appeal (the SCA) handed down on 28 April 2026, Ocean Ark and Astron emphasised that the Commissioner must show that two jurisdictional facts exist to establish appealability: (i) leave to appeal, and (ii) that the impugned ruling constitutes a decision as contemplated by section 16(1)(a) of SC the Act.

[16] In *MV Tai*, the SCA, after setting out the most recent higher court authorities regarding the appealability of interim orders, concluded that:

‘In sum, on the jurisprudence as it stands, an interim order may be appealable, taking into account a range of factors. The *Zweni* requirements play an important role in determining the issue of appealability in a particular case, but they are not immutable. The interests of justice continue to play a substantial role in the inquiry. What those interests are involves a finely weighed consideration of relevant factors in each case. In addition, to establish appealability, two jurisdictional facts must ordinarily be present: (i) leave to appeal, and (ii) that the impugned ruling constitutes a ‘decision’ as contemplated by s 16(1)(a) of the SC Act. The grant of leave does not render a non-

³ *Zweni v Minister of Law and Order* [1992] ZASCA 197; 1993 (1) SA 523 (A); [1993] 1 All SA 365 (A).. Namely (a) that it is final in effect and not susceptible to alteration by the court of first instance; (b) that it is definitive of the rights of the parties, in other words, it must grant definite and distinct relief; and (c) that it has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

⁴ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* [2022] ZACC 34; 2023 (1) SA 353 para 42.

⁵ *MV “Tai Harmony” and Another v Sure Success Steamship S.A and Another*⁵ (*MV Tai*) 953/2024 and 923/2024) [2026] ZASCA 60 (28 April 2026).

appealable order appealable. If the second jurisdictional fact is absent, the appeal must be struck from the roll for want of jurisdiction.’

[17] The court in *MV Tai* emphasised that in considering whether an order is final a court must consider the effect of the order, rather than the form:

‘What needs to be considered is whether the consequences and conditions of the orders may not be capable of being undone. I find that none of the orders have a final effect, rendering them appealable from the high court's orders. In addition, no grave injustice or prejudice would result from the said orders, given their interlocutory nature.’⁶

[18] Lastly, the SCA observed that ‘considerations of convenience, costs, or delays ...do not convert an interlocutory order into an appealable one. The focus will always be on the legal effect of the order, not its practical consequences’.⁷

[19] Ocean Ark and Astron submit that this Court’s judgment and order is not appealable and the court therefore does not have jurisdiction to consider the application for leave to appeal, despite the Commissioner’s contentions to the contrary, and its stance that as the judgment will allow the ‘ship to sail’, it is final in effect and therefore appealable.

[20] The Commissioner in argument raised the practical difficulties with this approach, particularly that it could not simply approach the review court to request directives regarding the control of the Vessel, and that it was free to sail beyond its reach the moment the order was given effect to, and once this transpired the order would be final in effect as there would be no Vessel to

⁶ Ibid para 70.

⁷ Ibid fn 2 para 71.

forfeit if the review was unsuccessful. The effect of the decision is therefore permanent and irreversible.

[21] In argument, SARS highlighted that in terms of the amended notice of motion in the review, which was annexed to the founding affidavit in the section 18 application, Ocean Ark and Astron sought an order (in the alternative) reviewing and setting aside the section 93 decision and remitting it to the Commissioner for reconsideration. SARS emphasised that if the order is enforced, the Vessel will not be liable for forfeiture and that is the end of the matter.

[22] I am further of the view that the additional grounds, including the revised guarantee not being part of the record and the issue of costs are issues which enjoy a reasonable prospect of success on appeal. I pause however to mention that the argument that the court should not have awarded costs in relation to interim relief was never advanced before the court in the main application.

[23] Turning to the second ground, it is correct that the guarantee which was incorporated in the terms of the order differs from the guarantee which formed part of the record before the court a quo. The revised guarantee was provided by Ocean Ark and Astron to address concerns and objections raised by the Commissioner on a post-hearing note.

