THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: 2026-046067

In the matter between:

ETIENNE JORDAAN **Applicant**

and

RCL FOODS CONSUMER (PTY) LTD **Respondent**

Heard: **5 March 2026**

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 13 March 2026.

JUDGMENT

DE KOCK, AJ

Introduction

[1] In this application, the Applicant seeks an order placing the judgment of Bosch AJ, delivered on 29 September 2025 under case number 2025-048772 (the review judgment), into operation and execution notwithstanding the Respondent's pending Petition for Leave to Appeal to the Labour Appeal Court, filed on 26 February 2026. The application is brought in terms of section 18(3) of the Superior Courts Act 10 of 2013 (the Act).[1]

[2] The Respondent is RCL Foods Consumer (Pty) Ltd (formerly Rainbow Farms (Pty) Ltd), a company listed on the Johannesburg Stock Exchange. It opposes the application.

[3] Reduced to its most elemental form, this application concerns whether the rule of law permits a successful litigant, brought to the verge of financial ruin by thirteen years of sustained litigation, to execute on a judgment that has survived successive rounds of review and opposition, while awaiting the outcome of what amounts to a fourth challenge by a wealthy corporate adversary. The answer to that question is found in the proper application of section 18(3) of the Act.

[4] For the reasons that follow, the application succeeds.

Background

[5] The facts underlying this dispute are extensive and are set out fully in the papers. For present purposes, the following salient chronology suffices.

[1] Act 10 of 2013. Section 18(1) provides: "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."

[6] The Applicant was employed as a Maintenance Fitter at the Respondent's (then Rainbow Farms') processing plant in Worcester. On 7 January 2013, he was dismissed for dishonesty arising from alleged clocking offences.

[7] On 17 June 2013, a CCMA commissioner found the dismissal to be unfair and ordered reinstatement with effect from the date of dismissal, together with backpay calculated at the Applicant's salary of R20,012.54 per month, amounting to R120,075.24.

[8] The Applicant reported for duty on 8 July 2013. He was sent home. The Respondent launched a review application in the Labour Court, Durban (case C667/16), and obtained a stay of the writ of execution.

[9] On 5 December 2018, the Labour Court (Steenkamp J) dismissed the review application. The Respondent applied for leave to appeal. That application was subsequently abandoned. The Respondent then launched a declaratory application seeking to set off against the outstanding backpay the approximate sum of R2.96 million which the Applicant had earned in alternative employment during the period of the Respondent's non-compliance with the reinstatement order.

[10] On 1 April 2020, more than seven years after the Applicant was first ordered to be reinstated, the parties reached an agreement and the Applicant was reinstated. The parties simultaneously agreed to refer the quantification of the backpay entitlement for the period 7 January 2013 to 31 March 2020 to private arbitration before Adv Watt-Pringle SC. The issues included the deduction of outside earnings, the applicability of the *in duplum* rule, and whether the reinstatement entitlement was limited to basic salary or extended to overtime, nightshift and standby allowances.

[11] On 12 August 2023, the Applicant was suspended. On 18 December 2023, he was dismissed for a second time, charged with gross misconduct arising from alleged falsification of T-cards in relation to safety valve maintenance during

2023. The Applicant did not challenge the second dismissal. He subsequently relocated to Ireland, where he presently resides.

[12] Arbitrator Watt-Pringle SC issued two awards in the Applicant's favour on 29 March and 14 May 2024 respectively. The Respondent reviewed those awards. By consent, the Watt-Pringle awards were remitted and a new arbitration was held before Arbitrator Buirski from 1 September to 8 October 2024.

[13] On 27 February 2025, Arbitrator Buirski issued an award ordering the Respondent to pay the Applicant R3,190,807.73 together with interest and costs. On 31 March 2025, Buirski issued an explanatory and interpretive note, clarifying that the original CCMA award's calculation of backpay on basic salary did not constrain the scope of the reinstatement entitlement as regards the overtime, nightshift and standby allowances payable over the seven-year reinstatement period.

