



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 295/2023

In the matter between:

HENDRIK (WICUS) DIEDERICKS

Applicant

and

**MEC FOR AGRICULTURE, ENVIRONMENTAL
AFFAIRS, RURAL DEVELOPMENT AND
LAND REFORM (NORTHERN CAPE)**

1st Respondent

**MINISTER OF FORESTRY, FISHERIES AND
THE ENVIRONMENT**

2nd Respondent

Neutral citation: *Diedericks v MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform (Northern Cape) and Another* (295/2023) 03 July 2026.

Coram: Tlaletsi JP *et* Lever J.

Heard: 29 April 2026.

Delivered: 03 July 2026.

Summary: Application to enforce judgment pending appeal – Section 18 of Superior Courts Act 10 of 2013 – Applicant to show exceptional circumstances – That he will suffer irreparable harm if order for leave to execute is not granted pending appeal – and That respondents will not suffer irreparable harm if order for leave to execute is granted.

JUDGMENT

Lever J

- [1] This is an application under the provisions of section 18(3) as read with section 18(1) of the Superior Courts Act¹ ("the Act") to put into operation and allow for the execution of an order, the above full Bench made in a judgment handed down on 31 October 2025.²
- [2] The said judgment in essence dealt with a question of private international law relating to how and the extent to which the provisions of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ("CITES") were incorporated into South African domestic law.
- [3] The said judgment found that Article VII, paragraph 5 of CITES had been incorporated into South African domestic law. The effect of this judgment is that, in certain limited and narrow circumstances, it would allow the applicant to trade in rhino horn derived from a white rhinoceros under the provisions of CITES.
- [4] The main requirements for such trade are that the relevant rhino horn, derived from a white rhinoceros, originates from a Captive Breeding Operation ("CBO") run for non-commercial purposes, and that any funds generated from the sale of the said rhino horn are ploughed back into the species' conservation. The applicant contends that his conservancy is covered by the exemption contemplated in Article VII, paragraph 5 of CITES and that any funds generated from such sale/s would sustain his conservancy and thus further the conservation of the species.

¹ 10 of 2013.

² *Diedericks v MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform, Northern Cape and Another* 2026 (1) SA 574 (NCK).

- [5] To proceed with the contemplated trade, a certificate is needed from the issuing authority certifying that the requirements set out above have been met. In this case, the issuing authority for the contemplated certificate would be the first respondent (the MEC). The first and second respondents have both sought leave to appeal the judgment and Order handed down on 31 October 2025.
- [6] In the ordinary course, unless this Court finds 'exceptional circumstances' and orders otherwise, the operation and execution of the order made by this Court on 31 October 2025 would be suspended pending the outcome of the application for leave to appeal and, if applicable, any subsequent appeal. Hence the application under the provisions of section 18(3) read with the provisions of section 18(1) of the Act.
- [7] However, before proceeding to consider the merits of the section 18(3) application, consideration must be given to the application to condone the respondents' late filing of their answering affidavits in the present matter.
- [8] The applicant served and filed the present section 18(3) application on 15 December 2025. The second respondent served and filed his Notice of Intention to Oppose the said application on 19 January 2026. The first respondent served and filed his Notice of Intention to Oppose such application on 20 January 2026.
- [9] The applicant contends that in these circumstances, the relevant answering affidavits were due on 9 and 10 February 2026, respectively. Two attorneys in the State Attorney's office filed affidavits regarding this condonation application. In substance, they sought to invoke Rule 6(13) of the Uniform Rules of Court ("the Rule/s") and argued that the answering affidavits were not due on the 9 and 10 February 2026. However, both overlooked the provisions of Rule 6(5)(d)(ii), which provides that the answering affidavit is to be filed within 15 days of notifying the applicant of their intention to oppose. Clearly, the arguments of these attorneys cannot be sustained.

- [10] The first respondent only filed his answering affidavit in the section 18(3) application on 18 April 2026. The second respondent filed an affidavit in support of the first respondent on 20 April 2026. Such affidavits are both filed approximately two months after they ought to have been filed. In these circumstances, the applicant in the section 18(3) application opposed the condonation application brought on behalf of both the first and second respondents.
- [11] In their condonation application, the respondents focused on the latter part of the two-month delay. They justified this on their fallacious reliance on the Rule 6(13) argument. However, they did state that, during the earlier part of the two-month delay, both incumbents in the offices of the first respondent (the MEC) and the second respondent (the Minister) had been replaced. The new incumbents in both offices needed to be briefed on the litigation concerned. This was subject to the availability of both the new Minister and the new MEC. Although there are unexplained gaps in the timeline, there is just sufficient for them to squeak by in their application for condonation. However, in all the circumstances outlined above, I think the applicant in the section 18(3) application was quite justified in opposing this condonation application. This aspect will be returned to when the issue of costs is considered. In the final analysis, condonation for the late filing of the answering affidavits will be granted.
- [12] The respondents also filed their heads of argument in this application after the date set out by the Judge President in his practice directive of 26 March 2026. In terms of the said practice directive, the said heads were due on 20 April 2026. The said heads were only delivered shortly before the hearing in this matter on 29 April 2026. This was obviously a result of the knock-on effect of the respondents filing their answering affidavits late. These heads were filed with the barest apology from the Bar, and in the absence of a substantive application for condonation. Nothing further will be made of this except to note that this shows a lack of consideration for this Court and the opposing litigants by the respondents and their legal representatives.