[24] I note that the Commissioner appears on the one hand to take issue with the further submissions provided to the court at its request, whilst at the same time bemoaning the fact that it was not given a further opportunity to address a further note to the court to set out its further objections to the revised guarantee which was redrafted to address the explicit concerns which it raised regarding

the terms thereof. I accept, nonetheless, that there is a reasonable prospect that another court may find that the Commissioner should still have been afforded such an opportunity in the circumstances of this case.

[25] This matter raised complex issues of importance. Another court may well find that if the Vessel is released and taken beyond the control of SARS it would have the consequence, which is final in nature, that whatever the outcome of the review, SARS can no longer take possession of the Vessel and forfeit it in terms of the Customs Act.

[26] I am satisfied that the order is sufficiently invasive and far-reaching such that it is in the interests of justice for the grant of the impugned interim order to be treated as a ‘decision’.⁸

[27] The grounds of the leave to appeal and the challenge to the court's assessment of irreparable harm raises legitimate legal questions. In my view there is a reasonable prospect that another court would find differently. Consequently, leave to appeal must be granted.

[28] In light of the complexity and importance of the issues concerned, leave ought to be granted to the SCA.⁹

[29] The possibility of removal from South African territorial waters and effectively out of reach from the Commissioner is a consideration that is also of course relevant to the requirement of irreparable harm in the section 18 application, which I now turn to deal with.

⁸ Ibid fn 6 paras 41-46.

⁹ Mr. Peter SC indicated that the Commissioner agrees to the appeal being heard on an expedited basis, and that it would facilitate any such expedited appeal in accordance with any direction given by the President of the SCA.

The section 18 application

[30] Under Section 18(1), the default rule is that the operation and execution of a decision are suspended pending the outcome of an application for leave to appeal or an appeal.

[31] In terms of section 18(3), a court may, in exceptional circumstances, order that the decision be executed despite the pending appeal. To succeed, the applicant must satisfy a threefold test on a balance of probabilities, namely that exceptional circumstances exist (a fact-specific enquiry) to warrant the deviation from the default rule of suspension, they will suffer irreparable harm if the order is *not* put into operation, the respondent (the party appealing) will not suffer irreparable harm if the order is put into operation.¹⁰

[32] In *Tyte Security Services CC v Western Cape Provincial Government and Others (Tyte Security)*,¹¹ the SCA¹² held that what constitutes irreparable harm is always dependent upon the factual situation in which the dispute arises, and upon the legal principles that govern the rights and obligations of the parties in the context of that dispute.

[33] In relation to exceptional circumstances, Astron Energy and Ocean Ark relied on the further grounds advanced in the main application relating to potential threats to *inter alia* regional energy security, and from a geopolitical standpoint the current war in Iran has destabilised the Strait of Hormuz and forced global shipping traffic to reroute around the Cape of Good Hope, massively increasing the regional demand for reliable bunkering and refuelling services that the Vessel is meant to provide.

¹⁰ See also *Knoop NO and Another v Gupta (Execution)* [2020] ZASCA 149; 2021 (3) SA 135 (SCA) para 2.

¹¹ *Tyte Security Services CC v Western Cape Provincial Government and Others* [2024] ZASCA 88; 2024 (6) SA 175 (SCA) para 11.

¹² *Ibid* para 13.

[34] In *Tyte Security* Ponnann JA observed that whilst it is important to recognise that the existence of ‘exceptional circumstances’ is a necessary prerequisite for the exercise of the court’s discretion under s 18, if exceptional circumstances are found to be present, it would not follow, without more, that the application must succeed.¹³

[35] The Court recognised that the ‘presence or absence of irreparable harm, as the case may be, may well be subsumed under the overarching exceptional circumstances enquiry. As long as a court is alive to the duty cast upon it by the legislature to enquire into, and satisfy itself in respect of exceptional circumstances, as also, irreparable harm, it does not have to do so in a formulaic or hierarchical fashion.’¹⁴

[36] On the issue of whether Ocean Ark and Astron will, on a balance of probabilities, suffer irreparable harm if the order is suspended pending the review application, they contend that Astron suffers direct, unrecoverable losses of approximately R31 million per month in charter costs for an idle vessel it cannot use, which cannot be compensated by damages under section 4(13) of the Customs Act. At the same time, Ocean Ark is forced to watch a R400 million physical asset actively depreciate while sitting entirely idle and non-operational.

