(1) REPORTABLE: **YES**
(2) OF INTEREST TO OTHER JUDGES: **YES**
(3) REVISED: **YES**

15 June 2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026 – 111287

In the matter between:

REGISTRAR OF LABOUR RELATIONS **Applicant**

and

SIPHO ERIC SONO *N.O.*
(Administrator of the Chemical, Energy
Paper, Printing, Wood and Allied Workers' Union) **First Respondent**

CHEMICAL, ENERGY, PAPER, PRINTING, WOOD AND
ALLIED WORKERS' UNION (under administration) **Second Respondent**

GERHARD VOSLOO **Third Respondent**

Heard: **8 June 2026**

This judgment was handed down electronically by circulation to the parties and legal representatives by email and uploading onto CaseLines. The date and time for hand-down is deemed to be 15 June 2026.

Summary: Superior Courts Act – s 18(3) and (4) considered – concept of next highest court considered – no further appeal after LAC order competent / permissible – approach adopted by first respondent contemplates such further

appeal – further application for leave to appeal to Constitutional Court against LAC order not competent

Superior Courts Act – s 18(3) considered – constitutes interlocutory order – further appeal even if competent applies s 18(2) – no suspension of interlocutory order pending appeal unless exceptional circumstances shown – first respondent showing no exceptional circumstances – LAC order not suspended in any event

Superior Courts Act – approach adopted by first respondent undermining purpose of s 18(3) and (4) – to allow further appeal inconsistent with clear wording and structure of section – order of LAC cannot be seen to be order under s 18(1) – interpretation / application by first respondent would render s 18(3) and (4) valueless – presumption against such interpretation

Constitution – s 167(3)(b) considered – Constitutional Court has overall jurisdiction over all matters – does not mean that application for leave to appeal to Constitutional Court always competent – Constitutional Court does not assume jurisdiction on what is essentially factual determinations – fact that leave to appeal under s 167(3)(b) possible does not render same competent in face of clear purpose of statute especially where merits of matter not to be decided

Contempt of Court – principles considered – requires wilful and *mala fide* non compliance – first respondent's conduct does not establish such intent – first respondent not in contempt – however declaratory relief and coercive order against first respondent still competent – order made accordingly

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JUDGMENT

SNYMAN, AJ

Introduction

[1] The current application now before me appears to be the epilogue of a long and drawn-out saga involving a trade union, CEPPWAWU, being placed under administration in terms of section 103A of the Labour Relations Act (LRA)[1]. I first dealt with this matter on 29 November 2022 in the judgment reported as *Chemical Energy Paper Printing Wood and Allied Workers Union and Others v Mashanda NO and Others*[2], when the current first respondent was appointed as administrator of CEPPWAWU. Since then, various issues concerning the administration of CEPPWAWU has turned in this Court a number of times. Ultimately, the applicant became dissatisfied with the first respondent in respect of the fulfilment of his duties as administrator of CEPPWAWU, and sought to replace him with another administrator. But the first respondent was certainly not doing to fade quietly into the night. He sought to cling to his position as administrator, and this culminated in an application brought by the applicant to this Court to remove the first respondent as administrator, and replace him with the current third respondent as administrator. The application came before Tlhotlhalemaje J, and in a judgment now reported as *Registrar of Labour Relations v Sono NO and Others*[3] and handed down on 28 January 2926, the learned Judge removed the first respondent as administrator and appointed the third respondent in his stead. Further relief to give effect to this change in administrator was also granted. This was the catalyst for the plethora of further litigation that then followed.

[2] Being the back end of this further litigation, which all went against the first respondent, the applicant has brought an application for contempt of court against the first respondent, with the purpose of compelling him to vacate the position of administrator of CEPPWAWU and allow the third respondent to take over. But still the first respondent is not done. He digs in, and now seeks to pursue a further appeal, and contends that all enforcement proceedings should be stayed pending what is now his latest appeal, being an application for leave to appeal to the Constitutional Court.

[3] This all makes for quite distressing reading, considering that the very purpose of placing CEPPWAWU under administration is to save it from going under,

[1] Act 66 of 1995 (as amended).
[2] (2023) 44 ILJ 520 (LC).
[3] (2026) 47 ILJ 1375 (LC).

which would leave its entire membership without the benefit of union representation, which is one of the fundamentals under the LRA. It would seem that this objective has been lost in the fight for earning fees from the administration, rather than achieving the nursing of CEPPWAWU back to health. As a general comment, if the first respondent could not restore CEPPWAWU to being a healthy trade union in a period of about three years, then surely, he should step aside and allow someone else to try. I will suffice by referring to the following findings by Tlhotlhalemaje J:[4]

> 'The position the union finds itself in cannot continue, nor is there justification for its administration to continue indefinitely, and in circumstances where, such as in this case, there is an obvious solution to this state of affairs, which Sono has unreasonably rebuffed for over three years.
>
> The administration of a union is meant to be a temporary measure to restore proper governance and ultimately facilitate democratic leadership through congress. The need for extension of the administration is purely based on the objective of placing the union in a position it ought to be rather than indefinite and unlimited control by administrators. In this regard, a higher premium is placed on an administrator's duty to act in good faith and in the best interests of a union and its members in achieving the objectives of the administration.
>
> The facts of this case point to an administration process since 2020 that has failed to achieve its objectives. They point to an unreasonable posture adopted by Sono in completing the process, and in circumstances where he completely misunderstood his independence as an administrator and the need for transparency and accountability to the extent that a solution was premised on those principles.'

[4] The above being said in introduction, what I have now before me is a contempt application by the applicant, and a counter application by the first respondent based on an allegation of an irregular step, seeking to set aside the contempt application. Both applications were opposed by each respective party, by way of filing answering affidavits. Replying affidavits were also filed. These applications first came before Allen-Yaman J on 28 May 2026. On that day, the learned Judge granted an interim order, i*nter alia* in the following terms:

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[4] Id at paras 97 – 99.

‘1 The Applicant’s contempt application, in the form delivered on 15 May 2026, is declared to be urgent.

2 A *rule nisi* is hereby issued, with a return day of Monday, 8 June 2026 at 10h00, calling upon the First Respondent to appear before the above Honourable Court on that date and to show cause why he should not:

2.1 be found guilty of contempt of the order of the Labour Appeal Court dated 6 May 2026, under case number A2026-047704 (the LAC Order);

2.2 be committed to imprisonment for a period of thirty (30) days, alternatively be ordered to pay a fine, alternatively be granted such other relief as the Court may deem appropriate;

2.3 be directed to comply with the LAC Order by vacating the Union premises and returning all Union property to the Third Respondent, failing which that the Third Respondent take possession of the Union Property as accompanied by security or the South African Police Service;

2.4 be ordered to pay the costs of this application, including the costs of two counsel where so employed …’

[5] It follows from the above order that effectively, the issue of urgency has been disposed of, and I need not decide it. What remains for consideration in this judgment is the terms of the rule *nisi* granted as aforesaid, together with the declaratory order applied for in the notice of motion.

[6] Pursuant to the aforesaid order, the two applications referred to came before me for argument on 8 June 2026. After considering argument by the parties, and considering the pleadings and written submissions filed, I considered it prudent to reserve judgment in order to give me a proper opportunity to apply my mind the parties’ submissions, considering that this matter was rather novel. I gave an order on 8 June 2026 that judgment be reserved and that written judgment would be handed down on Friday 12 June 2026. However, and due to the extent of the issues to be considered, and a particularly congested urgent roll for the week, I was unable to complete this judgment by

12 June 2026. The parties were advised that judgment will instead be handed down on Monday 15 June 2026. This judgment is now handed down accordingly.

