



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Appeal Case No: A2026-054914

Case No: 14077/2024P

In the matter between:

**THE CITY MANAGER, ETHEKWINI MUNICIPALITY
ETHEKWINI MUNICIPALITY**

**FIRST APPELLANT
SECOND APPELLANT**

and

**ETHEKWINI TENNIS ASSOCIATION
EVOLV OUTDOOR (PTY) LTD**

**FIRST RESPONDENT
SECOND RESPONDENT**

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Pietermaritzburg

(P Bezuidenhout J sitting as court of first instance):

1. The appeal is dismissed with costs.
2. The appellants, jointly and severally, the one paying the other to be absolved, are ordered to pay costs on scale C, including costs of senior counsel where so employed.

JUDGMENT (delivered on 26 June 2026)

THE COURT (Chili, Mngadi, and Mlaba JJ):

Introduction

[1] The appellants, in terms of s 18(4)(a)(ii) of the Superior Courts Act 10 of 2013 (the SC Act) appeal against the order and judgment of P Bezuidenhout J made on 16 February 2026, granting the enforcement of the judgment of Seegobin J, despite a pending appeal.

[2] The first appellant is the City Manager of eThekweni Metropolitan Municipality. He is cited based on a decision he made on behalf of eThekweni Metropolitan Municipality, the second appellant.¹ The first respondent is eThekweni Tennis Association, a voluntary association whose object is to control and administer the game of tennis in an assigned territory. It leased a piece of land whereon it conducted activities of a tennis stadium (leased land). The second respondent is Evolv Outdoor (Pty) Ltd, a company carrying on business as a media and advertising company, which includes erecting advertising billboards.

[3] The respondents applied to the appellants to erect a billboard on the leased land. The appellants refused the application. The respondents sought to review the decision to refuse the erection of a billboard. The matter served before Seegobin J, who reviewed, and set aside the decision of the first appellant and substituted it with a decision granting the application for the erection of a billboard. The appellants' subsequent leave to appeal the decision of Seegobin J was refused. The appellants thereafter approached the Supreme Court of Appeal on petition. We revert to the decision of the Supreme Court of Appeal in due course.

[4] Pending the decision of the Supreme Court of Appeal, the respondents approached P Bezuidenhout J for an order enforcing Seegobin J's order in terms of s 18(1) of the SC Act. Having heard the parties in argument, P Bezuidenhout J granted

¹ The decision made by the first appellant was the subject of a review before Seegobin J.

the order as prayed (the enforcement order). The appeal before us is in respect of that order.

The application before P Bezuidenhout J

[5] The respondents' application for the enforcement order was anchored on the following grounds. Firstly, the respondents argued that exceptional circumstances existed that warranted the grant of the relief sought; secondly, that there had been inordinate delays caused by the first appellant's failure to make a decision; thirdly, that the respondents would suffer irreversible prejudice if denied permission to erect a billboard and fourthly, that the appellants would suffer no prejudice at all if a billboard were erected.

[6] In their answering affidavit, the appellants disputed that exceptional circumstances existed warranting the grant of the enforcement order. They also disputed an allegation that the respondents would suffer irreparable harm if the enforcement order were refused.

[7] Having considered all the facts, including oral submissions and relevant authorities, P Bezuidenhout J concluded that the respondents succeeded in establishing the existence of exceptional circumstances, warranting the grant of the relief sought. In respect of prejudice, he concluded, on a balance of probabilities, that the respondents did not only succeed in establishing the existence of potential harm, but also that they had already suffered financial prejudice and further that they would continue to suffer financial prejudice totalling millions of rands, if Seegobin J's order were not put into effect. Regarding the appellants, he found that they failed to establish that they would suffer any prejudice if Seegobin J's order were put into effect.

The appeal

[8] On appeal, we were urged to consider the decision of the Supreme Court of Appeal dated 31 March 2026, granting the appellants leave to appeal Seegobin J's order to the full court of this Division. This order was only granted after the judgment of P Bezuidenhout J, and prior to the hearing of the present appeal. In its relevant portion, the order of the Supreme Court of Appeal reads:

‘The leave to appeal is limited to the substitution order made by the High Court that is the portion of the order that authorized the erection of a billboard on portion 33 of Erf 651, Brickfield.’

[9] Before us, Mr *Broster* (for the appellants) contended, both in argument and in his heads of argument, that the effect of the grant of the limited petition is that ‘the order of Seegobin J reviewing and setting aside the refusal of the respondents’ internal appeal is enforceable’. We do not agree. Read in context, the order of the Supreme Court of Appeal makes it plain that the only portion of the order that is appealable is the substitution order, not the setting aside of the decision of the first appellant prohibiting the erection of a billboard. Seegobin J’s decision setting aside the first appellant’s decision, therefore, stands until it is set aside by a competent court.

