



(1) Reportable Yes
(2) Of interest to other Judges: No
(3) Revised
TDM 08/09/2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: 2026-178344

In the matter between:

DEPARTMENT OF CORRECTIONAL SERVICES

Applicant

and

M E KGOWE

First Respondent

A Z ZWANE

Second Respondent

I O BANDA

Third Respondent

POLICE AND PRISONS CIVIL RIGHTS UNION

Fourth Respondent

GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Fifth Respondent

Heard: 25 August 2026

Delivered: 08 September 2026

This judgment was handed down electronically by consent of the parties' representatives, circulated to them by email. The date for hand-down is deemed to be 08 September 2026.

JUDGMENT

PRINSLOO, J

Background

- [1] The Applicant employed the First to Third Respondents (employees) in various capacities, and, after an investigation, they were charged with serious misconduct related to the offender monitoring system. Following disciplinary proceedings, they were dismissed on 13 February 2024. Their internal appeals were unsuccessful, and they referred unfair dismissal disputes to the Fifth Respondent (GPSSBC) under case numbers GPBC530/2024, GPBC554/2024, and GPBC555/2024, which were subsequently consolidated.
- [2] The arbitration proceedings commenced in 2025, but before the dispute was finally determined on the merits, the Applicant's representative, Mr Mtshweni, recommended that the disputes be settled. Mr Mtshweni's supervisor approved the request for a mandate to settle on 24 March 2025. On 27 March 2025, the parties concluded a written settlement agreement providing for reinstatement and retrospective remuneration of the employees. The settlement agreement recorded that the parties agreed that it be made an arbitration award under section 142A (1) of the Labour Relations Act¹ (LRA).
- [3] The effect of the settlement agreement was that the outcome of the disciplinary proceedings was overturned, the employees were reinstated, and the Applicant had to pay them substantial back pay. This raised concerns internally, and an investigation was requested into the circumstances under which the settlement agreement was recommended, approved and concluded. There were serious questions about the possibility of impropriety, lack of oversight and the absence of proper due diligence before the settlement agreement, involving reinstatement and back pay, was concluded.
- [4] The Department approached this Court on 22 April 2026 urgently to review the settlement agreement in terms of section 158(1)(h) of the LRA. The application was heard on 9 June 2026, and judgment was handed down on 3 July 2026. The Court (per Snyman AJ) found that the decision to conclude the settlement agreement was made in an unlawful, irregular, and irrational manner, and it was set aside.

¹ Act 66 of 1995, as amended.

- [5] The Court held that the employees were not left without remedy or further recourse and their unfair dismissal dispute was remitted to the GPSSBC for arbitration. The GPSSBC was directed to set the unfair dismissal dispute down for arbitration on an expedited basis. The GPSSBC has enrolled the disputes for expedited arbitration on 4 September 2026.
- [6] The employees, however, filed an application for leave to appeal on 17 July 2026, which came to the Applicant's attention on 20 July 2026. The Applicant subsequently, on 24 July 2026, filed this application in terms of section 18 (3) of the Superior Courts Act², and the matter was enrolled for hearing on the urgent roll of 25 August 2026.
- [7] The Applicant seeks an order to the effect that the operation and execution of the judgment of 3 July 2026 (the judgment), which was the subject of the Respondents' application for leave to appeal, not be suspended pending the decision on the application for leave to appeal, any petition or further application for leave to appeal, or an appeal process arising therefrom.
- [8] The application for leave to appeal was dismissed on 25 August 2026.
- [9] The application is opposed by the First to Fourth Respondents (Respondents), who took issue with the urgency. I do not intend to set out in detail the attack on urgency, as I am of the view that this application should be heard urgently.
- [10] The event that triggered the present application was not the judgment itself, but the filing of the application for leave to appeal. Until an application for leave to appeal was delivered, the judgment remained operative, and there was no statutory suspension which the Department was required to overcome under section 18(3). The Department could therefore not competently seek an order lifting a suspension which had not yet arisen. In view of this, this Court has exercised its discretion to deal with the merits on an urgent basis.

