IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NO: 3195/2025
Reportable

In the matter between:

THE INSTITUTE OF MARKET AGENCIES OF SOUTH AFRICA (IMASA) **APPLICANT / FIRST RESPONDENT**

and

THE CITY OF MATLOSANA LOCAL MUNICIPALITY **FIRST RESPONDENT / APPLICANT**

THE EXECUTIVE MAYOR OF THE CITY OF MATLOSANA **SECOND RESPONDENT / APPLICANT**

THE MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE **THIRD RESPONDENT**

THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS **FOURTH RESPONDENT**

THE MINISTER OF TRADE, INDUSTRY & COMPETITION **FIFTH RESPONDENT**

THE MINISTER OF AGRICULTURE **SIXTH RESPONDENT**

THE MEC FOR THE NORTH WEST DEPARTMENT OF ECONOMIC DEVELOPMENT,ENVIRONMENT, CONSERVATION & TOURISM **SEVENTH RESPONDENT**

AGRICULTURAL PRODUCE AGENTS' COUNCIL (APAC) **EIGHTH RESPONDENT**

ABSA BANK LIMITED (KERK ST KLERKSDORP BRANCH) **NINTH RESPONDENT**

FRESHLINQ (PTY) LTD **TENTH RESPONDENT**

Coram: Reddy J

Heard: 12 June 2026

Delivered: This judgment was electronically circulated to the parties' legal representatives by e-mail and released on SAFLII and uploaded to Caselines. The date and time of hand down are deemed to be 10h00 on 22 June 2026.

Summary: Leave to appeal — Section 17(1)(a) of the Superior Courts Act — Interim order not final in effect — Interim interdict does not impinge on municipal constitutional powers where funds are trust monies — Section 139 of the Constitution has no application to judicial enforcement of a court order — Requirements for interim interdict met — MFMA does not govern third-party trust funds — No reasonable prospects of success on any ground — No compelling reasons — Leave to appeal dismissed. Section 18(3) of the Superior Courts Act — Exceptional circumstances — Organ of state in persistent non-compliance with court order for more than four years — Trust monies unlawfully

retained — Ongoing irreparable harm to innocent third parties — No adequate alternative remedy — Section 139(5) financial recovery plan not an exceptional circumstance where it has no bearing on third-party trust funds — Section 18(3) application succeeds — Counter-application dismissed.

JUDGMENT

REDDY J

Introduction

[1] The first and second respondents, the City of Matlosana Local Municipality (the Municipality) and its Executive Mayor, apply for leave to appeal the interim order granted by this Court on 12 May 2026 (the interim order).The applicant, the Institute of Market Agencies of South Africa (IMASA), applies in terms of s 18(3) of the Superior Courts Act 10 of 2013 (the Act) for an order that the interim order shall not be suspended and shall be implemented immediately. The Municipality brings a counter-application for its formal suspension. Given their interconnected nature by directive of this Court all three applications were enrolled for hearing together on 12 June 2026.

Background

[2] The first respondent is the City of Matlosana Local Municipality (the Municipality), a local municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998, which operates the Matlosana Fresh Produce Market at Klerksdorp. The second respondent is the Executive Mayor of the Municipality (mayor), cited in his official capacity as the political head of the

Municipality responsible for its executive functions. The facts are set out fully in my judgment of 12 May 2026 including a full description of all the parties. That being so, no useful purpose is served by reidentifying the parties. I propose to follow the nomenclature used there throughout, the Matlosana Fresh Produce Market at Klerksdorp (the MFPM); the Agricultural Produce Agents Act 12 of 1992 (the APA Act); the MFPM's closed trust account held at ABSA Bank Limited (the Bank Account); and the Freshmark payment and accounting system administered by FreshLinq (Pty) Ltd (the Freshmark system). I propose to summarise what is material to the present applications.

The way the Market system operates as previously found

[3] In the main judgment I concluded that market agents are appointed by farmers and producers to sell fresh produce on commission, and that payment by buyers is made into the Bank Account at ABSA. I held that, in law, this is a closed trust account, and that the proceeds do not belong to the Municipality but are held in trust for market agents and, ultimately, producers. I reasoned that the Municipality retains a commission of five percent, and that the remaining ninety-five percent must be transferred to the trust account of the relevant market agent, who in turn accounts to the producer within five business days of the sale. I held that this obligation arises from both the contractual arrangements and Rule 32 of the rules made under the APA Act, and that immediate disbursement is not merely a commercial obligation but a legal imperative.

