



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT MAHIKENG**

Not Reportable

Case No: 2409/2025

In the matter between:

TSHENOLO WASTE (PTY) LTD

Applicant

and

MEC FOR HEALTH NORTH WEST

First Respondent

ULTIMATE WASTE (PTY) LTD

Second Respondent

AUDITOR-GENERAL OF SA

Third Respondent

MEC FOR TREASURY NORTH WEST

Fourth Respondent

PROGRESSIVE PROJECT ADMINISTRATION

Fifth Respondent

LIMPOPO SUPPLEMENT TRADERS

Sixth Respondent

MAKHATHINI MEDICAL WASTE (PTY) LTD

Seventh Respondent

SIYABONGA INDUSTRIAL WASTE

Eighth Respondent

SCELO BUSINESS CONSULTANCY

Ninth Respondent

PLEASANT MAPHOKA (PTY) LTD

Tenth Respondent

VSL GENERAL TRADING (PTY) LTD

Eleventh Respondent

MAHLABANA WASTE (PTY) LTD

Twelfth Respondent

MASA WASTE MANAGEMENT (PTY) LTD

Thirteenth Respondent

PHUTING MEDICAL WASTE CC

Fourteenth Respondent

MAMPURU WASTE MANAGEMENT (PTY) LTD

Fifteenth Respondent

BUHLE WASTE (PTY) LTD

Sixteenth Respondent

KLT MEDICAL AND PROJECTS

JV JIKELA AFRIKA WASTE CARE

Seventeenth Respondent

Corum: Tsautse AJ

Heard: 24 July 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down of the judgment is deemed to be 16h00 on 28 August 2026.

JUDGMENT

TSAUTSE AJ

INTRODUCTION

[1] This is an urgent application for compliance with an order granted by Morgan AJ on 29 May 2026 (the Order). The applicant, Tshenolo Waste (Pty) Ltd (Tshenolo), seeks to compel the first respondent, the MEC for Health North West (the MEC), and the second respondent, Ultimate Waste (Pty) Ltd (Ultimate), to give effect to paragraphs 4 and 5 of the Order.

[2] The application is opposed by the MEC and Ultimate. They contend, among other things, that the matter is not urgent and that the operation and execution of the Order are suspended by applications for leave to appeal. Paragraph 4 is central. It directs the MEC forthwith to terminate Ultimate's month-to-month contract, to utilise or contract Tshenolo's services, and to extend Tshenolo's month-to-month contract under the expired tender pending the commencement and finalisation of a new tender process, in order to ensure the uninterrupted removal and disposal of healthcare risk waste.

[3] The immediate question is whether Tshenolo has established a basis for the Court to exercise its urgent jurisdiction. That enquiry must, however, be considered against the statutory consequences of the pending applications for leave to appeal and the constitutional duty to obey court orders.

THE PENDING APPLICATIONS FOR LEAVE TO APPEAL

[4] Both Ultimate and the MEC instituted applications for leave to appeal before the present application was launched.

[5] Section 18(1)-(3) of the Superior Courts Act 10 of 2013 provides:

'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) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

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

[6] Section 18 is structured around three distinct components. The first is the default position in subsection (1), namely that a decision is suspended pending the determination of any appeal. The second is the default position in subsection (2), namely that an interlocutory order not having the effect of a final judgment remains operative notwithstanding the noting of an appeal. The third component is found in subsection (3), which permits a court to depart from either default position only upon a finding of exceptional circumstances and the prescribed findings concerning irreparable harm to the respective parties.

[7] Substance prevails over form when determining the appealability of a judicial pronouncement. In *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I-533B, the Appellate Division identified the three traditional hallmarks of an appealable order: finality in effect, definitiveness of rights, and the disposal of a substantial portion of the relief. Although courts now adopt a more holistic, interests-of-justice approach, the *Zweni* attributes remain a vital guide in evaluating an order's true effect.

[8] Paragraph 4 of the Morgan AJ order is expressly time-bound, but its practical consequences are substantial. It terminates Ultimate's existing month-to-month

arrangement and requires the MEC to contract with Tshenolo for the intervening period. If implemented, the commercial and administrative consequences during that period may not readily be reversed. Its temporary form does not, without more, answer the section 18 enquiry.

[9] In *Minister of Social Development, Western Cape v Justice Alliance of South Africa* [2016] JOL 35612 (WCC) paras 24 and 39-42, the Court stressed both the strict threshold created by section 18(3) and the caution required where immediate implementation of mandatory relief would change the status quo and intrude into polycentric executive decision-making. The applicant must establish, on a balance of probabilities, that it will suffer irreparable harm if execution is withheld and that the respondent will not suffer irreparable harm if execution is permitted. The equities alone do not suffice.

