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

_____ _____
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No. 2026-016508

In the matter between:

WESLEY PULENG NEUMANN **Applicant**

and

WESTERN CAPE EDUCATION DEPARTMENT **Respondent**

Heard: **13 February 2026**

Delivered: **20 February 2026**

Labour law - Section 18 of Superior Courts Act - Execution of judgment pending appeal – Requirements - Exceptional circumstances; irreparable harm to applicant; absence of irreparable harm to respondent.

Practice - Urgency – s 18 applications - Separate urgency enquiry unnecessary unless applicant delays unreasonably - Section 18(1) & (3) - Exceptional circumstances must be established - Enquiry is fact-specific and not rigidly compartmentalised - Irreparable harm requirement intertwined with exceptional circumstances.

Labour law - Reinstatement order - Delay caused by employer's appeal - Exceptional circumstances - Onus on applicant to plead and prove exceptional circumstances – Applicant failed to discharge onus - Application dismissed.

JUDGMENT

MAKHURA, J

Introduction

[1] The applicant was employed by the respondent as an educator from 2008 and was appointed as the principal of Heathfield High School in 2018 until his dismissal on 20 May 2022. He was dismissed for allegations of misconduct, including insubordination, insolence, breach of social media policy, incitement to keep the schools closed during the Covid-19 pandemic in June and/or July 2020 and bringing the respondent's name into disrepute. His dismissal was upheld by the commissioner. The applicant challenged the award on review before this Court.

[2] On 5 January 2026, this Court, per De Kock AJ, found the applicant not guilty of all the allegations, except insolence. For his insolent conduct, the Court issued the applicant with a final written warning valid for 12 months from the date of his reinstatement and substituted the commissioner's finding that the dismissal was substantively fair with a finding that dismissal was an inappropriate sanction, effectively declaring that the dismissal was substantively unfair. The respondent was ordered to reinstate the applicant retrospectively from the date of dismissal and the applicant was ordered to report for duty on 2 February 2026.

[3] The respondent has since applied for leave to appeal the review judgment. In reaction, the applicant launched these proceedings in terms of section 18 of the Superior Courts Act[1] (SC Act) to enforce the review judgment or declare that the review judgment is not suspended in terms of section 18(3) of the SC Act, pending finalisation of the application for leave to appeal and/or any appeal process. Subsections (1) and (3) provide that:

[1] Act 10 of 2013.

> '(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.
>
> …
>
> (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] The question this Court must decide is whether the judgment and order issued on 5 January 2026 should continue to operate and be enforceable notwithstanding the pending application for leave to appeal. The respondent also disputes that the matter is urgent.

Urgency

[5] The applicant deals with urgency in paragraphs 90 to 95 of his founding affidavit. He states that on 23 January 2026, the respondent indicated its intention to appeal the judgment, which he believes is an effort to prevent him from returning to his profession. He further explains that the matter is urgent because it affects his livelihood, that he will not obtain adequate redress if the case is heard in the ordinary course, since he may face severe financial consequences, including losing his home and that he fears the respondent will continue employing delaying tactics, potentially prolonging the appeal process by another three years.

[6] The respondent contends that the application should be struck from the roll for lack of urgency because the applicant has failed to make out a case for urgency. The applicant, so the respondent argues, advanced only one ground why the matter should be heard on an urgent basis, which is the impact the delay would

have on his livelihood if the judgment is not implemented. The respondent noted that the applicant is currently a part-time councillor by the City of Cape Town metropolitan municipality, earning, according to the latest available Determination of Upper Limits of Salaries, Allowances and Benefits of Different Members of Municipal Councils, dated 17 October 2024, a total remuneration package of R579 132.00 per annum. Allegations of financial prejudice, so the respondent argues, are not generally considered sufficient to justify urgency.

