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

Not reportable

Case no:5063/2025

In the matter between:

DISPRO TECH SA (PTY) LTD **APPLICANT**

and

SOOT SCIENCE (PTY) LTD **FIRST RESPONDENT**

MARTIN ELS **SECOND RESPONDENT**

PIETER ALBERTUS VAN NIEKERK **THIRD RESPONDENT**

Coram: Wessels AJ

Heard: 29 June 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 10 July 2026.

Summary: Superior Courts Act 10 of 2013 – s 18(1) and (3) – application for order to operate and be executed pending application for leave to appeal and any appeal – requirements restated – exceptional circumstances not a compartmentalised enquiry but an overarching one, informed throughout by presence or absence of irreparable harm – applicant must further show on balance of probabilities that it will suffer irreparable harm if order not made and that respondent will not suffer irreparable harm if it is – prospects of success on appeal relevant but to be assessed with restraint, without pre-empting appeal court – forfeiture of time-limited relief through the appeal process, regardless of the outcome of the appeal, constitutes exceptional circumstances – springboard interdict of finite duration rendered nugatory by suspension pending appeal – ancillary paragraphs enforcing an interdict not severable from it – costs order distinguished as not time-sensitive and ordinarily recoverable once appeal process concludes – partial enforcement granted accordingly

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JUDGMENT

Wessels AJ

Introduction

[1] The applicant, Dispro Tech SA (Pty) Ltd ('Dispro Tech'), applies in terms of ss 18(1) and (3) of the Superior Courts Act[1] ('the Act') for an order that the whole of the order granted by Hendricks JP on 8 April 2026 ('the order') operate and be executable pending the determination of the respondents' application for leave to appeal, and any subsequent appeal. The respondents, Soot Science (Pty) Ltd ('Soot Science'), Martin Els ('Mr Els') and Pieter Albertus van Niekerk ('Mr Van Niekerk'), oppose the relief. I will refer to the aforementioned parties collectively as 'the respondents'. A striking-out application brought by Dispro Tech in respect of certain paragraphs in the answering affidavit was argued before me and dismissed. This judgment deals only with the s 18 application.

The judgment

[2] It is necessary to briefly set out the findings in the judgment of Hendricks JP ('the judgment'). Dispro Tech conducts specialised gas emissions testing. It entails measuring and analysing diesel particulate matter emitted by diesel engines, primarily in the mining industry. It was the first enterprise of its kind in the North West Province and in South Africa. Dispro Tech employed Messrs Els and Van Niekerk in senior positions. They had intimate knowledge of its business model, client base, proprietary software and exclusive distribution arrangements with a German equipment manufacturer, Saxon. Both had personally signed the exclusive distribution agreement with Saxon on behalf of Dispro Tech and had undergone training at Saxon's facilities in Germany, at Dispro Tech's expense.

[3] In March 2025, Mr Van Niekerk was suspended following the discovery on his laptop of a business plan which contemplated the purchase of Saxon equipment for a competing business. Mr Van Niekerk denied any such intention

[1] Superior Courts Act 10 of 2013.

and gave assurances which led to the lifting of his suspension. On 15 May 2025, Mr Van Niekerk emailed himself a copy of Dispro Tech's proprietary software without authorisation. Messrs Els and Van Niekerk resigned on 2 June 2025 and left Dispro Tech's employ on 27 June 2025. Soot Science was incorporated 11 days later, on 8 July 2025. It was subsequently established that Messrs Els and Van Niekerk contacted Valterra Platinum, one of Dispro Tech's clients, and delivered a proposal to it for gas emission testing, using what Hendricks JP found to be a business model, methodology, equipment and software distinctly similar to those of Dispro Tech. Hendricks JP held that the respondents had springboarded Soot Science into existence by using Dispro Tech's confidential information, proprietary software, and client relationships as a launching platform, without investing any resources, time, or expense of their own.

[4] The order broadly provided for the following: (i) Messrs Els and Van Niekerk are interdicted from disclosing any confidential information obtained during their employment; (ii) the respondents are interdicted from utilising such information for their direct or indirect personal gain; (iii) the respondents are ordered forthwith to return and destroy all confidential information and related documentation; (iv) the respondents are interdicted from unlawfully competing with Dispro Tech for 18 months from the date of the judgment; and (v) the respondents are ordered to pay the costs of the application on the attorney-and-client scale, jointly and severally.