[7] For ease of reference in this judgment, I will refer to the applicant as '*the Registrar*', the first respondent as '*Sono*' and the third respondent as '*Vosloo*'. I have already indicated earlier that the second respondent is referred to as '*CEPPWAWU*'.

Background facts

[8] The background facts in this case are straight forward, and mostly undisputed. It speaks of a long and unfortunate process of court orders, extensions, and litigation in general. All of this is succinctly set out in paragraph of 11 of the judgment of Tlhotlhalemaje J of 28 January 2026, referred to above, and I do not intend to repeat it herein.

[9] Suffice it to say, after serving six months as interim administrator starting in 2022, Sono was finally appointed as administrator of CEPPWAWU on 7 December 2022. CEPPWAWU has remained under administration since then, with Sono at the helm as administrator.

[10] Then, and during September 2024, the Registrar brough an application to remove Sono as the administrator of CEPPWAWU, and to appoint Vosloo in his stead. Sono's current term at that time, as administrator, was due to end on 30 June 2025. He sought extensions that were granted, pending a decision on the removal application against him. He opposed the removal application.

[11] As touched on above, Tlhotlhalemaje J on 28 January 2026 found in favour of the Registrar and granted the removal application. This meant, in substance, that Sono was accordingly removed as the administrator and Vosloo was appointed in his stead. The parts of the order granted by Tlhotlhalemaje J of relevance *in casu* read:

> '… (7) The Applicant's application to remove the First Respondent as Administrator of the Second Respondent is upheld.

(8) The Third Respondent is appointed as the administrator of the Second Respondent with effect from 1 March 2026 to 30 December 2026, or until he has

(i) finalised and concluded, all the outstanding audited financial statements of the 2018, 2019, 2020, 2021, 2022, 2023 and 2024 as well as the 2025 financial years;

(ii) convened a national congress for the election of the second respondent's national leadership; and

(iii) handed over the union to such elected leadership, whichever comes first.

(9) The powers and responsibilities granted in the judgment and order of Rabkin-Naicker J dated 4 June 2020 are extended to the third respondent.

(10) The first respondent is directed to facilitate an orderly handover of the administration of the second respondent to the third respondent with effect from the date of this order to 27 February 2026 …'

[12] As appears from the order, Sono was actually removed as Administrator on 28 January 2026 even though Vosloo's term was to only commence on 1 March 2026. The period between 28 January 2026 and 27 February 2026 was therefore a transitional period ringfenced for the purpose of an orderly handover of the administration of CEPPWAWU to Vosloo, as also contemplated by the aforesaid order.

[13] Nonetheless, and despite the order, Sono continued with running the affairs of CEPPWAWU as administrator. According to the Registrar, and after the order by Tlhotlhalemaje J on 28 January 2026, Sono continued to make arrangements to convene a national congress and increase the Union's membership subscription fees, which is not consistent with complying with the order removing him as administrator.

[14] On 10 February 2026, and after coming under pressure from the Registrar and Vosloo to hand over the administration of CEPPWAWU to Vosloo, Sono launched an application for leave to appeal the order of 28 January 2026. It is trite that the effect of the application for leave to appeal was to suspend the operation of order of 28 January 2026.

[15] Because the application for leave to appeal suspended the operation of the order, the Registrar brought an urgent application on 16 February 2026, in

terms of section 18(3) of the Superior Courts Act[5] for the interim enforcement of the order of 28 January 2026, pending the application for leave to appeal or any further appeal process. Sono opposed this application. The application came Ramji AJ on 26 February 2026 for argument. Ramji AJ handed down judgment on 27 February 2026, in terms of which the learned Judge granted the section 18(3) application and made an order for the interim enforcement of the order of 28 January 2026 pending any appeal. This now meant that the order of 28 January 2026 was no longer suspended by the pending application for leave to appeal, was operative, and had to be complied with by Sono.

[16] On 27 February 2026, the same day as Ramji AJ handed down judgment, Sono noted an urgent automatic appeal in terms of section 18(4)(a)(ii) of the Superior Courts Act to the Labour Appeal Court (LAC), as the next highest Court from the Labour Court. This appeal then in turn suspended the operation of Ramji AJ's interim enforcement order. The Registrar opposed this appeal.

[17] Whilst this section 18(4)(a)(ii) appeal was still pending, Sono's application for leave to appeal was dismissed by Tlhotlhalemaje J on 16 March 2026. In response, Sono filed a petition for leave to appeal to the Judge President of the LAC. The petition was opposed by the Registrar and is currently still pending for determination by the LAC. This is the appeal on the merits of the main case.

[18] The section 18(4)(a)(ii) appeal then came before the LAC on 28 April 2026, where it was argued by both parties. In a judgment handed down on 6 May 2026, the LAC dismissed Sono's automatic appeal. The result of this dismissal is that the order granted by Ramji AJ on 27 February 2026 for the interim enforcement of the order of 28 January 2026 pending any appeal was no longer suspended, in in full force and effect, but in this instance pending the outcome of the petition for leave to appeal by Sono. Again, this meant that full compliance with the order of 28 January 2026 by Sono was now required.

[19] On 6 May 2026, the Registrar's attorneys sent Sono a letter which brought the LAC Order to his attention. The Registrar's attorneys further sought confirmation from Sono regarding when Vosloo should present himself to the

[5] Act 10 of 2013.

CEPPWAWU offices to take over the administration of CEPPWAWU in terms of the order of 28 January 2026.

[20] Again, Sono reacted with a legal challenge. On 7 May 2026, he filed an application for leave to appeal to the Constitutional Court against the order by the LAC of 6 May 2026 dismissing the appeal against the interim enforcement order of 27 February 2026. Sono also responded to the letter sent by the Registrar's attorneys on 6 May 2026, in which he stated that since he had filed an application for leave to appeal to the Constitutional Court, the operation of the LAC Order was suspended.

[21] The Registrar disagreed with the contention that the order of 27 February 2026 was suspended pending the application for leave to appeal to the Constitutional Court. The Registrar demanded that Sono vacate the premises of CEPPWAWU and return the union property by close of business on 11 May 2026. Sono's attorneys answered on 12 May 2026, indicating that Sono did not contend for a further automatic appeal under section 18(4), however his application for leave to appeal to the Constitutional Court was pursued under that Court's rules and jurisdiction, the filing of that application engaged section 18(1) read with section 18(5), of the Superior Courts Act, and thus a suspension was in order.

[22] The aforesaid then being the impasse reached between the parties, the current legal proceedings now before me then followed. I will now decide this *lis*.

Analysis

[23] I will first dispose of the application by Sono to set aside the contempt application. The application is based on Rule 58 of the Labour Court Rules, which prescribes a process to be followed when applying for contempt of Court. Considering the approach I intend to adopt in deciding this matter, it is simply not necessary to decide this application. The objections by Sono in this respect is primary aimed at the relief sought by the Registrar seeking to hold him in contempt, and for this Court to then dispense sanction accordingly. I indicated at the start of this matter that having regard to the issues involved, I would not be inclined to make any findings of contempt against Sono and

dispense sanction accordingly. I further indicated that even if I found against Sono, I would first afford him an opportunity to comply with the order of 28 January 2026, without making a finding of contempt. This approach I intend to adopt also disposes of the other preliminary issues raised by Sono, including non-joinder. In line with these suggestions I made, counsel for Sono did not pursue any of these issues further. No decision in this regard therefore needs to be made.