[7] The respondent relies on rule 38 of this Court's rules[2], requires an applicant seeking urgent relief to provide the reasons for urgency and why urgent relief is necessary. In proceedings brought under section 18 of the SC Act, the applicant must prove (1) exceptional circumstances that justify enforcing the judgment despite an appeal; (2) that he will suffer irreparable harm if the judgment is not implemented; and (3) that the respondent will not suffer irreparable harm if implementation is ordered.[3]

[8] The respondent's counsel did not seriously pursue the urgency point. In my view, the enquiry into urgency cannot be divorced from the main enquiry per section 18. The applicant must establish exceptional circumstances, that he will suffer irreparable harm if the order is not granted, and that the respondent would not suffer irreparable harm if it is granted. By its nature and design, a section 18 application is urgent, and that urgency arises once an application for leave to appeal is filed or the application for leave to appeal succeeds. The applicant brought the application within a reasonable time after the application for leave to appeal was filed. It is difficult to conceive a matter where exceptional circumstances and irreparable harm exist or are alleged to exist, yet the matter is not dealt with on urgent basis. Engaging in a separate urgency enquiry in a section 18 application is, in my view, impractical and unnecessary, unless of course, the applicant delays unreasonably before approaching the court to seek execution of the order. For these reasons, I have decided to deal with the matter

[2] Rules Regulating the Conduct of Proceedings of the Labour Court, GN4775a in GG 50608, 3 May 2024.
[3] See: *Knoop NO and Another v Gupta (Execution)* [2020] ZASCA 149; 2021 (3) SA 135 (SCA) *(Knoop)*; *Incubeta Holdings (Pty) Ltd v Ellis and Another* 2014 (3) SA 189 (GJ) *(Incubeta)* at para 16.

based on the applicable test and the objection to urgency is without merit and dismissed.

The test

[9] As already highlighted above, an applicant who seeks enforcement of the order pending an appeal process must prove the three requirements set out under section 18(1) and (3) of the SC Act. The Labour Appeal Court (LAC) reaffirmed this principle in *Moqhaka Local Municipality and Another v Tshabalala*[4], explaining that section 18 fundamentally changed the common-law approach. A court may only grant interim execution if the applicant proves exceptional circumstances, demonstrates that they will suffer irreparable harm without such an order, and shows that the respondent will not suffer irreparable harm if the order is granted. If the applicant fails to meet any of these requirements, the application cannot succeed.[5]

[10] In *Knoop*, the Supreme Court of Appeal (SCA) confirmed that proving exceptional circumstances is closely linked to the applicant establishing that he faces *"a real and substantial risk of immediate and irreparable harm"* if the judgment is not implemented immediately.[6] The Court stressed that the applicant bears the onus, on a balance of probabilities, to establish irreparable harm to him and absence of irreparable harm to the respondent, and:

> '…If the applicant cannot show that the respondent will not suffer irreparable harm by the grant of the execution order, that is fatal. It is unnecessary to decide whether in those circumstances the court would be empowered to grant other relief pending the hearing of the appeal in order to protect the applicant's position.'[7] (Own emphasis)

[4] [2025] ZALAC 36; (2025) 46 ILJ 2439 (LAC).
[5] Ibid at para 28.
[6] *Knoop* at para 47.
[7] *Knoop* at para 48.

[11] Following *Knoop*, the SCA revisited section 18 in *Tyte Security Services CC v Western Cape Provincial Government and Others*[8] *(Tyte)*. The SCA confirmed that whether exceptional circumstances exist is a fact-specific enquiry. It endorsed the view that *"exceptional circumstances"* refers to something out of the ordinary, something unusual, rare, or markedly different from the norm.[9]

[12] Referring to the three requirements, the SCA held that consideration of each of these requirements *"is not a hermetically sealed enquiry and can hardly be approached in a compartmentalised fashion"*.[10] The SCA then demonstrated why compartmentalisation and a mechanistic approach to these requirements may be unnecessary. It explained that what constitutes irreparable harm depends entirely on the specific facts and legal context of each dispute and reiterated what it said in *Knoop* that the need to prove exceptional circumstances is closely connected to proving that the applicant would suffer immediate and irreparable harm if the judgment is not implemented. Further, the SCA said that the same applies to the requirement that the respondent must not suffer irreparable harm and that these considerations cannot be separated from the broader inquiry into exceptional circumstances. The Court observed that:

