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

CASE NO: 2025-209746

Reportable

In the matter between:

OCEAN ARK SHIPPING LTD	First applicant
ASTRON ENERGY	Second applicant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE	Respondent

Coram: HOLDERNESS J

Heard: 24 June 2026

Delivered: 6 July 2026

Summary:

Application for leave to appeal the refusal of an enforcement order in terms of section 18(1) and (3) of the Superior Court Act 10 of 2013 – Whether such order is appealable and whether in interests of justice to grant leave to appeal– Test

restated – Court found that such order not ordinarily appealable – Leave to appeal refused.

ORDER

The following order shall issue:

(a) The application for leave to appeal is refused.

(b) The applicants are to pay the costs of the application, jointly and severally, the one paying the other to be absolved, the costs of counsel to be taxed on scale C.

JUDGMENT – LEAVE TO APPEAL AGAINST SECTION 18(3) REFUSAL ORDER

HOLDERNESS J

[1] On 8 June 2026, this Court handed down judgment and granted an order refusing the application in terms of section 18(3) of the Superior Courts Act 10 of 2013 (the SC Act), brought by the first and second applicants (the applicants), Ocean Ark Shipping Ltd (Ocean Ark) and Astron Energy (Pty) Ltd (Astron) respectively (the section 18 judgment).

[2] The respondent is the Commissioner for the South African Revenue Service (the Commissioner, also referred to as SARS).

[3] Ocean Ark and Astron have applied for leave to appeal the section 18 judgment and order to the Full Court of this Division, alternatively to the Supreme Court of Appeal. They contend that there are reasonable prospects of success on appeal and that there are compelling reasons why leave to appeal should be granted, as provided for in sections 17(1)*(a)(*i) and (ii) of the SC Act.

[4] The facts and applicant legal principles have been traversed in detail in the judgment in the main application and, to the degree necessary, in the section 18 judgment. They need not be revisited here.

Grounds for the application for leave to appeal

[5] The application for leave to appeal is brought firstly on the basis that another court will come to a different decision on the central finding by this Court that SARS stands to suffer irreparable harm if the judgment is brought into effect, and secondly that there are compelling reasons for this Court to grant leave to appeal against the section 18 judgment and order.

[6] Ocean Ark and Astron submit that the court erred *inter alia* in:

a) Finding that SARS may suffer irreparable harm if the section 18(3) order is granted as the applicants cannot de facto prevent the *MT Essien* vessel (the Vessel) from leaving South African waters, and despite earlier finding that the guarantee provides the fiscus with adequate security.

b) Not finding that SARS had not adduced any evidence which established that there would be a credible threat that the Vessel would be removed from South African territorial waters.

c) That upon expiry of Astron's time charter, at the earliest on 19 June 2026, the Vessel is free to leave,[1] and that there was no basis upon which to assume that Ocean Ark, as owner of the Vessel, would not fulfil its undertaking that the Vessel would not leave the territorial waters of South Africa.

d) In accepting the argument advanced by SARS that if it succeeds in the appeal and the section 18(3) order is granted, it will be left without either the guarantee or the Vessel, as the guarantee is an independent contract which is not subject to the outcome of the appeal and caters for the risk that the Vessel sails beyond the court's reach.

e) Overlooking the three components of section 18(4) which, cumulatively, address any harm SARS may suffer as a result of the grant of the section 18(3) order.

f) Finding that there are exceptional circumstances and that the applicant will suffer irreparable harm but then refusing the application.

[7] Lastly, Ocean Ark and Astron submitted that as the court found that the continued detention of the Vessel may cause widespread harm, the matter is of public importance and that this constitutes a compelling reason why the court should have granted the application.

[8] In short, the applicants' central contention is that the guarantee protects SARS' interest(s) in the Vessel adequately, which extends to any harm that SARS may suffer as a result of the section 18(3) order being granted, and the

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[1] Ocean Ark and Astron recorded that on appeal they intend applying to adduce new evidence that on 10 June 2026, after the section 18 judgment was handed down, the charterparty between Astron and ST Shipping was extended for a further year.

court accordingly erred in refusing to grant the order as applied for in terms of section 18(3).

