

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026-107715

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
24/08/2026	
DATE	SIGNATURE

In the matter between:

COMPLIANCE AND SECURITY ADVISORY SERVICES (PTY) LTD

Applicant

And

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Respondent

Case No: 2026-107715

APPLICATION FOR LEAVE TO APPEAL

FURMAN AJ

INTRODUCTION

[1] On 28 May 2026 I granted interim relief in Part A of an urgent two-part application brought by the applicant, Compliance and Security Advisory Services (Pty) Ltd (“CSAS”).

[2] The relief operates pending the final determination of the review proceedings in Part B. In material part, the first to fourth and eighth respondents were interdicted from implementing, enforcing or giving effect to a restriction decision dated 29 April 2026 (“the Restriction Decision”). The fifth respondent was interdicted from recording, listing or maintaining CSAS and/or its directors on the National Treasury Database of Restricted Suppliers pursuant to that decision.

[3] Conditional restorative relief was also granted. To the extent that a Treasury listing had already occurred, the fifth respondent was directed to reverse it pending Part B. To the extent that CSAS had been removed from the Municipality’s supplier database solely pursuant to the Restriction Decision, the first respondent was directed to restore its status pending Part B.

[4] The first to fourth and eighth respondents, to whom I shall collectively refer as “the Municipality”, now seek leave to appeal against the whole of the judgment and order, to the Supreme Court of Appeal, alternatively to a Full Court of this Division.

[5] The Municipality advances four principal grounds. In summary, it contends that:

- 5.1 the Court erred in relying upon National Treasury Instruction Note 3 of 2021/2022 (“the Instruction Note”), which was issued under the Public Finance Management Act 1 of 1999 (“the PFMA”), rather than the statutory and regulatory framework applicable to municipalities under the Local Government: Municipal Finance Management Act 56 of 2003 (“the MFMA”);
- 5.2 the order impermissibly restrains the Municipality in the performance of statutory and constitutional duties, particularly those said to arise from regulation 38 of the Municipal Supply Chain Management Regulations and findings of the Auditor-General;
- 5.3 the restorative portions of the order produce effectively irreversible consequences and expose municipal officials to potential liability under sections 171 and 173 of the MFMA; and
- 5.4 the requirements for interim interdictory relief, properly considered in the light of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) (“OUTA”), were not established.

[6] There is a prior question. The order sought to be appealed against is interlocutory. It is accordingly necessary to determine whether the interests of justice require it to be treated as appealable at this stage.

[7] There are consequently four broad enquiries:

7.1 whether the interim order is appealable;

7.2 where the decision does not dispose of all the issues in the case, whether an appeal would lead to a just and prompt resolution of the real issues between the parties as contemplated by section 17(1)(c) of the Superior Courts Act 10 of 2013;

7.3 whether there are reasonable prospects that an appellate court would materially alter the order; and

7.4 whether there is some other compelling reason for an appeal to be heard.

THE TEST FOR LEAVE TO APPEAL

[8] Section 17(1)(a) permits leave to appeal only where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

[9] In *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 the Supreme Court of Appeal explained that the enquiry is whether, upon a dispassionate consideration of the facts and law, another court could reasonably arrive at a different conclusion. The prospects must not be remote and there must be a sound rational basis for concluding that there is a reasonable chance of success.

[10] The parties do not materially differ concerning that test. The question is its application to this case.

[11] Section 17(1)(c) is also directly engaged. The order under consideration does not dispose of all the issues in the case. Part B remains pending. It follows that an appeal must, in addition, lead to a just and prompt resolution of the real issues between the parties.

APPEALABILITY

[12] The traditional attributes identified in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) are no longer applied as an inflexible checklist. Decisions including *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC), *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC), *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC), and *MEC for Economic Development, Gauteng and Another v Vilakazi and Others* [2024] ZASCA 126 establish that the overarching enquiry is whether the interests of justice require an interlocutory order to be appealable.

[13] The *Zweni* considerations nevertheless remain relevant. So do the immediate practical effect of the order, prejudice to the parties, the nature of the public power affected, the danger of piecemeal litigation and the extent to which an appeal would advance rather than delay the final determination of the dispute.

[14] The order made in Part A is expressly temporary. Every substantive component of the order operates only pending the final determination of Part B.

[15] The order does not review or set aside the Restriction Decision. It does not finally determine that the Restriction Decision is unlawful. It does not finally determine whether CSAS or any of its directors committed fraudulent or corrupt conduct. Nor does it prevent the Municipality from taking lawful steps against CSAS should it be entitled to do so.