> 'What constitutes irreparable harm is always dependent upon the factual situation in which the dispute arises, and upon the legal principles that govern the rights and obligations of the parties in the context of that dispute. It was accepted in *Knoop* that '(t)he need to establish exceptional circumstances is likely to be closely linked to the applicant establishing that they will suffer irreparable harm if the… order is not implemented immediately'. The same, I dare say, can be said of its counterpart, the absence of irreparable harm to the respondent. In that sense, the presence or absence of irreparable harm, as the case may be, can hardly be entirely divorced from the exceptional circumstances enquiry. It would perhaps be logically incoherent for a court to conclude, on the one hand, in favour of an applicant that exceptional circumstances subsist, but, on the other, against an applicant on either leg of the irreparable harm enquiry.

[8] [2024] ZASCA 88; 2024 (6) SA 175 (SCA).
[9] Ibid at para 12.
[10] Ibid at para 10.

The argument, as I have it, is that, as the language of s 18(3) is clear - it is for an applicant, in addition to exceptional circumstances, to prove on a balance of probabilities that it will suffer irreparable harm and conversely the other party would not. A court is thus required to undertake what would be in the nature of a tick-box exercise by enquiring into and satisfying itself as to the *first*, then the *second* and finally the *third*, in that order. Unless each box is successfully ticked, the applicant must fail. Here, so the argument proceeds, the high court failed to undertake such an exercise; had it done so, it could not permissibly have ticked the third box; consequently, the s 18 application should have failed. Even accepting that the legislature has employed the words 'in addition [to exceptional circumstances] proves on a balance of probabilities' in s 18(3), it would be passing strange that if an applicant comes short in respect of either the *second* or *third* requirements, it would nonetheless still be able to successfully meet the exceptional circumstances threshold. The use of the words 'in addition proves' in s 18(3) ought not to be construed as necessarily enjoining a court to undertake a further or additional enquiry. The overarching enquiry is whether or not exceptional circumstances subsist. To that end, the presence or absence of irreparable harm, as the case may be, may well be subsumed under the overarching exceptional circumstances enquiry. As long as a court is alive to the duty cast upon it by the legislature to enquire into, and satisfy itself in respect of, exceptional circumstances, as also irreparable harm, it does not have to do so in a formulaic or hierarchical fashion.

Although it has been postulated that the *second* and *third* are distinct and discrete enquiries, they are perhaps more accurately to be understood as being two sides of the same coin. The same facts and circumstances, which by that stage ought largely to be either common cause or undisputed, will inform both enquiries. The logical corollary of an applicant suffering irreparable harm will invariably - but not always - be that the other party has not. The enquiry into each can thus hardly be mutually exclusive, particularly because, as far as the *third* is concerned, unlike the *second*, the onus cast upon an applicant would be to prove a negative, in accordance with the usual civil standard. This suggests that, as with the exceptional circumstances enquiry, a court considering both the *second* and *third* must have regard to all the facts and circumstances in any particular

> case. Insofar as the *third* goes, although s 18(3) casts the onus (which does not shift) upon an applicant, a respondent may well attract something in the nature of an evidentiary burden. This would be especially so where the facts relevant to the *third* are peculiarly within the knowledge of the respondent. In that event it will perhaps fall to the respondent to raise those facts in an answering affidavit to the s 18 application, which may invite a response from the applicant by way of a replying affidavit.'[11] (Emphasis added)

[13] As I understand *Tyte*, the SCA said that although section 18(3) requires an applicant, *"in addition"* to proving exceptional circumstances, to establish on a balance of probabilities that he or she will suffer irreparable harm and that the respondent will not, this does not mean the court must conduct these enquiries in a rigid, step-by-step manner. It would be illogical for an applicant to fail either the second or third requirement yet still be able to meet the threshold for exceptional circumstances. Therefore, the phrase *"in addition proves"* in subsection (3) should not be interpreted as requiring a separate, additional enquiry. Instead, the overarching enquiry remains whether exceptional circumstances exist. In that overarching assessment, the presence or absence of irreparable harm will naturally form part of the analysis. A court must remain mindful of its duty to consider both exceptional circumstances and irreparable harm, but it need not do so in a formulaic or hierarchical way.