[14] On 8 April 2025, the Respondent launched a review application in this Court (case 2025-048772) seeking to set aside the Buirski awards. On 29 September 2025, Bosch AJ dismissed the review. The Respondent applied for leave to appeal. On 6 February 2026, Bosch AJ refused leave to appeal, with no order as to costs.

[15] On 13 February 2026, the Applicant's attorney instructed the Sheriff to proceed with a sale of execution against the Respondent's immovable property. The Respondent's attorneys immediately wrote requesting an undertaking to halt execution and warning that a section 18(3) application would be brought in the event that execution proceeded. The Applicant's attorney responded on 16 February 2026 confirming, correctly, that the judgment was automatically suspended by operation of section 18(1) of the Act once the Petition was filed.

[16] On 26 February 2026, the Respondent filed its Petition for Leave to Appeal to the Labour Appeal Court (LAC), thereby triggering the automatic suspension under section 18(1) of the Act. The present application was launched promptly

thereafter, with the notice of motion served on 27 February 2026 and the matter set down for hearing on 5 March 2026.

[17] By the time of the hearing on 5 March 2026, the Applicant had, on his uncontradicted evidence, incurred approximately R2.5 million in legal related costs, exhausted his pension fund, sold his vehicle, and had his wife surrender her insurance policy. His Worcester property, ERF 1[…] Worcester (Breede Valley Municipality), registered jointly in his name and that of his wife, Mrs Hermie Jordaan, carries a Standard Bank bond (B[…]) with an outstanding balance of R461,529.62. The judgment in his favour amounts to R3,190,807.73 plus interest.

[18] The central substantive question in the pending Petition is whether Arbitrator Buirski was correct that the reinstatement order entitled the Applicant to overtime, nightshift and standby allowances for the period January 2013 to March 2020, notwithstanding that the original CCMA award calculated backpay on what is alleged to be basic salary only.

[19] Following oral argument on 5 March 2026, the Court directed the Applicant's attorneys to obtain instructions as to whether a formal undertaking could be given in relation to the Worcester property as a form of security pending the Petition. The Applicant's attorneys confirmed the undertaking by letter on 5 March 2026; the Respondent's attorneys responded on 6 March 2026; and the Applicant's attorneys replied on 8 March 2026. The treatment of that correspondence is addressed below.

The *In Limine* Point

[20] The Respondent raised a preliminary point to the effect that the application is fatally defective because the Applicant's confirmatory affidavit was not commissioned before a notary public or a South African diplomatic or consular representative in Ireland, as required by Rule 63 of the Uniform Rules of Court, read with the Hague Convention on the Abolition of the Requirement of

Legalisation for Foreign Public Documents. No Apostille Certificate is attached to the confirmatory affidavit. The Respondent submits that the application is therefore hearsay and that the Applicant's attorney acts without authority.[2]

[21] The Respondent's point is not without technical foundation. Rule 63 compliance is a formal requirement that exists to provide an evidentiary guarantee that an affidavit was sworn under appropriate solemnities by the deponent identified in it.

[22] The Court has a discretion to condone non-compliance with procedural requirements where the interests of justice so require and no genuine prejudice results.[3]

[23] Several considerations weigh heavily against upholding the *in limine* point in the present matter:

23.1 The authority of Teresa Erasmus Attorneys to act on behalf of the Applicant is not genuinely in dispute. They have represented the Applicant throughout multiple rounds of proceedings in this Court, through two private arbitrations, and before the CCMA over a period of years. The suggestion that the Applicant's instruction to his long-standing attorneys is somehow unverified is wholly unpersuasive.

23.2 The Respondent has not alleged, and could not credibly allege, that the confirmatory affidavit was sworn by anyone other than the Applicant or that its contents are untrue. In the absence of such an allegation, there is no genuine dispute about the authenticity of the document.