[16] The final legality of the Restriction Decision remains wholly open for determination in Part B.

[17] The order therefore disposes of no portion of the substantive review relief claimed in Part B and makes no final determination of the parties' rights in the review.

[18] I accept that this does not by itself determine appealability. An interim order may, in an appropriate case, be appealable notwithstanding the absence of the traditional Zweni attributes.

[19] I also accept the Municipality's submission that the order has immediate effect. That is particularly so in relation to order 2.4, which may require CSAS to remain eligible to participate in the Municipality's procurement processes.

[20] But immediate effect is not synonymous with final effect, nor does every immediate consequence of an interim interdict make an interlocutory appeal necessary in the interests of justice.

[21] The Municipality contends that CSAS may tender for municipal work; that its tender may then have to be evaluated; and that, if it scores the highest points, a further contract may have to be awarded to it before Part B is determined.

[22] Those consequences are contingent. The order itself awards CSAS no contract, confers no entitlement to an award and directs the Municipality neither to accept a tender nor to make any payment to CSAS.

[23] There is no identified contract which the Municipality is presently compelled by the order to award to CSAS.

[24] More fundamentally, the order does not prevent the Municipality from combating fraud or abuse in its supply-chain management system. It restrains the implementation of one particular restriction decision pending judicial determination of its lawfulness.

[25] Nor does it prevent a lawful restriction process from being undertaken should the Municipality otherwise be entitled to do so.

[26] The position is materially different from that considered in Vilakazi. There the order reinstated persons to the board of a statutory entity and prevented the responsible member of the executive from appointing persons in their place. The order directly affected the constitution and governance of the statutory body.

[27] Here, no person is appointed to public office, no office-bearer is displaced, no organ of state is prevented from functioning and no municipal policy is suspended. CSAS remains, provisionally, eligible to participate in procurement processes.

[28] The decision of the Supreme Court of Appeal in *Cyril and Another v Commissioner for the South African Revenue Service* [2024] ZASCA 32 also illustrates the importance of considering whether an interlocutory appeal would fragment proceedings without disposing of the underlying dispute. The fact that an order has immediate effect does not, without more, establish that justice requires an appeal before the principal proceedings are determined.

THE RULE 53 RECORD AND SECTION 17(1)(c)

[29] There has been a material procedural development since judgment was delivered.

[30] The Municipality delivered the Rule 53 record on 14 July 2026. CSAS has thereafter taken steps contemplated by Rule 53(4) in relation to Part B.

[31] The significance of that development must be carefully defined.

[32] I do not have regard to the contents of the Rule 53 record for the purpose of retrospectively determining whether the interim order was correctly granted on 28 May 2026.

[33] The correctness of the Part A order must be determined upon the material that served before the Court when that order was made. A subsequently produced Rule 53 record cannot retrospectively supply an evidential foundation which was absent at the time.

[34] I accordingly do not rely upon the contents of the record to supplement or repair the reasoning in the principal judgment.

[35] The procedural fact that the record has now been delivered is, however, relevant to the present enquiry under section 17(1)(c), to the interests of justice and to the practical effect of a proposed interlocutory appeal.

[36] Part B has materially advanced since the Part A hearing. The decision-making record is now available and the review can proceed through the remaining Rule 53 process towards final determination.

[37] The real dispute between the parties is whether the Restriction Decision is lawful.

[38] That question can be finally decided only in Part B. An appeal against the interim order cannot finally decide it.

[39] The Municipality submits that there would be no piecemeal adjudication because an appeal would concern the requirements for interim relief whereas Part B concerns review.

[40] In the circumstances of this case that distinction is not convincing.

[41] The Municipality's grounds of appeal themselves require substantial consideration of the very matters which lie at the heart of Part B: the legal source of the restriction power; the statutory and contractual framework applicable to its exercise; the legal significance of the Auditor-General's findings; the existence of the jurisdictional prerequisites for restriction; and the procedural lawfulness of the process.

[42] An appellate court considering the prima facie-right component of the interim interdict would accordingly be invited to traverse substantially the same legal terrain which the review court must finally determine.

[43] It would do so for the purpose of deciding only whether interim relief should have operated pending that final determination.

[44] That is precisely the type of fragmentation which section 17(1)(c) is intended to avoid.

