



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 2026/107622

In the matter between:

OVEX (PTY) LTD

Applicant in the main application

and

YONG HUI HUANG

First Respondent /

First Applicant for leave to appeal

TATENDA SAMUEL NHEMACHENA

Second Respondent /

Second Applicant for leave to appeal

LUME TRADE (PTY) LTD

Third Respondent /

Third Applicant for leave to appeal

LUMEPAY (PTY) LTD

Fourth Respondent /

Fourth Applicant for leave to appeal

Coram: ADAMS AJ

Heard: 13 August 2026

Delivered: 07 September 2026

Summary: Restraint of trade. – Leave to appeal – Applicant having protectable interest in confidential information threatened by former employees’ involvement in competing businesses. – No reasonable prospects of success or compelling reason for appeal. – Application dismissed with costs.

ORDER

1. The first respondent’s application for leave to appeal is dismissed.
2. The second respondent’s application for leave to appeal is dismissed.
3. The third respondent’s application for leave to appeal is dismissed.
4. The fourth respondent’s application for leave to appeal is dismissed.
5. No order is made in Ovex’s application under s 18(1), read with s 18(3), of the Superior Courts Act 10 of 2013.
6. The first to fourth respondents shall pay the costs of the applications for leave to appeal, including the costs of two counsel, on Scale C.

JUDGMENT: APPLICATIONS FOR LEAVE TO APPEAL

ADAMS, AJ

Introduction

[1] The first to fourth respondents apply for leave to appeal against the judgment and order of this Court delivered on 26 June 2026. Ovex (Pty) Ltd (“Ovex”) opposes the applications.

[2] The main application concerned the enforcement of restraint-of-trade, confidentiality and non-solicitation undertakings contained in the employment agreements of the first and second respondents. It also concerned related claims against the third and fourth respondents based upon unlawful competition and the use or threatened use of Ovex’s confidential information.

[3] The grounds of appeal are extensive and overlap considerably. The respondents nevertheless emphasise that the claims against them were not identical and that their applications for leave must be considered separately.

[4] That proposition is accepted. The first and second respondents’ obligations arose principally from their respective employment contracts. The case against the third and fourth respondents rested upon their alleged participation in unlawful competition. Each application has been considered

separately, although it is convenient to address together those grounds which raise the same legal or factual questions.

The applicable test

[5] A judge considering an application for leave to appeal must approach the application dispassionately and objectively.¹ The question is not whether the judge remains persuaded that the original decision was correct, but whether the applicant for leave has satisfied one of the requirements in s 17(1)(a) of the Superior Courts Act 10 of 2013².

[6] The applicants are not required to establish that the proposed appeal will necessarily succeed. They must, however, demonstrate a sound and rational basis for concluding that another court could reasonably reach a different result. A mere possibility of success or the repetition of arguments rejected in the main proceedings is insufficient.

[7] The statutory threshold is not satisfied merely because the proposed appeal is arguable or because a different conclusion is conceivable. There must be a sound and rational basis for concluding that there are reasonable prospects of success on appeal.

¹ In *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) at para 10, the Supreme Court of Appeal explained that the enquiry requires a dispassionate assessment of the facts and law to determine whether a court of appeal could reasonably arrive at a conclusion different from that of the court of first instance.

² Section 17(1)(a) permits leave to appeal only where the Court is of the opinion that:

- (a) the appeal would have a reasonable prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard, including the existence of conflicting judgments on the matter under consideration.

[8] Where reasonable prospects are not established, the Court must consider whether there is nevertheless another compelling reason for an appeal.³ Such a reason may include an important question of law, conflicting judgments, an issue of public importance or some consideration affecting the administration of justice. The merits nevertheless remain important and are often decisive.

[9] The applicants rely both upon alleged reasonable prospects of success and upon what they contend are compelling reasons for the proposed appeals to be heard. Each basis must be assessed against the findings and order made in the main judgment. I turn now to consider the grounds advanced by the applicants in support of the application for leave to appeal.

Relief allegedly exceeding the notice of motion and contracts

[10] The respondents' first principal ground is that the Court granted relief which Ovex had not sought and which was not founded upon the employment contracts. Ovex submits that every material component of the order was either expressly sought in the notice of motion or founded upon the restraint, confidentiality and non-solicitation provisions of the employment contracts.