Litigation history

[9] On 30 January 2026 and 2 March 2026, this Court heard an application, initially brought as a matter of urgency, regarding the detention, seizure, and deemed importation decisions by SARS. The applicants, Ocean Ark and Astron Energy, sought a temporary suspension of these decisions pending review proceedings in the Gauteng Division.

[10] The Vessel, owned by Ocean Ark and used by Astron for coastwise fuel transportation, was detained as according to the Commissioner it entered South African waters in September 2023 under a foreign flag without due entry or payment of import value-added tax. The applicants proposed substituting physical detention with a financial on-demand guarantee covering the Vessel's value, tax, penalties, and interest.

[11] On 24 April 2026, this Court granted an interim interdict temporarily suspending the Commissioner's decisions and ordering the release of the Vessel, subject to future directives from the review court. The court accepted a revised guarantee from Lombard Insurance as adequate security. In assessing the balance of convenience, the court noted that while SARS faced enforcement risks if the foreign-flagged vessel left domestic waters, this was mitigated by the guarantee.

[12] The court found that on the other hand, the applicants faced severe, irrecoverable prejudice, with Astron losing approximately R1 million per day (R31 million per month) and Ocean Ark risking a R400 million asset bought

without prior knowledge of the customs dispute. Furthermore, the court acknowledged a public interest dimension, as, according to the applicants', the continued detention of the Vessel potentially impacted jet fuel supply for Cape Town International Airport.

[13] Subsequently, the Commissioner applied for leave to appeal the main judgment, and the applicants launched a section 18(3) application to execute the order pending the appeal.

[14] The Commissioner argued inter alia that the order improperly substituted its statutory authority under section 93 of the Customs and Excise Act 91 of 1964, that the court fundamentally misdirected itself by accepting a guarantee not included in the formal record without giving SARS the opportunity to make submissions in relation thereto, and erred in treating the guarantee as equivalent to physical possession of the Vessel. It also argued that Ocean Ark failed to prove irreparable harm, highlighted that Astron's contract was due to expire in mid-2026, and lastly contended that costs should have been reserved for the review court.

[15] On 8 June 2026, this Court granted the Commissioner leave to appeal to the Supreme Court of Appeal but dismissed the applicants' section 18 application for immediate enforcement. The court found that there were reasonable prospects of the appeal succeeding, and that the potential permanent loss of physical control over the Vessel could have an effect that is final in nature.

[16] Regarding the section 18(3) application, the court reaffirmed that the applicants would suffer catastrophic financial losses of approximately R1 million per day if the order was suspended, but concluded that they failed to

show the Commissioner would not suffer irreparable harm. This Court found further that as Astron's time charter was coming to an end, and that any undertakings by the applicants could not necessarily ensure the Vessel remained in our territorial waters, the risk of the Vessel departing South African territory constituted potential irreparable harm to SARS.

Is the refusal of a section 18(3) order appealable?

[17] The automatic right of appeal under section 18(4)(ii) does not arise when an enforcement order under section 18 is refused. Ocean Ark and Astron seek leave to appeal in the ordinary manner, and may face a real, and potentially insuperable, challenge in establishing that the refusal is an appealable order at all.[2]

[18] The section 18(4) right of appeal applies where the court departs from the default position in terms of which the enforcement of an order is automatically suspended pending an appeal, with the result that the judgment cannot be carried out and no effect can be given thereto (the default position).

[19] The automatic right under section 18(4)(ii) was included specifically to protect the party against whom enforcement was ordered, who would otherwise have no route to challenge what is in ordinary law a purely interlocutory order.

[2] Section 18(4) of the Superior Courts Act 10 of 2013 (the Superior Courts Act) provides:
(4)*(a)* 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
(iv) such order will be automatically suspended, pending the outcome of such appeal.
(b) Next highest court', for purposes of paragraph *(a)* (ii), means-
(i) a full court of that Division, if the appeal is against a decision of a single judge of the Division; or
(ii) the Supreme Court of Appeal, if the appeal is against a decision of two judges or the full court of the Division.