[45] There is also a real prospect that Part B may be determined before an appeal against the interim order can be brought to finality. If that occurs, the interim order will have lapsed by its own terms and the proposed appeal may have little or no practical effect.

[46] The more direct route to a just and prompt resolution is therefore the final determination of Part B.

[47] I am not satisfied that section 17(1)(c) has been met.

THE FIRST GROUND: THE NATIONAL TREASURY INSTRUCTION NOTE

[48] The Municipality's first ground is that the Court incorrectly relied upon National Treasury Instruction Note 3 of 2021/2022, issued under the PFMA, when the Municipality is governed by the MFMA and the municipal supply-chain management framework.

[49] CSAS accepts for purposes of the present application that the Instruction Note was issued under the PFMA and does not seek to sustain the interim order on the proposition that the Instruction Note itself imposes obligations upon the Municipality.

[50] It is unnecessary for me, in this application for leave to appeal, finally to determine the proper reach of the Instruction Note.

[51] I shall assume in the Municipality's favour, for present purposes, that its principal legal criticism is correct and that the Instruction Note does not itself bind the Municipality.

[52] That assumption does not dispose of the matter.

[53] The prima facie-right finding in the principal judgment did not rest on a single consideration. The judgment expressly stated that several considerations contributed to the conclusion.

[54] The first concerned the procedural requirements of the Instruction Note.

[55] A further consideration concerned the authority of the decision-maker, including under the applicable municipal legislative framework.

[56] Most importantly, the judgment separately identified the question whether the threshold of proven corrupt or fraudulent conduct necessary to justify restriction had been satisfied.

[57] That latter consideration did not depend upon the proposition that the PFMA Instruction Note binds the Municipality.

[58] It arose from the instruments upon which the Municipality itself relied in support of the termination and restriction process.

[59] The Municipality's grounds of appeal do not engage that finding on its merits. Its heads submit that there exists "prima facie evidence of fraudulent misrepresentation".

[60] That proposition does not answer the question identified in the principal judgment. The issue there was whether the threshold of proven corrupt or fraudulent conduct upon which the restriction power was said to depend had been satisfied.

[61] A contention that prima facie evidence exists is not the same contention as one that the requisite conduct has been proved to the standard required by the instrument conferring the power.

[62] No sufficient basis has been advanced in the application for leave to appeal for concluding that an appellate court would disturb that independent basis for the prima facie-right finding.

[63] An appeal lies against an order, not merely against particular reasons advanced for that order.

[64] Consequently, even if the Municipality were to persuade an appellate court that the Instruction Note was inapplicable to it, it has not demonstrated a reasonable prospect that this would result in the interim order being set aside.

[65] I emphasise again that this is not a final determination of the merits of any of these questions. They remain for Part B.

THE SECOND GROUND: OUTA, REGULATION 38 AND THE AUDITOR-GENERAL

[66] The second ground is that the order prevents the Municipality from performing peremptory statutory duties and insufficiently recognises the constitutional significance of the Auditor-General's findings.

[67] The Municipality places substantial reliance upon OUTA and the caution which courts must observe before restraining the exercise of public power.

[68] That caution is unquestionably important.

[69] It was, however, expressly considered in the principal judgment. The Court recorded that it was mindful of OUTA, and considered that the relief was temporary and preservative, made no final determination of lawfulness, and did not prevent a lawful restriction process from being pursued.

[70] The complaint is therefore not that OUTA was ignored. The Municipality disagrees with the weight attributed to the competing considerations.

[71] OUTA does not establish that public power can never be temporarily restrained. Nor did it replace the ordinary requirements of interim interdictory relief with an absolute prohibition. It requires the Court to apply those requirements with proper regard to the constitutional allocation of public power and, in particular, to weigh the harm which an interdict may occasion to the exercise of governmental functions.

[72] That enquiry was undertaken.

[73] The integrity of municipal procurement and the prevention of fraud are matters of obvious public importance.

[74] But the Municipality's argument goes further. It characterises regulation 38 as creating a peremptory duty to implement this particular Restriction Decision and to procure the national restriction of CSAS.

[75] On the material presented, that proposition is not established.

[76] Regulation 38 contains measures aimed at combating abuse of the supply-chain management system. The existence of those obligations does not itself resolve whether this particular restriction was lawfully made, whether its jurisdictional requirements were met, or whether the procedure followed was lawful.

[77] Those are precisely the matters which Part B must determine.