[37] My view insofar as the irreparable harm which Ocean Ark will suffer if the order is not enforced remains unchanged, for the same reasons which I have given in the main judgment. Ocean Ark and Astron have, in my view, shown that they will suffer irrecoverable losses if the Vessel is not released, including catastrophic financial harm amounting to approximately R1 million per day.

¹³ Ibid at para 11.

¹⁴ Ibid at para 14.

[38] On the issue of the irreparable harm which it avers that it will suffer if the order is not suspended, Mr. Peter SC argued that if the Commissioner is ultimately successful in the main review application at a later date, its victory will be a Pyrrhic one, as the Vessel will be gone, and the Commissioner's statutory right to physically execute a forfeiture order against the Vessel itself will have been permanently destroyed.

[39] SARS contends that the Lombard guarantee is inadequate, as if the Vessel sails and it is successful in the review, it cannot claim a loss arising *directly* from physical forfeiture, forcing it to pursue a third-party commercial guarantor, and that the order and guarantee changed neither the finality nor the permanence and irrevocability of the order of release.

[40] The Commissioner contends further that if an execution order is granted, and SARS is successful in an appeal, the order of the appeal court would be rendered nugatory.

[41] In a supplementary affidavit delivered after the first hearing at the request of the court, Ocean Ark and Astron undertook 'not to take steps to sail the Vessel out of South African waters.'

[42] In response the Commissioner highlighted that Astron's and Ocean Arks' undertakings not to issue any orders or take any steps that the Vessel leave the Republic are meaningless and ineffective, as there exists a chain of contracts between four parties, starting with Ocean Ark and ending with Astron.

[43] It is undisputed that Astron's contract with ST Shipping expires 30 days before or after 19 July 2026.¹⁵ The bareboat charter between Ocean Ark and Michael 5 does not give Ocean Ark any contractual right to direct Michael 5 to retain the Vessel in South Africa, nor does Michael 5 require permission from Ocean Ark to remove the Vessel from South Africa.

[44] The undertaking by Ocean Ark and Astron cannot prevent parties who are not before the court from removing the Vessel from our territorial waters, at the earliest by 19 June 2026.

[45] However, neither Mr Mullins SC nor Ms Pillay SC could, nor did, positive assert that the Vessel cannot leave South African waters, notwithstanding the undertaking given on behalf of Ocean Ark and Astron. This, in my view, lends credence to the Commissioner's argument that, ultimately, despite any undertaking Ocean Ark and Astron may be willing to give, they cannot *de facto* prevent the Vessel from leaving our waters.

[46] The issue of the Vessel not being prevented from being removed from South African waters is a factor which has significantly weighed against the granting of the section 18 application. This is an issue which was not raised by either of the parties in the main proceedings.

[47] An overarching cause for concern is that Ocean Ark has given possession of the Vessel to Michael 5. It therefore cannot direct that the Vessel remain in South African waters. Michael 5 and ST Shipping may choose not to leave the Vessel here, knowing that it is subject to forfeiture.

¹⁵ The Time Charter had to be extended by 19 April 2026. No evidence was placed before the Court that it was in fact extended by such date.

[48] This, in my view, is the irreparable harm which SARS may face if a section 18(3) execution order is granted. Upon expiry of Astron's time charter, at the earliest on 19 June 2026, the Vessel is free to leave. There is merit to the Commissioner's argument that the necessary safeguards to avoid this coming to pass should have been catered for in the original application.

[49] It may appear that this stance cannot be readily reconciled with the finding in the main judgment that led to the granting of an interim interdict. However, the test in terms of section 18 is far more stringent. Whilst the circumstances in this matter may properly be described as exceptional, the applicant is also required to show, on more stringent threshold that the respondent will *not* suffer irreparable harm if the order to execute is granted. This third leg of the test has not, in my view, been met.