[4] I further concluded that the Freshmark system was designed to record daily transactions and to facilitate immediate disbursement upon conclusion of each sale, and that delayed payment cascades through the chain. Market agents, starved of the funds they are owed, cannot pay producers, and producers in turn cannot fund the next production cycle. I reasoned that the knock-on effect on the

agricultural sector that relies on the MFPM was, on the evidence before me at that stage, severe and ongoing.

The court order of 4 March 2021 and the non-compliance thereof

[5] I held in the main judgment that the Municipality has been in contravention of its payment obligations since at least 2018. On 4 March 2021 this Court granted an order, unchallenged and still extant, directing *inter alia* that the Municipality disburse ninety-five percent of sale proceeds within forty-eight hours. The 2021 proceedings also yielded a money judgment in favour of IMASA's members for arrear amounts totalling R1 166 786.00, and a costs order on the attorney-and-client scale. I concluded that, notwithstanding those orders, the Municipality continued to treat its obligations with indifference.

[6] The founding affidavit, deposed to on 21 August 2025, shows that market agents had not been paid for produce sold on 15, 16, 18 and 19 August 2025, already more than five days overdue. The reconciliation for Subtropico Market Agents (Pty) Ltd showed amounts escalating daily; WL Ochse & Kie (Klerksdorp) (Pty) Ltd was in an even worse position with outstanding amounts going back considerably further. These are not isolated incidents; they are symptomatic of a systemic and persistent failure.

[7] IMASA's averment that the Municipality has been wholly oblivious to its obligations and has, notwithstanding years of correspondence and meetings, simply disregarded them, stood unrebutted, which was accepted.

[8] The application was initially enrolled on the urgent roll on 22 August 2025 but was struck from that roll for lack of urgency. It thereafter proceeded on the opposed motion roll and was argued before me on 12 February 2026. The main judgment was delivered on 12 May 2026 granting the interim order under Part A. Part B was postponed *sine die*. On 20 May 2026 the Municipality filed its notice of application for leave to appeal. ABSA thereupon refused to implement the mandate change directed in the interim order, citing s 18 of the Act. Producers and market agents have accordingly remained unpaid since the date of the main judgment.

The application for leave to appeal

Submissions

Advocate Chwaro for the first and second respondents (applicants in the leave to appeal)

[9] On the leave to appeal, Advocate Chwaro advanced the following grounds:

(1) the interim order unjustifiably inhibits the Municipality's original constitutional powers by vesting operational control of a municipal bank account in a private party and is artificial in benefiting only IMASA members;
(2) the order displaces duly appointed officials without the jurisdictional prerequisites prescribed by s 139 of the Constitution of the Republic of South Africa, (the Constitution)
(3) the Court in granting Part A relief determined Part B questions on non-compliance with the 2021 Order and the authorisation of FreshLinq rendering the order final in effect;

(4) the requirements for an interim interdict were not met, the complaint concerned four past days of non-payment and an adequate alternative remedy existed;
(5) Section 10 of the Municipal Finance Act 56 of 2003 (MFMA) vests sole control of all municipal bank accounts in the Accounting Officer without distinction between trust and non-trust monies; and
(6) the punitive costs order was granted on the basis of non-compliance findings reserved for Part B, without affording the Municipality a full opportunity to place its compliance record before this Court.

Advocate de Beer SC for the applicant (respondent in the leave to appeal)

[10] In opposition to the leave to appeal, Advocate de Beer SC submitted that none of the six grounds advanced by Advocate Chwaro establishes a reasonable prospect of success or any compelling reason why leave should be granted.

[11] On ground 1, Advocate de Beer SC argued that the Bank Account holds third-party trust monies to which (MFMA) has no application, and that the order neither transfers ownership of the MFPM nor displaces any legitimate municipal function. Advocate de Beer SC claimed that the so-called artificial sub-ground is answered by s 38 of the Constitution.