Section 18 of the Superior Courts Act: general principles

² Act 10 of 2013

[11] The default position is that the operation and execution of a decision (other than a decision not having the effect of a final judgment) is suspended pending the outcome of an application for leave to appeal or an appeal. Section 18 of the Superior Courts Act regulates the circumstances under which a party may apply for an order that departs from the ordinary consequence of filing an application for leave to appeal³. It provides that:

‘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.
- (4) If a court orders otherwise, as contemplated in subsection (1) —
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

³ *Luxor Paints (Pty) Ltd v Lloyd and another* (2017) 38 ILJ 1149 (LC).

(iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.’

[12] The Labour Appeal Court (LAC) in *Road Traffic Management Corporation v Tasima (Pty) Ltd and others (Tasima)*⁴ considered the provisions of section 18(3) versus the common law position as follows:

‘[43] Prior to the enactment of section 18(3) of the SC Act there was no statutory provision regulating interim execution orders. In terms of the common law, the noting of an appeal automatically suspends execution of the judgment appealed against. Where the successful party wishes to execute upon the judgment, it is required to make an application for leave to do so and bears the onus to show why the judgment should be executed pending the appeal, subject, in appropriate cases to the furnishing of security *de restituendo*. The court had a wide discretion to grant or refuse leave to execute and was required to determine what was just and equitable in all the circumstances having regard to the potentiality of irreparable harm or prejudice to the parties, the balance of convenience and the prospects of success on appeal. At common law, an interim execution order is itself an interlocutory order and was generally not appealable on the grounds that such an order may be varied by the court granting it in the light of changed circumstances.

[44] Section 18 of the SC Act has significantly altered the common law in more than one respect. The court no longer has a wide discretion to do what is just and equitable or to rely exclusively on the balance of convenience or the appeal’s prospects of success. Now, before a court may order interim execution, the applicant for that relief must prove three things on a balance of probabilities. Firstly, the applicant must show that exceptional circumstances exist (perhaps including the

⁴ [2019] 5 BLLR 434 (LAC) at paras 43 and 44.

balance of convenience and prospects of success) justifying the reversal of the ordinary principle of suspension pending appeal. Secondly, it must prove on the probabilities that it will suffer irreparable harm if interim execution is not ordered. Thirdly, it must prove that the other party will not suffer irreparable harm if an order of interim execution is granted. Should the applicant fail to discharge its onus in relation to any one of these requirements, the court may not grant an interim execution order. Additionally, in terms of section 18(4) of the SC Act, where an interim execution order is granted, the aggrieved party has an automatic right of appeal against that order to the next highest court and the order will be automatically suspended, pending the outcome of such appeal.'

[13] In *Incubeta Holdings (Pty) Ltd and another v Ellis and another*⁵ (*Incubeta*) the Court held that:

'[16] It seems to me that there is indeed a new dimension introduced to the test by the provisions of Section 18. The test is twofold; the requirements are:

- First, whether or not 'exceptional circumstances' exist, and
- Second, proof on a balance of probabilities by the applicant of-
 - The presence of irreparable harm to the applicant/victor, who wants to put into operation and execute the order, and,
 - The absence of irreparable harm to the respondent/loser, who seeks leave to appeal.'

[14] In *University of the Free State v Afriforum and another (Afriforum)*⁶ the Supreme Court of Appeal (SCA) held:

'[9] What is immediately discernible upon perusing sections 18(1) and (3), is that the Legislature has proceeded from the well-established

⁵ 2014 (3) SA 189 (GJ).

⁶ [2017] 1 All SA 79 (SCA) at paras 9 and 10.

premise of the common law that the granting of relief of this nature constitutes an extraordinary deviation from the norm that, pending an appeal, a judgment and its attendant orders are suspended. Section 18(1) thus states that an order implementing a judgment pending appeal shall only be granted “under exceptional circumstances”. The exceptionality of an order to this effect is underscored by section 18(4), which provides that a court granting the order must immediately record its reasons; that the aggrieved party has an automatic right of appeal; that the appeal must be dealt with as a matter of extreme urgency and that pending the outcome of the appeal the order is automatically suspended.