- [13] Next, the respondents in the section 18(3) application have raised what they describe as two points *in limine*. These need to be dealt with at the outset. These points *in limine* are set out in paragraphs 7 to 17 of the first respondent's answering affidavit. They are also dealt with in paragraphs 16 to 24 of the heads of argument filed on behalf of the first and second respondents herein.
- [14] The first point *in limine* is set out as follows in both aforementioned documents: "Order granted on 31 October 2025 is not a 'decision' as contemplated in section 18 of the SC Act:". This looks deceptively simple on the face of it, but it is presented in a disjointed and illogical manner. This Court has no option but to deal with each element of the argument raised by the respondents in support of this contention.
- [15] It needs to be said that the first respondent in the answering affidavit filed on his behalf herein misrepresents certain aspects of the relevant judgment (the review judgment). It would not be appropriate to restate the review judgment. The misrepresentations are readily apparent when one reads the review judgment against the relevant passages of the first respondent's answering affidavit herein.
- [16] The first element of the argument raised by the respondents is that the order granted in the review judgment is not a final decision which would trigger the provisions of section 18 of the Act. The argument proceeds along the lines that the term 'execution' means the 'carrying out' or 'giving effect' to the judgment. Section 18 of the Act and its sub-sections contemplate a binding final 'decision'. They then submit that section 18(1) of the Act cannot apply to a judgment that is of no force or effect, which, they contend, is a logical consequence of a textual interpretation of the aforesaid section. These arguments are directly borrowed from the decision of the full Court in the Western Cape High Court decision in *Public Protector of South Africa v Speaker, National Assembly and Others*³ ("*Public Protector*").

³ [2023] 1 All SA 256 (WCC); 2023 (4) SA 205 (WCC) particularly paras 76 and 77.

- [17] Then the argument proceeds that CITES is an international convention that was incorporated into South African domestic law by the 2010 CITES regulations promulgated under the authority of section 97(1)(b)(iv) of the National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA). Further that Article VII, paragraph 5, does not appear in the said CITES regulations.
- [18] The respondents' argument then proceeds that the role of the judiciary is to determine the law and how to apply it, if there is a dispute. It is the role of the legislature to make, amend, or repeal the law. The respondents then contend that this Court, in the review judgment, infringed this doctrine of the separation of powers. The respondents contend that in the said judgment, this Court declared that Article VII, paragraph 5, was part of South African domestic law in circumstances where Article VII, paragraph 5, does not appear in the 2010 CITES regulations or any other national legislation. In short, the respondents contend that in declaring in the review judgment that Article VII, paragraph 5, was incorporated into domestic South African law, this Court impermissibly made law as opposed to determining what the law was and applying it. This, they conclude, is a clear breach of the doctrine of the separation of powers.
- [19] The respondents then contend that until the Constitutional Court has pronounced on this issue, the decision of this Court in the review judgment cannot be regarded as a final and binding decision. Accordingly, in their view, section 18(1) and 18(3) have no application in the circumstances, and the section 18(3) application ought to be dismissed. Finally, the respondents submit that until the Constitutional Court pronounces on the matter, they have strong prospects of success on appeal.
- [20] The second point *in limine* is set out in both the first respondent's answering affidavit and the heads of argument filed on behalf of both the first and second respondents as, "Order granted on 31 October 2025 is unenforceable and impossible to execute:".
- [21] The respondents seek to distinguish between a permit and a certificate. They argue that there is no mechanism in place to give effect to the issuance of the

certificate the applicant seeks. They argue this on the basis that the 2010 CITES regulations contain no reference to Article VII, paragraph 5 of CITES, and that the said regulations make no provision for a certificate as contemplated in Article VII, paragraph 5 of CITES.