23.3 The Respondent's answering affidavit, at paragraph 63, asserts that there is "no prejudice to Jordaan in waiting another few months." This posture is entirely inconsistent with a genuine concern about the solemnities with which the Applicant's affidavit was commissioned. A respondent that

[2] Rule 63 of the Uniform Rules of Court, as incorporated by Rule 11(2) of the Rules of the Labour Court, 2024.

[3] Act 66 of 1995, section 158(1)(a)(ii).

contends there is no urgency because no harm will flow from further delay cannot simultaneously claim that the affidavit irregularity is fatal to the proceedings.

23.4 Upholding the point would allow the Respondent to avoid a hearing of the merits of this application on a technical procedural ground arising from the Applicant's geographical circumstances, circumstances which are themselves, in part, a consequence of the Respondent's own conduct.

23.5 In any event, Rule 63(4) expressly empowers a court to accept a document as sufficiently authenticated where it is satisfied that the document was in fact signed by the person purporting to have signed it. The Respondent does not allege that the confirmatory affidavit was not signed by the Applicant, nor that its contents are untrue, nor that the Applicant's long-standing attorneys lack actual authority. In these circumstances, the objection is purely technical, causes no prejudice, and falls squarely within the Court's discretion to condone.

23.6 The Applicant, in any event, uploaded and presented to this Court on 5 March 2026 with a proper confirmatory affidavit, which this Court accepts.

[24] The *in limine* point is dismissed. The non-compliance with Rule 63 is condoned insofar as this may be required despite the filing of a further properly commissioned confirmatory affidavit. The application is properly before this Court.

Urgency

[25] The Respondent challenges the urgency of the application. It invokes the established proposition that financial hardship, standing alone, does not constitute sufficient grounds for urgency, and that a party that creates its own urgency by delaying proceedings cannot rely on self-created urgency. It relies on

Jonker v Wireless Payments Systems CC[4] (*Jonker*) and *Hultzer v Standard Bank of South Africa (Pty) Ltd*[5] *(Hultzer)* in support.

[26] These propositions, while correct as statements of general principle, do not assist the Respondent on the facts of this case. The urgency here was not created by any delay or mismanagement on the Applicant's part.

[27] The Applicant instructed the Sheriff to proceed with execution as early as 13 February 2026. It was the Respondent's own act of filing the Petition on 26 February 2026 that triggered the automatic suspension under section 18(1) and thereby created the need for this application. The Applicant moved promptly: the notice of motion was served on 27 February 2026, the day after the Petition was filed. This is the opposite of self-created urgency. The Respondent's reliance on authority holding that financial hardship alone does not establish urgency is misplaced: the urgency here flows from the procedural consequences of the Respondent's own step, not from the Applicant's financial position.

[28] The financial position of the Applicant is further genuinely deteriorating. Further delay without court intervention pending the outcome of a LAC petition, or any subsequent appeal proceedings, would, on the evidence, leave the Applicant unable to protect his rights at all. The Applicant cannot be afforded substantial redress at a hearing in due course: by the time the Petition is finalised, or any further subsequent appeal or petition to the Constitutional Court, his financial position may have deteriorated beyond the point of recovery. Urgency is established.

<u>The Legal Framework: Section 18 of the Superior Courts Act</u>

[29] Section 18(1) of the Act provides that 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 that application or appeal, unless the court

[4] [2009] ZALC 150; (2010) 31 ILJ 381 (LC).

[5] [1999] ZALC 46; [1999] 8 BLLR 809 (LC); (1999) 20 ILJ 1806 (LC).

under exceptional circumstances orders otherwise. The automatic suspension is the statutory default: it operates by force of law upon the filing of the application for leave to appeal and requires no court order.