The section 18 application

[5] The respondents filed an application for leave to appeal on 23 April 2026, against the whole of the judgment and order. This had the immediate effect, in terms of s 18(1) of the Act, of suspending all five paragraphs of the order, which was the catalyst for launching this application. At the date of the hearing of this

application, 29 June 2026, approximately three months of the 18-month springboard period have elapsed. The application for leave to appeal is enrolled for 24 July 2026. By that date, a further month will have elapsed. Should leave be granted and an appeal run its ordinary course, the process could take well in excess of a year. Should leave be refused and the respondents petition the Supreme Court of Appeal, a further six to 12 months may be consumed. On any calculation, the springboard interdict will have expired before the appeal is finally determined.

[6] In this application, reliance is placed on the respondents' own correspondence. In a letter dated 28 April 2026, the respondents, through their attorneys, stated that they had never disclosed or utilised any of Dispro Tech's confidential information, were not in possession thereof and were not in unlawful competition with Dispro Tech. On the other hand, Dispro Tech argues that, if this is so, the respondents suffer no prejudice whatsoever from an order compelling them to refrain from conduct the respondents disavow.

[7] The respondents' opposition rests on three grounds. Firstly, exceptional circumstances have not been established because the founding affidavit does not address the prospects of success on the intended appeal. Secondly, the applicant has not demonstrated ongoing irreparable harm, given that no clients have been lost and no damages action has been launched. Thirdly, the respondents will themselves suffer irreparable harm by reason of the vagueness of paragraphs (i) to (iii) of the order, the threat of contempt proceedings and the risk that the appeal may become moot if the orders are fully implemented before the appeal is heard.

Legal framework

[8] The general principles governing s 18 of the Act have been stated by the Supreme Court of Appeal ('SCA') in *University of the Free State v Afriforum and Another* [2] and, more recently, in *Tyte Security Services CC v Western Cape Provincial Government and Others* [3]. The default position established by s 18(1) of the Act is that the operation and execution of an order is suspended pending an application for leave to appeal or an appeal. Section 18 constitutes an extraordinary deviation from that norm and is available only under exceptional circumstances. In addition to establishing exceptional circumstances, an applicant must prove on a balance of probabilities that it will suffer irreparable harm if the order is not made, and that the other party will not suffer irreparable harm if it is.

[9] In *Tyte*[4], it was clarified that these requirements are not hermetically sealed enquiries to be approached in a compartmentalised, formulaic fashion. The overarching enquiry is whether exceptional circumstances subsist. The presence or absence of irreparable harm guides the entire inquiry and can be integrated into it. The second and third requirements are, as stated in *Tyte,* 'two sides of the same coin'. However, in *Autumn Skies Resources and Logistics (Pty) Ltd v Genet Manganese (Pty) Ltd In re: Genet Manganese (Pty) Ltd v Minister of Mineral Resources and Others*[5] the Full Court emphasised that the irreparable harm enquiry is a sine qua non in that if either question is answered in the negative, the existence or non-existence of exceptional circumstances is moot. Only once the

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[2] *University of the Free State v Afriforum and Another* 2018 (3) SA 428 (SCA).
[3] *Tyte Security Services CC v Western Cape Provincial Government and Others* 2024 (6) SA 175 (SCA).
[4] *Idem* para 10.
[5] *Autumn Skies Resources and Logistics (Pty) Ltd v Genet Manganese (Pty) Ltd In re: Genet Manganese (Pty) Ltd v Minister of Mineral Resources and Others* [2019] ZAGPPHC 559 para 26.

irreparable harm hurdle is crossed does the court proceed to consider whether exceptional circumstances justify the deviation.

[10] In *Incubeta Holdings (Pty) Ltd and Another v Ellis and Another*[6], the court established that where a time-limited interdict will be rendered entirely nugatory by the appeal process, regardless of the outcome of the appeal, such forfeiture of substantive relief constitutes exceptional circumstances. Put differently, a court order ought not to be lightly allowed to evaporate, as that would undermine the role of courts in ordering social relations. This principle was endorsed by the Full Court in *Jai Hind EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa*[7], which further confirmed that irreparable harm as envisaged by s 18(3) of the Act is harm that arises from being unable to recover performance in terms of the order, not harm that flows from some other collateral consequence.

