



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-194952

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

SIGNATURE

03/09/2026
DATE

In the matter between:

HANLIE JANSE VAN RENSBURG

Applicant

and

MOTLALEPULA CHRISTINAH MARAGELO

First Respondent

MASTER OF THE HIGH COURT, PRETORIA

Second Respondent

JUDGMENT

LABUSCHAGNE, J

Introduction

[1] The applicant was appointed in 2023 as the Executrix in the estate of the late husband of the first respondent, John Terry Pidgeon, Estate No. 001481/2023 (“the

estate”). The applicant was removed as Executrix by means of a judgment of Mbongwe J dated 22 January 2026 (“the principal order”).

[2] The applicant timeously applied for leave to appeal, which leave to appeal was dismissed on 18 August 2026. She thereafter applied for leave to appeal to the Supreme Court of Appeal. The first respondent was appointed by the Master (“the second respondent”) as Executrix of the estate after lodging of the application for leave to appeal. The applicant contends that such appointment is an act of execution of the order, which is precluded by the suspension of the principal order in terms of section 18(1) of the Superior Courts Act 10 of 2013 (“Superior Courts Act”).

[3] The judgment of Mbongwe J made serious and damning findings against the applicant regarding her administration of the estate, and the first respondent is resisting the attempts of the applicant to resume control of the estate, contending that her application for leave to appeal lacks **bona fides**.

The relief sought

[4] The applicant seeks an urgent declarator that the principal order has been suspended. She seeks the setting aside of the letters of executorship of the first respondent in terms of section 95 of the Administration of Estates Act 66 of 1965 (“Administration of Estates Act”), and interim interdicts against the first respondent regarding the administration of the estate.

[5] The Master has not participated in these proceedings. This Court would require the Master’s response to the issues raised below that affect the timing of the issuing of first respondent’s Letters of Executorship. That does not preclude deciding the interim position.

Background facts

[6] The deceased died on 8 January 2023. His Will nominated the applicant as Executrix. Letters of Executorship were issued to the applicant on 26 May 2023. The first respondent launched an urgent application on 21 October 2025 to have the applicant removed as Executrix.

[7] On 22 January 2026, Mbongwe J granted an order removing the applicant as Executrix and he issued an order directing the Master to appoint the first respondent as Executrix.

[8] On 23 January 2026, the applicant filed an application for leave to appeal against the judgment and order. The first respondent through her attorneys proceeded to execute the principal order and had bank accounts frozen as directed in the order of Mbongwe J. The applicant objected, contending that the principal order was suspended.

[9] On 26 January 2026, the first respondent launched an application in terms of section 18(3) of the Superior Courts Act to have the principal order put into operation despite the application for leave to appeal. The section 18(3) of the Superior Courts Act application was set down for 4 February 2026 and was postponed **sine die**. It remains undecided and undetermined.

[10] When the application was postponed on 4 February 2026 before Meyer AJ, an order was made directing the first respondent (the current applicant) to provide a copy of the liquidation and distribution in the estate within one day. Pending finalisation of the application the first respondent (the current applicant) undertook not to take any further steps in the administration of the estate, save to make relevant payments to creditors and maintenance to the first respondent as surviving spouse.

[11] On 18 August 2026, Mbongwe J dismissed the application for leave to appeal and ordered the applicant to pay the costs personally on a scale as between attorney and client.

[12] The applicant filed an application for leave to appeal to the Supreme Court of Appeal in terms of section 17(2)(b) of the Superior Courts Act on Thursday, 20 August 2026 by delivering hard copies to the Registrar of the SCA. The Registrar however required proof of service and that could only be done on 21 August 2026 together with the court order, as that was not available on 20 August 2026.

[13] The application was consequently lodged and issued by the Registrar on 21 August 2026 in terms of Rules 6(1) and 6(2) of the Supreme Court of Appeal Rules (“Rules”) under case number 939/2026. Prior to that the application was served on the first respondent’s attorneys of record and on the Master.

[14] The Letters of Executorship issued by the Master to the first respondent are dated 22 August 2026, a Saturday, being a day on which the Office of the Master is not open. According to the Master’s notification the Letters of Executorship would be available on 24 August 2026. The Master’s letter communicates that the Letters of Executorship were issued on 22 August 2026.