[11] Clause 14.3.1.2 of the first respondent's contract, and the corresponding clause 11.3.1.2 in the second respondent's contract, provided that for 12 months after termination of employment the employee would not:

“directly or indirectly have an interest in any business which competes with the Company nor ... directly or indirectly engage in the prohibited fields of activity within any country in which the Company maintains a legal presence and undertakes its business operations, drawing customers.”

³ Section 17(1)(a)(ii) of the Superior Courts Act

[12] Prayer 2.1 of the notice of motion sought an order restraining the first and second respondents from breaching their restraints by being directly or indirectly engaged with the third or fourth respondents in South Africa for the agreed restraint periods.

[13] Properly understood, the reference in the order to the respondents being shareholders in a competing business gave effect to the contractual prohibition against their having a direct or indirect interest in such a business. Although the word “shareholder” does not appear in clause 14.3.1.2, a shareholding is capable of constituting an interest in a business. The reference to shareholding did not create a new restraint. It gave effect to the contractual prohibition against directly or indirectly holding an interest in a competing undertaking.

[14] Clause 14.1.1 prohibited the employees from using Ovex’s trade secrets or confidential information for their own benefit or that of another person and required them to keep such information confidential.

[15] Prayer 2.2 of the notice of motion sought an interdict preventing disclosure of Ovex’s confidential information and trade secrets to the third or fourth respondents or any other person. Paragraph 2.2 of the order therefore had a clear contractual foundation.

[16] Clause 14.2 prohibited the first and second respondents, during the stipulated period, from persuading, inducing, encouraging or procuring any Ovex employee to:

- (a) become employed by, or interested in, a competing business;
- (b) terminate employment with Ovex; or
- (c) supply information acquired through employment to an unauthorised person.

[17] Prayer 2.3 of the notice of motion mirrored those obligations. The corresponding paragraph of the order did not extend beyond the non-solicitation covenant.

[18] Paragraph 3 of the order followed prayer 3 of the notice of motion, save that the relief based upon passing off Ovex's intellectual property or website content was omitted because the Court found that Ovex had not established passing off.

[19] The omission of that relief demonstrates that the Court differentiated between the causes of action and granted only the relief it considered established. It also answers the submission that the various claims were treated indiscriminately.

[20] The delivery-up provisions differed in formulation from prayer 4 of the notice of motion. A difference in wording does not, without more, mean that unclaimed relief was granted. A court may formulate an order which gives effective and practical expression to the relief established, provided that it does not determine a dispute the affected parties were not called upon to answer.

[21] The delivery-up and confirmatory-affidavit provisions were ancillary to the confidentiality relief. They were intended to ensure that confidential information was not retained or used after the termination of employment.

[22] The respondents were not required to establish that they did not possess information. If they held none, the order required no more than confirmation of that fact. The order did not introduce a new cause of action or impose obligations unrelated to the case pleaded. The respondents were fully aware of the relief sought and answered it extensively. No procedural unfairness has been demonstrated.

[23] The contention that the order was vague, unenforceable or materially broader than the contractual obligations does not afford the proposed appeal a reasonable prospect of success.

Standing and the distinction between Ovex and Ovex FSP

[24] The respondents contend that parts of the relevant business were conducted by Ovex FSP (Pty) Ltd and that Ovex consequently lacked standing to enforce the alleged protectable interests. This issue was addressed in paragraphs 23 and 24 of the main judgment. The contractual restraints were directed at participation in defined prohibited fields of activity. They were not confined to competition with a particular licence holder.

[25] Clause 14.3.2 defined the prohibited fields to include activities relating to:

- (a) crypto-asset services;
- (b) crypto-asset trading platforms;
- (c) crypto-asset vending-machine services;
- (d) crypto-asset token issuance;
- (e) crypto-asset funds or derivative services;

- (f) custodial crypto-asset wallets; and
- (g) crypto-asset safe-custody services.

[26] The relevant enquiry was whether the businesses with which the first and second respondents became associated operated in, or competed within, those prohibited fields. The first and second respondents were employed by Ovex, not Ovex FSP. Their contractual undertakings were given to Ovex. Ovex FSP was not the employer and had no contractual right to enforce the restraints against them.

[27] The fact that Ovex and Ovex FSP formed part of the same group or that Ovex FSP performed regulated functions did not deprive Ovex of its contractual rights or its own commercial interests.

[28] Nor does the possible existence of an overlapping interest in Ovex FSP establish that Ovex had no protectable interest. The restraint provisions were not limited to competition with a single licensed entity.

