

SOUTH AFRICA / JUDGMENT

Bojosinyane v Maroga and Others

(UM197/2022) [2024] ZANWHC 221; [2024] 4 All SA 378 (NWM) (23 August 2024)

[2024] ZANWHC 221

COURT

North West High Court, Mafikeng

BEFORE

Hendricks, Laubscher, Morgan

CASE / FILE NUMBER

UM197/2022

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IN THE HIGH COURT

OF SOUTH AFRICA

(NORTH-WEST

DIVISION, MAHIKENG)

CASE

NO.UM 197/2022

APPEAL

CASE NO. CIV APP FB 16/2023

Reportable:

YES/NO

Circulate

to Judges: YES/NO

Circulate

to Magistrates: YES/NO

Circulate

to Regional Magistrates: YES/NO

OLAOTSE

THEOPHILUS BOJOSINYANE

Appellant

and

SELLO

MAROGA

1st

Respondent

KAGISANO

MOLOPO LOCAL MUNICIPALITY

2nd

Respondent

MEC

FOR THE NORTH WEST DEPARTMENT
OF
COOPERATIVE GOVERNANCE, HUMAN
SETTLEMENTS
& TRADITIONAL AFFAIRS
3rd
Respondent
ABSA
BANK LIMITED
4th
Respondent
MINISTER
OF COOPERATIVE GOVERNANCE
AND
TRADITIONAL AFFAIRS
5th
Respondent
PREMIER
OF THE NORTH WEST PROVINCE
6th
Respondent
EXECUTIVE

COUNCIL: NORTH
WEST PROVINCE
7th
Respondent
PROVINCIAL

LEGISLATURE: NORTH
WEST PROVINCE
8th
Respondent
NATIONAL
COUNCIL OF PROVINCES
9th
Respondent
PRESIDENT
OF THE REPUBLIC
OF
SOUTH AFRICA
10th
Respondent

CORAM:

HENDRICKS JP,
LAUBSCHER AJ &
MORGAN AJ:

DATE
OF HEARING
:
26 APRIL 2024
DATE
OF JUDGMENT
:
23 AUGUST 2024
FOR
THE APPELLANT
:
MR ZISIWE.
FOR
THE 1ST & 2ND RESPONDENTS
:
ADV MUZA.
FOR
THE 3RD RESPONDENT,
THE
6TH AND 7TH RESPONDENT
:
ADV MONNAHELA

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 10h00am on 23 August 2024.

ORDER

Accordingly, the following order is made:

1. The Appellant's appeal is struck from the roll with costs.

LAUBSCHER AJ

THE BACKGROUND RELEVANT TO THIS APPEAL:

- [1] This is an appeal to the Full Court of this division against the whole of the judgment and orders made on 31 October 2022 by Mahlangu AJ, except for the orders contained in paragraphs (a), (c) and (e). The order read as follows:

“(a) The non-compliance with the forms, service and time periods provided for in the Uniform Rules of Court is condoned and the application is heard on urgent basis in terms of Uniform rule of Court 6(12) (a);

- (b) That the application is dismissed;