[12] On ground 2, Advocate de Beer SC maintained that s 139 of the Constitution addresses executive intervention between spheres of government and has no application to judicial enforcement of a court order. This Court exercises its authority under sections 165 and 172 of the Constitution, which is not subject to the jurisdictional preconditions of s139.

[13] On ground 3, Advocate de Beer SC contended that the Part A findings were made for the limited purpose of the interdict enquiry and do not constitute a final adjudication of Part B issues. The order is expressly interim and not final in effect.

[14] On ground 4, Advocate de Beer SC asserted that a further money judgment against a municipality that has treated such judgments with equanimity for four years is not a satisfactory alternative remedy, and that the interdict is directed at future conduct rather than past events.

[15] On ground 5, Advocate de Beer SC posited that the MFMA governs municipal money and that the ninety-five percent of market proceeds is not municipal money; to accept Advocate Chwaro's argument would transform the Municipality from conduit into beneficial owner of funds belonging to others.

[16] On ground 6, Advocate de Beer SC accentuated that no exceptional circumstances warranting leave to appeal on costs alone have been demonstrated, and that the costs award rested on three independent bases each sufficient to justify it. He proposed that the application for leave to appeal should be refused in its entirety.

The law

[17] Section 17(1)(a) of the Act provides that leave to appeal may only be given where the court is of the opinion that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.[1] The word "would" imports a measure of certainty that another

[1] *Section 17(1)(a) (i) and (ii)) of the Superior Courts Act 10 of 2013 ("the Act").*

court will differ from the *court a quo*; a mere possibility of success is insufficient.[2]

[18] In *Ramakatsa v African National Congress*, the Supreme Court of Appeal confirmed that leave to appeal may only be granted where the judges are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons why the appeal should be heard.[3]

[19] It is well established that the prospects of success on appeal, while not conclusive, are a relevant consideration in evaluating whether leave to appeal should be granted. A court asked to grant leave must be satisfied that the proposed appeal has sufficient merit to warrant the suspension of the order under challenge.

Analysis

[20] I turn to address each of the grounds of the appeal.

The first ground: Municipal autonomy and constitutional powers

[21] The contentions Advocate Chwaro advances within this ground were fully addressed in the main judgment and are further answered by s 21 of the Act, which confers inherent power on this Court to regulate its own process and to develop the common law, having regard to the interests of justice. More pertinently, the interim order is grounded in s 165 and 172 of the Constitution. Section 165(1) vests judicial authority in the courts. Section 165(2) provides that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

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[2] *The Mont Chevaux Trust (IT2012/2008) v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) para 6; *Notshokovu v S* [2016] ZASCA 112; para 2; *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

[3] *Ramakatsa v African National Congress* [2021] ZASCA 31; [2021] 3 All SA 136 (SCA) para 10.

[22] Section 172(1)(a) provides that a court must declare any law or conduct inconsistent with the Constitution invalid. Section 172(1)(b) provides that a court may make any order that is just and equitable. It is this constitutional authority not s 139 that grounds the interim order. The Municipality's argument conflates two entirely separate constitutional regimes; executive oversight under Chapter 7 and judicial authority under Chapter 8.

[23] The Bank Account holds third-party trust monies to which the MFMA has no application; s 10 of the MFMA, read with ss 11 and 12 of that Act (considered more fully under the fifth ground below), does not authorise the Accounting Officer to retain trust funds beyond the APA Act's prescribed period; the order is fully reversible and transfers neither ownership nor management of the MFPM. The sub-ground advanced by Advocate Chwaro is answered by s 38 of the Constitution, which confers standing on associations to litigate on behalf of their members. No other court would reasonably differ from these findings. It follows that this ground falls to be dismissed.

The second ground : Section 139 of the Constitution

[24] Advocate Chwaro's conflation of judicial enforcement with executive intervention under s 139 was addressed and rejected in the main judgment. Section 139 addresses executive intervention between spheres of government and has no application to the enforcement by a court of a prior court order or to the protection of third-party trust funds. This Court's jurisdiction under s 21 of the Act and sections 165 and 172 of the Constitution is not subject to the jurisdictional preconditions of s 139. Similarly, this ground suffers the same fate as the first ground. Accordingly, it falls to be dismissed.