[29] The judgment found that Ovex possessed protectable interests in its confidential information of the kind described in paragraphs 42 and 43 of the main judgment and, secondarily, in its customer connections.

[30] Ovex was therefore the correct party to enforce the undertakings given by its former employees. No reasonable prospect of success has been established on standing.

The factual disputes and Plascon-Evans

[31] The respondents contend that the Court granted final relief despite genuine disputes of fact and failed properly to apply *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁴ As stated in paragraph 47 of the main judgment, it was unnecessary to determine every factual dispute in order to decide the application.

[32] The Court relied upon the facts stated by Ovex which were admitted or could not genuinely be disputed, read with the respondents' own version. It was not disputed that the first respondent had enjoyed access to information of a highly confidential nature. The respondents' case was principally that he had neither misused nor retained that information.

[33] Their denial of actual misuse did not answer Ovex's case. In proceedings to enforce a restraint directed at confidential information, an employer need not invariably prove that the former employee has already used or disclosed the information. It is sufficient to establish the protectable information, the employee's access to it and a reasonable possibility that the information could be used to the employer's prejudice.

[34] That principle is recognised in *IIR South Africa BV (Incorporated in the Netherlands) t/a Institute for International Research v Hall (aka Baghas)*.⁵ The Court applied the same principle in paragraph 37 of the main judgment.

[35] The forensic report relied upon by the first respondent did not conclusively dispel Ovex's case. It addressed aspects of actual copying or use. It

⁴ *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984)

⁵ *I I R South Africa BV t/a The Institute for International Research v Hall and Another* (14293/03) [2003] ZAGPHC 7 (13 June 2003)

did not eliminate the common-cause access to the information or the prospect that confidential information within the first respondent's knowledge or possession could be used in the competing enterprises.

[36] The second respondent's position had to be evaluated in light of his involvement with the first respondent as co-founder of the Lume entities and his own prior access to Ovex's business and information.

[37] The Court did not reverse the onus in paragraph 78 of the main judgment. It recognised the practical difficulty that Ovex could not identify with certainty every document or item of information which the respondents might have retained.

[38] The delivery-up order catered for that uncertainty without requiring the respondents to prove a negative. A respondent who retained no confidential information could comply by stating that fact on oath.

[39] The respondents have not identified a material factual dispute which, properly resolved under *Plascon-Evans*, would displace the cumulative foundation of the order.

[40] No reasonable prospect of success arises from the factual-dispute or onus grounds.

The requirements for final interdictory relief

[41] The respondents contend that Ovex had another satisfactory remedy because it could institute a damages claim.

[42] A possible future claim for monetary compensation is not necessarily an adequate alternative to the enforcement of a restraint or confidentiality covenant. Once confidential information has been disclosed or used to target customers or commercial opportunities, the resulting harm may be difficult to reverse or quantify.

[43] The purpose of the interdict was preventative. Damages after the event would not provide Ovex with equivalent protection.

[44] Final interdictory relief may be granted where an infringement has occurred or is reasonably apprehended. It is not necessary for an applicant to wait until the threatened harm has materialised.

[45] Another court is unlikely to find that a damages claim provided a satisfactory alternative remedy in these circumstances.

Circumstances surrounding termination and alleged compensation

[46] The first and second respondents relied upon the circumstances in which their employment terminated and alleged unfulfilled promises concerning financial compensation or the purchase of their shares.

[47] Those matters were considered in paragraphs 25 to 27 of the main judgment. They did not constitute defences to the enforcement of the independent restraint and confidentiality covenants.

[48] A dispute concerning the termination of employment or compensation does not, without more, extinguish contractual obligations expressly intended to survive termination.

[49] The respondents themselves accept that their confidentiality obligations survived termination. Their complaint therefore concerns the permissible scope of enforcement, not the continued existence of those obligations.

The restraint enquiry

[50] The respondents contend that the Court failed to apply the established test for the enforceability of a restraint of trade.

[51] The legal principles in *Basson v Chilwan*⁶ and *Reddy v Siemens Telecommunications (Pty) Ltd*⁷ were addressed in paragraphs 33 and 34 of the main judgment.

[52] The Court thereafter considered:

- (a) whether Ovex had an interest deserving protection;
- (b) whether that interest was threatened by the respondents;
- (c) how the respective interests of the parties weighed against one another;
and
- (d) whether enforcement would be contrary to public policy.