[24] The aforesaid then leaves the actual and real issue to be decided. It is a straightforward issue, which I consider to be quite novel. What is important to appreciate is that this matter does not in any manner concern the merits or substance of the order made on 28 January 2026. The merits of the main case is the subject matter of the pending petition for leave to appeal to the LAC. What makes this case different is the very basis upon which Sono contends the interim enforcement order of 27 February 2026, followed by the order of the LAC on 6 May 2026 dismissing his appeal against it, is suspended. Sono believes the filing of his application for leave to appeal to the Constitutional Court brings about such suspension, which application for leave to appeal is not seeking a further appeal under section 18(4). So, what I must decide, in simple terms, is whether an application for leave to appeal to the Constitutional Court against these interim enforcement orders is even competent in the first place. If not, then that must be the end of the matter for Sono, and he would be compelled to comply with the order of 28 January 2026, even whilst his application to the Constitutional Court is pending.

[25] At the heart of deciding this matter is the provisions of section 18 of the Superior Courts Act. It is necessary to quote it in full, as follows:

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

(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.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.'

[26] Section 18 of the Superior Courts Act heralded in a new and more stringent basis upon which a departure from the ordinary principle that an appeal process suspends the operational of an order, could be brought about. In *University of the Free State v Afriforum and Another*[6], the Court succinctly described this as follows:

'It is further apparent that the requirements introduced by s 18(1) and (3) are more onerous than those of the common law. Apart from the requirement of 'exceptional circumstances' in s 18(1), s 18(3) requires the applicant 'in

[6] 2018 (3) SA 428 (SCA) at para 10.

addition' to prove on a balance of probabilities that he or she 'will' suffer irreparable harm if the order is not made, and that the other party 'will not' suffer irreparable harm if the order is made. The application of rule 49(11) required a weighing-up of the potentiality of irreparable harm or prejudice being sustained by the respective parties and, where there was a potentiality of harm or prejudice to both of the parties, a weighing-up of the balance of hardship or convenience, as the case may be, was required. Section 18(3), however, has introduced a higher threshold, namely proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted, and conversely that the respondent will not if the order is granted.'

[27] The fact remains that granting a successful litigant relief under section 18(3), despite the opponent having an automatic right to an appeal, is a drastic remedy. It would compel compliance with the original order, where the merits thereof are still subject to legitimate challenge on appeal, and these merits are thus still not finally decided. That is why this relief must be subject to stringent requirements. But despite this, and because the decision to grant relief under section 18(3) is granted in the same Court that granted the original order, a further check and balance is necessary. This check and balance is found in an evaluation, if the unsuccessful litigant wants it, by the next Court up in the chain of Courts. This is a check and balance available for the mere asking, being an automatic appeal. This will ensure that the decision pertaining to the interim enforcement of the order is properly moderated. Once this moderation is invoked, and then decided by the Higher Court, it must be the end of it, and the entire interim enforcement proceedings are concluded. And all this happens urgently. The Court in *Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others*[7] described the position as follows:

'Section 18(4) of the Act serves as a protective measure to prevent irreversible harm caused by a court granting an execution order inappropriately. The court is required to immediately document its reasons for such a decision. The party affected by the order has an automatic right to appeal, unlike the usual situation where leave to appeal is required. The appeal against the execution order is an inherent right, and the party who obtained the order cannot object to it. If they want to uphold the execution order, they must contest the appeal.

[7] 2023 (6) SA 434 (SCA) at para 18. See also *Ntlemeza v Helen Suzman Foundation and Another* 2017 (5) SA 402 (SCA) at para 24.

> In an instance where they want to avoid the suspension of the execution order and potential harm, their recourse is to approach the head of the court overseeing the appeal and take all necessary steps to expedite an urgent hearing, as provided by this section.'

[28] It is clear from the text of section 18(4)(ii) and (b) that the '*next highest court*' means a full court of a division where the appeal is against a decision of a single judge of the division or the Supreme Court of Appeal (SCA) if the appeal is against a decision of two judges or the full court of the division. The Labour Court has no provision for a full court. As such, the next highest court must be the LAC, which is in status equal to the SCA. The notice of motion in Sono's application for leave to appeal to the Constitutional Court states that he: '*… applies for leave to appeal against the whole judgment and order of the Labour Appeal Court delivered on 6 May 2026 under case number A2026-047704 …*'. As it reads, it is thus a further appeal against the original enforcement order of 27 February 2026 to a further higher court above the LAC. But section 18(4) does not permit an appeal to a further higher court. This was made clear *Vresthena supra*[8] as follows:

> 'Section 18(4)(ii) introduces a provision that grants an automatic right to appeal to the 'next highest court' against an order issued under s 18(3) of the Act. This provision is unique because it changes the general appeal processes, in that such orders, being interlocutory in nature, are generally not appealable and that leave to appeal must first be obtained before an appeal can be lodged. Section 18(4) establishes a mechanism for a single appeal that will be concluded in an expedited process, as evidenced by the absence of provisions for appealing the decision of the 'next highest court'. In essence, the decision made by the 'next highest court' in the appeal process is final and cannot be appealed any further.'

[29] Similarly, with specific reference to the aforesaid dictum in *Vresthena*, the Court in *Hashtag Movement v Ethiopian Church of South Africa and Others*[9] held:

[8] Id at para 16.
[9] 2023 JDR 4649 (SCA) at para 5.

> '… In this case too, the order which was made in terms of s 18(1) of the Act was made by a single judge of the high court. Accordingly, the automatic appeal lies to the full court of the Eastern Cape Division of the High Court. Consequently, this Court does not have the jurisdiction to hear the appeal. …'

[30] And finally in this respect, the Court in *Ntlemeza v Helen Suzman Foundation and Another*[10] stated as follows:

> 'Since a court of three judges was constituted to hear the matter, this court, so it was submitted, was 'the next highest court' envisaged in s 18(4)(ii). It is on that basis that the present appeal came to be set down on an expedited basis before this court, because s 18(4)(iii) directed that the appeal had to be dealt with as a matter of extreme urgency. Understandably, because it is such a dramatic change, only one appeal to 'the next highest court' is permissible. No further appeal beyond this court appears competent …'

[31] It is in the face of the aforesaid clear provisions and objectives that Sono attempts to construct an alternative approach. What he does is to say that the order made by the LAC at the end of the enforcement chain under section 18, so to speak, is an order susceptible to seeking leave to appeal to the Constitutional Court, not as a further step in the interim enforcement moderation process, but rather as an appeal against a standalone order as contemplated by section 18(1) itself. And because it is such a standalone order, it must follow that the application for leave to appeal to the Constitutional Court suspends it. The case of Sono is that the basis for seeking leave to appeal to the Constitutional Court is founded on section 167(3)(b) of the Constitution, which affords the Constitutional Court jurisdiction to decide this application for leave to appeal. Section 167(3)(b) will be specifically dealt with later in this judgment. All said, according to Sono, there is still a proper appeal pending, resulting in a further suspension of the order of 28 January 2026, because the enforcement order under section 18(4) by the LAC is similarly suspended pending this latest appeal.