The third ground :The interim order is final in its effect

[25] Advocate Chwaro's submission under this ground is disposed of in the s 18(3) of the Act analysis below. The Part A findings were made for purposes of the interdict enquiry only and do not constitute a final adjudication of Part B issues. The order is interim, susceptible to alteration, and not final in effect. This ground is meritless and falls to be dismissed.

The fourth ground : The requirements for an interim interdict were not met

[26] Advocate Chwaro's submission that IMASA had an adequate alternative remedy in further legal proceedings cannot be accepted. To my mind, a further money judgment against a recalcitrant municipality that has ignored a judgment for four years is not a satisfactory remedy. Advocate Chwaro's characterisation of the complaint as concerning four discrete past days in August 2025 ignores the systemic and ongoing pattern of non-compliance accepted on unrebutted evidence in the main judgment. In plain terms an interdict is directed at future conduct, not past events. Each of the four interdict requirements was met for the reasons stated in the main judgment. It follows that this ground falls to be dismissed.

The fifth ground: Section 10 of the MFMA and the Accounting Officer

[27] Advocate Chwaro's argument, if accepted, would transform the Municipality from conduit which is what it is in law into beneficial owner of funds belonging to market agents and producers. Section 10 of the MFMA cannot be read in isolation from ss 11 and 12 of that Act, which form part of the same

statutory scheme governing municipal bank accounts.[4] Section 11(1)(e) MFMA expressly contemplates withdrawal from a municipal bank account to pay over to a person money received by the municipality on behalf of that person, which is precisely the mechanism by which the ninety-five percent of market proceeds passes through the Bank Account. Section 12 of the MFMA confirms that a trust fund administered through a municipal bank account does not thereby become the property of the Municipality. The MFMA governs municipal money; the ninety-five percent of market proceeds is not municipal money. It axiomatically follows that s 10 of the MFMA does not displace the APA Act obligations or the 2021 Order. No court would accept that result. Resultantly this ground equally falls to be dismissed.

The sixth ground: The costs award

[28] Advocate Chwaro's sixth ground requires exceptional circumstances to be established, since it is directed at costs alone.[5] None has been demonstrated. In any event, the costs award in the main judgment rested on three independent bases, any one of which suffices. First, the Municipality's opposition rested on inadmissible hearsay objectively contradicted by comparative evidence. Second, it had disregarded the 2021 Order for more than four years, directly necessitating this application. Third, the litigation required two counsel in a complex multi-

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[4]Sections 10, 11 and 12 of the Municipal Finance Management Act 56 of 2003 ("the MFMA") provide: "10. **Control of municipal bank accounts** (1) The accounting officer of a municipality (a) must administer all the municipality's bank accounts, including a bank account referred to in section 12 or 48(2)(d); (b) is accountable to the municipal council for the municipality's bank accounts; and (c) must enforce compliance with sections 7, 8 and 11. (2) The accounting officer may delegate the duties referred to in subsection (1)(c) to the municipality's chief financial officer only. 11. **Withdrawals from municipal bank accounts** (1) Only the accounting officer or the chief financial officer of a municipality, or any other senior financial official of the municipality acting on the written authority of the accounting officer, may withdraw money or authorise the withdrawal of money from any of the municipality's bank accounts, and may do so only … (e) to pay over to a person or organ of state money received by the municipality on behalf of that person or organ of state … 12. **Relief, charitable, trust or other funds** (1) No political structure or office-bearer of a municipality may set up a relief, charitable, trust or other fund of whatever description except in the name of the municipality. Only the municipal manager may be the accounting officer of any such fund. (2) A municipality may in terms of section 7 open a separate bank account in the name of the municipality for the purpose of a relief, charitable, trust or other fund."

[5]*Section 16(2)(a)(ii) of the Superior Courts Act 10 of 2013.*

respondent matter. The threshold for appellate interference with a costs discretion is nowhere near met.[6] This ground falls to be dismissed.

No compelling reasons

[29] None of the grounds advanced by Advocate Chwaro raises a novel or unsettled question of law of general importance, and no conflict between judgments of different courts has been identified. There are no reasonable prospects of success on any of the grounds considered above and no compelling reason why the appeal should be heard, both legs of the enquiry under s 17 (1) (a) of the Act fail. The application for leave to appeal is dismissed.