- [22] Further, the respondents argue that the second respondent has not published an exemption contemplated in section 57(4)(a) and (b) of NEMBA. That, before the first respondent can issue a permit, he must refer the application to the second respondent for a recommendation, which entails the necessary publication and consultation. Accordingly, the argument goes, it is impossible for the first respondent to issue the permit within the 7 days mandated by the order of the Court in the review judgment, as well as the order sought in similar terms in prayer 4 in the Notice of Motion in the present section 18(3) application.
- [23] Turning now to deal with the first point *in limine*. I hasten to add that in relation to that point, the respondents further argue that the Constitutional Court must have the final say on what the law is in this case; for that reason, they argue that the order issued in the review judgment is not final in effect. The foundation of this argument is flawed in two significant respects.
- [24] Firstly, as already mentioned, the said argument is based on the decision of the full Court in the Western Cape High Court in *Public Protector*.⁴ In that case, the full Court held that the President's conduct in suspending the then Public Protector did not constitute final relief as contemplated by section 18(1) of the Act. The full Court in that case based its decision on the requirement of section 167(5) of the Constitution of the Republic of South Africa, 1996 ("the Constitution").⁵ This section of the Constitution provides that the Constitutional Court is the final arbiter as to whether the conduct of the President of the Republic is constitutional or otherwise. The facts in *Public Protector* and its *ratio decidendi* have no relevance or application to the facts of the present matter.

⁴ *Supra* fn 3.

⁵ *Ibid* paras 74 and 75.

- [25] The second mistake affecting the foundation of the respondent's argument is that they contend that the Constitutional Court is, in any event, the final arbiter as to whether Article VII, paragraph 5, of CITES has been made a part of South African domestic law, and that accordingly the declaratory order made by this Court in the review judgment has no effect until it is confirmed by the Constitutional Court.
- [26] The above argument is based on a misreading or misunderstanding of the provision of section 172(2)(a) of the Constitution. Such section provides that the Constitutional Court has the final say on the matter if the High Court makes an order of constitutional invalidity in relation to legislation. In the review judgment, this Court did not declare any legislative act to be constitutionally invalid. The reasoning of the Court in the review judgment in finding that Article VII, paragraph 5, was incorporated into domestic South African law is to be found at paragraphs 72 to 92 of the review judgment. Clearly, this is not a case that involves the declaration of any legislation to be constitutionally invalid.
- [27] It is necessary to canvass the fundamental reasons for the Court's conclusion in the review judgment because the respondents in their submissions on the first point *in limine* simply maintain that they are correct in asserting that the CITES convention was incorporated into South African domestic law via the 2010 CITES regulations. The respondents are not correct in this assertion for the reasons set out below.
- [28] In paragraph 80 of the review judgment, the Court quoted section 97(1)(b)(iv), which is the section of NEMBA that empowered the second respondent (the then Minister) to make regulations relating to CITES. In paragraph 92 of the review judgment, the Court found that, reading sections 2, 5, and 97, Parliament incorporated the whole of CITES into South African domestic law through NEMBA itself and did no more than authorise its operationalisation through the regulations.
- [29] It is axiomatic to the extent that it need not even be mentioned that the Minister may only promulgate subordinate legislation to the extent that the enabling

legislation authorises him to do so. There is nothing contained in section 97(1)(b)(iv) of NEMBA that specifically authorises the Minister to incorporate CITES into domestic South African law, and more particularly, nothing authorises the Minister to choose which parts of CITES to incorporate into domestic law and which parts to exclude.

- [30] In the final analysis, reading section 5 of NEMBA with section 2 of NEMBA together with what is not contained in section 97 of NEMBA allows for no other conclusion than that NEMBA itself incorporated the whole of CITES into South African law, and the 2010 CITES regulations do no more than operationalise CITES in South African domestic law.
- [31] This Court was informed from the Bar that the Minister who promulgated the 2010 CITES regulations has passed away. Accordingly, there is no direct evidence of what she intended. There is nothing in section 97 of NEMBA that authorises the Minister to domesticate CITES into South African law. Paragraph 92 of the review judgment clearly sets out how CITES was incorporated into domestic South African law. This Court will not assume in the absence of evidence that the then Minister acted outside her powers as authorised by the enabling legislation.
- [32] Further, the specimen documents to obtain the relevant permits that form part of the 2010 CITES regulations make provision for the use of source code "C". As pointed out in paragraphs 89 to 91 of the review judgment, source code "C" can have no other purpose but to facilitate the application of Article VII, paragraph 5 of CITES.
- [33] Also, the respondents sought to strike out the Deloitte report on the use of source code "C", being the evidence of the domestic implementation of Article VII, paragraph 5, of CITES in South Africa. The respondents' application to strike out was unsuccessful. Despite this, the respondents were invited to deal with this Deloitte report. They chose not to do so. This, despite the Deloitte report evidencing multiple occasions in which a specimen was exported from South Africa under the source code classification "C". Despite the respondents'

protestations otherwise, source code “C” can have no other application than the domestic implementation of Article VII, paragraph 5 of CITES. Under the circumstances, it is not open to the respondents to challenge any aspect of the Deloitte report after declining to deal with it substantively.