[10] It is further apparent that the requirements introduced by sections 18(1) and (3) are more onerous than those of the common law. Apart from the requirement of “exceptional circumstances” in section 18(1), section 18(3) requires the applicant “in addition” to prove on a balance of probabilities that he or she “will” suffer irreparable harm if the order is not made, and that the other party “will not” suffer irreparable harm if the order is made. The application of rule 49(11) required a weighing-up of the potentiality of irreparable harm or prejudice being sustained by the respective parties and where there was a potentiality of harm or prejudice to both of the parties, a weighing-up of the balance of hardship or convenience, as the case may be, was required. Section 18(3), however, has introduced a higher threshold, namely proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted and conversely that the respondent will not, if the order is granted.’

[15] The effect, in short, is this: the Superior Courts Act limits a court's discretion to grant interim execution relief, and section 18(3) introduces a higher threshold and more onerous requirements. An applicant must prove three distinct requirements on a balance of probabilities:

15.1 Exceptional circumstances;

15.2 That it will suffer irreparable harm if interim execution is not ordered;

15.3 That the other party will not suffer irreparable harm if an order of interim execution is granted.

[16] The provisions of section 18 of the Superior Courts Act introduced a twofold test, which calls for an inquiry first as to whether ‘exceptional circumstances’ exist and second whether the applicant has shown the presence and the absence of irreparable harm on a balance of probabilities.

[17] Exceptional circumstances and the existence or absence of irreparable harm are distinct requirements that must all be satisfied in order for an applicant to succeed with an application in terms of section 18(3). If an applicant fails to prove any one of the requirements, the application must fail.

[18] In the context of the requirements of section 18(3), this application is to be decided.

Exceptional circumstances and irreparable harm:

[19] The first issue to be decided is whether there are exceptional circumstances.

[20] The question as to what would constitute ‘exceptional circumstances’ had been considered in *Incubeta* and the Court held that exceptionality must be fact-specific and circumstances which are or may be ‘exceptional’ must be derived from the actual predicaments in which the given litigants find themselves. The Court held that:

‘In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant a consideration of putting the order into operation. The forfeiture of substantive relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of ‘exceptional circumstances.’⁷

[21] *Incubeta* has been quoted with approval by the SCA, and it is clear that the determination of whether exceptional circumstances exist is a fact-specific

⁷ Id fn 5 at para 27.

inquiry, and each case has to be decided on its own facts, as there is no definition of exceptional circumstances. It was held that:

[18] Significantly, although it is accepted in that judgment that what is cognisable as 'exceptional circumstances' may be indefinable and difficult to articulate, the conclusion that such circumstances exist in a given case, is not a product of a discretion, but a finding of fact.⁸

[22] In *Afriforum*, it was confirmed that whether or not "exceptional circumstances" for the purposes of section 18(1) are present must necessarily depend on the peculiar facts of each case. The LAC confirmed in *Tasima* that the applicant must show that exceptional circumstances exist, including the balance of convenience and prospects of success, justifying the reversal of the ordinary principle of suspension pending appeal.

[23] The question is thus whether the circumstances *in casu* are truly exceptional and whether an extraordinary deviation from the norm is justified. This question is to be answered by considering the facts and the circumstances relied upon by the Applicant.

[24] The prospects of success in the appeal are a relevant factor in the consideration of the application, as was held in *Minister of Social Development, Western Cape and others v Justice Alliance of South Africa and another*⁹ where the court said that:

'It follows that the less sanguine a court seized of an application in terms of section 18(3) is about the prospects of the judgment at first instance being upheld on appeal, the less inclined it will be to grant the exceptional remedy of execution of that judgment pending the appeal. The same quite obviously applies in respect of a court dealing with an appeal against an order granted in terms of section 18(3). The position is very much akin to that which pertains when interim interdictory relief pending a judicial review is being considered.'

[25] In *Afriforum*, the SCA also confirmed that the prospect of success on appeal is a valid consideration when determining whether exceptional circumstances

⁸ Id fn 5 at para 18.

⁹ [2016] JOL 35612 (WCC) at para 27.

have been established by an applicant seeking leave to execute a pending appeal.

- [26] It is evident that, in the papers before me, the issues of exceptional circumstances and irreparable harm are intertwined and that they overlap.