[20] The SCA in *Naledi Local Municipality and Others v Appolus and Others*[3] recently observed that:

> 'Section 18(4)(*a*)(ii) is a distinct provision establishing a unique category of appeals, designed explicitly for orders made under s 18(3). Moreover, the application in terms of s 18(3) serves, by its nature, to regulate the interim position between litigants from the time that an order is issued until the final judgment on appeal is handed down. In addition, the s 18(4) appeal specifically allows for a single right of appeal, indicating that multiple appeals are not permitted under the section. In my view, once the judgment of this Court on the main appeal is handed down, irrespective of the outcome thereof, the s 18(3) order and the automatic appeal in terms of s 18(4)(*a*)(ii) will automatically fall away.'[4]

[21] The legislature plainly intended that only a party confronted with enforcement pending an appeal required the protection afforded by such a right, not a party who remained in the default position as a result of the refusal of a section 18 order. Put differently, the unsuccessful applicant in a section 18(3) application would ordinarily have no means to challenge what is ordinarily a purely interlocutory order.

[22] The authoritative judgment of Corbett JA in *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd,*[5] which has been applied in a long line of cases by our higher courts over the past five decades, set out the following cardinal principles in our common law regarding appealability.

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[3] *Naledi Local Municipality and Others v Appolus and Others* (122/2024) [2025] ZASCA 171; [2026] 1 All SA 59 (SCA) (14 November 2025).
[4] Id at para 14.
[5] *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 545.

[23] Firstly, that an exception to the default position, namely that the judgment may be carried into effect, can only be with the leave of the court which granted the judgment, upon special application by the judgment creditor.

[24] Secondly, that the court in deciding whether to grant leave to execute has a wide general discretion to grant or refuse leave, which is part of its inherent jurisdiction to control its own judgments, and that in exercising its discretion, the court should determine what is just and equitable in the circumstances.

[25] Section 18 largely preserved the common law, save that in terms of section 18(2) the carrying into effect of an interlocutory order, not having the effect of a final judgment, is not suspended pending appeal proceedings.

[26] A refusal of a section 18 application is manifestly an interlocutory order. The first question which therefore arises is whether the decision is an appealable 'judgment or order' under section 16(1)*(a)* of the SC Act.

[27] The *Zweni*[6] triad remains the foundational test. To be appealable, the decision must be final in effect (not susceptible to alteration by the court that made it), definitive of the rights of the parties, and dispositive of at least a substantial portion of the relief claimed. This must be considered in the context of the particular facts of each case. The interests of justice remain an overriding consideration in determining appealability.

[28] In addition, two jurisdictional facts must ordinarily be present: (a) leave to appeal; and (b) the impugned decision constitutes a decision as contemplated

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[6] *Zweni v Minister Of Law And Order* 1993 (1) SA 523 (A).

by section 16(1)*(a)* of the SC Act. In determining whether the latter is satisfied, the focus will be on the legal effect of the impugned decision.[7]

[29] The section 18(3) refusal by the court is a refusal to grant interim enforcement of an interim judgment and order. Practically and legally, that means the interim judgment and order granted in favour of the applicants is suspended and has no force and effect until the appeal before the SCA is finalised. Therefore, for the time being, the applicants are not at liberty to enjoy the advantages flowing from the main judgment. That seems to constitute a decision for purposes of the appealability enquiry.

[30] Importantly, whatever the outcome of the appeal the merits of the main application will be determined by the court hearing the review application. Therefore, this court's decision in granting or refusing leave to appeal in the present application must still be aimed towards protecting the integrity of the proceedings in the review court.[8]

[31] The applicants' main contention is that SARS will not suffer irreparable harm by virtue of the section 18(3) order being granted, and that the guarantee, as found in the main judgment, provides SARS with sufficient security pending the outcome in the appeal and in the review proceedings. The applicants further argued that section 18(4) of the SC Act protects SARS fully against any harm it may suffer as a result of the section 18(3) order being granted, in that (a) SARS will have an automatic right of appeal should the order be granted; (b) the appeal will be dealt with on the basis of extreme urgency; and (c) the section

[7] Id at 534

[8] *Ocean Ark Shipping Ltd and Another v Commissioner for the South African Revenue Service* [2026] ZAWCHC 201; [2026] 2 All SA 577 (WCC) para 61. See also *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP) at 404A-E.

18(3) order will be automatically suspended pending the outcome of the appeal by SARS.