- [34] Finally, Ms Ellis SC, who appeared for the respondents herein, maintained her argument that the content of Article VII, paragraph 5, is not available to any member of the South African public to read in any domestic legislation. This Court pointed out that no portion of CITES was textually incorporated in that way and that Article VII, paragraph 4, which the respondents maintain is incorporated into our domestic law, was also included in a manner that a citizen could not read its text in any domestic legislation.⁶ Ms Ellis had no credible response to this plain fact pointed out by this Court.
- [35] In all these circumstances, there is no reasonable prospect that another court would conclude that the CITES convention was incorporated into domestic South African law by the 2010 CITES regulations and that such regulations deliberately omitted Article VII, paragraph 5 from South African domestic law. Hence, there is no justification in the present circumstances for the respondents to assume and assert that their interpretation of the CITES convention being incorporated into domestic South African law by the 2010 CITES regulations is correct.
- [36] It is clear from an ordinary reading of the review judgment that the Court did not usurp the function of the Legislature. The judgment does not purport to make law; it simply declares the law to be as the Court found it. Accordingly, there is no breach of the doctrine of the separation of powers.
- [37] For the reasons set out above, there is no merit in the first point *in limine*, and it stands to be dismissed. Turning now to the second point *in limine*.

⁶ *Diedericks v MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform, Northern Cape and Another* (Supra fn 2) paras 82-88.

[38] The distinction that the respondents seek to draw between the terms 'permit' and 'certificate' is undermined by the 2010 CITES regulations. The 2010 CITES regulations define these terms together. Thus, for the purposes of the 2010 CITES regulations, the terms are interchangeable. For the sake of completeness, I quote the relevant definition from the said regulations, which reads as follows:

"'permit or certificate' means the official document used to authorise import, export, re-export, or introduction from the sea of specimens of species listed in any of the Appendices of these Regulations;"

[39] There is no merit in the assertion that the 2010 CITES regulations do not provide a process for issuing the certificate/s and that, hence, it is not possible for the first respondent to give effect to the court order. No process is required; the first respondent must simply ascertain the factual position as to whether: the specimen originates from a CBO for white rhinoceros; the CBO is run for conservation and not for commercial purposes; and that the proceeds of any contemplated sale of a specimen relevant to such certificate will be used for conservation and survival of the species. For the same reasons, no exemption and associated publication and consultation is required from the second respondent.

[40] For the reasons already set out in relation to the first point *in limine*, the respondents cannot simply assume and assert that CITES was domesticated into South African law by the 2010 CITES regulations. There is no merit in the second point *in limine*, and it stands to be dismissed. Turning now to the section 18(3) application itself.

[41] The relevant portions of section 18 of the Act read as follows:

"18. Suspension of decision pending appeal

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

(2) . . .

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

[42] It is clear from section 18 itself that, in the ordinary course, if there is an application for leave to appeal and a subsequent appeal, the order which is the subject of such application for leave to appeal is suspended pending the application for such leave and, where leave is granted, the appeal itself. A party may apply to put such an order into effect despite the application for leave to appeal. In such cases, section 18 stipulates that three requirements must be established before an order made in a matter can be put into operation despite an application for leave to appeal or subsequent appeal. These are: Firstly, the applicant who wishes for an order to be put into effect where there is a pending application for leave to appeal or a subsequent appeal must establish exceptional circumstances; Secondly, on a balance of probabilities, establish that they would suffer irreparable harm if the said order is not put into effect; and Finally, on a balance of probabilities, establish that the other party would not suffer irreparable harm if the court orders that such order be put into effect despite the pending application for leave to appeal or appeal.

[43] How the requirements to give effect to an order under the provisions of section 18(3) ought to be applied has been authoritatively set out by the

Supreme Court of Appeal (SCA) in *Tyte Security Services CC v Western Cape Provincial Government and Others*⁷ (“*Tyte*”).

- [44] It would be helpful to briefly paraphrase and set out the principles applied by the SCA in *Tyte*. Reference will be made to the relevant paragraphs in *Tyte* without reference to the authorities cited therein.
- [45] Each of the three requirements set out above is not a hermetically sealed enquiry and ought not to be approached in a compartmentalised fashion (*Tyte* paragraph 10).
- [46] The existence of ‘exceptional circumstances’ is a threshold enquiry. That is, if truly exceptional circumstances do not exist, the enquiry can go no further, and the application must be dismissed (*Tyte* paragraph 11).
- [47] If exceptional circumstances are found to be present, more is required for the application to succeed. In other words, if the ‘exceptional circumstances’ threshold is crossed, then the other two requirements of section 18 come into play (*Tyte* paragraph 11).
- [48] It is ‘undesirable to attempt to lay down any general rule’ in respect of ‘exceptional circumstances’ and each case is to be decided on its own facts. It is generally accepted that ‘exceptional circumstances’ apply to something uncommon, rare, or different, out of the ordinary, and of an unusual nature (*Tyte* paragraph 12).
- [49] What constitutes irreparable harm is always dependent on the factual situation in which the dispute arises, and upon the legal principles that govern the rights and obligations of the parties in the context of their dispute (*Tyte* paragraph 13).
- [50] The need to establish exceptional circumstances is likely to be closely linked to the applicant establishing that it would suffer irreparable harm if the order is not