[78] The Municipality also relies on the constitutional status of the Auditor-General. Nothing in the interim order purports to set aside, suspend or invalidate any finding of the Auditor-General.

[79] The Auditor-General is the seventh respondent and has not sought leave to appeal. No relief in the order restrains the Auditor-General in the performance of its constitutional functions.

[80] Moreover, the Municipality's own formulation of the audit findings refers to findings of non-compliance and irregular expenditure. The legal consequences of those findings, and the extent to which they establish any prerequisite for restriction, remain matters for adjudication. They do not by themselves demonstrate that a ten-year restriction of national effect was peremptorily required.

[81] I accordingly find no reasonable prospect of success on the second ground.

THE THIRD GROUND: RESTORATIVE RELIEF

[82] The third ground concerns orders 2.3 and 2.4.

[83] At the outset, order 2.3 is directed to the Director-General of National Treasury, the fifth respondent. The fifth respondent has not applied for leave to appeal.

[84] As regards order 2.4, its actual terms are significant.

[85] Restoration is required only to the extent that CSAS's removal from the Municipality's supplier database occurred pursuant solely to the Restriction Decision dated 29 April 2026.

[86] The relief is therefore conditional. It does not compel restoration if some independent lawful basis exists for CSAS's exclusion.

[87] It is also temporary. It endures only until Part B is finally determined.

[88] I am unable to accept that this gives CSAS the full practical benefit of a successful review.

[89] A successful review would finally set aside the Restriction Decision. The interim order does no such thing.

[90] If CSAS fails in Part B, the interim order lapses and the Restriction Decision may thereafter operate in accordance with the final judgment.

[91] Nor does interim eligibility to submit tenders constitute an irreversible benefit. Eligibility to compete is not an award of public work.

[92] The submission that compliance with order 2.4 exposes municipal officials to criminal liability under sections 171 and 173 of the MFMA is also unpersuasive.

[93] No authority has been identified for the proposition that an official incurs criminal liability by complying with an extant order of the High Court.

[94] If the Municipality considers that compliance creates some genuine statutory difficulty, that may bear upon the expedition with which Part B should proceed. It does not establish a reasonable prospect that the interim order will be overturned on appeal.

THE FOURTH GROUND: REQUIREMENTS FOR INTERIM RELIEF

[95] The fourth ground attacks the requirements for interim interdictory relief generally.

[96] The first proposition advanced is that an interdict prevents future conduct and cannot be directed against a decision which has already been made.

[97] That proposition does not address the relief which was actually sought and granted.

[98] The principal judgment expressly distinguished the historical Restriction Decision from its future implementation.

[99] It was common cause when Part A was decided that the contemplated National Treasury listing had not yet occurred.

[100] The Restriction Decision itself contemplated future listing.

[101] The conduct restrained by the order was accordingly the implementation, enforcement and national consequences of the Restriction Decision. It was preventative relief directed at future conduct.

[102] The second proposition is that CSAS established no substantive right beyond a right to review.

[103] I do not agree.

[104] The prima facie case was not simply that CSAS was entitled to approach a court.

[105] It concerned the applicant's entitlement to lawful, reasonable and procedurally fair administrative action and its asserted right not to be subjected, pending judicial scrutiny, to the immediate national consequences of a restriction decision shown on the papers to be arguably unlawful.

[106] The judgment identified concrete grounds upon which the lawfulness of that decision was placed in issue. Those included authority, procedural regularity and the threshold of proven fraudulent or corrupt conduct.

[107] The threatened harm was likewise not abstract.

[108] The Restriction Decision contemplated exclusion from public procurement on a national basis for ten years.

[109] The finding of irreparable harm was therefore based upon the nature, duration and breadth of the restriction contemplated by the decision itself.

[110] I remain unpersuaded that there is a reasonable prospect that an appellate court would hold that the apprehension of harm was merely speculative.

[111] As to the balance of convenience, the principal judgment expressly recognised the public importance of procurement integrity.

[112] It nevertheless concluded that limited preservation pending review caused less prejudice than permitting a ten-year national restriction to take effect before its legality could be determined.

[113] Importantly, the Municipality was required to award nothing to CSAS under the order.

[114] The Municipality remained able to administer its supply-chain management system, investigate misconduct and take lawful action. What was temporarily restrained was the implementation of the impugned Restriction Decision.

[115] In my view, the Municipality has not demonstrated a material misdirection in that weighing exercise giving rise to a reasonable prospect that an appellate court would interfere.