[32] I must confess that I have several difficulties with the case sought to be advanced by Sono, as summarized above. I believe that it is a construct that undermines the entire purpose of interim enforcement under section 18. No

[10] 2017 (5) SA 402 (SCA) at para 25.

matter how Sono seeks to classify the basis of the further appeal, it must be remembered that decisions taken in any Court are not taken in abstract, but in the real world and having real world consequences. It must therefore always be considered what the granting of the order sought would actually lead to. In this respect, what Sono is propagating is problematic. The pertinent purpose of relief under section 18(3) is to prevent irreparable harm in exceptional circumstances. It involves a specific factual determination. If the facts of a case illustrate that these kinds of adverse consequences will result, it must always be in the interest of justice to prevent it at this immediate point in time, despite the fact that the relief is subject to further challenge under law. So, if it is found to be justified to grant this relief, and the granting of this relief is moderated by a higher court and upheld, it simply does not make any sense that the final moderation by the higher court is considered to be an order in itself that reverts back to section 18(1) with all its consequences. It will in effect render the process under section 18(3) and (4) valueless. This would run counter the trite principle that it is presumed the legislature does not *per incuriam* legislate superfluous statutory provisions.[11] It must always be supposed that a statutory provision must be of use or must fulfil a purpose.[12] As succinctly held in *Wellworths Bazaars Ltd v Chandler's Ltd and Another*:[13]

> '… a Court should be slow to come to the conclusion that the words are tautologous or superfluous. It was said by the Privy Council in *Ditcher v Denison* (11 moore P.C. 325, at p. 357): -
> 'It is a good general rule in jurisprudence that one who reads a legal document whether public or private, should not be prompt to ascribe - should not, without necessity or some sound reason, impute - to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use.'

[33] Let me explain why I think the aforesaid would be the case if what is contended for by Sono is applied. Accept, for the purposes of illustration, that

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[11] See *Attorney-General Transvaal v Additional Magistrate for Johannesburg* 1924 AD 421 at 436; *Commissioner for Inland Revenue v Golden Dumps (Pty) Ltd* 1993 (4) SA 110 (A) at 116F-117B.
[12] As said in Rex v Standard Tea and Coffee Co (Pty) Ltd and Another 1951 (4) SA 412 (A) at 416F-G: '*…It is a cardinal rule of interpretation of legislative enactments that they 'should be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant'*'. See also *National Union of Metalworkers of SA v Staman Automatic CC and Another* (2003) 24 ILJ 2162 (LC) at 2168E-F; *Truworths Ltd v Chief Inspector: Occupational Health and Safety, Department of Employment & Labour and Another* (2025) 46 ILJ 1426 (LC) at para 36.
[13] 1947 (2) SA 37 (A) at para 43.

a successful litigant will actually suffer irreparable harm if relief that has been granted, especially relief granted on an urgent basis which in itself contemplates that immediate intervention is necessary, is not immediately implemented. That litigant, whilst needing to satisfy the stringent requirements under section 18(3), manages to convince a Judge that interim enforcement is justified, whist the unsuccessful litigant pursues an appeal on the merits. Then the decision of the Judge is confirmed by a higher court pursuant to the prescribed process. To then say that the mere bringing of a further application for leave to appeal, no matter on what basis it is sought to be brought, would suspend the confirmation by the higher court and so suspend the interim enforcement, would completely undo the entire process right back to when the original interim enforcement order was granted by the first Judge, until this last appeal is heard in the ordinary course. What is then the point of all that had gone before.

[34] In effect, the construct propagated by Sono means that all any unsuccessful litigant that is pursuing an appeal would need to do, despite circumstances where the facts actually justify immediate interim enforcement confirmed by two Courts, is to just keep running up the chain of Courts beyond the higher Court that ultimately confirmed the original enforcement order by way of section 18(4), and this will cause a suspension to always result. The entire section 18(3) and (4) process is designed to determine this issue immediately, finally, and urgently. So, and practically speaking, all that such an unsuccessful litigant would need to do is to oppose the first interim enforcement process, and if that does against it pursue the automatic appeal to the next higher Court which suspends the interim enforcement, and if that automatic appeal also goes against it, file a further application for leave to appeal to the further higher court beyond that, which appeal is then decided in the ordinary course, with automatic suspension then results from it. This surely cannot be. It will, by way of the mere filing of process, simply resurrect the suspension of the original order that has been enforced, indefinitely until this last appeal is decided, completely undoing everything that happened before, despite the enforcement being essential to prevent irremediable harm. If that is not an injustice undermining the very purpose sections 18(3) and (4) seek to

achieve, I do not know what would be. In this context, the Court in *Vresthena supra* decided:[14]

> 'Section 18(4) of the Act establishes a distinct provision that establishes a unique category of appeals, specifically designed to be utilised solely for orders made under s 18(3) of the Act. This provision carves out a specific and extraordinary avenue for appeals in exceptional circumstances, especially when it can be proved that irreparable harm would follow if the operation and execution of a decision are suspended. The provision enhances access to court on appeal by guaranteeing one automatic appeal, bypassing the typical screening process outlined in the general provisions of ss 16 and 17 of the Act. The purpose is to streamline and facilitate access to courts for these specific appeals, providing a more efficient and expedited avenue for seeking redress without infringing the s 34 constitutional right of access to courts.'

[35] A further illustration confirms the fallacy of the reasoning advanced by Sono. Assuming it is correct that the order granted by the LAC is then an order as contemplated by section 18(1), as Sono propagates, then surely that would again bring sections 18(3) and (4) into play. Section 18(1) is applicable to all appealable orders, and Sono suggests the order of the LAC on 6 May 2026 is appealable. The grounds under which it would be appealable is irrelevant in this context. And further, section 18(1) reads: '… *Subject to subsections (2) and (3) …'.* Does this now mean that the Registrar can now apply to the LAC under section 18(3) for interim enforcement of its order of 6 May 2026 pending the leave to appeal application to the Constitutional Court, and if the LAC is then inclined to grant such order, there is then an automatic appeal to the next highest Court, which in this case is only the Constitutional Court? Surely not. The point is that Sono cannot say that section 18(1) applies to the order granted on 6 May 2026, without acknowledging that this means that sections 18(3) and (4) would also apply. He is seeking to apply only the parts of section 18 that suits his case, and that is not acceptable nor permissible.

[36] The issue of interim enforcement under section 18(3) and (4) is a *sui generis* process which is to a large extent divorced from the merits of the main case that is subject to the further appeal challenge. Whilst it is true that prospects of

[14] Id at para 21.

success on appeal may be a factor to consider when deciding if exceptional circumstances exist in the context of section 18(3), whether or not there is merit in the pending appeal is of lesser importance. This is evident from the fact that interim enforcement could still be granted pending an appeal itself, where leave to appeal is granted by the Court *a quo*, with the decision to grant leave to appeal being motivated by a finding that there is reasonable prospects of success on appeal. The point is that nothing decided in the course of the section 18(3) and (4) proceedings is determinative of what may happen to the appeal on the merits. The *sui generis* process under sections 18(3) and (4) has a statutory prescribed beginning and end. The beginning is where a litigant obtains a Court order and an application for leave to appeal follows. It ends when the next highest court decided the issue of interim enforcement pending that appeal. Nothing further is contemplated. That can, in my view, be the only interpretation that makes sense.

[37] The principles applicable to interpreting written instruments, including statutes, are now quite settled. More often than not, it is informed by the often quoted judgment in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[15] where the Court held as follows:

> '... The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is

[15] 2012 (4) SA 593 (SCA) at para 18.

> to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

[38] As I have said, the approach established in *Endumeni supra* has been consistently applied since.[16] I will suffice with two particular references to how the Constitutional Court applied *Endumeni*. In *University of Johannesburg v Auckland Park Theological Seminary and Another*[17], that Court decided: '*… The approach in Endumeni 'updated' the previous position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. The Supreme Court of Appeal has explicitly pointed out in cases subsequent to Endumeni that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous. …*'. And in *Association of Mineworkers and Construction Union and Others v Chamber of Mines of SA and Others*[18], the Court decided as follows:

> 'All interpretations of law are themselves in a sense 'factual': certain textual and other sources (for example, statutes, common and customary law) are excavated and marked out as factually 'law', in contradiction to non-law. But this process itself involves a contextual analysis of those sources. See in this regard *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 18. Indeed, interpretation and application are simultaneous and intricated. The most imaginative exponent of this insight is Ronald Dworkin. See Dworkin *Law's Empire* (Harvard University Press Cambridge 1986) at vii: 'legal reasoning is an exercise in constructive interpretation', in which we advance 'the best justification of our legal practices as a whole'.