[50] SARS argued that if the appeal is successful as the order, including the guarantee, will be set aside and the application dismissed. In other words, if the Commissioner succeeds in the appeal and the section 18(3) order is granted, it will be left without either the guarantee or the Vessel.

[51] During the hearing on 1 June 2026, Ms. Pillay SC pointed out that in terms of paragraph 7.2 of the guarantee if SARS is finally successful in any appeal it would still be entitled to call up the guarantee. She further contended that any irreparable harm SARS may suffer is addressed by its automatic right of appeal in terms of section 18(4) of the SC Act.

[52] In my view, the latter argument cannot be sustained. The requirement in section 18(3) that an applicant must show on a balance of probabilities that the respondent will not suffer irreparable harm if the execution order is granted would be superfluous if this were so, as the respondent automatically has an

automatic right of appeal if such an order is granted. Section 18(4) therefore cannot, in my view, be an answer to the issue of irreparable harm by SARS.

[53] Ms. Pillay SC relied on clause 8 of the guarantee, which provides that:

‘In respect to a forfeiture claim, and in the event that a court orders that the Vessel be restored to the control of SARS, in addition to clauses 7.1. to 7.3 above, SARS shall only be entitled to demand payment under this Guarantee on presentation to Lombard of a recordal in writing by the Customer that it is unable to restore the Vessel to SARS or a recordal in writing by SARS that it does not seek restoration of the Vessel.’

[54] The difficulty is that if the Vessel has sailed beyond the court’s reach before the order is granted, it will not be capable of being restored to SARS. There is no undertaking that the Vessel will be restored or returned to the Commissioner at the end of the review proceedings and that the guarantee will still be available.

[55] For all these reasons Ocean Ark and Astron have, in my view. failed to prove on a balance of probabilities that the Commissioner will not suffer irreparable harm if the execution order is granted, arising from the fact that Astron’s time charter expires at the earliest on 19 June 2026 and that Ocean Ark does not have any contractual right to direct Michael 5 to retain the Vessel in South Africa nor to prevent it from removing the Vessel from South Africa.

[56] The offer by the Commissioner to facilitate the expedited hearing of the appeal in accordance with any directions given by the President of the Supreme Court of Appeal may serve to ameliorate the ongoing harm which Ocean Ark and Astron continue to suffer by the continued detention of the Vessel pending the determination of the review application.

[57] For all the reasons set out above, the application in terms of section 18(3) cannot succeed.

Costs

[58] There is no reason why the ordinary rule that costs should follow the event should not apply. The Commissioner has been successful in opposing the section 18(3) application and is entitled to its costs.

[59] The costs of the application for leave to appeal shall be costs in the appeal.

Order

[60] The following order shall issue:

- (a) The application for leave to appeal by the Commissioner for the South African Revenue Service (the Commissioner) against the judgment and order delivered by this Court on 24 April 2026 is granted.
- (b) Leave to appeal is granted to the Supreme Court of Appeal.
- (c) The costs of the application for leave to appeal shall be costs in the appeal.

- (d) The application in terms of Section 18(1), read with Section 18(3) of the Superior Courts Act 10 of 2013 by Ocean Ark Shipping Limited and Astron Energy (Pty) Ltd (the Section 18 application), for an order directing that the operation and execution of the order dated 24 April 2026 shall not be suspended pending the outcome of the appeal, is refused.
- (e) Ocean Ark Shipping Limited and Astron Energy (Pty) Ltd are ordered to pay the Commissioner's costs of opposing the Section 18 application, such costs to include the cost of two counsel, to be taxed on Scale C.

M Holderness
Judge of the Western
Cape High Court

Appearances

Ocean Ark Shipping Limited
and Astron Energy (Pty) Ltd: Adv S Mullins SC, Adv K Pillay SC, Adv D
Cooke, Adv E Muller

Instructed by

Ocean Ark Shipping Limited: Bowman Gilfillan Inc.
Astron Energy (Pty) Ltd: Webber Wentzel

The Commissioner for the

South African Revenue Services: Adv J Peter SC

Instructed by:

MacRobert Attorneys