[14] With regard to irreparable harm to the applicant and the respondent, these two requirements are interconnected as they are informed by similar underlying factors. If the applicant establishes that he would suffer irreparable harm, it will logically and generally follow, that the respondent may not. Because the applicant is required to prove a negative – that the respondent will not suffer irreparable harm - the respondent may carry an evidentiary burden where the relevant facts lie particularly within its knowledge. In such situations, the respondent would be expected to raise those facts in its answering affidavit.

[11] *Tyte* at paras 13 – 15.

[15] The proper approach is to determine whether the applicant has demonstrated exceptional circumstances. Failure to do so is fatal. However, if exceptional circumstances are established, this is not the end of enquiry and does not mean that the application axiomatically succeeds. Section 18(3) still requires proof of irreparable harm to the applicant and the absence of irreparable harm to the respondent. These latter enquiries only arise once exceptional circumstances are shown.

Exceptional circumstances

[16] The applicant has dedicated a significant portion of his founding affidavit to the background of his unfair dismissal dispute, covering the history of delays during the arbitration, his career progression from teacher to principal, and his performance in those roles. In paragraph 21 of his founding affidavit, the applicant acknowledges the requirements he must satisfy to succeed in this application. He pleads that:

> 'In this case I will show the exceptional circumstances and the irreparable harm I will suffer, which ought to entitle me to an order implementing the Court Order of De Kock AJ, pending leave to appeal and the appeal. I submit that the Respondent will not suffer any harm should the Court grant an order that the Order dated 5 January 2026 shall not be suspended pending final determination of all present and future applications for leave to appeal or appeals lodged by the Respondent.' (Own emphasis)

[17] However, despite this acknowledgement, he then largely recounts the dispute's history, revisits the merits of the dismissal case, discusses who testified and who did not, briefly mentions irreparable harm in a single paragraph, and then shifts back to the procedural delays during arbitration, the prospects of success in the application for leave to appeal, and what he calls the *"practicalities of re-instatement"*, before turning to urgency. He completely ignores to set out facts that constitute exceptional circumstances.

[18] The question is whether the applicant has established anything out of the ordinary or norm, something unusual, rare or distinctive. It is common in dismissal disputes that an employer's application for leave to appeal and/or appeal against an order of reinstatement delays an employee's return to work and consequently postpones his or her earning of wages. In the present matter, although the applicant stated that he would demonstrate exceptional circumstances justifying departure from the general rule that an application for leave to appeal or appeal suspends a judgment, he failed, after making that assertion, to present any facts in his founding affidavit that could be considered in the enquiry into exceptional circumstances. He later attempted to remedy this in his heads of argument. In his original heads of argument, the applicant referred to the exceptional circumstances as the public interest and sentiments, and the support from learners, parents and other community stakeholders. In his supplementary heads of argument, he argues that:

> 'It is submitted that the Applicant have demonstrated the presence of several exceptional circumstances in this case relating to the circumstances of the misconduct with particular reference to the Covid-19 pandemic, the refusal of his immediate superiors to support his dismissal, the fact that there was an attempt to bribe a potential witness to give false evidence against the Applicant, the fact that the Applicant was never suspended during the two-year period while the disciplinary hearing was proceeding, the offer of demotion and huge public interest in this matter.' (Emphasis added)

[19] The applicant cannot make out a case for the first time in his heads of argument. The reality is that he failed to plead his case and this should be the end of the enquiry. Even if the Court were to consider factors articulated in the applicant's heads of argument as an attempt to identify exceptional circumstances from his founding affidavit, the factors he relies on - public interest, community support, the context of the Covid-19 pandemic, his superiors' refusal to support his dismissal, the alleged attempt to bribe a potential witness, his lack of suspension during the disciplinary process, and the offer of demotion - do not in my view qualify as exceptional. None of these factors are unusual or rare when compared

to the situation of many reinstated employees awaiting the outcome of their appeal process. Moreover, these issues relate to the fairness of the dismissal itself, not to whether the judgment should be enforced pending appeal. They therefore do not amount to exceptional circumstances for the purposes of section 18 application.