[10] *Incubeta Holdings (Pty) Ltd v Ellis* 2014 (3) SA 189 (GJ) paras 16 and 21-24 similarly holds that exceptional circumstances are fact-specific and that section 18(3) requires two distinct findings of fact, rather than a general balancing of convenience. Execution pending an appeal is a departure from the norm and requires particular judicial sanction.

[11] There is therefore considerable force in the respondents' submission that the practical effect of paragraph 4 brings it within section 18(1), and that Tshenolo could secure its execution pending the appeal process only through section 18(3). This application is not framed as such an application and does not seek an order in the terms contemplated by subsections (1) and (3).

[12] It is nevertheless unnecessary to decide the classification issue finally. Whether paragraph 4 was competent, and whether Morgan AJ correctly directed the MEC to terminate one arrangement and contract with Tshenolo, are issues raised in the pending applications for leave to appeal. This Court is not sitting as a court of appeal over the Order.

[13] I accordingly approach the question of urgency on the assumption most favourable to Tshenolo, namely that paragraph 4 constitutes an interlocutory order contemplated in section 18(2) and was therefore not automatically suspended pending

appeal. Even on that assumption, Tshenolo bears the burden of establishing urgency in terms of Uniform Rule 6(12). The fact that an order remains operative is a separate question from whether urgent relief is warranted to enforce it. These are distinct enquiries.

[14] That assumption does not diminish the authority of the Order. In *Municipal Manager, O.R. Tambo District Municipality and Another v Ndabeni* [2022] ZACC 3; 2023 (4) SA 421 (CC) at paragraphs 23–25, the Constitutional Court reaffirmed that under section 165(5) of the Constitution, a judicial order binds all parties to whom it applies, regardless of whether a party believes it to be a nullity. Litigants cannot usurp the judicial function by simply disregarding an order; instead, any challenge must be properly ventilated through an appeal or a review process.

[15] The present conclusion on urgency must therefore not be understood as permission to disobey the Order. It determines only whether Tshenolo has justified the exceptional procedural advantages of the urgent roll in this application.

URGENCY

[16] Rule 6(12)(b) requires an applicant to set out explicitly the circumstances rendering the matter urgent and the reasons why substantial redress cannot be obtained at a hearing in due course. The explanation must cover the period from the applicant's awareness of the alleged infringement until the institution of proceedings. Urgency is assessed in the round, having regard to the degree of departure from the ordinary rules that the applicant seeks.

[17] *Rhweba Butterworth (Pty) Ltd and Another v Mntonga; In re: Rhweba Butterworth (Pty) Ltd and Another v Mntonga and Others* [2022] ZAECHMHC 9; [2022] JOL 53031 (ECM) at paragraphs 9–18 illustrates the point. The degree of relaxation must be commensurate with the exigencies of the case; an applicant must play open cards and explain material periods of inaction. The mere invocation of enforcement does not excuse an unexplained delay or unfairly truncated time periods.

[18] The court in *Rhweba* likewise recognises at paragraphs 38–40 that contempt proceedings are generally urgent because ongoing defiance of a court order

undermines both the effectiveness of judicial remedies and the authority of the courts themselves. However, the degree of urgency remains fact-specific, and considerations of fairness retain a controlling role in determining the appropriate procedural course.

[19] The present matter is not a contempt application. It does not seek a declaration that the respondents are in wilful and mala fide breach of a court order, nor does it seek coercive or punitive contempt-related relief. Rather, it is framed as an application to compel performance. Its urgency must therefore be assessed on its own terms and established in its founding papers. It cannot derive urgency merely from the proposition that contempt proceedings are ordinarily treated as urgent.

[20] The chronology is telling:

- a) 5 June 2026 - The Order was furnished to, or otherwise became available to, the parties.
- b) 8 June 2026 - Tshenolo addressed correspondence to the MEC demanding compliance.
- c) 12 June 2026 - Ultimate filed an application for leave to appeal.
- d) 18 June 2026 - Tshenolo again demanded compliance, requiring the issuance of appointment letters by 19 June 2026 and threatening urgent litigation.
- e) 19 June 2026 - Tshenolo's attorney made a single telephone call to the MEC's State Attorney.
- f) 22 June 2026 - The MEC filed an application for leave to appeal.
- g) 30 June 2026 - Ultimate's attorneys expressly informed Tshenolo's attorneys that applications for leave to appeal had been filed.
- h) 13 July 2026 - Tshenolo launched the present application, more than five weeks after the Order had been granted.