[30] Section 18(3) creates a mechanism for departing from this default. The provision requires the applicant for execution to prove, on a balance of probabilities: (i) that it will suffer irreparable harm if the judgment is not placed in operation; and (ii) that the other party will not suffer irreparable harm if the judgment is placed in operation.[6]

[31] The phrase "exceptional circumstances" as a threshold requirement flows from section 18(1) itself. The Supreme Court of Appeal in *Ntlemeza v Helen Suzman Foundation and Another*[7] *(Ntlemeza)* read section 18(1) and section 18(3) together and confirmed that the applicant for execution must additionally demonstrate exceptional circumstances justifying departure from the statutory default.

[32] The three requirements, i.e., exceptional circumstances, irreparable harm to the applicant for execution, and absence of irreparable harm to the opposing party, are cumulative. They are not to be treated as factors in a balancing exercise in which strength in one may compensate for weakness in another. Failure to establish any single requirement is fatal to the application.

[33] The threshold is deliberately high. The Supreme Court of Appeal in *University of the Free State v Afriforum and Another*[8] (*Afriforum*) described what is sought under section 18(3) as "an extraordinary deviation from the norm, which, in turn, requires the existence of truly exceptional circumstances to justify the deviation." The onus rests squarely on the applicant for execution.

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[6] Section 18(3) provides: "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."

[7] [2017] ZASCA 93; [2017] 3 All SA 589 (SCA); 2017 (5) SA 402 (SCA).

[8] [2016] ZASCA 165; [2017] 1 All SA 79 (SCA); 2018 (3) SA 428 (SCA) at para 13.

[34] In *Incubeta Holdings and Another v Ellis and Another*[9] *(Incubeta*), the Court identified several factors relevant to the exceptional circumstances inquiry, including the conduct of the litigant; the consequences of suspension; the nature of the underlying right; the financial position of each party; the prospects of success on the appeal; the potential for exploitation of the appeal process; and the constitutional dimensions of the right in issue. These factors are not a closed list and are not to be applied mechanically. They are aids in assessing whether the overall constellation of circumstances is truly exceptional.

[35] As regards prospects of success on appeal: this is not a separate express requirement of section 18(3). However, it is relevant to the assessment of exceptional circumstances. A petition that merely repeats arguments already fully considered and rejected at every level is less deserving of the protection of the automatic suspension than a *bona fide* appeal raising a genuinely novel or untested question of law.

[36] In *Road Traffic Management Corporation v Tasima (Pty) Limited; Tasima (Pty) Limited v Road Traffic Management Corporation*[10] *(Tasima)*, the Labour Appeal Court recognised that the section 18(3) threshold in the employment context is informed by the constitutional dimension of work and the particular quality of harm suffered by a person deprived of the benefit of a favourable judgment concerning employment rights.

[37] In *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[11] *(Equity Aviation)*, the Constitutional Court confirmed that a reinstatement order is intended to place the employee in the position he or she would have occupied had the dismissal not occurred. The remedy gives direct effect to the right to fair labour practices enshrined in section 23(1) of the

[9] [2013] ZAGPJHC 274; 2014 (3) SA 189 (GSJ).

[10] [2019] ZALAC 33; (2019) 40 ILJ 1785 (LAC).

[11] [2008] ZACC 16; (2008) 12 BLLR 1129 (CC); 2009 (1) SA 390 (CC); (2008) 29 ILJ 2507 (CC); 2009 (2) BCLR 111 (CC). See also section 23(1) of the Constitution, which guarantees every person the right to fair labour practices; the reinstatement remedy gives direct effect to this right.

Constitution. It cannot be fully vindicated by the subsequent payment of money alone: the deprivation of the benefit of the order during the suspension period is itself a constitutional harm.

[38] Against that legal backdrop, this Court turns to the application of section 18(3) to the facts of this case.

Exceptional Circumstances

[39] The question is whether the circumstances of this case are "truly exceptional" in the sense contemplated by the Act and the authorities. This requires an assessment of the totality of the circumstances rather than a focus on any single element.