THE INDEPENDENT FINDING

[116] There is a further consideration which cuts across the four grounds and which is, in my view, important.

[117] As already stated, the prima facie-right finding rested upon several considerations.

[118] One of them was the issue whether the threshold requirement of proven corrupt or fraudulent conduct necessary to justify the restriction had been satisfied.

[119] That finding stands independently of the dispute concerning the Treasury Instruction Note.

[120] It is not answered by the Auditor-General's constitutional status.

[121] It is not answered by the conditional restoration of CSAS to a supplier database.

[122] And it is not answered by the proposition that courts must exercise restraint when interdicting public power.

[123] The Municipality was required, in seeking leave against the whole order, to demonstrate a reasonable prospect that the order itself would be altered.

[124] Where an independent foundation sufficient to sustain the prima facie-right finding remains materially unanswered, that requirement has not been satisfied.

OTHER COMPELLING REASONS

[125] The Municipality alternatively relies upon section 17(1)(a)(ii).

[126] It submits that an important question of public law arises, namely whether a municipality may be interdicted from implementing a restriction decision where it has statutory obligations to combat abuse of its supply-chain management system.

[127] The question, formulated at that level of generality, does not arise for determination.

[128] There is no dispute that municipalities bear important constitutional and statutory obligations in relation to procurement integrity.

[129] Equally, there is no dispute that courts must be particularly cautious before restraining the exercise of public power.

[130] The issue in this matter is narrower: whether, on the particular facts and pending a review which has now materially advanced, the implementation of this particular Restriction Decision should remain temporarily restrained.

[131] The governing principles have been addressed repeatedly in decisions including SCAW, OUTA, Afriforum, EFF v Gordhan and Vilakazi.

[132] Their application is necessarily fact-sensitive.

[133] No conflicting line of authority requiring resolution by an appellate court has been demonstrated.

[134] Nor has it been shown why an immediate appeal against the interlocutory order, rather than determination of Part B upon the Rule 53 record, is required to resolve any broader question of law.

[135] As Ramakatsa makes clear, the merits remain important even where an alleged compelling reason is advanced.

[136] I am accordingly not persuaded that there is some other compelling reason within the meaning of section 17(1)(a)(ii).

CONCLUSION

[137] The order of 28 May 2026 is interlocutory in both purpose and operation. It finally determines none of the review issues and disposes of none of the relief claimed in Part B.

[138] I accept that it has immediate consequences. Those consequences are, however, limited and temporary and do not, in the circumstances of this case, render immediate appellate intervention necessary in the interests of justice.

[139] The Rule 53 record has now been delivered. I have not relied upon its contents to sustain the Part A order. Its delivery is nevertheless relevant to the present procedural position: the final review has materially advanced and provides the direct means by which the legality of the Restriction Decision can be finally determined.

[140] An interlocutory appeal would require substantial reconsideration of issues central to that review without finally resolving them.

[141] It would accordingly produce piecemeal adjudication and would not lead to a just and prompt resolution of the real issues between the parties as required by section 17(1)(c).

[142] In any event, and even if the order is treated as appealable, I am not satisfied that any of the four grounds establishes a reasonable prospect of success.

[143] In particular, the criticism concerning the Instruction Note does not engage the independent finding concerning the threshold of proven corrupt or fraudulent conduct.

[144] No compelling reason requiring an appeal at this stage has been established.

COSTS

[145] There is no reason why costs should not follow the result.

[146] The application for leave to appeal has involved questions of public procurement law, administrative law, the appealability of interlocutory orders, the separation of powers and the interrelationship between different statutory and regulatory instruments. The consequences for the parties are substantial, involving a restriction potentially operating nationally for ten years.

[147] In those circumstances the employment of two counsel was reasonable.

[148] Having regard to the complexity, importance and extent of the matter, I am satisfied that costs on scale C are warranted.

ORDER

[149] In the result, I make the following order:

1. The application for leave to appeal is dismissed.
2. The First, Second, Third, Fourth and Eighth Respondents are ordered, jointly and severally, the one paying the others to be absolved, to pay the costs of the application for leave to appeal.
3. Such costs shall include the costs of two counsel where so employed and shall be taxed on scale C.



R FURMAN

Acting Judge of the High Court
Gauteng Local Division, Johannesburg

Date of hearing: 11 August 2026

Date of judgment: 24 August 2026