[20] The applicant also raises concerns about delays in the process. However, if delays in previous proceedings or in the anticipated appeal process were, on their own, sufficient to amount to exceptional circumstances, section 18 would lose its meaning, and the right to appeal would be undermined. The applicant's reliance on *Incubeta*[12] is misplaced because that case involved a restraint of trade dispute, where immediate enforcement is crucial given the restraint period and time-sensitive nature of such orders. In contrast, unfair dismissal matters do not carry the same time-sensitivity, and the applicant has not explained why he would be deprived of meaningful or substantial relief if execution is refused. If the appeal ultimately fails, he will be reinstated with full retrospective benefits per the judgment of 5 January 2026, with his years of service intact and he will be entitled to his arrear wages until the date of the actual wages.

[21] Regarding the prospects of success in the respondent's appeal, this Court is not required to reevaluate its earlier decision. It is enough to note that this case did not involve the kind of serious procedural irregularities or blatant legal breaches seen in *Letsholonyane v Minister of Human Settlements and Another*[13], where the employer summarily dismissed the employee in direct violation of contractual and statutory requirements. In that matter, this Court, per Tlholhlalemaje J, found that suspension during appeal would have prolonged an unlawful situation and effectively perpetuate an illegality. The employee in *Letsholonyane* had limited prospects of finding employment at her age - about two years before retirement – which meant she would be left with no income for the appeal period and that protracted appeals could extend beyond his retirement, rendering reinstatement

[12] See fn 3 above.
[13] [2023] ZALCJHB 259; (2023) 44 ILJ 2757 (LC) at paras 20 – 28.

meaningless. In contrast, the applicant was found guilty of a charge of insolence by this Court, his dismissal was not in flagrant breach of contractual or statutory requirements, and there is no bad faith established on the part of the respondent. This case, therefore, does not present the type of circumstances that would justify treating the judgment as immediately enforceable pending appeal.

[22] The applicant alleged under the practicality of immediate reinstatement that the transition from the current principal to him would be smooth because he is already familiar with most of the staff at the school. Whether the temporary transition will be seamless or not does not assist the applicant. It is in my view irrelevant. The applicant must show why the judgment must continue to operate notwithstanding the respondent's right, which it exercised, to appeal the judgment. Regardless, the applicant does not explain why this transition cannot wait until the appeal process is finalised. The respondent, on the other hand, points out that a principal is currently in place and that the applicant's temporary return could be disruptive, particularly given the unrest and disruptions to teaching and learning that occurred after his dismissal, including community-led campaigns. The respondent states that stability has since been restored, and the applicant's interim reinstatement could reignite divisions among stakeholders who hold differing views about him. For these reasons, the respondent submits, and in addition to his failure to demonstrate exceptional circumstances, he should wait for the finalisation of the appeal process.

[23] The applicant's public interest argument or public support and/or sentiment does not advance the applicant's case in any respect. Such considerations belong in the realm of politics, not in a judicial assessment of disputes and section 18 application. The fact that some members of the public or the school community support him merely reflects his popularity, not any legal basis for exceptional circumstances. As the respondent's counsel submitted, South Africa is a constitutional democracy founded on the supremacy of the Constitution and the rule of law. The courts' role is to determine disputes impartially and objectively

based on the facts as pleaded, without the influence of the public opinion or pressure, as the applicant effectively sought to persuade this Court to do.

[24] There is nothing unusual, extraordinary, or unique about this case that warrants departing from the general rule that an appeal suspends the operation of a judgment. For that reason alone, the application must fail. Even if exceptional circumstances had been established, the application would still fail at the stage of assessing irreparable harm, as I demonstrate briefly below.

Irreparable harm

[25] Sutherland J in *Incubeta* outlined the requirements for proving irreparable harm under section 18(3). He explained that if the party seeking leave to appeal, in this case the respondent, will suffer irreparable harm should execution proceed, the judgment must remain stayed even if the successful party, the applicant in this case, would also suffer irreparable harm from the delay. Conversely, if the losing party will not suffer irreparable harm, the successful party must still prove its own irreparable harm. This framework requires courts to make two distinct factual findings rather than weighing the overall balance of convenience.