[40] The Respondent argues that financial hardship does not constitute exceptional circumstances, and that a party in financial difficulty pending an appeal routinely encounters such a position. It relies on *Jonker* and *Hultzer* in support of the proposition that financial necessity, standing alone, is insufficient.

[41] These propositions are correct as statements of general principle. However, they fundamentally mischaracterise the Applicant's case. The Applicant is not a party who has experienced financial hardship while awaiting the outcome of a first appeal by a party that has previously succeeded. The Applicant's case is categorically different, and the difference lies in the conduct of the Respondent itself over a period of thirteen years.

[42] The Respondent's conduct at each stage of these proceedings is material. A summary follows:

42.1 In June 2013, the CCMA ordered reinstatement with backpay. The Respondent refused to reinstate and launched a review application.

42.2 That review was dismissed in December 2018, five years later. The Respondent applied for leave to appeal and then abandoned that application. It then launched a declaratory application.

42.3 Reinstatement was eventually agreed in April 2020, seven years after the original order.

42.4 Private arbitration proceeded before Watt-Pringle SC, who issued two awards in the Applicant's favour. The Respondent reviewed those awards.

42.5 By consent, the Watt-Pringle awards were remitted. Arbitration before Buirski followed, who also found in the Applicant's favour. The Respondent reviewed those awards.

42.6 Bosch AJ dismissed the review on 29 September 2025. The Respondent sought leave to appeal.

42.7 Bosch AJ refused leave to appeal on 6 February 2026. The Respondent filed a Petition to the LAC.

42.8 When viewed cumulatively, the Respondent's conduct over thirteen years, including its refusal to reinstate the Applicant for seven years after a binding CCMA award, its serial and consistently unsuccessful challenges before every forum, its belated raising of new points not pleaded or argued at the appropriate stages, and its pattern of procedural opportunism, constitutes a constellation of circumstances that is, by any measure, truly exceptional. The statutory default of suspension cannot be used as a shield by a litigant whose own conduct has created the very conditions that now threaten to extinguish the successful party's rights.

[43] Every single adjudicative process in which this dispute has been determined has produced a finding adverse to the Respondent. The Respondent has not succeeded at any level, before any decision-maker, at any stage of the thirteen-year history of this matter. The Respondent's own answering affidavit confirms the extraordinary nature of the delay, even as it denies responsibility for it.

[44] The Respondent's answering affidavit, at paragraph 63, asserts that there is "no prejudice to Jordaan in waiting another few months." This submission is not only

factually incorrect as the evidence of the Applicant's financial collapse demonstrates; it is also inconsistent with the Respondent's simultaneous reliance on the Applicant's *peregrinus* status and alleged inability to make repayment, a contradiction that the Respondent's papers do not attempt to resolve.

[45] The cumulative effect of the Respondent's conduct is that what began as a straightforward reinstatement order for a maintenance fitter earning approximately R20,000 per month has become a thirteen-year legal odyssey resulting in an award of R3,190,807.73 and legal related costs to the Applicant of approximately R2.5 million. The financial ruin that the Applicant faces is not the product of his own mismanagement or improvidence. It is the direct and foreseeable consequence of the Respondent's conduct in pursuing every available procedural avenue.

[46] A party that, through its own sustained non-compliance with court orders and persistent exploitation of available legal mechanisms, reduces its opponent to financial ruin cannot then invoke the protection of the automatic suspension as though the resulting predicament is merely incidental. That is not the purpose of the automatic suspension. The suspension exists to protect the integrity of the appeal process and to preserve the rights of a litigant who has an arguable case on appeal. It is not designed to provide a corporate respondent with a further instrument of delay against an individual whom it has already spent thirteen years delaying.

[47] This Court is mindful that this finding does not depend on a finding of bad faith in each of the Respondent's individual legal challenges. The point is structural and cumulative: when the aggregate effect of successive challenges by a wealthy corporate respondent is to reduce the successful individual litigant to financial ruin, the circumstances of that predicament are, by any measure, truly exceptional. The Respondent's conduct approaches the borderline of an abuse of process, albeit I make no formal finding to that effect.