- (c) That the application to supplement the answering affidavit by the first and second respondent is dismissed;
 - (d) The applicant is ordered to pay costs of the urgent application on a party and party scale;
 - (e) The first and second respondent are ordered to pay costs of the application to supplement the answering affidavit, jointly and severally the one paying the other to be absolved on a party and party scale.”
- [2] This appeal is before us under section 17(2)(a) of the Superior Courts Act, Act 10 of 2013 (hereafter “the Superior Court Act”). Mfenyana J granted leave to appeal on 18 August 2023.
- [3] In its notice of appeal, which the Appellant delivered on 15 September 2023, the Appellant advances three grounds of appeal, to wit:
- “(a) First ground of appeal: “The Learned Judge erred in finding that:- The Minister of Cooperative Governance & Traditional Affairs (fifth respondent) approved the appointment of the first respondent as an administrator on 10 October 2022”.*
- (b) Second ground of appeal: “The Learned Judge erred in finding that:-
- (i) The first respondent rightfully terminated the fixed term contract of employment of the applicant.
 - (ii) The first respondent is authorised to terminate the fixed term contract of employment of the applicant.
 - (iii) The applicant’s employment contract could not exceed a period of one year after the election of the new municipal council which took place in November 2021.”
- (c) Third ground of appeal: “Even if the application fell to be dismissed as the Court a quo found, the costs of the application did not fall to be awarded against the appellant for at least the reasons set out above and on the Bio Watch Principle and each party ought to have been ordered to pay its own costs.”
- [4] In his notice of appeal, the Appellant requested the following relief from this court of appeal:
- “The appellant seeks an order that the orders of the Court a quo to be set aside replaced in the following terms:-*
- (a) That it be declared that the provincial intermentioned in the Kagisano Molopo Local Municipality, in terms of Section 139 (1)(b) of the Constitution, with reference to a decision by the Provincial Executive Council of the Northwest Province taken on the 7 September 2022, has come to an end in terms of Section 139 (2)(i) of the Constitution;

- (b) That it be declared that the approval by the fifth respondent dated 10 October 2022 of the provincial intervention in the Kagisano Molopo Local Municipality, in terms of Section 139 (1) (b) of the Constitution, with reference to a decision by the Provincial Executive Council of the North West Province taken on the 7 September 2022 is inconsistent with Section 139 (2) (b) (i) of the Constitution and is consequently, unlawful, invalid and be set aside;
 - (c) That it be declared that the termination of the Applicant contract of employment by the first respondent, with effect from the 7 October 2022, was unlawful, invalid and be set aside;
 - (d) That it be declared that the first respondent lacks the authority to manage the second respondent's bank account(s) and appoint signatories in relation thereto;
 - (e) That the respondents be ordered to pay the applicants costs of the main application, costs of the appeal as well as costs of the application for leave to appeal."
- [5] The importance of the nature and content of the relief requested by the Appellant in this appeal will become evident below when this Court deals with the issue of the mootness of the appeal. The issue of mootness was expressly raised on behalf of the First and the Second Respondents in argument during the hearing of this appeal.
- [6] The First and the Second Respondents opposed the appeal as well as the Third Respondent, the Sixth Respondent and the Seventh Respondent.
- [7] This appeal was heard by the Full Court of this division on 26 April 2024 and the Appellant was represented by Mr Zisiwe, the First and the Second Respondents were represented by Adv Muza and the Third Respondent, the Sixth Respondent and the Seventh Respondent by Adv Monnahela.
- [8] None of the parties before this court delivered their heads of argument timeously as required by the provisions of Rule 49(15) and Practice Directive 13.1(a) of the practice directives of this court.
- [9] The Appellant delivered its heads of argument on 22 April 2024 and the First Respondent and the Second Respondent delivered their heads of argument on 16 April 2024. The Third Respondent, the Sixth Respondent and the Seventh Respondent delivered their heads of argument on 24 April 2024.
- [10] One day before the hearing of this appeal the Appellant delivered a notice of motion accompanied by a founding affidavit in terms of which the Appellant requested this court to condone the late delivery of the Appellant's heads of argument. This application was opposed by the respective respondents during the hearing of the appeal.
- [11] No application for condonation was made on behalf of any of the respondents for the late delivery of their respective sets of heads of argument.

[12] For reasons to be stated below, it is not necessary for the court to adjudicate and pronounce on the Applicant's application for condonation, suffice to state that this Court had sight of and considered the contents of the heads of argument delivered on behalf of the Appellant, the First Respondent and Second Respondent, as well as the Third Respondent, the Sixth Respondent and the Seventh Respondent.

THE FORMAL REQUIREMENTS IN PROSECUTING AN APPEAL AND THE NON-COMPLIANCES THEREWITH IN THIS APPEAL

[13] As stated above, leave to appeal in this matter was granted on 18 August 2023.