Analysis

- [27] The judgment reviewed and set aside the Applicant's antecedent decision to conclude the settlement agreement with the employees, set aside the settlement agreement and the section 142A award, and restored the unfair dismissal disputes to the GPSSBC for determination on their merits.
- [28] The Applicant's case is that as an organ of state, the Department is constitutionally obliged to exercise public power lawfully, accountably and within the powers conferred upon it.¹⁰ Unless this Court orders otherwise, the Department must continue to give practical effect to the settlement agreement and the consequential section 142A award, which the judgment found unlawful and set aside, while the merits of the underlying disputes remain capable of prompt determination as early as 4 September 2026.
- [29] The suspension of the judgment does not merely delay ordinary consequential relief, but rather preserves, for the duration of the appeal process, the practical consequences of a public sector settlement agreement and arbitration award, which this Court has found unlawful and set aside. The Applicant submitted that the consequence will not merely be the payment of salaries but will also be the continued operation of an employment status created by an unlawful settlement and the Department's exposure to financial, operational and institutional prejudice.
- [30] The Applicant submitted that the remedy crafted by the judgment is practical, available and capable of immediate implementation. The employees are not left without a remedy – they have an available, expeditious and adequate remedy, which shows that they will not suffer irreparable harm. In fact, the

¹⁰ See: *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (2014) 35 ILJ 613 (CC) at para 35.

judgment placed the employees back in the position they were in prior to the conclusion of the unlawful settlement agreement. Their unfair dismissal dispute can be arbitrated expeditiously, and if they successfully challenge their dismissal, appropriate relief, including retrospective reinstatement, could be granted to them.

- [31] The Applicant will be prejudiced if the judgment is suspended because the appeal process will take much longer than the expedited arbitration process and the unlawful settlement agreement will continue to regulate the parties' relationship. The consequence is that the application for leave to appeal does not merely preserve the position pending appeal; it will also prevent the prompt determination of the underlying unfair dismissal dispute and prolong the practical effect of the settlement agreement and the arbitration award. The Department's prejudice is not confined to the further payment of salaries – the settlement has already resulted in retrospective payments totalling more than R1,2 million, but the Department will be further exposed to pay remuneration, benefits and leave, flowing from the unlawful settlement agreement. The subsequent recovery of such amounts will be uncertain, practically difficult and likely to generate further litigation. The financial consequences have a public finance dimension and implications under the Public Finance Management Act¹¹.
- [32] On the other hand, the Respondents' case is that the settlement agreement which forms the subject matter of the dispute was concluded on 27 March 2025, the Department became aware of the alleged irregularity by 12 May 2025, and a review application to set aside the settlement agreement was only filed in April 2026. Throughout the entire period, the Department implemented the settlement; it reinstated the employees, restored them to the payroll, made payments to them, and continued to regulate their employment. The continuation of the employment relationship does not constitute irreparable harm, as the Department's lackadaisical approach to setting the settlement agreement aside demonstrates that the position was tolerable and manageable.

¹¹ Act 1 of 1999.

- [33] The Respondents submitted that the fact that the Applicant must continue to give effect to a settlement agreement that was found to be unlawful is not an exceptional circumstance, nor is the financial consequence of salary. When the employees tender their services, the Department can assign them controlled duties; therefore, this constitutes remuneration for productive work. Remuneration '*lawfully earned for services rendered does not constitute fruitless expenditure*' the Respondents argue. The Department has been paying the employees' salaries since May 2025 and continues to do so.
- [34] The Respondents argue that the Applicant's harm is purely pecuniary and therefore it is not irreparable. Financial harm can be quantified, and if the appeal ultimately fails, it is capable of being recovered by the ordinary means available to any creditor. The employees, by contrast, will be removed from their positions, denied access to their workplaces, and left without income or employment, while the underlying disputes remain unresolved. The employees do not have the means to absorb such an income-free period. Stripping them of their security of income and employment, pending the appeal, would be devastating.
- [35] Did the Applicant cross the threshold of exceptional circumstances? In my view, it did.
- [36] Exceptional circumstances do not arise merely because the Applicant is an organ of state or a public employer, or merely because public funds are implicated, or merely because it succeeded in the underlying review. It is also not exceptional for a public employer, during a *bona fide* appeal, to await the outcome of the appeal.
- [37] However, the facts of this case and the existence of 'exceptional circumstances' must be considered within the context that the effect of the judgment is that the settlement agreement (and the section 142A award) was declared unlawful, irregular and irrational and it was set aside. It no longer constitutes a lawful basis for the reinstatement or continued employment of the employees.

