

# Dispute Resolution

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## South Africa

- SCA confirms the position on reconsideration applications in the appeal process



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## SCA confirms the position on reconsideration applications in the appeal process

In the recent case of *Hi-Q Automotive (Pty) Ltd v Erga Investments (Pty) Ltd and Another* (935/2024) [2026] ZASCA 31, the Supreme Court of Appeal (SCA) provided much needed clarity on the long-standing debate concerning the procedural and substantive consequences of invoking a reconsideration under section 17(2)(f) of the Superior Courts Act 10 of 2013 (Act).

At its core, this case addressed whether the lodging of a reconsideration application affects the execution of a judgment, and how conflicting High Court approaches, particularly in the Gauteng Division, Johannesburg and the KwaZulu-Natal Division, Pietermaritzburg, ought to be reconciled.

### Statutory framework

Of prime importance in this case is the provisions of both section 17(2)(f) (in particular, the proviso thereto) and section 18(1) of the Act.

Section 17(2)(f) of the Act stipulates that the decision of the majority of judges considering an application referred to in section 17(2)(b) (an application brought if leave to appeal is refused by a judge or judges), to grant or refuse the application, shall be final, provided that the President of the SCA may, in exceptional circumstances, whether of his or her own accord or on application filed, refer the decision to the same court for reconsideration and, if necessary, variation.

Section 18(1) of the Act stipulates that 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.

When considering the contents of both section 17(2)(f) and section 18(1) of the Act, it is unclear whether the lodging of a reconsideration application affects the execution of a judgment.



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## The competing High Court approaches

The Gauteng Division adopted the view that a reconsideration application under the proviso to section 17(2)(f) does form part of the appeal process and therefore has the effect of suspending the operation and execution of a decision sought to be taken on appeal. According to this viewpoint, section 18(1) brings the operation and execution of a court decision that is the subject matter of an application for reconsideration in terms of the proviso to section 17(2)(f) to a temporary pause. In support of this interpretation, the Gauteng Division relied on prior cases as authority for the proposition that an application under the proviso to section 17(2)(f) forms part of the appeal process.

The KwaZulu-Natal Division adopted a different approach, and held that an application under the proviso to section 17(2)(f) does not form part of the appeal process and consequently, does not trigger automatic suspension as envisaged in section 18(1) of the Act, as a result of an appeal or an application for leave to appeal that is still pending. According to this view, under section 18(1), the operation and execution of an order would be suspended only if the court orders otherwise. In other words, the order would not be suspended merely on the bringing of an application to suspend such order. To attain the suspension of the order, there must be an order from

the court. Similarly, the court held, with respect to the proviso in section 17(2)(f), an application for a reconsideration of an unsuccessful petition to the SCA for leave to appeal, would of itself, not suspend the operation of the order. The President of the SCA would have to rule on the matter and until such ruling is made, and even if the proviso to section 17(2)(f) contemplated a suspension of the order, the order would not be suspended until a favourable decision to the applicant is pronounced on the reconsideration of the petition.

## The SCA's resolution of the conflict

The SCA preferred the Gauteng Division's approach.

The SCA stressed that at a practical level, although an application for reconsideration in terms of the proviso to section 17(2)(f) is not explicitly mentioned in section 18(1) of the Act, such application is nevertheless, on a contextual and purposive interpretation of section 18(1) read with the proviso to section 17(2)(f), also encompassed by section 18(1) because, after all, it is an integral part of the appeal process.

The SCA noted that it was fortified in this view by the very fact that the proviso itself explicitly empowers the President to 'refer the decision to the court for reconsideration and, if necessary, variation', and in the context of section 17(2)(f), the decision concerned is the one referred to in paragraph (b)



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which pertains to an application for leave to appeal previously refused by the High Court under section 17(2)(a) of the Act. Thus, having regard to the overall framework of the Act and the overarching scheme of section 17, read holistically, an application for reconsideration, which is, in pursuit of a litigant's quest to have a section 17(2)(b) decision reconsidered (and, if necessary, varied) falls within the purview of section 18(1) of the Act.

The SCA disapproved the KwaZulu-Natal Division's line of authority, finding it inconsistent with both the text and structure of the Act.

## Significance of the judgment

This decision is significant for several reasons. The decision provides doctrinal clarity. It clarifies the position regarding reconsideration applications in terms of section 17(2)(f). It provides harmonisation of High Court judgments. By endorsing the approach of the Gauteng Division and rejecting the KwaZulu-Natal Division's approach, the SCA resolved a developing split in High Court authority. The decision also has practical implications. Litigants must now be alert to the following: reconsideration applications offer protection against execution, but it would be incumbent on an applicant for reconsideration to satisfy the stringent requirements stipulated by the proviso.

## Conclusion

The Hi-Q Automotive case provides a clear and authoritative statement on the limits of section 17(2)(f) of the Act. By rejecting the interpretation adopted in the KwaZulu-Natal Division and confirming the approach by the Gauteng Division, the court has ensured certainty in the law relating to suspension of execution. This is an outcome that promotes both procedural clarity and the finality of judgments.