⁷ 2024 (6) SA 175 (SCA).

implemented immediately. The presence or absence of irreparable harm cannot be entirely divorced from the 'exceptional circumstances'- enquiry (*Tyte* paragraph 13).

- [51] A court is not required to undertake a tick-box exercise by enquiring into and satisfying itself as to the first, then the second, and finally the third requirement. Although the requirement of exceptional circumstances appears first in section 18 and is then followed by the words 'in addition to', those words must not be construed as necessarily enjoining the court to undertake a further or additional enquiry. The overarching enquiry is whether exceptional circumstances exist or not. The presence or absence of irreparable harm may be subsumed under the exceptional circumstances enquiry. As long as a court is alive to the duty cast upon it by the legislature to enquire into and satisfy itself in respect of exceptional circumstances and irreparable harm, it does not have to do so in a formulaic or hierarchical fashion (*Tyte* paragraph 14).

- [52] For the reason set out above, the second and third requirements of section 18(3) are therefore not separate and discrete enquiries. The same facts and circumstances, which by that stage ought to be either common cause or undisputed, will inform both enquiries (*Tyte* paragraph 15).

- [53] Accordingly, the factual enquiry contemplated in section 18(3), as read with section 18(1), requires a court to have regard to all the facts and circumstances that emerge from the case in question when determining if the three requirements have been established (*Tyte* paragraph 15).

- [54] Although the *onus* is on the applicant and it does not shift, in circumstances where the facts the respondent seeks to rely on are peculiarly within such respondent's knowledge, such respondent bears an evidentiary burden. The respondent should set out the relevant facts in the answering affidavit it files in the section 18(3) application to enable the applicant a fair opportunity to deal with the relevant factual contentions. This is also apposite because section 18(3) requires the applicant to prove a negative (*Tyte* paragraph 15).

- [55] The second and third requirements must not be approached as isolated enquiries because, to do that, would strip a court of its important discretion to arrive at a manifestly equitable conclusion (which is a requirement of the rule of law). A court must retain an overall discretion to preserve the rationality, reasonableness, and proportionality yardsticks that have become important touchstones in our jurisprudence. The courts have a residual discretion, and such discretion may be exercised by weighing up the respective harm that each party may suffer whilst awaiting the outcome of an appeal (*Tyte* paragraph 18).
- [56] A court must not overlook 'irreparably disastrous' harm that will be suffered by an applicant simply because the respondent may also suffer some irreparable harm as well (*Tyte* paragraph 18).
- [57] The object of interim relief in the context of section 18(3) is to prevent a successful litigant, who must necessarily suffer the law's delay, from losing by virtue of the delay the fruit of his litigation (*Tyte* paragraph 21).
- [58] The probability of success in the contemplated appeal process is not mentioned anywhere in the wording of section 18 of the Act. However, the SCA has determined that the prospect of success still plays a role⁸.
- [59] The applicant has set out four independent bases, which he contends, taken individually, each constitutes exceptional circumstances, in the sense contemplated as a threshold in section 18(1) of the Act.
- [60] The first of these bases is that the very survival of the applicant's conservancy, Rockwood, is at stake. In the last financial year, the evidence showed that it cost Rockwood approximately R44 million to keep itself going. In that same period, Rockwood earned approximately R12,4 million. Accordingly, there was a shortfall of approximately R31,6 million. The evidence showed that during the same period, the Rockwood conservancy was financed by two companies

⁸ *University of the Free State v Afriforum and Another* [2017] 1 All SA 79 (SCA); 2018 (3) 428 (SCA) paras 14 and 15.

associated with the applicant, namely: Dibros and Izweltu. The evidence showed that Izweltu lost government contracts and that Dibros will no longer be receiving the local government contracts that had sustained it in the past. In these circumstances, the underlying substratum that had previously sustained Rockwood is no longer in place. Rockwood cannot be sustained in these circumstances, it needs a cash injection. The applicant has explored other options without success. The sale of rhino horn offers a solution. The applicant has maintained throughout that he does not want to make a profit; he just wants to recover the cost of running Rockwood. The applicant maintains that, in the circumstances, the fact that Rockwood would have to close down is an exceptional circumstance.