[48] The circumstances are further rendered exceptional by the nature of the underlying right. This is not a commercial dispute between two business entities of comparable resources. The Applicant is a former employee who was unlawfully denied reinstatement for seven years and who is now entitled, following two sets of awards that survived two rounds of review, to payment of the economic value of that reinstatement. The harm he faces encompasses not only financial loss but the comprehensive frustration of his constitutional right not to have been unfairly dismissed and his right of access to courts and speedy dispute resolution.

[49] As regards prospects of success on the Petition, the following observations are made. The “basic salary only” argument now advanced in the Petition was not pleaded as a ground of review. It did not form part of the arbitration mandate agreed between the parties. It was raised for the first time in supplementary heads of argument before Arbitrator Buirski after the close of evidence. It does not form part of the review grounds in this Court. A point raised for the first time in supplementary argument, not pleaded, not part of the arbitration mandate, and not forming part of the review grounds, cannot constitute a reasonable prospect of success on appeal. The Petition merely repeats arguments already considered and rejected by two arbitrators and by this Court in two separate rulings. Bosch AJ refused leave to appeal; the judge who heard the review and had the full benefit of the parties’ argument did not regard the matter as raising a reasonable prospect of success. The prospects are, at best, slender.

[50] Exceptional circumstances are established. They are established not by any single factor but by the convergence of: a thirteen-year pattern of sustained and consistently unsuccessful litigation by a JSE-listed company against an individual employee; the direct causal link between the Respondent’s own conduct and the Applicant’s financial ruin; the constitutional dimension of the underlying right; the weak and repetitive nature of the pending Petition; and the further delay that continued suspension would impose.

[51] Exceptional circumstances arise where the cumulative effect of a litigant's conduct, the nature of the underlying right, and the consequences of continued suspension combine to produce a situation fundamentally at odds with the purpose of section 18(1). This is such a case.

Irreparable Harm: The Applicant

[52] The Applicant must prove on a balance of probabilities that he will suffer irreparable harm if the judgment is not placed in operation. "Irreparable harm" for this purpose does not require absolute inability to remedy the harm in any future scenario; it means harm of such nature and degree that it cannot adequately be remedied by the eventual outcome of the Petition, whether by subsequent payment, restitution, or otherwise.

[53] The evidence on this point is largely unchallenged. The Applicant has, by the time of this hearing, incurred approximately R2.5 million in legal related costs. His pension fund has been exhausted. He has sold his vehicle. His wife's insurance policy has been surrendered. He resides in Ireland, to which he relocated following his second dismissal in December 2023. His Worcester property carries an outstanding mortgage bond of R461,529.62.

[54] The Respondent's answering affidavit does not meaningfully engage with this evidence. At paragraph 63, it submits that "there is no prejudice to Jordaan in waiting another few months." This submission is factually unsound and disregards the cumulative harm caused by thirteen years of delay.

[55] The Applicant's evidence of financial collapse is uncontradicted. Interest accruing on the judgment amount does not compensate for insolvency, for the erosion of the Applicant's ability to manage his affairs in South Africa, for his inability to fund litigation, or for the loss of the constitutional benefit of reinstatement. The Respondent pays interest on the judgment amount regardless of whether the judgment is executed now or in two years' time. But interest does not compensate for the Applicant's exhausted pension, for the depletion of his wife's

policy, for his forced relocation to Ireland, or for the real risk that further delay will result in his insolvency and the permanent loss of the very right he has spent thirteen years pursuing. In this respect, the reasoning of the Constitutional Court in *Equity Aviation* is directly applicable: the reinstatement remedy gives effect to the right to fair labour practices entrenched in section 23(1) of the Constitution, and its deprivation during a prolonged suspension is itself a constitutional harm that cannot be remedied by money alone.

