



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

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

DATE: 4 September 2026

SIGNATURE [REDACTED]

Case No: 2025/220272

In the matter between:

THE THUSA FOUNDATION NPC

Applicant

[Registration No. 2018/479934/08]

and

WONDER STEAM TRAINS (PTY) LTD

Respondent

[Registration No. 2018/208665/07]

JUDGMENT

The judgment and order are published and distributed electronically.

MICHAU. AJ

INTRODUCTION:

[1] This is an application in which interim relief is sought by the Applicant pending the final relief which the Applicant and Respondent have instituted against each other in case numbers 2025-074560 and 2025-184219. These cases are action proceedings in which the rightful owner of a steam train locomotive (*"the locomotive"*) will be determined. The issue of ownership is disputed.

[2] There is a further dispute between the parties and that is whether or not the Respondent, in whose possession the locomotive currently is, is entitled to use that locomotive for commercial purposes pending the resolution of the ownership dispute. It is this dispute that precipitated the application of the matter before me.

[3] At the end of 2025 the Applicant brought an urgent application in which the following substantive relief was sought:

"2. *That, pending the final determination of the issue of ownership of the 19B Steam Train Locomotive Nr. 3366/3343 ('the locomotive') and from the date of the granting of this order, the Respondent or anyone acting on its behalf or instruction be interdicted and restrained from:*

2.1 *operating, moving, transporting, or in any manner utilising the locomotive, whether for commercial or any other purpose;*

2.2 *running scheduled or advertised train services utilising the locomotive;*

- 2.3 *permitting or authorising any third party to operate, move, transport or utilise the locomotive;*
- 2.4 *removing the locomotive from its current location at the Hermanstad Depot, Pretoria; and*
- 2.5 *in any manner interfering with, disturbing, or making use of the locomotive.*

3. *That the interdict in paragraph 2 above operate until final determination of this court of the issue of ownership of the locomotive, in respect of which the Applicant and the Respondent respectively instituted claims under case no. 2025-074560 and case no. 2025-184219."*

[4] The matter was heard by Justice Francis-Subbiah and on 4 December 2025, having found that the matter is urgent, granted the following relief:

- "2.1 *operating, moving, transporting, or in any manner utilising the locomotive, whether for commercial or any other purpose;*
- 2.2 *running scheduled or advertised train services utilising the locomotive;*
- 2.3 *permitting or authorising any third party to operate, move, transport or utilise the locomotive;*
- 2.4 *removing the locomotive from its current location at the Hermanstad Depot, Pretoria; and*

2.5 *in any manner interfering with, disturbing, or making use of the locomotive.*

3. *The interdict in paragraph 2 above is granted with immediate effect pending the determination of the issue of 'commercial use' in the ordinary opposed court on 16 March 2026.*

4. *The costs of the application is reserved for determination of paragraph 3 above".*

[5] There is no judgment accompanying the order and I have nothing to ascertain the reasoning of the presiding judge that resulted in the grant of the order. I was advised by Ms Oschman, who appears on behalf of the Applicant, that after the matter was argued before Justice Francis-Subbiah, counsel for the respective parties were asked to provide a draft order in which certain interim relief should be catered for. The Respondent's counsel was Mr Louw in December of 2025.

[6] Counsel, apparently, provided Justice Francis-Subbiah a draft order which she then changed into that which I have quoted earlier. The order appears at CaseLines 022-2 and following.

[7] Notwithstanding the fact that there is no accompanying judgment, Justice Francis-Subbiah must have been of the view that the matter was urgent and, in addition, that the balance of convenience favoured the form of the interim relief granted.

[8] The matter did not proceed on 16 March 2026. It was then set down during June 2026 and now comes before me, in essence, to determine the issue of "*commercial use*" which,

on a proper construction would be a reference to the word "*commercial*" appearing in paragraph 2.1 of the order.

[9] The Applicant is once more represented by Ms Oschman. The Respondent is represented, not by its previous legal representatives but by a certain Mr Derek du Toit, a director of the Respondent.

[10] Whether Mr du Toit is entitled, as a matter of law, to appear on behalf of the Respondent is a matter for debate. However, I decided, in the interests of justice, to allow Mr du Toit to make submissions in order to assist me in coming to a decision in this matter. Mr Oschman indicated that the Applicant has no difficulty in that regard.

[11] I initially had some difficulty in ascertaining exactly what the order of Justice Francis-Subbiah meant. After further consideration, I think that what was intended was that the Respondent be interdicted on an interim basis from using the locomotive commercially until such time as the ordinary motion court decided whether or not that interim interdict relating to commercial use should extend until such time as the action has been determined regarding who the owner of the locomotive is.