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[16] See *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) at para 12; *Unica Iron and Steel (Pty) Ltd and Another v Mirchandani* 2016 (2) SA 307 (SCA) at para 21 and all the authorities cited there; *Nel v De Beer and Another* 2023 (2) SA 170 (SCA) at paras 22 – 23; *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) at para 50-51; *Sugar Berry CC t/a Horison Staff Solutions v Motor Industry Bargaining Council and Others* (2026) 47 *ILJ* 188 (LAC) at para 13.
[17] 2021 (6) SA 1 (CC) at para 66.
[18] (2017) 38 *ILJ* 831 (CC) at fn 28.

[39] With particular reference to the interpretation of statutes, the Constitutional Court in *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others*[19] said: '*… It is a well-established canon of statutory construction that "every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature …*'. That same Court in *National Credit Regulator v Opperman and Others*[20] described the exercise of interpreting statutes in the following manner:

> 'A longstanding precept of interpretation is that every word must be given a meaning. Words in an enactment should not be treated as tautologous or superfluous. This is for good reason. Interpretation is a cooperative venture between legislature and judge, bounded by mutually understood rules, in which the latter seeks to give meaning to the text enacted by the former. The mutual suppositions, and the constraints of principle and constitutional precept on the judge's role, enable the joint process to reach a coherent and practical outcome. For this, it has to be assumed that the legislature's enacted text includes only words that matter. For to enact words that do not would violate the most basic supposition of the shared enterprise. Hence none can be ignored.'

And finally, and in specifically interpreting section 18 of the Superior Courts Act itself, the Court in *Vresthena supra* held:[21]

> 'A general principle of statutory interpretation is that the words used in a statute should be understood in their normal grammatical sense unless this would lead to an absurd result. In *Cool Ideas 1186 CC v Hubbard and Another* (*Cool Ideas*) the Constitutional Court added three additional principles to this general rule. Firstly, statutes should be interpreted purposively. Secondly, the relevant statutory provision must be properly contextualised; and, lastly, all statutes must be construed consistently with the Constitution. These three principles serve to guide the interpretation of statutes and ensure that the law is applied in a manner that aligns with the intended purpose and constitutional principles'.[22]

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[19] 2020 (2) SA 325 (CC) at para 38.
[20] 2013 (2) SA 1 (CC) at para 99.
[21] Id at para 20. See also *South African Human Rights Commission v Agro Data CC and Another* 2024 (6) SA 443 (SCA) at para 42.
[22] The Court was referring to *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC).

[40] Applying the aforesaid, and in particular a purposive interpretation of section 18, I believe the interpretation of section 18 I have discussed above is the only interpretation that makes sense and achieves the purpose of section 18 as a whole. In particular, the ordinary and clear text of sections 18(3) and (4) contemplate that only one appeal to the next highest court is permitted, and no appeal of any kind beyond that is competent. In fact, and to permit a further appeal considering the very purpose of section 18(3) and the materially prejudicial consequences to a deserving litigant if such relief is not afforded, would entirely undermine the basic core of the provision. Read as a whole, an order granted under sections 18(3) and (4) is granted under a *sui generis* process and cannot be seen to be an order granted under section 18(1). In short, the construct of section 18 itself prohibits any further appeal of any kind and on whatever basis, of the order made by the moderating appeal court (the next highest court) where it comes to interim enforcement under section 18(3).

[41] Sono further pins his case on the Constitutional Court's jurisdiction under section 167(3)(b) of the Constitution.23 The argument in essence goes that because the Constitutional Court has jurisdiction to decide the kind of appeal Sono seeks to pursue, challenging the confirming of the interim enforcement by the LAC, then that appeal must stay the order because only the Constitutional Court can decide that issue. In short, his case is that because he was entitled to invoke the Constitutional Court's leave to appeal jurisdiction under section 167(3)(b) of the Constitution, the filing of his application for leave to appeal had the consequences under section 18(1), as read with section 18(5). However, believe that whilst this argument on face value appears to be appealing, there is an inherent misconception, which I will deal with next.

[42] In my view, and if one considers section 167(3)(b), the Constitutional Court pretty much has jurisdiction over anything feasible to be decided by any Court. This is evident from the fact that the Constitutional Court may assume jurisdiction over '*any matter*' it may decide to consider. So, and always,

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[23] Section 167(3)(b) reads: '*The Constitutional Court … (b) may decide: (i) constitutional matters; and (ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court …*'

anyone can notionally appeal to the Constitutional Court about anything. But that does not mean that those appeals are competent, even if, at a general level, the Constitutional Court is bestowed with jurisdiction to decide this. It is for this reason, I believe, that the Constitutional Court assumes jurisdiction to decide matters in a quite particular manner. This is evident from the fact that no matter what the case is that comes before it, the Constitutional Court inevitably first conducts an enquiry to decide whether the case actually engages its jurisdiction. This is evident from virtually every Constitutional Court judgment. That Court thus assumes jurisdiction based on a particular factual enquiry with due reference to the issue raised that is required to be decided. Surely, the consequences of this approach to jurisdiction are that it cannot be said that just because the Constitutional Court could feasibly decide Sono's appeal, section 18 must be applied in a manner that is incompatible with the way it specifically reads and what its purpose would be. This is therefore still something that must be decided by this Court in discharging the duties expected of it. As explained in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others*[24]:

> '… the Constitution gives specific treatment to principles that govern appealability to the Constitutional Court. Those principles frame what the Constitutional Court may do, and it is for that court to decide how these principles are to be applied. The Constitutional Court has developed a sizeable jurisprudence to that end. The interests of justice, as the touchstone of the Constitutional Court's doctrine of appealability, has an institutional justification. The Constitutional Court, as the apex court, needs a highly selective, but flexible, criterion to decide which matters warrant its attention. To discharge its functions as an apex court, the Constitutional Court depends upon this court carrying out its functions in an orderly fashion. This means that, in general, finality should be brought to decisions that ascend the court hierarchy, so that the Constitutional Court can be highly selective in deciding upon the matters that should be heard by it. …'

[43] Sono relies on *Road Traffic Management Corporation v Tasima (Pty) Ltd; Tasima (Pty) Ltd v Road Traffic Management Corporation*[25] in support of his argument, although he does concede that *Tasima* does not finally decide the

[24] 2023 (5) SA 163 (SCA) at para 26.
[25] (2020) 41 ILJ 2349 (CC).

exact point now being raised before this Court. He however contends that the judgment nonetheless confirms that, in a Labour Court and LAC context, a Constitutional Court application for leave to appeal may engage section 18(1). He further contends that in *Tasima* the Constitutional Court accepted that the interpretation and application of the LRA engages constitutional jurisdiction, because the LRA gives effect to section 23 of the Constitution.