[11] Turning to the merits of the appeal, in *Afriforum* the SCA affirmed[8] that the less confident a court is that the original judgment will be upheld on appeal, the less inclined it should be to grant the exceptional remedy of execution pending that appeal. To this extent, the respondents place particular reliance on the Full Court judgment of *Maritz v Truworths Ltd* [9]. In *Maritz*, the court set aside an enforcement order because the underlying restraint-of-trade order was incompetent, as it went beyond both the wording of the restraint agreement as well as the case made in the founding affidavit. That court held that the prospects of success on appeal go to the heart of the exceptional circumstances enquiry in terms of s 18, and that an order will not be put into operation pending appeal

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[6] *Incubeta Holdings (Pty) Ltd and Another v Ellis and Another* 2014 (3) SA 189 (GJ) para 25 – 27.
[7] *Jai Hind EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa* 2023 (2) SA 252 (GJ) para 20.
[8] *Ibid* fn 2 paras 14 – 15.
[9] *Maritz v Truworths Ltd* [2025] ZAWCHC 508.

where it is shown to be overbroad or incompetent. Although I am enjoined to, *inter alia*, consider the merits of the application for leave to appeal or appeal, I should do so with restraint so as not to rehear the original application or pre-empt the outcome of the application for leave to appeal or any possible appeal. In *Maritz,* it was stated[10] that:

'In between the two ends of the spectrum, however, where the prospects of success on appeal are uncertain and cannot be gauged without an in-depth engagement with the merits which anticipates the work of the appeal court, the prospects of success on appeal will, perforce, carry less weight in the exceptional circumstances enquiry, which will focus more on the presence and absence of irreparable harm to the parties.'

[12] This restraint finds recent affirmation in the Full Court judgment of this Division in *Atamelang Bus Transport (Pty) Ltd v Member of the Executive Council for the Department of Community Safety and Transport Management, North West*[11], where Petersen ADJP held that a court seized with a s 18 application may express a view on the prospects of success of the appeal process, but may not pre-judge the appeal itself.

[13] The respondents' main grounds of appeal are an alleged misdirection of the *Plascon-Evans* rule and the imposition of an 18-month period without pleaded facts. I decline to assess the respondents' prospects on appeal in depth. It is, however, necessary to satisfy myself that this matter does not fall within the exceptional category identified in *Maritz*, where strong and readily assessable prospects of success militated against a finding of exceptional circumstances because the underlying order was objectively incompetent on its face. The order is not incompetent on its face value. The respondents' grounds of appeal are

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[10] *Ibid Maritz* para 34.
[11] *Atamelang Bus Transport (Pty) Ltd v Member of the Executive Council for the Department of Community Safety and Transport Management, North West* [2025] ZANWHC 191 para 10.

arguable, but they are far removed from the overbreadth of an order that was the decisive feature of *Maritz*. The irreparable harm enquiry is therefore the decisive consideration in this matter.

Irreparable harm to Dispro Tech

[14] The interlocutory relief is, by definition, the only satisfactory remedy available to Dispro Tech. Hendricks JP found that the respondents' springboard advantage was unlawful, which is precisely why an interdict was granted. Each day of the suspension of the order is a day of the 18-month protection permanently lost. The lost period cannot be recovered or compensated by a later award for damages. This is irreparable harm envisaged by s 18(3).

[15] The respondents argue that no irreparable harm has been demonstrated because no clients have been lost and no damages action has been launched. This argument misconstrues Dispro Tech's case. The harm is not the loss of any specific client or contract, it is the nullification of the springboard interdict itself, which conforms with the approach followed in *Jai Hind*. The fact that the interdict has been largely unenforceable since 23 April 2026 indicates that Dispro Tech has been deprived of the protection the Court found it was entitled to receive. Dispro Tech will suffer irreparable harm if paragraphs (i) to (iv) of the order are not enforced.

Irreparable harm to the respondents

[16] In their letter of 28 April 2026, the respondents, through their attorneys, stated that they had never disclosed or utilised Dispro Tech's confidential information, were not in possession thereof, and were not in unlawful competition with Dispro Tech. If that is so, the respondents are not engaged in any conduct

that the order restrains. An order compelling the respondents to refrain from conduct they now disavow causes them no harm, let alone irreparable harm. The respondents cannot, in one breath, deny all wrongdoing and in the next, claim irreparable prejudice from an order that merely prohibits that wrongdoing.

[17] The respondents' specific claims of harm do not withstand scrutiny. The argument that the orders are too vague to comply with is not credible, as the respondents have been employed by Dispro Tech for years and know precisely what constitutes its confidential information. Mr Van Niekerk himself admitted to creating the formulas in Dispro Tech's software and emailing them to himself. The contention that the threat of contempt proceedings constitutes irreparable harm is circular, as any such threat arises only if the respondents fail to comply and compliance is within their control. As for the mootness argument that the appeal may be dismissed as academic if the orders are implemented before it is heard, the respondents overlook that s 18(4) of the Act confers an automatic right of urgent appeal against this very order. That is the legislature's answer to the mootness concern.