[21] This sequence of events sits uneasily with the urgency now asserted. Tshenolo was aware of the Order from the outset, demanded compliance within days of its grant, and threatened urgent proceedings on 18 June 2026. By 19 June 2026, it knew that the MEC had not complied with the deadline it had imposed. By 22 June 2026, the MEC's position was objectively apparent from its application for leave to appeal, and by no later than 30 June 2026 Tshenolo had express confirmation that both respondents were pursuing appeal processes. Yet the present application was

instituted only on 13 July 2026, and no satisfactory explanation is advanced for that delay. In circumstances where urgency is self-created when a litigant fails to act at the point when the need for relief first arises, this chronology weighs heavily against a finding that the matter justified a departure from the ordinary rules and timetables of the Court.

[22] The founding papers do not satisfactorily explain the 24-day period from 19 June to 13 July 2026. The assertion that it would have been unreasonable to rush to the urgent Court while the MEC was considering its position is unpersuasive after Tshenolo itself demanded compliance by 19 June and threatened urgent proceedings. A litigant alleging continuing prejudice cannot leave a material period unexplained and then rely on the accumulated consequences of its own inaction.

[23] The correspondence likewise does not demonstrate the promptness expected of an urgent applicant. After the deadline of 19 June, one telephone call was made. No adequate account is given of the steps taken thereafter, the reasons papers could not be prepared earlier, or the event on 13 July that suddenly made ordinary redress inadequate.

[24] The correct question is not whether Tshenolo is anxious to secure compliance, but whether it will be denied substantial redress if the matter follows the ordinary course. In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at paragraph 6, the court explained that a matter only qualifies for urgent enrolment where an applicant cannot obtain substantial redress in due course. Tshenolo has failed to demonstrate why an ordinary enforcement application—coupled, where appropriate, with the statutory remedies established under section 18 of the Superior Courts Act 10 of 2013—would afford it no substantial redress.

[25] The alleged public-health dimension does not cure that omission. The Order itself was directed at uninterrupted healthcare risk-waste services. On the papers before this Court, Ultimate remains the incumbent service provider. There is no properly particularised evidence that healthcare risk waste is presently uncollected, that an identified facility faces an imminent health hazard, or that the continuation of the

existing service pending an ordinary hearing creates a concrete and immediate danger.

[26] The applicant's commercial interest in being appointed under paragraph 4 is real, but commercial prejudice, without a showing that it cannot be substantially remedied in due course, does not establish urgency. Nor can a general appeal to the public interest substitute for the facts Rule 6(12)(b) requires.

[27] Tshenolo's characterisation of the matter as a simple application to compel does not assist it. A binding order must be obeyed, but the authority of the order does not render every chosen enforcement procedure automatically urgent. Ndabeni safeguards the binding force of court orders; it does not dispense with the rules governing urgent enrolment.

[28] I therefore find that Tshenolo has not explained its delay, has not established that substantial redress is unavailable in due course, and has not justified the degree of departure from the ordinary rules that it sought. The urgency is, to a material extent, self-created.

[29] This finding is sufficient to dispose of the application. It is unnecessary to determine finally whether paragraph 4 falls under section 18(1) or section 18(2), whether a section 18(3) application was indispensable, or whether the relief granted by Morgan AJ was competent. Nothing in this judgment determines the applications for leave to appeal or authorises non-compliance with an operative court order.

ULTIMATE'S CONDITIONAL COUNTER-APPLICATION

[30] Ultimate's counter-application is expressly conditional upon a finding that paragraph 4 is an interlocutory order falling within section 18(2). Since I have made no final finding on that question and the main application is not properly before the urgent Court, the condition for adjudicating the counter-application has not arisen.

[31] The counter-application will accordingly not be determined.

COSTS

[32] Costs ordinarily follow the result. Although the application was misconceived as urgent, the circumstances do not justify punitive costs. The questions concerning section 18 and the status of paragraph 4 are legally significant, and the applicant was entitled to seek lawful means of enforcing an order made in its favour.

[33] In *Zisiwe v Naude NO and Others* [2025] ZANWHC 106 at paragraphs 29–31, this Division applied the ordinary principle that costs follow the result and awarded party-and-party costs on Scale B in an interlocutory application. That approach is equally appropriate in the present matter. Furthermore, the employment of two counsel by the first and second respondents was entirely reasonable, having regard to the manifest complexity and importance of the issues traversed.

ORDER

[34] In the result, the following order is made:

1. The application is struck from the urgent roll for want of urgency.
2. Ultimate Waste (Pty) Ltd's conditional counter-application is not determined.
3. The applicant is ordered to pay the costs of the first and second respondents on the party-and-party scale, Scale B, including the costs of two counsel where so employed.

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**TSAUTSE AJ
ACTING JUDGE OF THE HIGH COURT**

Appearances:

For the Applicant: Adv Kennedy Tsatsawane SC
Adv Kgomotso Kabinde

For the First Respondent: Adv L. Montsho-Moloisane SC
Adv G I Mothibi

For the Fourth Respondent: Adv L J Morison
Adv A Laher