[53] The Court found that Ovex had established a protectable interest in confidential information and that the first and second respondents' access to that information, together with their involvement in the new enterprises, created a threat to it.

⁶ *Basson v Chilwan and Others* (332/1991) [1993] ZASCA 61; 1993 (3) SA 742 (AD); [1993] 2 All SA 373 (A) (17 May 1993)

⁷ *Reddy v Siemens Telecommunications (Pty) Ltd* (251/06) [2006] ZASCA 135; 2007 (2) SA 486 (SCA); (2007) 28 ILJ 317 (SCA) (30 November 2006)

[54] The respondents' criticism is therefore not that the restraint enquiry was omitted, but that its outcome was unfavourable to them. That disagreement does not demonstrate an appealable misdirection.

Delay

[55] The respondents relied upon Ovex's alleged delay in enforcing the restraints as evidence that no protectable interest was genuinely threatened or that Ovex's true purpose was to suppress competition.

[56] The delay argument was considered in paragraphs 20 and 21 of the main judgment. The Court accepted that Ovex first obtained evidence in April 2026 concerning the public launch and activities of Lume Trade and Lumepay and instituted proceedings thereafter.

[57] Ovex could not reasonably be expected to enforce the restraints before it possessed sufficient evidence of conduct threatening its contractual and commercial interests.

[58] Once the chronology accepted in the main judgment is applied, the alleged delay does not support an inference of an ulterior motive and does not render enforcement unreasonable.

Confidential information as the primary protectable interest

[59] The respondents submit that Ovex's information was insufficiently identified and included material in the public domain or information forming part of their general skill and experience.

[60] Information does not cease to be confidential merely because individual components may be publicly available. A compilation of information, its organisation and the commercial insight it affords may possess a confidential quality and value not present in its individual components.

[61] The information identified in the judgment included customer information, account balances, transaction activity, treasury positions, custody infrastructure, trading accounts, SQL exports and downloaded corporate records.

[62] That information extended beyond the first and second respondents' general skill and experience. It concerned Ovex's internal operations and commercial position and was capable of benefiting a competitor.

[63] The Court did not find that every item of information known to the respondents was confidential. It identified particular categories of internal commercial and technical information falling within the contractual confidentiality clauses.

[64] The submission that the confidentiality order was impermissibly general or unsupported by a protectable interest does not carry a reasonable prospect of success.

Customer connections

[65] The respondents submit that the Court conflated confidential information with customer connections and found a protectable customer connection without evidence that either former employee could carry Ovex's customers away in his pocket.

[66] Properly understood, the judgment did not find that Ovex had proved the conventional form of close personal customer connection described in *Rawlins v Caravantruck (Pty) Ltd*.

[67] Ovex's principal case was not that the respondents had established personal influence over particular customers. Its case was that the respondents possessed confidential customer information, including customer identities, account balances, transaction activity and related commercial information, which could enable the new businesses to target Ovex's customers.

[68] The primary protectable interest was therefore confidential information. Any customer-connection interest was secondary.

[69] Ovex was required to establish at least one recognised protectable interest. Its failure, if any, to establish the conventional personal-customer connection would not displace the separate finding that its confidential information constituted a protectable interest.

[70] The proposed appeal would therefore not succeed merely because an appellate court might express the customer-connection aspect differently.

The delivery-up order

[71] The respondents contend that there was no proof that they retained confidential information and that the delivery-up order was vague and incapable of proper compliance.

[72] Properly understood, paragraphs 78 and 79 of the main judgment explain that the delivery-up order was not punitive. It was intended to ensure that

confidential information to which the first and second respondents had enjoyed access was not retained or used after termination.

[73] Ovex could not know with certainty what information had been copied or retained. That uncertainty was not a reason to deny effective relief where access to and possession of confidential information had been established.

[74] Paragraph 4 of the order identified the types of information concerned. The order did not require the respondents to surrender information which was public, belonged to them personally or constituted their general knowledge and experience.

[75] If the respondents possessed no responsive information, they were required only to say so on oath. That does not amount to requiring them to prove a negative or reversing the onus.

[76] The delivery-up ground does not afford the proposed appeal a reasonable prospect of success.

Non-solicitation

[77] The respondents submit that there was no evidence that the first or second respondent solicited Ovex's employees and that the approach made by an independent recruiter was insufficient.

[78] The approach was common cause and had to be considered in its factual context, including the formation of the competing businesses and the purpose of the contractual non-solicitation clause.