- [38] The Applicant is not an ordinary private litigant or private sector employer seeking release from an unfavourable bargain. It is an organ of State, and as such subject to sections 1(c), 2, 195 and 237 of the Constitution of the Republic of South Africa (the Constitution). The rule of law requires public power to be exercised lawfully and within the limits of the power conferred. Conduct inconsistent with the Constitution is invalid. Section 195 of the Constitution requires accountable public administration, a high standard of professional ethics and the efficient, economic and effective use of resources.
- [39] In *Khumalo v Member of the Executive Council for Education: Kwazulu-Natal*¹² (*Khumalo*) the Constitutional Court dealt with the duties of public functionaries and held that the rule of law is a founding value of our constitutional democracy and that it is the duty of the courts to insist that the state, in all its dealings, operates within the confines of the law and, in so doing, remains accountable to those on whose behalf it exercises power. Reference was made to section 195 of the Constitution, which compelled the MEC, in the public interest, to avoid and eliminate illegalities in public administration, and the fact that the MEC was not only entitled, but also duty-bound to set aside irregular administrative acts. It was held that:

[35] Section 195 provides for a number of important values to guide decision-makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1)(f) and (g) and the requirement of a high standard of professional ethics in section 195(1)(a). Read in the light of the founding value of the rule of law in section 1(c) of the Constitution, these provisions found not only standing in a public functionary who seeks to review through a court process a decision of its own department, but indeed they found an obligation to act to correct the

¹² (2014) 35 ILJ 613 (CC).

unlawfulness, within the boundaries of the law and the interests of justice.

[36] Public functionaries, as the arms of the state, are further vested with the responsibility, in terms of section 7(2) of the Constitution, to “respect, protect, promote and fulfil the rights in the Bill of Rights.” As bearers of this duty, and in performing their functions in the public interest, public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it. This is the responsibility carried by those in the public sector as part of the privilege of serving the citizenry who invest their trust and taxes in the public administration.’¹³

[40] The Applicant’s actions in seeking to review the settlement agreement were an attempt to rectify irregularities alleged to have been part of the settlement agreement’s conclusion, which was found to be unlawful, irrational, and irregular. This was part of the Applicant’s effort to fulfill its constitutional and statutory obligations to ensure lawfulness, accountability and transparency.

[41] *In casu*, the fact that the Applicant must continue to give effect to a settlement agreement found to be unlawful is an exceptional circumstance.

[42] The second leg of the inquiry is ‘irreparable harm’.

[43] The employees will no doubt suffer harm if the judgment is suspended pending appeal. The question is, however, whether such harm is irreparable, considering the harm the Applicant will suffer if the operation of the judgment is suspended.

[44] In my view, the Department is in an untenable position, which constitutes irreparable harm that cannot be undone later. Pending the appeal, the Department will continue to implement an unlawful settlement agreement, thereby incurring further financial and institutional prejudice.

[45] The Respondent submitted that the Applicant’s prejudice is purely pecuniary, and therefore it is not irreparable, as financial harm can be quantified and

¹³ Ibid at paras 35 and 36.

recovered by the ordinary means available to any creditor. Financial prejudice is indeed part of the Applicant's prejudice; it is, however, not the only prejudice. The Applicant's prejudice is financial, institutional, operational and constitutional.

[46] In view of the facts before me, it is unlikely that the financial prejudice, as alleged by the Applicant, is prejudice that would or could be repaired in due course, should the appeal ultimately fail. The employees, by their own account, do not have the means or 'budget' to absorb an income-free period. This raises the question of how they would afford to compensate the Applicant for the financial harm suffered should the appeal fail. The subsequent recovery of the Applicant's financial harm, even if it can be quantified and recovered by ordinary means, will be uncertain, practically difficult and likely to generate further litigation.