[56] The Respondent's reliance on the Applicant's *peregrinus* status as a reason to deny execution is addressed in the following section. For present purposes, it is noted that the *peregrinus* concern does not bear on the question of whether the Applicant will suffer irreparable harm from continued suspension; it bears on whether the Respondent will suffer irreparable harm from execution. Those are separate enquiries.

[57] I am satisfied that the Applicant will suffer irreparable harm if the judgment is not placed in operation.

Irreparable Harm: The Respondent and the *Peregrinus* Point

[58] The third requirement presents the most analytically demanding issue in this application. The Applicant must prove on a balance of probabilities that the Respondent will not suffer irreparable harm if the judgment is placed in operation. The Respondent submits that it will suffer such harm, primarily because the Applicant is a *peregrinus* and recovery of any overpayment, if the Petition ultimately succeeds, would be extremely difficult.

[59] The *peregrinus* concern is a legally recognised one and is not to be dismissed. A person resident outside the Republic against whom a South African judgment is not easily enforceable in the foreign country of residence, and who has no readily attachable assets in the Republic, presents a genuine risk of non-recovery in the event that payment is subsequently shown to have been made in error.

[60] However, the *peregrinus* concern does not operate in a vacuum and does not automatically entail irreparable harm within the meaning of section 18(3). The following considerations are material.

60.1 The Respondent is a JSE-listed company with substantial financial resources. The risk it faces from execution, namely, the possibility of having to absorb the financial consequences if the R3,190,807.73 is paid and the Petition subsequently succeeds, is, for an entity of this size and character, a bounded commercial risk and not an existential one. A JSE-listed company that may face the commercial inconvenience of having to pursue a restitution claim, or of having temporarily paid a sum which it recovers with interest, has not suffered irreparable harm in this sense.

60.2 The Applicant retains immovable property in the Republic in the form of ERF 1[…] Worcester (Breede Valley Municipality), registered in the joint names of himself and his wife, Mrs Hermie Jordaan. The post-hearing correspondence confirmed that both the Applicant and Mrs Jordaan formally undertake not to alienate the property nor to register any further mortgage bonds over it pending the finalisation of the Petition or any subsequent appeal. That undertaking, incorporated in the order of this Court, operates as a judicially enforceable restraint on disposition of the Applicant's primary South African asset.

60.3 The documentary evidence relating to the property's value, including the annexures placed before the Court in the founding affidavit, was not disputed in the Respondent's answering affidavit. The Respondent did not allege the existence of competing creditors in its answering affidavit. The Respondent's assertion that the value of the property is "unknown" is contradicted by the documentary evidence placed before the Court, which the Respondent did not dispute.

60.4 The Respondent's own papers do not dispute the existence, value, or attachability of the Worcester property, nor do they allege that execution

against it would be insufficient to meet a restitution claim should the Petition succeed.

60.5 The Respondent's invocation of its potential recovery difficulties must be assessed in light of the fact that it was the Respondent itself, through its own persistent litigation over thirteen years, that reduced the Applicant to the financial position that now makes him a *peregrinus* with limited South African assets. The Respondent cannot create the conditions that result in the Applicant's impoverishment and then invoke the product of those very conditions as a reason to deny execution.

[61] The question under section 18(3) is not whether the Respondent faces any risk from execution; it is whether the Respondent will suffer irreparable harm. On the facts of this case, a JSE-listed company paying a judgment debt of R3,190,807.73 plus interests to an individual, with the benefit of a court-incorporated undertaking restricting the disposal of that individual's South African immovable property, does not suffer irreparable harm. The risk of non-recovery, if the Petition were to succeed, is a commercial risk of a kind that the Respondent, by reason of its own conduct in prolonging this litigation, has in large measure created for itself.