[79] A non-solicitation clause is preventative rather than punitive. Ovex was not obliged to wait until an employee had terminated employment and joined a competing enterprise before seeking to enforce the covenant.

[80] The Court considered the relevant evidence cumulatively in paragraphs 70 and 71 of the main judgment. The respondents have not demonstrated a reasonable prospect that another court would reject the inference drawn from that evidence.

The first respondent's explanation and forensic report

[81] The first respondent relied upon his explanation for information removed from his laptop and upon an independent forensic report.

[82] The material issue was not confined to the dates upon which individual documents were downloaded or deleted. It was common cause that the first respondent had access to and possession of Ovex's information and was bound not to disclose or use it.

[83] Ovex explained the confidential character of the relevant information in its founding papers. It also explained that the proceedings were instituted after the discoveries made in April 2026 concerning the launch and activities of the Lume entities.

[84] The forensic report was addressed in reply because it had been introduced by the respondents. It did not eliminate the first respondent's access to confidential information or establish that none could be retained or used.

[85] The weight attached to the report does not provide a reasonable prospect of appellate interference.

The second respondent

[86] The second respondent submits that Ovex made no case that he had breached or threatened to breach his confidentiality undertaking.

[87] Properly understood, the judgment found that the first respondent in particular had access to Ovex's confidential information. It did not, however, follow that the second respondent's position was legally or factually irrelevant.

[88] The second respondent had been employed by Ovex and was subject to his own contractual obligations. He aligned himself with the first respondent in establishing the Lume entities and acted with him in advancing those businesses.

[89] Their relationship and shared commercial undertaking were relevant in determining whether Ovex's confidential information could be used for the benefit of the new enterprises.

[90] The case was not based solely upon association. It included the second respondent's own obligations, access and participation in the businesses which posed the apprehended threat.

[91] Another court would not reasonably conclude that no case was established against the second respondent.

Unlawful competition and the third and fourth respondents

[92] The third and fourth respondents emphasise that they were not parties to the employment contracts and could not be bound by the restraints undertaken by the first and second respondents.

[93] The Court did not treat them as contracting parties. The cause of action against them was unlawful competition through their use or likely use of confidential information obtained from Ovex's former employees.

[94] In *IIR South Africa v Hall*, the Court recognised that an interdict may be granted against a third-party competitor where it is making use of, or is likely to make use of, the former employer's confidential information or trade secrets, whether knowingly or innocently.

[95] The first respondent was the chief executive officer of Lume Trade and had enjoyed access to Ovex's confidential information. He was consequently in a position to use that information to advance Lume Trade.

[96] The relationship between the respondents, their involvement in the Lume entities, the nature of the competing activities and the information available to the former employees supported Ovex's apprehension that its confidential information could be used by or for the benefit of those entities.

[97] The interdict against unlawful competition was based upon that reasonably apprehended use. It was not dependent upon proof that the third or fourth respondent had already exploited a particular document.

[98] The dismissal of the passing-off claim does not undermine the unlawful-competition relief. Passing off and the misuse of confidential information are distinct causes of action with different requirements.

[99] The fact that the Court rejected passing off but upheld the confidentiality-based unlawful-competition claim demonstrates that it distinguished between the separate causes of action.

[100] The third and fourth respondents have not established a reasonable prospect that an appellate court would find that no proper case was made out against them.

Costs in the main application

[101] The respondents challenge the order that they pay the costs of the main application jointly and severally.

[102] A costs order involves the exercise of a judicial discretion. An appellate court will not readily interfere unless the discretion was not exercised judicially, was influenced by a material misdirection or produced a result no reasonable court could have reached.

[103] The reasons for the costs order were given in paragraph 84 of the main judgment. Although the causes of action were not identical, the respondents

opposed the application together, relied upon substantially overlapping evidence and made common cause on the principal issues.

[104] Ovex achieved substantial success. The fact that it did not succeed on passing off did not require a mathematical apportionment of costs.

[105] The respondents have not demonstrated the exceptional circumstances required for appellate interference with the costs order.

The Varejes judgment

[106] The respondents rely upon the judgment of Holderness J in *Ovex (Pty) Ltd v Luc Varejes and Lume Trade (Pty) Ltd*⁸ (“The Varajes judgment”) as an allegedly conflicting judgment and, consequently, a compelling reason for an appeal.

[107] The Varajes judgment was considered and distinguished in paragraphs 54 to 58 of the main judgment.