[12] It is trite that an interlocutory order, such as that which was granted by Justice Francis-Subbiah can be revisited at a later stage. It can be discharged, amended or confirmed by, a court, sitting in the position in which I find myself. I should guard against the notion of sitting as a court of appeal. I am not. There are limited circumstances in which that can be done and, ordinarily, apart from the issues contained in rule 42 of the rules of court and the common law, an interim order will generally be revisited and amended when justice demands this be done because of changed circumstances brought to the attention

of the court. In the instant case that has not happened. No additional papers have been filed.

[13] That notwithstanding, the order of Justice Francis-Subbiah, in any event, empowers the court to revisit the issue of "*commercial use*" and is indicative of the fact that she wanted that issue to be determined afresh and not in the hurly-burly of a December urgent court where, often, presiding judges are overwhelmed with matters and making a proper consideration difficult under the circumstances.

[14] In considering this matter I have had regard to the Respondent's heads of argument that served before Justice Francis-Subbiah as well as the Applicant's "*supplementary heads of argument*" dated 18 August 2026. I have also listened to Ms Oschman as well as to Mr du Toit in the submissions they both made.

[15] The submissions of Mr du Toit do not, with respect to him, in essence take any substantive issue with the comprehensive heads of argument filed by Ms Oschman. I am not critical of him as he is a layperson in this regard. But it is still a reality. In essence he says that the locomotive and its preservation will best be served by its continued use because that enables the Respondent to service it regularly. This is better, so the argument goes, than it standing idle. There is a dispute in this regard. The scales in this regard are balanced but even if I find in favour of the Respondent in this regard, logic dictates that the more it is used, the greater the probability of other events damaging the locomotive. Like an accident for example. The locomotive is of a vintage era. Parts are scarce. The locomotive seems to be insured by someone other than the Respondent. This might create difficulties in recovering any damage that might potentially arise. I am not convinced that the Respondent, itself, will be in any position to satisfy a damages

action in the event of something happening to the locomotive. Even if I were to accept that there might be some deterioration should the locomotive remain idle, in my view it is insignificant compared to the possible repercussions should something happen to it while in commercial use.

- [16] I am also not persuaded by the argument made by Mr du Toit that in the urgent application which the Respondent itself brought in the Gauteng Local Division, Johannesburg, under case no. 2024-128681 that Justice Crutchfield had permitted the Respondent to use the locomotive in the interim. The order of Justice Crutchfield in the matter that served before her was clearly of an interim nature in respect of which no final finding of facts had to be made. In this regard see, generally, the case of *Prinsloo NO and Others v Goldex 15 (Pty) Ltd and Another* [2012] ZASCA 28.
- [17] I intend amending the order to the effect that the locomotive not be used whether for commercial or private use pending the outcome of the actions to which I have referred earlier. I will delete the previous paragraph 2.5 of that order as it adds nothing to the relief.
- [18] The Applicant seeks costs, and, whilst it is true that the Applicant has been successful in its interim relief and that this success is, strictly, independent of the final relief regarding ownership, I am inclined to exercise my discretion and not award costs in favour of the Applicant at this stage. If, ultimately, in the action it be found that it indeed is the Respondent that is the owner of the locomotive, I believe it to be fair that the costs of these urgent proceedings should probably follow that result, although I make no finding in that regard. I will leave it to the trial judge who decides the ownership issue to determine the issue of the costs in these proceedings.

As such, I make the following order:

[1] Pending the determination of the actions under case no. 2025-074560 and case no. 2025-184219, the Respondent is interdicted and restrained from using the 19B Steam Train Locomotive No. 3366/3343 (*"the locomotive"*) in the following manner:

[1.1] Operating, moving, transporting, or in any manner utilising the locomotive, whether for commercial or any other purpose;

[1.2] Running scheduled or advertised train service utilising the locomotive;

[1.3] Permitting or authorising any third party to operate, move, transport or utilise the locomotive;

[1.4] removing the locomotive from its current location at the Hermanstad Depot, Pretoria without the consent of the Applicant or an order of court.

[2] Costs of the application are reserved for the trial judge deciding the ownership of the locomotive in either of the cases referred to in paragraph 1.


R MICHAU

ACTING JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES

FOR APPLICANT: I OSCHMAN

INSTRUCTED BY: TUCKERS INCORPORATED

FOR RESPONDENT: DEREK DU TOIT (a director of the Respondent)

INSTRUCTED BY:

Date of hearing: 24 August 2026

Date of judgment: 4 September 2026