The section 18(3) application and the counter-application

Submissions

Advocate Chwaro for the first and second respondents

[30] Advocate Chwaro contested each ground and advanced a counter-ground. Advocate Chwaro submitted that the North West provincial executive council has intervened under s 139(5)(a) and (c) of the Constitution and placed the Municipality under a mandatory financial recovery plan. Advocate Chwaro maintained that this intervention standing alone constitutes an exceptional circumstance and implementation of the interim order would obstruct the recovery plan, interfere with the provincial representative's authority, and cause the Municipality and the province irreparable harm.

[31] Advocate Chwaro relied on the constitutionally protected autonomy of local government. He contended that payment delays to market agents are not

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[6] *Van Zyl v Steyn* (83856/15) [2022] ZAGPPHC 302 (3 May 2022) paras 17–19.[6]

extraordinary, that only two market agents were identified on the founding papers, and that numerous remedies remain available.

Advocate de Beer SC for the applicant

[32] Advocate de Beer SC contended that exceptional circumstances are established by five cumulative grounds. First, the Municipality's flagrant four-year non-compliance with the 2021 Order strikes at the rule of law and is, by its nature, out of the ordinary for an organ of state. Second, the continued suspension causes ongoing, irreversible daily harm to market agents facing deregistration by APAC or and to producers unable to fund production cycles. Third, the Bank Account holds trust monies that never belonged to the Municipality, making each day of suspension another day of unlawful retention. To this end, Advocate de Beer SC argued that no adequate alternative remedy exists, as a further money judgment against an organ of state that has treated the 2021 judgment with equanimity for four years would be futile. Fourth, the leave to appeal application is primarily dilatory, designed to extend the period of unlawful retention rather than to advance a genuine legal controversy.

[33] Fifth on the harm requirements, Advocate de Beer SC asserted that market agents face deregistration that no damages award can undo, while the Municipality suffers no harm from implementation since its five percent commission is entirely unaffected. Insofar as costs are concerned, Advocate de Beer SC sought a punitive costs order in respect of all three applications.

The law

[34] Section 18 of the Act provides the legislative framework. It reads:

> " 18. Suspension of decision pending appeal

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation 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) 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 appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

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

(i) the court must immediately record its reasons for doing so;

(ii) the aggrieved party has an automatic right of appeal to the next highest court;

(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

(iv) such order will be automatically suspended, pending the outcome of such appeal.

(b) 'Next highest court', for purposes of paragraph (a)(ii), means-

(i) a full court of that Division, if the appeal is against a decision of a single judge of the Division; or

(ii) the Supreme Court of Appeal, if the appeal is against a decision of two judges or the full court of the Division.

[35] Advocate Chwaro argued, in support of ground 3 of the leave to appeal and the counter-application, that the interim order is final in its effect and falls within s 18(1) of the Act. Advocate Chwaro's contention is that in determining Part A this Court made findings on the Municipality's

non-compliance with the 2021 Order and on the authorisation of FreshLinq that are properly issues for Part B. This, Advocate Chwaro claims, effectively disposed of a substantial portion of the Part B relief.

[36] What needs to be underscored is that the findings in the main judgment were made for the limited purpose of assessing the *prima facie* right and the balance of convenience in the interdict enquiry. In my view, they do not constitute a final adjudication of the contempt and compliance questions that will fall for determination within the perimeters of Part B, where the Municipality will have a full and fair opportunity to place its case.

[37] It is my considered view that the order is expressly interim, susceptible to alteration by this Court, and not final in its effect. It falls within the purview of s 18(2) of the Act. For the reason that ABSA has treated the order as suspended regardless, and because all three applications seek s 18(3) relief, the tripartite test under that subsection governs. Undoubtedly that enquiry is holistic. It stands to reason that the three requirements must be evaluated together in light of the overall circumstances of the particular case.

Analysis

[38] Section 18(3) imposes a specific and sequential onus. The applicant must, in addition to establishing exceptional circumstances, prove on a balance of probabilities two things simultaneously. First, that it will suffer irreparable harm if the court does not order otherwise; and second, that the other party will not suffer irreparable harm if the court does so order. The word "in addition" in s 18(3) is significant. It makes plain that the onus on irreparable harm is cumulative upon, and not a substitute for, the threshold requirement of exceptional circumstances. Both must be satisfied. The onus rests throughout on the party

seeking the departure from the default position. In the present case, that party is IMASA in respect of the s 18(3) application, and the Municipality in respect of the counter-application. I address each in turn.