- [61] The second of the bases that the applicant relies upon to establish 'exceptional circumstances' is the survival and welfare of the rhino herd, which has, since the inception of the review application, grown to a herd of 430 (Four-hundred and thirty) rhinos. The evidence is that when the money runs out, which is imminent, there will be no way to pay for feed, salaries, veterinary bills, and security. The applicant has established that he will not be able to sell his rhinos. The result is that they will probably end up in state-owned parks, where the uncontested evidence is that 86% of all rhinos in the Kruger National Park were poached and killed. The fact that rhinos, an endangered species, will die as a result of a delay occasioned by an appeal is an exceptional circumstance.
- [62] The third of the bases that the applicant relies upon to establish the threshold requirement of 'exceptional circumstances' is that the review, the subject of the application for leave to appeal, is not adversarial litigation. It is also not a private law matter where the respective commercial interests of competing parties are at stake. On the contrary, the review case concerned the status of our law and whether important treaty provisions are part of our domestic legal order. A declaration of law, as our courts have repeatedly held, does nothing more than declare the law as it has always been. In this case, since 2004, because that is when CITES was incorporated into our domestic law by NEMBA. If the review order is suspended by the application of section 18(1) instead of the order being put into effect via the provisions of section 18(3), the result would be that an

unlawful state of affairs would be allowed to continue. This, the applicant contends, is of itself an exceptional circumstance.

- [63] The fourth of these bases that the applicant contends constitutes an exceptional circumstance is that South Africa has, in the past, allowed the export of Appendix I species and specimens using source code "C". In fact, the uncontested number of Appendix I, II and III trades in which source code "C" was used, according to the information provided to CITES Secretariat by the government itself, is approximately 26 million specimens. This has been confirmed by an independent auditing firm, Deloitte. In this regard, see annexure "RA23" filed in the papers in the review proceedings. If section 18(1) of the Act applies, it will suspend the declarator that the exemption in Article VII, paragraph 5 is part of our domestic law and not only render these previous trades unlawful but, more directly, prohibit any further trade under source code "C". That effect, inevitably, impacts all Appendix I, II and III species and specimens, not just rhino horn, and will cause international trade in these species and specimens to grind to a halt. This will be a staggering disruption of trade that this Court has found is currently operating on a wide scale and has been doing so for an extended period of time. This, too, is an exceptional circumstance.
- [64] The first respondent, in dealing with the bases for exceptional circumstances set out by the applicant, seeks to portray the case made out by the applicant as being based on pure commercial interests. This is an unjustified distortion and oversimplification of the case made out by the applicant. It is clear to the ordinary reader of the founding affidavit herein that the applicant fears that his worsening financial position will adversely impact the safety and wellbeing of the rhino herd on the Rockwood conservancy. The applicant, from the content of the founding affidavit herein, sees himself as responsible for the safety and wellbeing of this rhino herd. This is a far cry from pure commercial interests.
- [65] Then, the first respondent criticises the applicant for failing to fulfil the obligation of a CBO, being to relocate the rhino to the wild and re-wild such rhino. This criticism ignores three important facts. Firstly, the alarming rate of poaching

beyond our borders. Secondly, the uncontested fact that the Kruger National Park has lost 86% of its rhinos to poaching. Thirdly, Rockwood currently houses some 430 rhinos on a substantial 33 000 (Thirty-three thousand) acres, which is currently protected by sophisticated anti-poaching measures.

- [66] Ms Ellis, in her oral argument, pushed this theme of re-wilding. In debating this issue with her, the Court asked her where the 'wild' is, given the high and uncontested rate of poaching that exists. All the Court got in response were vague generalisations about export to approved and appropriate destinations.
- [67] What is glaringly obvious from what appears in the papers and what was argued before us in court is that the respondents do not contest the extent to which poaching is a threat to the survival of rhino as a species, yet they fail to demonstrate an understanding of what is required to curtail poaching.
- [68] The applicant has in place sophisticated anti-poaching measures, but he has placed evidence before this Court that, due to financial constraints, his anti-poaching measures are under stress. He is having trouble retaining staff, and the equipment needs maintenance, upgrading, and modernisation. The respondents not only show no sympathy for this, but they also seem not to understand what is required to secure and maintain this level of protection.
- [69] The applicant has placed evidence before this Court that he has not had a poaching incident in the last eight years. However, from the evidence placed before this Court, it is clear from his changed financial circumstances that this level of security cannot be sustained for much longer.
- [70] The first respondent also incorrectly refers to Rockwood as if it is a CBO for commercial purposes. This is clearly not correct. Rockwood is registered as a conservation operation for rhinoceros for non-commercial purposes. Despite this and despite being corrected in the past, the first respondent simply repeats this as if it were a fact. The first respondent simply ignores the fact that the rhino horn will be sold exclusively to fund the conservancy and the protection of the rhino herd. Nobody seeks to make a profit out of such trade. This is precisely

what Article VII, paragraph 5 of CITES empowers/enables. Rockwood can trade sufficient horns to fund itself and remains a rhino conservancy for non-commercial purposes.