[44] In my view, *Tasima* does not assist Sono, for the reasons to follow. It is true that in *Tasima* part of what was before the Constitutional Court was an application for leave to appeal against a decision of the LAC under section 18(4) that the requirements of section 18(3) had not been met. The application for leave to appeal further concerned a finding of the LAC that the Labour Court hearing proceedings in terms of s 18(3) of the Superior Courts Act does not have the power to grant relief that goes beyond that granted in the order which forms the subject of those proceedings, and that a court's power is, in effect, limited to reversing the suspension of the relief granted. However, in deciding whether leave to appeal to that Court should be granted, the Constitutional Court then consolidated the applications for leave to appeal on this issue with the application for leave to appeal on the main merits of the matter, and because of deciding the main matter the Court held it: '… *rendered the s 18(3) appeal moot as between the parties. This matter no longer presents any live controversy, since there is no longer any interim period during which the Labour Appeal Court's s 197 order could be enforced* …'.[26] It was then argued that the Court should nonetheless consider the section 18(3) appeal because it raised important legal questions and the issue was of public importance and in the public interest for the Constitutional Court to provide certainty on this issue. However, the Court ultimately decided as follows:[27]

> 'In my view, it is not in the interests of justice to grant leave to appeal, despite the fact that the s 18(3) appeal is moot. As a starting point, an order by this court will have no practical effect. This is because the issue concerning who is responsible for the employees has now been finally determined in the s 197

[26] Id at para 126
[27] Id at para 129

appeal. No party will receive any benefit or advantage as a result of an order on the merits of the s 18(3) appeal by this court. …'

[45] It is clear that the Court in *Tasima* never assumed jurisdiction in the application for leave to appeal in respect of the section 18(3) order. It only decided the merits of the main matter, and assumed jurisdiction in respect of that issue. It did this despite being urged that the section 18(3) proceedings should qualify for leave to appeal being granted under section 167(3)(b). *Tasima* therefore cannot be used as authority for the proposition that an appeal to that Court for an order under section 18(3) that was also dealt with under section 18(4) engages the jurisdiction of that Court. The Court never considered any issue relating to that appeal, and certainly never decided if it was competent in the first place. It effectively refused leave to appeal in that regard.

[46] Perhaps a more apposite example is the judgment of the Constitutional Court in *Cloete and Another v S and a Similar Application*[28]. The Court in that case considered section 17(2)(f) of the Superior Courts Act, which provides that in the instance of an application for leave to appeal under section 17(2)(b) being refused by the SCA, the President of the SCA may on application decide to refer such decision refusing leave to appeal for reconsideration if exceptional circumstances exist to do so.[29] The Court held that the section 17(2)(f) procedure is part of the appeal process as a whole which involves making a judicial determination on a defined legal issue between the litigating parties, and pertinently decided: '*…The President's decision under s 17(2)(f) of the Act thus falls comfortably within the judicial function and purpose of the Supreme Court of Appeal leave-to-appeal process, in this instance, to be exercised by one judge of that court, its President …*'[30]. This being the case, the Court concluded:[31]

[28] 2019 (4) SA 268 (CC).
[29] The section reads: '*The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation*'.
[30] Id at para 33.
[31] Id at para 36 – 37.

> 'It would follow that, if an appeal lies against the decision of the President, it would essentially amount to an appeal against the factual findings of the President on whether exceptional circumstances exist. An appeal against purely factual findings does not ordinarily raise a constitutional matter, nor does it usually give rise to an arguable point of law, sufficient to bring the matter within this court's jurisdiction in terms of s 167(3)(b) of the Constitution. This means that ordinarily, even if a s 17(2)(f) decision is final because the merits of the court a quo's judgment cannot be appealed to this court, an appeal against such a decision will not engage the jurisdiction of this court.
>
> The appeal in this matter is a case in point. Its grounds are purely factual in nature as they target the President's decision regarding the existence of exceptional circumstances. An appeal of this nature does not engage the jurisdiction of this court. …'

[47] The comparisons to the case *in casu* are in my view clear. At the heart of the determination under section 18(3) is that of exceptional circumstances. That is certainly a fact specific determination. *In casu*, Ramji AJ found exceptional circumstances to exist, on the facts, and thus granted the interim enforcement order under section 18(3). The LAC moderated that decision on automatic appeal, as provided for in section 18(4), and upheld it. Deciding that appeal also clearly involved a determination on the facts that exceptional circumstances existed. Based on the discussion earlier in this judgment, it is undeniable that under section 18, that decision is final and there is no further appeal. This is quite similar in effect and consequence to section 17(2)(f), and in my view it must follow, applying the reasoning in *Cloete*, that a further appeal in this case to the decision by the LAC under section 18(4) would simply not engage the jurisdiction of the Constitutional Court.

[48] The judgment in *Cloete supra* points to a further consideration that would be at stake in this case. As the Constitutional Court said in *TM v Member of the Executive Council for Health and Social Development Gauteng*[32]: '*… this Court has and will refuse "to entertain appeals that seek to challenge only factual findings or [the] incorrect application of the law by the lower courts. A*

[32] 2023 JDR 2371 (CC) at para 46. See also *Mankayi v Anglogold Ashanti Ltd* 2011 (3) SA 237 (CC); at para 12; *Burger NO. v Bester NO* 2022 JDR 0820 (CC) at para 34; *NVM obo VKM v Tembisa Hospital* 2022 JDR 0608 (CC) at para 89.

challenge to a decision of the Supreme Court of Appeal on the sole basis that it is wrong on the facts is not a constitutional matter. …'. A decision under sections 18(3) and (4) is quintessentially a factual determination. The grounds for Sono seeking leave to appeal to the Constitutional Court shows that it is primarily aimed at the factual determination of exceptional circumstances and prejudice made by the LAC. That would not engage the jurisdiction of the Constitutional Court.

[49] As far as I am concerned, the issue of jurisdiction raised by Sono is a red herring, designed to give substantiation to a construct that runs counter to the very purpose of section 18. This is evident from the fact that Sono's counsel conceded that if section 18(3) and (4) was applied as it read, and an appeal was based on that, then Sono's case would have no substance. Sono has also conceded that he does not seek a further appeal by virtue of section 18(4). But what Sono says he seeks to do, I believe effectively undoes the import and purpose of sections 18(3) and (4), as I discussed earlier. To undermine this based on the existence of the ultimate complete oversight by the Constitutional Court over all things legal is in my view not competent. The fact is that one cannot ignore the real-world practical effect of what Sono's approach does. No matter how Sono constructs his approach, the consequence is a further appeal of an order under sections 18(3) and (4) which cannot be allowed. The Constitutional Court is not asked to consider the merits of the main case. It is only requested to consider the interim enforcement order. What Sono is doing, no matter how one cuts it, is seeking a further appeal of an interim enforcement order under sections 18(3) and (4), which as I said is not permissible. I believe the following *dictum* in *Adams v National Bargaining Council for the Road Freight and Logistics Industry and Others*[33], albeit given in the context of litigation rules, is quite apposite:

> 'Although it is highly desirable for good order that rules be complied with on their own terms, the function of the rule is the paramount consideration and, where it can be safely found that the purpose of the rule is achieved, it is highly undesirable to approach the matter in a literalist way. Mechanical thinking is anathema to our law: *cessante ratione legis cessat et ipsa lex.* …'

[33] (2020) 41 ILJ 2051 (LAC) at para 16.