Exceptional circumstances

[39] A proper evaluation regarding exceptional circumstances requires an assessment of the grounds advanced by Advocate de Beer SC. It is to this that I now turn.

[40] The most compelling ground is the Municipality's prolonged and contumacious non-compliance with the 2021 Order. That order imposed a clear, calculable obligation, the disbursement of ninety-five percent of sale proceeds within forty-eight hours of each sale. The Municipality neither appealed it, nor sought its variation, nor complied with it for more than four years. Advocate Chwaro offered no satisfactory answer to this ground.

[41] Organs of state bear a heightened constitutional responsibility towards the courts. The constitutional injunction as enshrined in s 165(4) of the Constitution obliges them to assist and protect the courts. Moreover, our jurisprudence is unambiguous that non-compliance by all members of South African society lawyers, laypeople and politicians alike strikes at the rule of law and the foundations of constitutional order.[7] Four years of defiance is, by its very nature, extraordinary.

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[7] *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* (CCT 52/21) [2021] ZACC 18; 2021 (5) SA 327 (CC) para 1; *Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others* (27740/2015) [2015] ZAGPPHC 402; 2015 (5) SA 1 (GP) para 37.2; *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* [2015] ZACC 10 para 1.

[42] Organs of state are not singled out for any preferential treatment and are not immune to acquiescence with court orders. In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others*[8] the following was posited:

"It is indeed the lofty and lonely work of the Judiciary, impervious to public commentary and political rhetoric, to uphold, protect and apply the Constitution and the law at any and all costs. The corollary duty borne by all members of South African society – lawyers, laypeople and politicians alike – is to respect and abide by the law, and court orders issued in terms of it, because unlike other arms of State, courts rely solely on the trust and confidence of the people to carry out their constitutionally-mandated function.".

[43] In *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)*[9] Nkabinde J held that:

"(t)he rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery."

[44] In *Southern Africa Litigation Centre v Minister of Justice and Constitutional Development* the following was held:

"…if the State, an organ of State or State official does not abide by court orders, the democratic edifice will crumble stone by stone until it collapses and chaos ensues."[10]

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[8] *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* (CCT 52/21) [2021] ZACC 18; 2021 (5) SA 327 (CC) para 1. Ibid para 1.

[9] Op cit fn 7

[10]. Op Cit fn 7.

[45] In *MEC for Health, Eastern Cape & Another v Kirkland Investments (Pty) Ltd t/a Eye and Lazer Institute* the following was stated regarding the duty placed on organs of state:

> "There is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant adrift on a sea of litigious uncertainty, to whom the costs must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right and it must do it properly."[11]

[46] These principles apply with full force to the Municipality's four-year disregard of the 2021 Order. The ongoing daily harm to innocent third parties is a further exceptional circumstance. Advocate Chwaro's contention that only two market agents were identified on the founding papers understates the systemic nature of the harm. This to my mind is of no moment. What warrants accentuating is that Market agents who fail to pay producers within five business days breach the APA Act and their registration conditions, exposing them to regulatory sanctions by APAC, including deregistration.

[47] Deregistration cannot be undone by a damages award *ex post facto*. Producers who do not receive the proceeds of their sales cannot fund subsequent production cycles; those losses are permanent for farmers operating on narrow margins. These consequences fall on parties who bear no responsibility for the Municipality's default. The facts are closely analogous to those in which courts have found exceptional circumstances where an organ of state's non-compliance holds third parties to ransom.[12]

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[11] *MEC for Health, Eastern Cape & Another v Kirkland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2014 (3) SA 481 (CC) para 82.

[12] *FourieFismer Inc and Others v Road Accident Fund*, [2020] ZAGPPHC 183; [2020] 3 All SA 460 GP; 2020 (5) SA 465 (GP) para 35; *Minister of Home Affairs and Others v Somali Association of South Africa Eastern Cape (SASA EC) and Another* 2015 (3) SA 545 (SCA) paras 6–7.