[108] There are superficial similarities between the two matters. Ovex was the applicant in both; Lume Trade was involved; similar restraint and confidentiality clauses were considered; and portions of the general commercial background overlapped.

[109] Those similarities do not establish conflicting judgments. Restraint and confidentiality disputes are fact-sensitive. The role of each employee, the information to which that employee had access, the manner of departure and the subsequent conduct must be considered.

⁸ OVEX (Pty) Ltd v Varajes and Another (Western Cape Division, Cape Town) case no 2026-124280 [18 June 2026]unreported

[110] Varejes did not leave Ovex to establish a competing business. He took up a regulatory role at Lume Trade. Although he had access to operational information as Ovex's chief operating officer, the evidence did not establish conduct comparable to that of the respondents in the present matter.

[111] By contrast, the first and second respondents left Ovex and co-founded the Lume entities. The evidence concerned their deletion or downloading of Ovex information and, in the case advanced by Ovex, post-termination access to its Fireblocks trading accounts. The character of the information and the conduct relied upon differed materially.

[112] The respondents seek to transpose findings made on the evidence in Varejes—concerning the absence of proof of use, the age of information and attenuation of any threat—to the materially different evidence in this matter.

[113] A different outcome on different evidence does not amount to a conflicting judgment for purposes of s 17(1)(a)(ii). The respondents have not identified an inconsistent rule of law adopted in the two judgments.

[114] Nor do superficial similarities concerning the parties, the contractual wording, legal representation or timing give rise to *lis alibi pendens* or issue estoppel. The material parties, evidence and issues were not identical.

[115] The Varejes judgment consequently does not constitute a compelling reason why the proposed appeal should be heard.

Constitutional and public-interest grounds

[116] The respondents invoke the rights to dignity, freedom of trade and a fair hearing in ss 10, 22 and 34 of the Constitution. They also rely upon alleged reputational harm and the novelty of the industry.

[117] The fact that restraint litigation affects commercial freedom and may carry reputational consequences does not, without more, create a constitutional issue requiring appellate determination.

[118] The respondents were represented, filed extensive evidence and argument and were afforded a full opportunity to meet Ovex's case. Their disagreement with the Court's conclusions does not establish an infringement of s 34.

[119] Nor does the relatively novel commercial setting render the governing law unsettled. The application was decided under established principles governing contract, restraint of trade, confidential information, unlawful competition and final interdictory relief.

[120] No question of public importance or constitutional principle has been identified which independently compels an appeal.

Conclusion

[121] I have reconsidered the judgment dispassionately and from an objective standpoint. The issue is not whether I remain persuaded of its correctness, but

whether any respondent has demonstrated a sound and rational basis upon which another court could reasonably reach a different result.

[122] Having considered the position of each respondent separately and objectively, I am not persuaded that any of the proposed appeals would enjoy a reasonable prospect of success. Nor has any respondent established another compelling reason why an appeal should be heard. The applications for leave to appeal must accordingly be refused.

The s 18 application

[123] Ovex also sought an order under s 18(1), read with s 18(3), of the Superior Courts Act directing that the order in the main judgment operate and be executed pending the determination of any application for leave to appeal or appeal.

[124] The respondents submitted that the s 18 application should be considered only if leave to appeal were granted. Ovex did not persist in seeking determination of that application in the event that leave was refused by this Court.

[125] Since the applications for leave to appeal fall to be dismissed, and Ovex does not persist with its s 18 application at this stage, it is unnecessary to determine whether the requirements of exceptional circumstances and irreparable harm under s 18 have been established. No order will be made in that application.

Order

[126] The following order is made:

1. The first respondent's application for leave to appeal is dismissed.
2. The second respondent's application for leave to appeal is dismissed.
3. The third respondent's application for leave to appeal is dismissed.
4. The fourth respondent's application for leave to appeal is dismissed.
5. No order is made in Ovex's application under s 18(1), read with s 18(3), of the Superior Courts Act 10 of 2013.
6. The first to fourth respondents shall pay the costs of the applications for leave to appeal, including the costs of two counsel, on Scale C.

M. F. ADAMS
Acting Judge of the High Court

Appearances

For applicant: A. Smalberger SC
 R. Fitzgerald

Instructed by: R. Gootkin, Werksmans Attorneys

For respondents: R. Stelzer SC

Instructed by: H. Theron, Hanekom Attorneys Inc