Issues to be decided

[15] There are three issues, namely:

1. Is the establishment of **bona fides** a prerequisite for an application for leave to appeal to suspend the order appealed against??
2. If not, has the principal order of Mbongwe J been suspended?
3. If the order is suspended, should the Letters of Executorship issued to the first respondent be set aside?

Bona fides

[16] The lodging of the applicant’s application for leave to appeal would suspend the operation of the order of Mbongwe J in terms of section 18(1) of the Superior Courts Act, subject to subsections (2) and (3), unless the court under exceptional circumstances orders otherwise.

[17] Section 18(5) of the Superior Courts Act provides that, for the purposes of section 18(1) and 18(2), a decision becomes the subject of an application for leave to appeal as soon as an application for leave to appeal is lodged with the Registrar in terms of the Rules.

[18] Section 18(3) of the Superior Courts Act governs applications to have orders put into operation pending appeal. As stated, such an application was brought but was not pursued and in the proceedings before this Court was also not pursued.

[19] It is against the aforesaid backdrop that it is necessary to determine whether the first respondent's contention that **bona fides** is a requirement before an application for leave to appeal suspends a judgment has merit or not. The first respondent's position is set out in paragraph 3.3 of her answering affidavit which reads:

"I deny the applicant's interpretation of her rights under section 18 of the Superior Courts Act. The applicant contends that the mere filing of a petition somehow serves as a procedural 'stay' of the court's order. This is a gross distortion of the law. The right to an automatic suspension is predicated on **bona fide** appellate intent. The applicant's six-month delay in prosecuting her leave to appeal is evidence of an abandonment of legitimate legal redress in favour of obstructionism. She cannot invoke the protection of a statute to perpetuate the very maladministration that the court sought to curtail".

[20] The applicant's explanation for the long delay is that a date had been requested from the Registrar of Mbongwe J, but no response was forthcoming.

[21] Applicants for leave to appeal are required by the Practice Directives in this Division to notify the Judge's Registrar of an application for leave to appeal once it is filed. Filing of an application for leave to appeal on CaseLines does not come to the attention of the Judge concerned, unless specifically brought to the attention of his Registrar. This may very well be what has happened in this matter. This Court makes no findings in this regard.

[22] It is a truism that any application of any nature has an inherent requirement of **bona fides**. Court proceedings are meant to resolve genuine disputes of law. If a court is not approached in a **bona fide** manner, it may be held to constitute an abuse of process. However, the lack of **bona fides** is an issue for the first respondent to raise, unless it is self-evident from the papers. Once established, **mala fides** may have the results envisioned by the first respondent in these proceedings - i.e. it may constitute exceptional circumstances under which a court may direct that the order appealed against is not suspended by the filing of an application for leave to appeal in terms of section 18(1) of the Supreme Courts Act.

[23] The stay brought about by the mere filing of an application for leave to appeal is the consequence of section 18(1) and section 18(5) of the Supreme Courts Act. It is a legal consequence of an administrative act, which is not dependent on a prior assessment of the application to determine whether it is a **bona fide** application or not.

Is the principal judgment suspended?

[24] Sec 18 (1) of the Act restates the common law. In **University of the Free State v AfriForum and Another [2016] ZASCA 2018 (3) SA 428 (SCA)** the Supreme Court of Appeal stated at par[5]:

“The well-established common law rule of practice in our courts has been that generally the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the court which granted the judgment.”

[25] In **Ntlemeza v Helen Suzman Foundation and Another [2017] ZASCA 93** the Supreme Court of Appeal said the following at paragraph 28:

“The primary purpose of section 18(1) is to re-iterate the common law position in relation to the ordinary effect of appeal processes – the suspension of the order being appealed – not to nullify it. It was designed to protect the rights of litigants who find themselves in the position of General Ntlemeza, by ensuring, that in the ordinary course, the orders granted against them are suspended whilst they are in the process of attempting, by way of the appeal process, to have them overturned. The suspension contemplated in section 18(1) would thus continue to operate in the event of a further application for leave to appeal to this court and in the event of that being successful, in relation to the outcome of a decision by this court in respect of the principal order. Section 18(1) also sets the basis for when the power to depart from the default position comes into play, namely, exceptional circumstances which must

be read in conjunction with the further requirements set by section 18(3). As already stated and as will become clear later, the Legislature has set the bar fairly high.”

[26] From the aforesaid it is apparent that the legal position is clear. It is the lodging of the application for leave to appeal in the Supreme Court of Appeal in terms of Rule 6(1), and the issuing of that application on 21 August 2026 which has had the effect of automatically suspending the order of Mbongwe J.