[26] In addressing the claim of irreparable harm, the applicant argues that:

> 'An appeals process will cause yet another delay in the final resolution of a dispute which has numerous delays most of them caused by the employer. I was Par rain unemployed for a long time until a year ago when I was given a job by the Good Political Party as a part-time City Councillor to focus on education challenges in various communities. However, the remuneration is nowhere near that of a school principal.' (Own emphasis)

[27] The applicant further states that if he is to wait another two to three years for the appeal process to conclude, he will be unable to continue paying his legal fees. He claims that it would be unjust for him to abandon his case for financial reasons at this stage. He argues that refusing the relief sought would result in an injustice that could not later be remedied.

[28] It must be emphasised, with regard to the alleged delay of two to three years, that the present application was launched in reaction to the application for leave to appeal, and not to the judgment or the order granting leave. The applicant's suggestion that the appeal process will necessarily take two to three years to conclude is therefore conjectural. Equally speculative is the assumption that, should leave to appeal be refused, the respondent will successfully petition the LAC, or if not, will successfully petition the Constitutional Court. The Court refuses to engage in speculation and conjecture.

[29] The applicant cannot credibly claim financial ruin when he earns R579 132.00 per annum, which is more than R48 200.00 per month. He has not sufficiently pleaded the issue about the potential non-payment of his home loan. He has also not explained why this income is inadequate or how it compares to his salary as a principal. More importantly, he has not shown that any delay would leave him without meaningful relief. If he succeeds in opposing the leave to appeal application or the appeal itself, he will receive backpay in terms of the 5 January 2026 judgment, including his benefits, plus his arrear wages from 2 February 2026 until his actual reinstatement. The applicant has not provided any reason why such retrospective relief would not constitute substantive and meaningful relief.

[30] In his heads of argument, the applicant submitted that *Tyte* rejected the notion that the applicant must prove *"a complete absence of irreparable harm to the respondent"*. The applicant's interpretation of the judgment is inaccurate. As I have already addressed this issue above, the SCA simply recognised that while the applicant carries the onus of proving the respondent will not suffer irreparable harm, the respondent may bear an evidentiary burden where the relevant facts fall particularly within its knowledge.

[31] The applicant's claim that he will be unable to afford legal representation during the appeal process is unsubstantiated. He has not disclosed what he previously earned as a principal or explained why his current salary would be insufficient to

cover the legal costs involved. Moreover, since the evidence in this matter has already been presented during arbitration and his current legal representatives were involved in the review application, the remaining legal services relate mainly to written submissions for the leave to appeal application and, if granted, the LAC submissions and hearing. He has also not shown why his current income would be inadequate for these costs. Importantly, even if the appeal proceeds unopposed, it will still be decided by the LAC on the existing record, not on new evidence, meaning his inability to fund opposition would not amount to irreparable harm.

[32] The applicant's assertion that refusing to enforce the judgment now would result in an injustice that no later proceedings could remedy suffers the same fate of the absence of necessary factual averments. It is said in abstract. In addition, I have already dealt with this issue that if he ultimately succeeds in the appeal process, he will receive retrospective reinstatement and the accompanying backpay, plus the arrear wages.

[33] The applicant has provided no evidence that the respondent would not suffer the irreparable harm. Having failed to prove irreparable harm to himself, the third requirement does not even need any further discussion The applicant has failed to satisfy the irreparable harm requirement.

Conclusion

[34] For the reasons set out above, the applicant has failed to satisfy the test set out in section 18 of the SC Act. His application therefore falls to be dismissed. The respondent did not seek costs against the applicant.

[35] In the premises, the following order is made:

Order

1. The application is dismissed.

2. There is no order as to costs.

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M. Makhura

Judge of the Labour Court of South Africa

Appearances

For the Applicant:	Mr V. Seymour of Lionel Cay Attorney with Mr R. Solomons (Counsel)
For the Respondent:	Mr C. Kahanovitz SC with Ms J. Williams
Instructed by:	The State Attorney, Cape Town