[48] The nature of the funds in the Bank Account adds further weight. Those funds are trust monies that never belonged to the Municipality. Each day of continued suspension is another day of their unlawful retention. Suspending an order directed at preventing a continuing unlawful act is contradictory. It amounts to condoning it. On the alternative remedy point, Advocate Chwaro's suggestion that IMASA could obtain a further money judgment, as it did in 2021, has been adequately addressed and does not necessitate repetition. As I see it structural relief of the specific kind granted in the interim order is the only mechanism with a realistic prospect of securing disbursement of trust funds pending the finalisation of Part B.

[49] I turn to Advocate Chwaro's counter-ground, which is the principal submission advanced in support of the counter-application. Advocate Chwaro submitted that the s 139(5)(a) and (c) of the Constitution intervention by the North West provincial executive council constitutes an exceptional circumstance favouring the Municipality. Of importance Advocate Chwaro opines that the implementation of the interim order would obstruct the financial recovery plan and cause the Municipality and the province irreparable harm.

[50] Section 139(5) of the Constitution addresses a municipality's own financial crisis its budget, revenue, service delivery obligations, and commitments as a governmental entity. A financial recovery plan imposed under that section governs the Municipality's own finances. Properly understood s139(5) of the Constitution does not extend to, and has no bearing on, trust monies held in a closed account on behalf of private third parties. The ninety-five percent of market proceeds belonging to market agents and producers never formed part of

the Municipality's finances. No nexus between the recovery plan and the Bank Account was established on the evidence. The two functions do not overlap.

[51] Advocate Chwaro's most cogent submission was the invocation of the constitutionally protected autonomy of local government, which has been confirmed to be constitutionally bolstered and to deserve respect.[13] That principle is well established. Notwithstanding, the disbursement of trust monies belonging to private parties is not a function within the Municipality's protected domain. To permit the Municipality's own financial mismanagement which triggered the s 139 of the Constitution intervention to function as a shield against obligations to private trust beneficiaries would be constitutionally impermissible.

[52] The s 139 of the Constitution regime is designed to restore constitutional governance, not to enable a municipality to defer the disbursement of funds to which it was never beneficially entitled. The counter-ground fails and the counter-application is dismissed. On the contrary, the s 139 of the Constitution intervention lends further urgency to compelling compliance with the Municipality's trust obligations.

Irreparable harm and balance of harm

[53] On the irreparable harm requirements, I accept the submissions of Advocate de Beer SC. Market agents face deregistration by APAC and producers face loss of production capacity that cannot be recouped by a damages award. The harm flows directly from the Municipality's conduct and compounds daily. It is irreparable in every sense relevant to s 18(3) of the Act.

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[13] *CDA Boerdery (Edms) Bpk and Others v Nelson Mandela Metropolitan Municipality* 2007 (4) SA 276 (SCA) para 33.

[54] The nature of the harm to IMASA's members warrants closer examination. Market agents are registered under the APA Act and are bound by Rule 32 to account to producers within five business days of each sale. That obligation is not discretionary. Where the Municipality retains the proceeds beyond the prescribed period, market agents are placed in the impossible position of being required by statute to pay over funds they have not received. Each day of continued suspension is another day on which market agents are exposed to regulatory sanction by APAC.

[55] Deregistration, once imposed, carries consequences that no subsequent damages award can repair. The loss of a licence to operate is permanent and irreversible, and the market agent's business relationships, trading relationships and reputation in the industry cannot be restored by money. The prejudice is not abstract or speculative. It is ongoing, measurable and compounds with each trading day.

[56] The position of producers and farmers is equally compelling. Producers who sell through market agents at the MFPM operate within narrow commercial margins. The proceeds of each sale are not surplus income; they are the working capital required to fund the next production cycle. Where those proceeds are withheld by the Municipality beyond the statutory period, the farmer cannot plant the next crop. That loss is not recoverable. A damages award months or years later cannot restore a missed growing season, cannot undo a defaulted loan, and cannot reconstitute a farming operation that has collapsed in the interim. This is precisely the kind of harm that the courts have recognised as irreparable in the context of s 18(3). Harm that is immediate, continuing and incapable of adequate monetary remedy.

[57] In *FourieFismer Inc and Others v Road Accident Fund* Hughes J found exceptional circumstances where an organ of state's failure to comply with its obligations held the public to ransom.[14] The present facts are, if anything, more acute. It is not the public in the abstract but identifiable producers and market agents whose livelihoods depend directly on the Municipality's compliance with its forty-eight-hour payment obligation.