<u>The Post-Hearing Correspondence</u>

[62] The practice of continuing to address submissions to the presiding judge by correspondence after argument has closed should, as a general rule, be avoided. The Court considers the letters of 5, 6 and 8 March 2026 only because the issue of the property undertaking was raised by the Court itself during argument. In those circumstances it was appropriate for the Applicant's attorneys to confirm the undertaking and for both sides to briefly address its adequacy.

[63] The Respondent's letter of 6 March 2026 raised, for the first time, concerns regarding joint ownership of the property, alleged uncertainty about the property's value, and the possible existence of other creditors. These matters were not

pleaded in the answering affidavit, were not raised in oral argument, and are contradicted by the Applicant's documentary evidence, which the Respondent did not dispute. The Respondent cannot, at this stage, introduce new factual disputes or objections not contained in its answering affidavit.

[64] The Applicant's attorneys responded on 8 March 2026 confirming that both registered owners of the property have given the undertaking, noting that the Respondent had not disputed the property's valuation or alleged competing creditors in its answering affidavit, and correctly observing that new issues cannot be raised for the first time in post-argument correspondence.

[65] The adequacy of the undertaking must be assessed on the evidence properly before the Court. On that basis, the undertaking is sufficient. Both registered owners are bound by it. Its incorporation in the order of this Court creates an enforceable restraint on alienation and further encumbrance.

[66] The Respondent's post-hearing correspondence does not alter the analysis. It merely repeats assertions unsupported by evidence in the papers properly before the Court. Its attempt to raise new issues after argument is noted but cannot be entertained.

Proportionality

[67] Although section 18(3) does not expressly require a finding of proportionality, it is appropriate to note that the relief granted is narrowly tailored. It preserves the Respondent's restitutionary interests through the court-incorporated undertaking relating to the Worcester property, while preventing the extinguishing of the Applicant's rights through further delay. The balance of convenience overwhelmingly favours execution: the Respondent faces a temporary and bounded commercial risk, whereas the Applicant faces the permanent loss of the very remedy he has pursued for thirteen years. The order demonstrates judicial restraint: it grants execution but couples it with a judicially enforceable protection for the Respondent.

[68] This Court is satisfied that all three requirements of section 18(3) are satisfied. The application succeeds.

Costs

[69] The Applicant seeks costs. The Respondent's opposition was not, in all respects, unreasonable. The *peregrinus* concern is a legitimate legal issue, and the Respondent was entitled to raise and probe the adequacy of the property undertaking. However, the overall posture adopted in the answering affidavit, and in particular the assertion that the Applicant faces no prejudice from a further "few months" of delay, reflects a degree of indifference to the human consequences of this litigation that is difficult to reconcile with the obligation of candour a litigant owes to the Court.

[70] In all the circumstances, in accordance with law and fairness, costs should follow the result. There is no basis for a punitive order. The order will be on the party-and-party scale.

Order

[71] The following order is made:

1. The judgment and order of Bosch AJ, delivered on 29 September 2025 under case number 2025-048772 in the Labour Court of South Africa, is placed in operation and execution notwithstanding the Respondent's pending Petition for Leave to Appeal to the Labour Appeal Court.

2. Pending the finalisation of the Respondent's Petition for Leave to Appeal or any subsequent appeal, the Applicant, Mr Etienne Jordaan, and his wife, Mrs Hermie Jordaan, are ordered not to alienate ERF 1[…] Worcester (Breede Valley Municipality) and not to register any further mortgage bond over the said property in addition to the existing bond registered in favour of Standard Bank under reference number B[…]. The

said undertaking, already given by both registered owners in the correspondence of 5 and 8 March 2026, is hereby incorporated in and forms part of this order.

3. The Respondent is ordered to pay the costs of this application on the party-and-party scale.

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C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Adv AC Oosthuizen SC
Instructed by:	Teresa Erasmus Attorneys
For the Respondent:	Mr Elco Geldenhuys
Instructed by:	MacGregor Erasmus Attorneys