[27] In the aforesaid case in which General Ntlemeza’s position was being determined, he also had prior damning findings against in a judgment of Matojane J. He was granted the benefit of section 18(1) of the Supreme Courts Act, i.e. suspension of the order.

[28] A similar factual scenario presented itself in **Olivier v Nieman and Others (Leave to Appeal) (UM228/2022) [2023] ZANWHC 183 (Olivier)**. It involved a judgment concerning executorship, an application for leave to appeal, and the subsequent issuing of letters of executorship by the Master.

[29] Judgment in **Olivier** was delivered on 28 November 2022. An application for leave to appeal was served on 29 November 2022, and the Master thereafter issued letters of executorship on 30 November 2022. At paragraph 17, the Court expressly stated that “the application for leave to appeal suspended the operation of the judgment in terms of section 18(1) of the Superior Courts Act.”

[30] The High Court then confronted the fact that the Master had nevertheless issued letters of executorship and significantly observed at paragraph 17 that, “this muddles the waters as to the basis on which the letters of executorship have been issued.”

[31] If there is a lack of **bona fides**, it is for the first respondent to raise and establish it in her application in terms of section 18(3) of the Supreme Courts Act, and in opposing the declarator sought. The section 18(3) application was not enrolled before this Court for consideration. In the premises, the consequences of the filing of the application for leave to appeal has been to suspend the order of Mbongwe J

pending determination of the application for leave to appeal, and if leave were granted, the subsequent appeal in the Supreme Courts Act.

[32] The use of emotive language in restating what was found by Mbongwe J does not assist in proving a lack of **bona fides** on the part of the applicant. The judgment has been suspended and is not enforceable at present. Emotions are clearly running high on both sides of the divide, but the issue of **bona fides** or lack of it is a factual matter. It needs to be established though facts if it is to form the basis for exceptional circumstances under section 18(1) and 18(3) of the Superior Courts Act.

The Letters of Executorship of the first respondent

[33] This leaves the question as to what the import of the aforesaid is on the Letters of Executorship issued by the Master after the aforesaid lodgement.

[34] The reason for acting as he did has not been answered. The sec 95 review sought in the notice of motion is consequently not ripe for hearing. The Master has not been heard. In **Olivier** the Court stated at paragraph 17 that, “without having any statement from the Master, it is impossible to determine whether the letters of executorship were issued in terms of the court order or in terms of the Master’s discretion despite the court order.”

[35] In the absence of the Master’s evidence the terms of the principal order become the only guide to the issue of the letter of executorship. The importance of **Olivier** therefore lies in the distinction it draws between implementation of a suspended judgment and the independent exercise of a statutory power by the Master.

[36] Counsel for the first respondent contends that the issuing of the letters of executorship is a separate administrative act that stands until set aside in terms of the **Oudekraal** principle. Normally this would be so. However, the facts of this matter point in a different direction.

[37] The order of Mbongwe J reads in part:

“[25] In the circumstances the following order is made:

(d) That the applicant (first respondent in these proceedings- my insertion) be appointed Executrix of Estate Late Pidgeon with Estate number 00148/2023 forthwith;

(e) That the Second Respondent is directed to provide letter of authority to the applicant within three days of date of this order”

[38] Absent cogent evidence to the contrary, the Master was ostensibly not exercising a discretion in appointing the first respondent as Executrix. The Master had been ordered and directed by Mbongwe J to do so in terms of the order appealed against. It was

[39] There is thus a second proposition pertaining to the issuing of Letters of Executorship to the first respondent- that it is part of the execution of the order of Mbongwe J.

[40] The distinction does not matter on the facts of this case as the same result ensues. The judgment of Mbongwe J has been suspended as a matter of law and therefore any steps taken to execute it are suspended as well. Secondly, even if it were an administrative act, it relies for its validity on the existence of the order of Mbongwe J. The first respondent’s appointment flowed from the principal order of Mbongwe J. Once the order of Mbongwe J is suspended as a matter of law, the substratum for the appointment of the first respondent as Executrix has fallen away. This is sometimes referred to as the domino effect.

[41] In **Seale v Van Rooyen NO and other 2008 (4) SA 43 (SCA)**, the following is said at paragraph 13: “I think it is clear from **Oudekraal**, and it must in my view follow, that if the first act is set aside, a second act that depends for its validity on the first act must be invalid as the legal foundation for its performance was non-existent.”