[50] I would add to the consideration of this case the fact that an order under sections 18(3) and (4) is an interlocutory order.[34] This is because, at the core, it is not an order that in any manner disposes of the merits of the main matter.[35] In fact, it is an order district and separate from it, seeking to achieve a different purpose. It is clearly an interim measure designed to only operate until the merits of the main case is decided. It automatically ends along with a decision in respect of the case on the merits. Further, it is not an impediment to the conduct of the appeal on the main merits and will have no impact on it. In short, there is no doubt that the order Sono seeks to appeal against is an interlocutory / interim order. In *Naledi Local Municipality and Others v Appolus and Others*[36] the Court dealt with the interaction between an appeal on the merits and proceedings under section 18(3) and (4), and said the following:

> 'Although these litany of applications are not part of the current appeal, the respondents raised the status of the s 18 appeal stream in their oral arguments, to the extent that it had a bearing on the regular appeal against the main judgment and order of Reid J. The conundrum is created by the fact that it remains pending in the office of the Judge President of that Division. I will thus divert to briefly refer to the status of the s 18 appeal and thereafter return to deal with the appeal before us.
>
> Section 18(4)(a)(ii) is a distinct provision establishing a unique category of appeals, designed explicitly for orders made under s 18(3). Moreover, the application in terms of s 18(3) serves, by its nature, to regulate the interim position between litigants from the time that an order is issued until the final judgment on appeal is handed down. In addition, the s 18(4) appeal specifically allows for a single right of appeal, indicating that multiple appeals are not permitted under the section. [5] In my view, once the judgment of this Court on the main appeal is handed down, irrespective of the outcome thereof, the s 18(3) order and the automatic appeal in terms of s 18(4)*(a)*(ii) will automatically fall away.'

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[34] This is specifically confirmed in *Vresthena supra* and *Ntlemeza supra*.
[35] See *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I-533B; *Tshwane City v Vresthena (Pty) Ltd and Others* 2024 (6) SA 159 (SCA) at para 8; *MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another* 2025 (1) SA 392 (SCA) at para 29; *Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others* 2025 (6) SA 424 (SCA) at para 6.
[36] 2025 JDR 4844 (SCA) at para 13 – 14.

[51] Although some debate went into whether the order of the LAC of 6 May 2026 is appealable because it is an interlocutory order, it must be remembered that what is at stake in this case is not whether the order is appealable. It is about whether the application for leave to appeal to the Constitutional Court, assuming it is competent and that the order at stake is appealable, suspends the said order. This enquiry has nothing to do with appealability and the case *in casu* can be decided on the basis that it is assumed that the order, despite being an interlocutory order, would be appealable because it may be in the interest of justice to do so.[37]

[52] So, and even being an appealable interlocutory order, there is an obvious reality that stares Sono in the face, once he contends that section 18(1) applies. Because the order by the LAC, as is clear from the above principles and as the SCA has specifically said, would be an interlocutory order, the provisions of section 18(2) must equally come into play. Under section 18(2), an interlocutory order is not suspended and continues to operate, unless a court under exceptional circumstances orders otherwise. So, and applying Sono's own contention of an order that is appealable under section 18(1), he would need to illustrate exceptional circumstances why the order is not suspended, and not *vice versa*. The default position with an interlocutory order is therefore that it is not suspended by an appeal, unless exceptional circumstances dictate otherwise. This has nothing to do with the appealability of the order. Sono has made out no case in this regard. His contention is that the application for leave to appeal to the Constitutional Court, *per se*, suspends the order. The proper position was succinctly articulated in *TWK Agriculture supra*[38] as follows:

> 'The defendant referenced s 18(2) of the Superior Courts Act. It does contemplate that an interlocutory order not having the effect of a final judgment may be the subject of an appeal. Section 18 regulates the suspension of decisions pending an appeal. The scheme of s 18 is simply to allow for different suspension regimes of application to decisions and interlocutory orders. The provision has nothing to say about when

[37] See *Tshwane City v Afriforum and Another* 2016 (6) SA 279 (CC) at para 40; *MV Smart* (*supra*) at para 32.
[38] Id at para 24.

> an interlocutory order might be appealable. Only that if such an order is sought to be appealed or leave has been given (rightly or wrongly), s 18(2) is the regime of application to the suspension of the order. Section 18 does not overturn this court's jurisprudence as to when a decision is appealable. Nor does it enthrone the interests of justice as the overarching principle to decide when a matter is appealable.'

[53] But even if exceptional circumstances are considered, the concept of the interest of justice as part of such consideration would work squarely against Sono. It has been decided by no less then three Courts that he must vacate his position as administrator, and if he does not do so, there would be irremediable prejudice to very victim of all of this, being CEPPWAWU. Sono's right to challenge his removal as administrator on the merits is in the first instance fully protected by his pending appeal to the LAC, which must still be decided. But in the meantime, there can be no reason why the dispensation as contemplated by the Court order of 28 January 2026 should not find immediate application, as found to be the case by this Court, and the LAC. The fate of the interim enforcement order should be tied to the fate of the appeal on the merits. There can be no cause or reason to continue to further separate this, by conducting two different determinations in two different courts. I find guidance in the following *dictum* in *MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another*[39]:

> '… it is undesirable to fragment a case by bringing appeals on individual aspects of the case prior to the proper resolution of the matter in the court of first instance, and an appellate court will only interfere in pending proceedings in the lower courts in cases of great rarity — where grave injustice threatens, and, intervention is necessary to attain justice.'

[54] In summary, based on the aforesaid discussion, I decide that the Registrar is entitled to the declaratory order sought in the notice of motion. The order of 28 January 2026 remains operative and Sono remains obliged to comply with the same and give effect thereto, despite his pending application for leave to appeal to the Constitutional Court. This is because there exists no competent

[39] 2025 (1) SA 392 (SCA) at para 33.

appeal to any final determination made by the applicable appeal Court under section 18(4). And even if such an appeal can be brought, an order under section 18(3) is an interlocutory order that does not in any manner determine the main appeal on the merits, and thus under section 18(2) the operation of such order is not suspended, unless exceptional circumstances are shown that it should be suspended, however Sono made out no such case. Lastly, even if it can be argued that an application for leave to appeal to the Constitutional Court under section 167(3)(b) *per se*, is competent, I do not think it engages the jurisdiction of the Constitutional Court because of the clear consequence, effect and purpose of sections 18(3) and (4) and the fact that it would be an appeal to the Constitutional Court concerning purely factual determinations. In the end, all must finish once the LAC pronounced on the issue under section 18(4).

[55] Since Sono remains obliged to comply with the order of 28 January 2026, what next? He was clearly aware of the order, knew what he had to do to comply therewith, and deliberately and purposefully decided not to comply. *Prima facie*, this satisfies the requirements of establishing that he would be in contempt of court. As held in National Union of *Metalworkers of SA and Others v Vulcania Reinforcing Co (Pty) Ltd and Another*[40]:

> 'It is well established that in order to succeed in the application for committal for civil contempt, the applicant must prove the requisites of contempt beyond a reasonable doubt. The applicant must allege and prove that: *(a)* there was a court order against the alleged contemnor; *(b)* such court order was served or brought to the notice of the alleged contemnor; and *(c)* the alleged contemnor has not complied with the order.'

[56] However, it is not as simple as that. No matter how one may look at it, Sono's adopted position was at least *bona fide*, reasonably arguable, openly advanced at the outset when this issue arose, and was arrived at based on legal advice. As such, it cannot be said that the conduct of Sono was in wilful and *mala fide* non-compliance with the order granted under sections 18(3) and (4). These facts relate to the second component of the contempt enquiry, so to speak, which is that the respondent, in this case Sono, must show that he is

[40] (2022) 43 ILJ 1307 (LAC) at para 16. See also *SA Municipal Workers Union and Others v Thaba Chweu Local Municipality and Another* [2015] JOL 32840 (LC) at para 27.

not in wilful and *mala fide* contempt of the Court order. As explained in *Fakie NO v CCII Systems (Pty) Ltd*[41]*:*

> 'The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately and *mala fide*. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids infraction. Even a refusal to comply that is objectively unreasonable may be *bona fide* (though unreasonableness could evidence lack of good faith).
>
> These requirements - that the refusal to obey should be both wilful and *mala fide*, and that unreasonable non-compliance, provided it is *bona fide*, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. …'

[57] Therefore, it cannot be said that Sono is in contempt of court to the extent that the relief afforded in terms of paragraphs 2.1, 2.2 and 2.4 of the rule *nisi* granted by Allen-Yaman J of 28 May 2026 is justified. Those paragraphs all relate to sanction, or differently out, punishment for contempt of court. The facts show that Sono's conduct is not wilful and mala fide, as contemplated by the contempt test. The interim orders granted where it comes to these mentioned paragraphs of the rule *nisi* thus fall to be discharged.