[18] Applying the holistic approach mandated by *Tyte*, the balance is decisively in Dispro Tech's favour. Dispro Tech faces the permanent forfeiture of court-ordered protection against unlawful competition. The respondents, on their own version, face no interference with any lawful conduct whatsoever. The respondents' claimed harm is, at best, speculative and, at worst, self-induced. I am satisfied that the respondents will not suffer irreparable harm if the order is enforced.

Exceptional circumstances

[19] The springboard interdict in paragraph (iv) is time-sensitive by its nature. Its purpose is to restore competitive parity between the parties for a finite period of 18 months, calculated from 8 April 2026. The period runs regardless of whether the order is operative. As of the date of this hearing, some three months of the interdict have been lost to the suspension. The application for leave to appeal is enrolled for 24 July 2026, and by that date, a further month will have elapsed. In the most optimistic scenario, the interdict will have been suspended for some four months before it can first be enforced. Should the appeal process run its ordinary course, the interdict will have expired before it is finally determined. The forfeiture of the primary relief, regardless of the outcome of the appeal, falls squarely within the exceptional circumstances identified in *Incubeta*[12] as follows:

> 'The forfeiture of substantive relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of exceptional circumstances.'

[20] Paragraphs (i), (ii) and (iii) of the order are ancillary to the springboard interdict and cannot sensibly be severed from it. They provide the enforcement mechanism of the interdict. To enforce the springboard interdict in paragraph (iv) of the order while leaving paragraphs (i) to (iii) suspended would deprive the enforcement order of practical content.

The cost order

[21] The respondents correctly point out that the applicant seeks enforcement of all five paragraphs of the order but hinges its entire case for exceptional circumstances on the time-sensitive nature of the springboard interdict in

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[12] *Ibid* fn 6 para 27.

paragraph (iv) of the order. Paragraph (v) is a costs order. Its suspension pending appeal is an ordinary incident of litigation. It is not time-sensitive, unlike the interdict. Once it becomes enforceable, whether after the leave to appeal is refused or after any appeal is dismissed, Dispro Tech can recover the costs. If the appeal ultimately succeeds, the costs order would be revisited in any event. No exceptional circumstances have been advanced for the immediate enforcement of the costs order and none are apparent. The power to grant partial enforcement is expressly contemplated in *Maritz*. The same approach is appropriate here. The application for enforcement of the costs order is refused.

Conclusion

[22] The requirements of s 18 are not compartmentalised enquiries to be ticked off in sequence. The overarching requirement is simply whether exceptional circumstances exist. Viewed as a whole, this case plainly meets that requirement. The applicant possesses a court order that is being effectively emptied of its substance by the respondents' application for leave to appeal. The respondents state, in writing, that they are not doing what the order restrains them from doing. They do not suffer from being held to that position. The application succeeds in respect of paragraphs (i) to (iv) of the order.

Costs

[23] Dispro Tech has succeeded substantially. Although the application fails in respect of the costs order, the primary relief sought, enforcement of the springboard interdict and the ancillary obligations, is granted. Costs should follow the result.

Order

[24] Resultantly, the following order is made:

1. The operation and execution of paragraphs (i), (ii), (iii) and (iv) of the order granted by Hendricks JP on 8 April 2026 under case number 5063/2025 ('the order') shall not be suspended pending the determination of the respondents' application for leave to appeal, and, if leave is granted, pending any appeal and any further appeal proceedings.
2. Paragraphs (i), (ii), (iii) and (iv) of the order shall remain in force and be operational and enforceable until the final determination of all present and future applications for leave to appeal and any resultant appeal proceedings in respect of the matter under case number 5063/2025.
3. The application for the enforcement of paragraph (v) of the order is refused. The operation and execution of paragraph (v) of the order remain suspended pending the determination of the respondents' application for leave to appeal and any resultant appeal.
4. The respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved.

[redacted]

M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the applicant:	Adv C Goosen and Adv M Kruger
Instructed by:	Gerhard Botha & Partners Inc, Pretoria
	c/o LFS Attorneys, Mahikeng
For the respondents:	Mr N Esterhuyse (attorney with right of appearance)
Instructed by:	Du Plessis Van der Westhuizen Inc, Rustenburg
	c/o Loubser Ellis & Associates, Mahikeng