**Eugene Bester, Serisha Hariram and Mapule Shai**



## OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa, Kenya and Namibia, please contact:



### Rishaban Moodley

Practice Head & Director:  
Dispute Resolution  
Sector Head:  
Gambling & Regulatory Compliance  
T +27 (0)11 562 1666  
E rishaban.moodley@cdhlegal.com



### Tim Fletcher

Chairperson  
Director: Dispute Resolution  
T +27 (0)11 562 1061  
E tim.fletcher@cdhlegal.com



### Patrick Kauta

Managing Partner | Namibia  
T +264 833 730 100  
M +264 811 447 777  
E patrick.kauta@cdhlegal.com

### Imraan Abdullah

Director:  
Dispute Resolution  
T +27 (0)11 562 1177  
E imraan.abdullah@cdhlegal.com

### Timothy Baker

Director:  
Dispute Resolution  
T +27 (0)21 481 6308  
E timothy.baker@cdhlegal.com

### Eugene Bester

Director:  
Dispute Resolution  
T +27 (0)11 562 1173  
E eugene.bester@cdhlegal.com

### Neha Dhana

Director:  
Dispute Resolution  
T +27 (0)11 562 1267  
E neha.dhana@cdhlegal.com

### Denise Durand

Director:  
Dispute Resolution  
T +27 (0)11 562 1835  
E denise.durand@cdhlegal.com

### Claudette Dutilleux

Director:  
Dispute Resolution  
T +27 (0)11 562 1073  
E claudette.dutilleux@cdhlegal.com

### Jackwell Feris

Sector Head:  
Industrials, Manufacturing & Trade  
Director: Dispute Resolution  
T +27 (0)11 562 1825  
E jackwell.feris@cdhlegal.com

### Nastascha Harduth

Sector Head: Corporate Debt,  
Turnaround & Restructuring  
Director: Dispute Resolution  
T +27 (0)11 562 1453  
E n.harduth@cdhlegal.com

### Anja Hofmeyr

Director:  
Dispute Resolution  
T +27 (0)11 562 1129  
E anja.hofmeyr@cdhlegal.com

### Annemari Krugel

Director:  
Dispute Resolution  
T +27 (0)11 562 1709  
E annemari.krugel@cdhlegal.com

### Mercy Kuzeeko

Director:  
Dispute Resolution  
T +26 (4)83 373 0100  
E mercy.kuzeeko@cdhlegal.com

### Corné Lewis

Director:  
Dispute Resolution  
T +27 (0)11 562 1042  
E corne.lewis@cdhlegal.com

### Nomlayo Mabhena-Mlilo

Director:  
Dispute Resolution  
T +27 (0)11 562 1743  
E nomlayo.mabhena@cdhlegal.com

### Sentebale Makara

Director:  
Dispute Resolution  
T +27 (0)11 562 1181  
E sentebale.makara@cdhlegal.com

### Vincent Manko

Director:  
Dispute Resolution  
T +27 (0)11 562 1660  
E vincent.manko@cdhlegal.com

### Khaya Mantengu

Director:  
Dispute Resolution  
T +27 (0)11 562 1312  
E khaya.mantengu@cdhlegal.com

### Richard Marcus

Director:  
Dispute Resolution  
T +27 (0)21 481 6396  
E richard.marcus@cdhlegal.com

### Lebogang Makwela

Director:  
Dispute Resolution  
T +27 (0)11 562 1057  
E lebogang.makwela@cdhlegal.com

### Burton Meyer

Director:  
Dispute Resolution  
T +27 (0)11 562 1056  
E burton.meyer@cdhlegal.com

### Desmond Odhiambo

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E desmond.odhiambo@cdhlegal.com

### Lucinde Rhodie

Director:  
Dispute Resolution  
T +27 (0)21 405 6080  
E lucinde.rhodie@cdhlegal.com

### Clive Rumsey

Sector Head: Construction & Engineering  
Director: Dispute Resolution  
T +27 (0)11 562 1924  
E clive.rumsey@cdhlegal.com

### Belinda Scriba

Director:  
Dispute Resolution  
T +27 (0)21 405 6139  
E belinda.scriba@cdhlegal.com

### Tim Smit

Sector Head:  
Consumer Goods, Services & Retail  
Director: Dispute Resolution  
T +27 (0)11 562 1085  
E tim.smit@cdhlegal.com

### Joe Whittle

Director:  
Dispute Resolution  
T +27 (0)11 562 1138  
E joe.whittle@cdhlegal.com

### Roy Barendse

Executive Consultant:  
Dispute Resolution  
T +27 (0)21 405 6177  
E roy.barendse@cdhlegal.com

### Rimo Benjamin

Counsel:  
Dispute Resolution  
T +27 (0)11 562 1716  
E rimo.benjamin@cdhlegal.com

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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.  
Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114  
E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**ONGWEDIVA**

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.  
T +264 (0) 81 287 8330 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdhstellenbosch@cdhlegal.com](mailto:cdhstellenbosch@cdhlegal.com)

**WINDHOEK**

2<sup>nd</sup> Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.  
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020  
T +264 833 730 100 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

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