- [71] The first respondent also criticises the applicant for allowing 12 or 13 hunts involving 12 or 13 rhinos on Rockwood. The point is that there is limited scope for hunting to properly and adequately fund Rockwood sustainably. The applicant also indicates that he does not allow hunting out of choice; in fact, he does not want his rhino to be hunted.
- [72] The first respondent also criticises the applicant for not disclosing the full extent of his interests in corporate entities. The applicant disclosed how his corporate entities funded Rockwood in the past. He dealt with the contentions made by the first respondent. It is now clear from the evidence before this Court that none of the enterprises the applicant is involved in could sustainably fund Rockwood at the levels necessary to maintain security and other services required to ensure the protection and well-being of the rhino herd on Rockwood. The threat on the security and well-being of the 430 rhinos now on Rockwood constitute the real exceptional circumstance. The applicant's financial predicament is the underlying cause of the said exceptional circumstances.
- [73] The first respondent accuses the applicant of seeking to set up a commercial enterprise, ostensibly to farm and make a profit from trading rhino horn. There is not a shred of evidence to support this contention. The applicant has been consistent in his assertion that he does not seek to make a profit but only trade sufficient rhino horn to sustain Rockwood. It would surely not be unreasonable for the first respondent to make this one of the conditions upon which any certificate is issued.
- [74] I find that on the first two bases pleaded by the applicant as set out above, the applicant has crossed the threshold and established the necessary 'exceptional circumstances'. This is sufficient for present purposes. Accordingly, it is not necessary to consider the other two bases and make a finding in respect thereof.

- [75] Accordingly, one must now move on to consider the other two requirements set out in section 18(3) of the Act. Namely, that the applicant will suffer irreparable harm if the order in the review judgment is not put into effect immediately, and on the other hand, that the respondents will not suffer irreparable harm if the said order is not suspended pending the appeal process.
- [76] The same facts and factors identified by the applicant as 'exceptional circumstances' also establish the irreparable harm to both the applicant and Rockwood on the one hand, and the rhino herd on Rockwood on the other. It is clear from all the evidence placed before the Court that poaching was and remains the principal threat to the survival of the species. Having regard to the effect of poaching in the Kruger National Park, one of the ways to protect the rhino and ensure its survival as a species is to protect it in private conservancies that have the means to sustain themselves. One would hope that rhinos would also be adequately protected in State Parks and beyond our borders. It is clear from the uncontested evidence placed before us that this is little more than an aspirational wish in the present circumstances. Hoping for better will not save the rhino. The irreparable harm is palpable.
- [77] The applicant, in his founding affidavit, stated that he cannot foresee any irreparable harm to the respondents if the section 18(3) order is granted, but he invited the respondent to place evidence of any such irreparable harm before this Court in their answering affidavit. They failed to pertinently put anything before the Court except a reference to Article XIII of CITES and a claim that the contemplated trade in rhino horn would lead to international sanctions.
- [78] An ordinary reading of Article XIII of CITES shows that sanctions are not its primary focus, although they may well be possible after the processes in Article XIII have been followed. However, the direct answer to this issue is that if the provisions of Article VII, paragraph 5, are properly adhered to, there can be no reason for invoking Article XIII. The first respondent has not provided any substantive reason why Article XIII would be invoked in those circumstances.

- [79] In her oral argument, Ms Ellis argued that the provision of a certificate and allowing trade in rhino horn, even under these narrow and restrictive conditions, would incur the wrath of the other state parties to CITES. This is a circular argument because the provisions of CITES itself provide for trade in these circumstances. If the provisions of Article VII, paragraph 5, are adhered to, it is difficult to see how any other state party can object.
- [80] Since the review judgment, the South African 'Scientific Authority' appointed under CITES has published a new Non-Detrimental Finding (NDF). This new NDF was published in the Government Gazette No. 54291 on 9 March 2026 under the signature of the second respondent (the present Minister).
- [81] Insofar as the white rhinoceros is concerned, the species relevant to the present application, the said NDF reads as follows:
 "Legal international trade in live animals to appropriate and acceptable destinations and the export of hunting trophies poses a low risk to the survival of this species in South Africa and is not detrimental. Trophy hunting of white rhinoceros has incentivised the conservation and protection of the species in South Africa as evidenced by [the] growth [in] the population since trophy hunting was introduced. The ongoing CITES prohibition on the trade in rhino horn has however proven to be detrimental to the survival of the species in South Africa. Despite the national herd of rhinoceros having shown an overall population growth in recent years, with illegal offtakes (poaching) having been reduced over the last five years to around 3% of the population, it is unlikely that the current investment in the protection of this species by the government, external donors, and especially private rhino owners can be sustained due to the high costs of securing populations and limited economic returns. Trade in live animals or horn from captive breeding operations is unlikely to have a detrimental impact on the wild population provided that the criteria for the captive breeding of white rhinoceros developed by SANBI are adhered to. This will also ensure that the wellbeing (welfare) of rhinos in captive breeding operations is not compromised." (My emphasis.)
- [82] The position taken by the second respondent (the Minister) in the present matter is diametrically opposed to the position he takes in the latest NDF. At the very least, this is incongruous. Whether the second respondent is aware of