[58] Advocate Chwaro's submission that the Municipality will suffer more harm from implementation than the market agents will suffer from continued suspension is wide of the mark. This is anchored on the following. The interim order withholds no lawful funds of the Municipality. Its ownership and management of the MFPM are wholly unaffected, and its five percent commission may be withdrawn from the Bank Account without the authorisation of Mr Hooghiemstra. The contention that the s 139 of the Constitution recovery plan will be impeded by implementation of the interim order is without factual foundation for the reasons already given. It logically follows that a party restrained from continuing with an unlawful act does not suffer irreparable harm.

[59] The Municipality must establish, on a balance of probabilities, that it will suffer irreparable harm if the interim order is implemented. It has not done so. Three distinct answers present themselves. First, the interim order does not affect any property, revenue or entitlement of the Municipality. The Bank Account holds trust monies that never belonged to the Municipality. Its five percent commission is expressly excluded from the order and may be withdrawn at any time without the authorisation of Mr Hooghiemstra. The Municipality is not being deprived of anything it lawfully possesses; it is being restrained from retaining what it was never entitled to keep. A party restrained from perpetuating an

[14] Op cit fn 12 para 35 and 85.

unlawful act does not thereby suffer harm that the law recognises as weighing in a s 18(3) enquiry.

[60] Second, the Municipality's ownership and management of the MFPM are wholly unaffected. The interim order does not transfer ownership of the market, does not remove the Municipality from its role as market operator, and does not displace any statutory function properly belonging to the Municipality. What it does is ensure that trust monies collected at the market are disbursed to their rightful owners within the period prescribed by law. That is a function the Municipality was always obliged to perform. The interim order restores, rather than interferes with, the legal order.

[61] Third, the s 139(5) financial recovery plan, upon which the Municipality principally relies to establish irreparable harm, operates in an entirely separate sphere from the Bank Account. A recovery plan directed at the Municipality's own finances its budget, revenue, service delivery obligations and governmental commitments has no bearing on trust monies held for private third parties. The ninety-five percent of market proceeds belonging to market agents and producers never formed part of the Municipality's finances. The Municipality placed no evidence before this Court establishing any practical nexus between the recovery plan and the disbursement obligations under the interim order. Bare assertion cannot substitute for proof. The Municipality has accordingly failed to discharge the onus imposed by s 18(3) and no irreparable harm to the Municipality has been established.

[62] The application in terms of s 18(3) of the Act accordingly succeeds. The counter-application is dismissed.

Costs

[63] Costs are at the discretion of the court. IMASA has been substantially successful and is entitled to its costs. The opposition to the s 18(3) application, the prosecution of the counter-application, and the grounds advanced in the leave to appeal application are a further chapter in the same narrative of non-compliance and delay that necessitated the main application. The proceedings required two counsel and involved a contested counter-application. A punitive costs order is warranted in respect of all three applications.

Order

[64] Resultantly, the following order is made:

1. The application for leave to appeal by the first and second respondents against the judgment and interim order of this Court dated 12 May 2026 is dismissed.

2. The application in terms of section 18(3) of the Superior Courts Act 10 of 2013 succeeds.

3. The operation and execution of the interim order granted by this Court on 12 May 2026 under Case No 3195/2025 shall not be suspended pending the determination of the first and second respondents' application for leave to appeal or any subsequent appeal.

4. The interim order granted on 12 May 2026 is to be implemented and executed with immediate effect.

5. The counter-application by the first and second respondents in terms of sections 18(1) and (2) of the Superior Courts Act 10 of 2013 is dismissed.

6. The first and second respondents shall pay the costs of the section 18(3) application, the counter-application, and the leave to appeal application, including the costs of two counsel where so employed, jointly and severally, the one paying the other to be absolved, on the scale as between attorney and client.

A REDDY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicant : Adv J de Beer SC
Instructed by Lötz Baloyi Horn Inc, Pretoria
c/o Van Rooyen Tlhapi Wessels Attorneys, Mahikeng

For the First and Second Respondents: Adv OK Chwaro
Instructed by Modiboa Attorneys Inc., Mahikeng