[32] From a practical perspective, it is difficult to understand the purpose sought to be achieved by the applicants in their application for leave to appeal against the section 18(3) refusal in the circumstances of this case, more particularly when one has regard to their reading of section 18(4) of the SC Act.

[33] Firstly, when leave to appeal against the main judgment was granted to the SCA and the section 18(3) order refused, counsel for SARS undertook to facilitate the expedited hearing of the appeal in line with directives given by the President of the SCA.

[34] Secondly, on the applicants' reading of section 18(4), had the court granted the section 18(3) order and SARS exercised its automatic right of appeal the section 18(3) order would be suspended and would take matters back to square one, as if the section 18(3) order had not been granted. That is, the Vessel would not be released to the applicants until the appeal against the section 18(3) order is finalised and the court on appeal finds in the applicants' favour.

[35] Thirdly, granting leave to appeal in the present application will not automatically render the main judgment and order enforceable. Its enforceability depends on whether the court on appeal finds that this Court erred in not granting the section 18(3) order.

[36] Fourthly, due to the doctrine of vertical stare decisis, whatever decision the court hearing the section 18(3) appeal makes will be subject to the SCA's decision in the main appeal, if leave to appeal to the full court is granted. For

example, if the SCA finds that this Court should not have granted the interim judgment in favour of the applicants in the first place, the full court's pronouncement and order(s) on the section 18(3) appeal will serve no practical purpose.

[37] In short, regardless of whether this Court finds the section 18(3) order appealable or not, and whether or not the applicants have satisfied the requirements for leave to appeal to be granted, the fate of the Vessel is dependent on the decision of the SCA on appeal against the main judgment and ultimately the decision of the review court.

[38] The applicants rely heavily on the sufficiency of the guarantee and this Court's findings in that regard in the main judgment. However, they appear to have overlooked that one of the findings that informed the Court in granting leave to appeal against the main judgment is that another court may find that SARS should have been given an opportunity to make submissions or raise objections before the court could consider accepting the revised guarantee as adequate security to protect SARS interests in the Vessel. Another court may find that the revised guarantee does not adequately secure the interests of the fiscus.

[39] Moreover, in my view, a refusal of section 18 relief is not, in the ordinary course, appealable as it is not final in the ordinary sense, inasmuch as a court retains an inherent power and, arguably, a further application may lie if circumstances change, such as if new evidence of irreparable harm emerges.

[40] Furthermore, it does not definitively determine the parties' rights, as the main appeal remains extant and the underlying merits are unaffected by the order. Lastly, it usually does not dispose of any substantive relief, as it merely

preserves the statutory default position, leaving both parties exactly where they would have been had no application been brought.

[41] The applicants argued that the order is final in effect and referred the Court to the recent judgment of *Tau Mining Contractors (Pty) Ltd v Aveng Moolmans (Pty) Ltd and Another (Leave to Appeal),*[9] where the Court[10] granted leave to appeal the refusal of relief under section 18(3). This judgment did not deal with the issue of whether such an order is indeed appealable, and neither Ms Pillay SC nor Mr. Peter SC could refer me to any judgments in this (or indeed in any other divisions where such an order had been granted.

[42] Based on the foregoing, I am not persuaded that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.[11]

[43] There is no reason why costs should not follow the event.

Order

[44] I accordingly grant the following order:

(a) The application for leave to appeal is refused.
(b) The applicants are to pay the costs of the application, jointly and severally, the one paying the other to be absolved, the costs of
(c) counsel to be taxed on scale C.

[9] *Tau Mining Contractors (Pty) Ltd v Aveng Moolmans (Pty) Ltd and Another (Leave to Appeal)* (2671/2024) [2026] ZANCHC 52 (5 June 2026).
[10] Northern Cape Division, Kimberley.
[11] See section 17(1) of the SC Act.

M Holderness

Judge of the Western Cape High Court

<u>Appearances</u>

Ocean Ark Shipping Limited and Astron Energy (Pty) Ltd:	Adv S Mullins SC, Adv K Pillay SC, Adv D Cooke, Adv E Muller
Instructed by	
Ocean Ark Shipping Limited:	Bowman Gilfillan Inc.
Astron Energy (Pty) Ltd:	Webber Wentzel
The Commissioner for the South African Revenue Services:	Adv J Peter SC
Instructed by:	MacRobert Attorneys