[47] The obvious and overriding prejudice remains that the Applicant will be forced to give effect to a settlement agreement that was found to be unlawful. The unlawful settlement agreement will continue to regulate the parties' relationship. The Respondents' case is that if they tender their services, the Department can assign them controlled duties and that the payments due to them will constitute remuneration '*lawfully earned for services rendered.*' The difficulty is that the settlement agreement, which formed the basis for their reinstatement, was declared unlawful and set aside. There can be no question of 'lawful' employment or remuneration 'lawfully earned'. This is not merely an accounting consequence. It requires an organ of state to continue administering an employment arrangement pursuant to an agreement which has been judicially found to have been concluded unlawfully, irrationally and without compliance with the applicable delegation framework.

[48] Even if some amount were ultimately recoverable, financial recovery would address only the monetary component. It would not reverse the continued administration of the unlawful arrangement, restore the lawful exercise of public power during the intervening period or remedy the institutional consequences which had already arisen. If the appeal process is ultimately unsuccessful, a later dismissal of the appeal cannot retrospectively restore

lawful public administration during the intervening period, nor can a later order reverse the period during which public power and public resources were administered pursuant to instruments already declared unlawful. By then, that legality and institutional harm will have occurred.

- [49] The fact that the Department has been paying the employees' salaries since May 2025 and has continued to do so is of no moment. Prior to the judgment, the Department employed and remunerated the employees in terms of the settlement agreement. That was the reality of the settlement agreement. The position changed in July 2026, when the judgment declared the settlement agreement unlawful. The agreement required the Respondents to employ and remunerate the employees before the judgment, but that obligation no longer exists.
- [50] The Respondents' harm, on the other hand, is not irreparable. The judgment crafted a practical, readily available, and immediately implementable remedy, and the employees are not left without a remedy. The unfair dismissal dispute can be arbitrated expeditiously, and if they successfully challenge their dismissal, the employees could be granted appropriate relief, including retrospective reinstatement with the necessary back pay.
- [51] The employees will not suffer irreparable harm if the judgment remains in effect pending the appeal. Their unfair dismissal dispute remains alive - the judgment did not deprive them of their remedies, and their unfair dismissal dispute can be decided expeditiously, with the possibility of appropriate relief, should they succeed. Even if the employees elect not to proceed with arbitration expeditiously, as per the judgment, and instead wait for the ultimate outcome of the appeal, any financial prejudice they may suffer can be remedied by either the arbitrator, if their appeal fails and their dismissals are ultimately found to have been unfair, or the LAC if their appeal succeeds.
- [52] Prospects of success are to be considered as a factor in deciding whether or not to grant the exceptional remedy of execution of a judgment pending appeal. In my view, a court seized of a section 18(3) application should be

slow to reach a concluded view on the prospects of success. This is not a deciding factor *in casu*.

- [53] A section 18 order regulates the interim position only. It does not determine the merits of the application for leave to appeal, restrict the grounds upon which an appeal may be pursued or prevent an appellate court from granting effective relief. Proceedings under sections 18(3) and 18(4) are *sui generis* and substantially separate from the merits of the principal appeal. Nothing decided in the section 18 proceedings determines what may ultimately happen in the appeal on the merits.
- [54] In short, a section 18 order is interlocutory and temporary. It does not dispose of the merits, impede the appeal or determine the appellate proceedings. Its purpose is to regulate the interim position until the merits are finally decided. The Respondents' appeal will remain intact and will be determined independently of the interim enforcement order.
- [55] It follows that all the requirements under sections 18(1) and (3) of the Superior Courts Act have been satisfied.

Costs

- [56] The last issue to be decided is the issue of costs.
- [57] Insofar as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.
- [58] In my view, this is a matter where the interests of justice and fairness will be best served by making no order as to costs.
- [59] In the premises, I make an order as follows:

Order

1. The Labour Court judgment and order delivered on 3 July 2026 under case number 2026-092263 operates and is extant pending the final determination of the application for leave to appeal, any petition or

further application for leave to appeal, any appeal or further appeal process arising from the said judgment and order;

2. There is no order as to costs.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate S Bismilla

Instructed by: State Attorney, Pretoria

For the First to Fourth Respondents: Advocate A L Cook

Instructed by: Ngada Attorneys

LABOUR COURT