[10] Turning to the appeal, it is important to remind ourselves that the appeal before us relates only to the enforcement order granted by P Bezuidenhout J. The question for determination before P Bezuidenhout J was whether the respondents had succeeded, on a balance of probabilities, in establishing exceptional circumstances that warrant the enforcement of the order granted by Seegobin J, pending the appeal. That question is to be decided on facts that were before P Bezuidenhout J when he granted the enforcement order. Section 18(1) provides for the suspension of the order that is the subject of an application for leave to appeal or an appeal, unless exceptional circumstances exist that warrant the enforcement of a decision. Subsection (2) provides that an interlocutory order that does not have the effect of a final judgment is not suspended pending appeal or an application for leave to appeal, unless the court orders otherwise. Subsection (3), which is relevant for the purposes of this appeal, provides:

‘(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.’

[11] There are two factors that prompted P Bezuidenhout J to grant the enforcement order, namely: (a) the irreparable harm the respondents were bound to suffer if the

enforcement order were refused and (b) the fact that the appellants would suffer no harm if the enforcement order were granted. We deal with these factors in turn.

Actual prejudice

[12] It was common cause that, at the hearing of the application, the respondents had already commenced the process of constructing a billboard which entailed three phases: the construction of a steel stand and frame; the construction of the concrete foundation and base for the billboard; and the manufacturing of an electronic screen. In the founding affidavit deposed to by Mr Chris Masters, the respondents stated that they had already expended irreversible amounts totalling R4.2 million towards the construction costs. The steel framework had already been constructed; screens had already been manufactured and delivered; and the foundation had already been laid and was ready for construction.

[13] Responding to an allegation of the actual harm already suffered by the respondents, the appellants simply stated:

‘The contents of these paragraphs are devoted to the loss of income allegedly suffered by the applicants (respondents). That equally is not an exceptional circumstance nor irreparable harm within the meaning of section 18(3).’²

There simply is no merit in the appellants’ unsubstantiated defence and in our view, it was correctly disregarded by P Bezuidenhout J.

Potential harm

[14] The respondents made the following averments regarding potential harm. Firstly, they contended that they had already secured the services of contractors who had agreed to install a billboard. Contractors were already on standby and the cancellation of the contract would result in a loss totalling R150 000, an amount the respondents would never be able to recover. Secondly, the respondents contended that if a billboard were not erected, the first respondent ran the risk of being finally wound-up. Finally, they contended that if a billboard were not erected, the second respondent stood to lose an income totalling R6.24 million in fees. As at the date of the application, the second respondent

² See para 26 of the appellants’ answering affidavit at page 304 of the record.

had engaged the services of numerous advertisers who had expressed an interest in using a billboard for advertising purposes. As for the first respondent, it was contended that in terms of the agreement between the first and second respondents, it had been agreed that the first respondent would receive 25% of the second respondent's profit, an amount between R250 000 and R280 000 per month. It was never disputed that all the amounts mentioned by the respondents were irrecoverable.

[15] In response to a contention set out in paragraphs 45 through to 48 of the respondents' founding affidavit, that the appellants would suffer no harm if the enforcement order were granted, the appellants simply raised a defence of bare denial. We are not persuaded that P Bezuidenhout J misdirected himself when granting the enforcement order and that order must therefore stand.

[16] Having had regard to all the above facts, P Bezuidenhout J concluded that the respondents succeeded in establishing, not only the potential harm in the form of financial prejudice, but also actual irreversible harm. We cannot think of any reason why it could be suggested that P Bezuidenhout J was wrong in concluding that the respondents succeeded in establishing, on the facts, that they would suffer irreparable harm if the enforcement order were refused and that the appellants would suffer no harm if the order were granted.

Costs

[17] Costs should follow the result³. It was not in issue that a successful party should be entitled to costs. Both the appellants and the respondents were represented by counsel and in our view an award for costs on scale C is appropriate.

Order

[18] We therefore make the following order:

1. The appeal is dismissed with costs.

³ *Kobusch and Others v Whitehead* [2025] ZASCA 24; 2025 (3) SA 403 (SCA) para 24.

2. The appellants, jointly and severally, the one paying the other to be absolved, are ordered to pay costs on scale C, including costs of senior counsel where so employed.




CHILI J




MNGADI J




MLABA J

Appearances

Case Number:	A2026-054914
For the first and second Appellants:	JP Broster
Instructed by:	Vanessa Fernihough & B Associates c/o Grant & Swanepoel Attorneys PIETERMARITZBURG
For the Respondent:	C.J. Pammenter SC
Instructed by:	Hughes Madondo INC. c/o Nhlapho Attorneys PIETERMARITZBURG
Heard on:	17 April 2026
Judgment delivered on:	26 June 2026