[42] By the same token, the order of Mbongwe J had no force or effect, when the Master appointed the first respondent on 22 August, due to the lodging of the application for leave to appeal at the Supreme Court of Appeal on 21 August 2026.

[43] The domino effect is a consequence separate from the question on appeal whether the quoted portion of the principal order was competent or not. In the premises, the consequence of the aforesaid is that the appointment of the first respondent as Executrix is in itself suspended.

[44] The principal order is being assailed on appeal based on **Bankorp Ltd v Pienaar 1993 (4) SA 98AD at 107 D-E** in terms of which the Supreme Court of Appeal found that a court does not have the power to appoint an Executrix or an Executor, as this is by statute a power to be exercised by the Master.

[45] If I err in the aforesaid conclusion that both the principal order and the letters of executorship are suspended, I am satisfied that the grounds for review and setting aside of the Master's decision are strong. The Master followed the dictates of a court order which conflicts with the Supreme Court of Appeal authority, and which order was suspended at the time of the appointment of the first respondent as Executrix. A suspension of the letters of executorship would constitute a just and equitable remedy in terms of sec 8 of the Promotion of Administrative Justice Act (PAJA)

[46] On either approach, the applicant has established a prima facie right to a suspension pendente lite.

[47] The risk of irreparable harm is evident. The first respondent, during January 2026 already indicated that she did not appreciate the effect of the suspension of a court order by virtue of the filing of an application for leave to appeal. She tried to enforce the order immediately despite the pending leave to appeal. She then commenced with a section 18(3) application after she had already taken steps to implement the order of Mbongwe J. In these proceedings she raises a legal contention which, as this Court has indicated above, is not of assistance to the first respondent. If she wishes to raise **bona fides** or the lack of it as a reason not to come to the assistance of the applicant, she should have pursued the section 18(3) application. However, as she contends that the appointment by the Master is effective and as she intends acting as Executrix in the interim, it is necessary to rule on this and the Court

is therefore satisfied that the matter is both urgent and that the risk of irreparable harm has been established.

[48] The balance of convenience favours maintaining a holding position until the Court rules on the validity of the first respondent's letters of executorship. The limitation of the applicant's powers of administration imposed by the order of Meyer AJ removes the risk to the estate. By contrast, if the first respondent were to administer the estate on letters of executorship the validity of which is suspect, there is a risk to the estate.

[49] There is no adequate alternative remedy to suspension of the letters of executorship of the first respondent.

[50] In light of the Court's conclusion that the letters of executorship are without force, this Court does not deem it urgent to entertain the section 95 of the Administration of Estates Act review application setting aside the letters of executorship. Suspension will suffice. In previous references to relief being *pendente lite*, it includes the conclusion of a sec 95 review in terms of the Administration of Estates Act that is referred to.

[51] The need for the interim interdicts sought in the Notice of Motion also falls away as the suspension of the first respondent's letter of executorship is an adequate alternative remedy.

[52] In the premises, this Court makes the following order:

1. The application is found to be urgent.
2. The section 95 review is not ripe for hearing and is postponed **sine die**.
3. It is declared that the execution of the order of Mbongwe J dated 22 January 2026 is suspended, by operation of section 18(1) read with section 18(5) of the Superior Courts Act with effect from 21 August 2026, and that such suspension endures pending the final determination of the Supreme Court of Appeal proceedings, unless a court orders otherwise in terms of section 18(3) of the Superior Courts Act.

4. It is ordered and directed that the appointment of the first respondent as Executrix in terms of Letters of Executorship issued by the second respondent on 22 August 2026 is suspended pending finalisation of the application for leave to appeal and the Supreme Court Appeal proceedings referred to above and the sec 95 review proceedings, unless a court orders otherwise.
5. The interim interdictory relief is refused.
6. This court order is to be provided to the second respondent forthwith.
7. The costs of the application are to be paid by the first respondent on a party and party scale, Scale B.


E LABUSCHAGNE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 27 August 2026
Date judgment delivered: 03 September 2026

Appearances:

Counsel for the Applicant:	Adv A Coertze
Instructed by:	Abrams Modira Inc attorney
Counsel for the First Respondent:	Mr S.Maqungo
Instructed by:	Sivuyile Maqungo Incorporated