[58] But does that mean that Sono walks away from the current application without consequence? I do not think so. In my view, where it comes to applications for contempt of Court relating to non-compliance with civil Court orders *ad factum praestandum*, the primary purpose of such proceedings is not to punish / sanction the non-compliant party. The primary purpose is to compel compliance, against a court imposed sanction if there is no compliance. To simply decide contempt of court applications only from the perspective of dispensing punishment for non-compliance does not really assist the party who remains suffering as a result of non-compliance. As held in *Fakie supra*[42]:

[41] 2006 (4) SA 326 (SCA) at paras 9 – 10.
[42] 2006 (4) SA 326 (SCA) at para 42(a). See also para 39 of the judgment, where the Court said: '… *A court, in considering committal for contempt, can never disavow the public dimension of its order. This means that the use of committals for contempt cannot be sundered according to whether they are punitive or coercive. In each, objective (enforcement) and means (imprisonment) are identical …*'. See further *Vulcania Reinforcing* (*supra*) at para 16.

'*… The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements …*'.

[59] That is why there are several orders available to a Court in contempt proceedings other than simply committing an errant party to imprisonment or fining it. The Court in *Matjhabeng Local Municipality v Eskom Holdings Ltd and others*[43] held that:

> 'Not every court order warrants committal for contempt of court in civil proceedings. The relief in civil contempt proceedings can take a variety of forms other than criminal sanctions, such as declaratory orders, *mandamus*, and structural interdicts. All of these remedies play an important part in the enforcement of court orders in civil contempt proceedings. Their objective is to compel parties to comply with a court order. In some instances, the disregard of a court order may justify committal, as a sanction for past non-compliance.'

[60] Therefore, I intend to follow an approach, since Sono's adopted position to substantiate his non-compliance has now been found wanting, that would compel Sono to first comply with the order of 28 January 2026 before being visiting him with a contempt sanction for non-compliance.[44] The order I intend to make will afford Sono an opportunity to fully comply with the order of 28 January 2026, by a stipulated deadline, and if he does not do so, the Registrar will be given leave to approach this Court again on the same contempt pleadings in this case for the purposes of securing a contempt sanction of imprisonment and / or a fine. This order will also entail a confirmation of paragraph 2.3 of the rule *nisi* of 28 May 2026. In short, the order would be firstly declaratory in nature coupled with coercive relief. In *Fakie supra* it was held:[45] '*… A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities …*'. And in *Pheko and Others v Ekurhuleni City*[46] the Court said:

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[43] 2018 (1) SA 1 (CC) at para 54. See also para 67 of the judgment. See further *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) at para 37.
[44] Compare *Solidarity v Minister of Employment and Labour and Others* (2026) 47 ILJ 214 (LC) at paras 26 and 29.
[45] Id at para 42(e).
[46] 2015 (5) SA 600 (CC) 31

> 'Coercive contempt orders call for compliance with the original order that has been breached, as well as the terms of the subsequent contempt order. A contemnor may avoid the imposition of a sentence by complying with a coercive order.'

[61] I wish to make some concluding comments in this case. Applications for leave to appeal and / or appeals should not be pursued because it may be tactical or intended to frustrate and tire out an opponent.[47] This kind of approach was appositely identified, in *Zuma v Downer and Another*[48] as being a fight from '*burning house to burning house*', hoping for a victory due to attrition where the actual substance of the case is lost or meritless. This approach not only undermines the rule of law, but it overburdens the limited resources of the Courts to the detriment of everyone. I venture to say that it would be appropriate for a Court, when confronted with deciding an application for interim enforcement and where the above kind of stratagem is involved, to consider the following *dictum* in *Hudson v Hudson and Anotherr*[49]:

> '... When therefore the Court finds an attempt made to use for ulterior purposes machinery devised for the better administration *cf*. justice, it is the duty of the Court to prevent such abuse. But it is a power which has to be exercised with great caution, and only in a clear case. ...'

Surely, it is now time for Sono to let this all go.

Conclusion

[62] In conclusion, the Registrar has made out a proper case for the declaratory relief he seeks. Accordingly, it is declared that Sono is obliged to comply with the order of 28 January 2026 and that such order remains operative, pending Sono's petition for leave to appeal to the LAC in the main matter, and any further appeals that may follow thereafter. However, and at this stage, no finding will be made that Sono is in contempt of court, coupled with punitive sanction. Instead, coercive relief will be granted in terms of which Sono must

[47] Compare *Trident South Africa (Pty) Ltd and Another v Taylor and Others* 2024 JDR 0423 (GP) at paras 45 – 46; *Sekgala v Body Corporate of Petra Nera* 2023 JDR 1126 (GJ) at para 49.
[48] 2024 (2) SA 356 (SCA) at para 28.
[49] 1927 AD 259 at 268.

give effect to the order of 28 January 2026, and if he fails to do so, then a contempt of court finding and sanction against him would follow.

Costs

[63] This then only leaves the issue of costs. In this respect, and in terms of section 162(1), I have a wide discretion. As guidance in exercising this discretion, I will consider how the issue of costs was dealt with in all the preceding litigation proceedings in this whole saga. Tlhotlhalemaje J did not make a costs order in his judgment of 28 January 2026 and his leave to appeal judgment of 16 March 2026. Similarly, Ramji AJ made no costs order in her judgment given on 27 February 2026. And lastly, the LAC followed the same approach in the judgment of 6 May 2026. I see no reason to decide differently and also make no order to costs in the current proceedings. In any event, I consider, overall, making no order as to costs would be fair. I also do not believe it is appropriate to mulch any party with a costs order with all the proceedings obviously still to follow. And at least Sono had an arguable case. No costs order will therefore be made.

[64] For all the reasons set out above, I make the following order:

Order

1. Paragraphs 2.1, 2.2 and 2.4 of the rule *nisi* dated 28 May 2026 is discharged.

2. The order granted by the Labour Appeal Court on 6 May 2026 under case number A2026 – 047704 is not suspended pending the final determination of any appeals being pursued by the first respondent.

3. The first respondent is directed to immediately comply with the order granted by Tlhotlhalemaje J on 28 January 2026, and further to immediately vacate the CEPPWAWU premises, and return all CEPPWAWU's property to the third respondent.

4. In the event of the first respondent failing to comply with paragraph 3 of this order within 7(seven) days of date of this order, the applicant is given leave to immediately re-enrol, on an urgent basis, the applicant's contempt application based on the same pleadings in this matter, together with any supplementary affidavit that may be necessary for establishing further non-compliance, for the purposes of holding the first respondent to be in contempt of court and implementing an appropriate sanction.

5. There is no order as to costs.

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S Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Professor T Madima SC together with Advocate J Chanza
Instructed by:	The State Attorney – Pretoria
For the First Respondent:	Advocate F Boda SC together with Advocate S Bismilla
Instructed by:	KMNS Inc