this incongruity, this Court cannot say. No attempt has been made to explain this incongruity.

- [83] For all the reasons set out above, in dealing with the first point *in limine*, I believe that the respondents have no reasonable prospects of success on appeal.
- [84] In debating the relief the applicant seeks from the first respondent, I raised certain concerns with Mr Hopkins SC (Counsel for the applicant) about what the relief sought would require from the first respondent. I have reflected on the concerns I raised with Mr Hopkins, and being frank and direct with myself, all the first respondent is required to do in the circumstances is to act lawfully and provide reasons that are rationally connected to his ultimate decision in respect of the certificates sought by the applicant.
- [85] In all these circumstances, I find that the applicant has established on a balance of probabilities that he would suffer irreparable harm if the order in the review judgment is not put into immediate effect despite the application for leave to appeal. In all of these circumstances, I also find that the applicant has established on a balance of probabilities that the respondents would not suffer irreparable harm if the order in the review judgment is not suspended.
- [86] All that is left to consider is the issue of the costs of the condonation application and the costs of the application itself.
- [87] In respect of the condonation application, although the decision was to grant condonation, I found that, given the incomplete explanation set out for the delay, the applicant was fully justified in opposing the application. In these circumstances, it would be equitable to order that each party bear their own costs in respect of the condonation application.
- [88] In respect of the section 18(3) application itself, the applicant has been successful, and I can see no reason why costs should not follow the event. Accordingly, that is the order that will be made. The respondents will be jointly and severally liable for the costs of the section 18 (3) application—the one

paying, the other to be absolved. The matter is obviously one of great importance to all the parties concerned. Senior legal teams were employed by both the applicant and the respondents. In these circumstances, it is appropriate to order costs on scale C.

[89] In the circumstances, the following order is made:

1. The respondents' late filing of their answering affidavits is condoned.
2. The parties will bear their own costs in respect of the condonation application.
3. Pending the final determination of the application for leave to appeal or the appeal itself, the order granted by this Court per Tlaletsi JP and Lever J on 31 October 2025 ("the order in the review judgment") shall not be suspended in accordance with section 18(1) of the Superior Courts Act 10 of 2013 ("the Act").
4. The order in the review judgment is, in accordance with section 18(3) of the Act, immediately operative and enforceable.
5. When the first respondent ("the MEC") makes his decision on whether to issue the applicant ("Mr Diedericks") with the certificate contemplated in paragraph 4 of the order in the review judgment, the MEC is required to accept that:
 - a. The exemption contained in Article VII(5) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") is part of South African domestic law as declared in paragraph 2.1 of the order in the review judgment.
 - b. The rhino horns identified in Mr Diedericks' applications for permits relevant to the review judgment come from white rhinoceros *Ceratotherium simum simum* that were bred in captivity for conservation purposes, as held in paragraph 1 of the review judgment of 31 October 2025.
 - c. The certificate contemplated in paragraph 4 of the order in the review judgment shall be accepted in lieu of any of the permits and certificates required under Article III, IV or V of CITES.
 - d. An import permit from the State of Import is not a requirement for the export of rhino horn from South Africa by a person who has been

issued with the certificate contemplated in paragraph 4 of the order in the review judgment.

6. The MEC is directed to take a decision on whether to issue Mr Diedericks with the necessary certificates within 7 days of this order and to notify him and his attorney of the decision and in the event that the decision to refuse to grant the relevant certificates, the MEC must simultaneously provide his reasons as contemplated by section 5 of the Promotion of Administrative Justice Act 3 of 2000 together with a record of decision as contemplated by Rule 53 of the Uniform Rules of Court.
7. The respondents are jointly and severally liable for the party-and-party costs of the section 18(3) application, the one paying the other to be absolved. Such costs are to be taxed on scale C.



LG LEVER

JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

I agree,



LP TLAETSI

JUDGE PRESIDENT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:

Adv K Hopkins SC

Instructed by:

PGMO Attorneys, Kimberley

For the Respondents:

Adv Isabelle Ellis SC (with Adv Rasivhetshela)

Instructed by:

The State Attorney.