[14] The peremptory procedural steps for prosecuting an appeal subsequent to the granting of leave to appeal can be summarised as follows:

- (a) In terms of Rule 49(2), if leave to appeal to the Full Court is granted the notice of appeal shall be delivered to all the parties within twenty days after the date upon which leave was granted or within such longer period as may upon good cause shown be permitted. The Appellant delivered its notice of appeal in this appeal on 15 September 2023.
- (b) The appellant must then in order to prosecute the appeal, within a period of 60 days after delivery of a notice of appeal, execute the following four steps, to wit, in terms of:
 - (i) Rule 49(6)(a), make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal;
 - (ii) Rule 7(2), file with the registrar a power of attorney which conforms to the provisions of Rule 7(4), authorising him to appeal;
 - (iii) Rule 49(7)(a), file with the registrar three copies of the record on appeal and shall furnish two copies to the respondents and also the registrar shall be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents;
 - (iv) Rule 49(13)(a) and before lodging copies of the record on appeal with the registrar, enter into good and sufficient security for the respondents' costs of appeal, unless the respondents waive their right to security or the court in granting leave to appeal or subsequently on application to it, has released the appellant wholly or partially from that obligation.
- (c) It is important to note that Rule 49(6)(a) expressly states that if no application in terms of Rule 49(6)(a) (i.e., an application comprising the four steps as stated above) is made, the appeal shall be deemed to have lapsed.
- (d) In the matter of PAF v SCF,[1] the Supreme Court of Appeal stated that: "The High Court granted the applicant leave to appeal to the Full Court on 23 October 2018. The notice of appeal was delivered timeously on 7 November 2018. In terms of rule 49 (6)(a) of the

Uniform Rules of Court, the applicant had 60 days within which to apply for allocation of the date of hearing of the appeal, and to lodge the appeal record. If no such application was made, the appeal would be deemed to have lapsed in terms of the rule. Thus, the applicant had up to 6 February 2019 to apply for a date. He only did so on 10 October 2019, when he also furnished the record on appeal. By then, the appeal had lapsed in terms of the deeming provisions of rule 49(6)(a)". (this court's emphasis)

Thus, the Supreme Court of Appeal held that the appeal had lapsed due to the applicant's failure to comply with the procedural

requirements set out in rule 49(6)(a) of the Uniform Rules of Court. This judgment underscores the importance of strict compliance with procedural timelines in appeal matters, as failure to do so can result in the appeal being deemed to have lapsed, regardless of its merits. This, of course, subject to the appellant failing to show good cause for reinstatement.

(e) Accordingly, a Full Court of this division stated the following in the matter of Ngaka Modiri Molema District Municipality v Quantibuild (Proprietary) Limited[2]:

"[17] The Municipality further contends that the Full Court held that the appeal had not lapsed. This is not entirely correct. The Full Court found that the deeming provisions in terms of Rule 49(6)(a) means that the appeal is deemed to have lapsed, but the other party (Quantibuild) may approach the court (Full Court) seized with the appeal, for an order that the appeal has lapsed. Because there was no such

application before the Full Court by Quantibuild seeking a declaratory order that the appeal has lapsed, therefore the appeal was removed from the roll and the Municipality was ordered to pay the wasted costs. The Full Court held: "[25] Resultantly, the appeal cannot be deemed to have lapsed unless the respondent [Quantibuild] applies for relief seeking an order to the effect that the appeal has lapsed, which the respondent has not done."

[18] That the appeal has lapsed is beyond dispute having regard to the conduct of the Municipality in the prosecution of the appeal. The order sought by Quantibuild that the appeal has lapsed accordingly stands to be granted. The remaining question, based on the counter application for condonation by the Municipality is whether a case is made for condonation to be granted and the consequent re-instatement of the appeal." (this Court's emphasis)

(f) To this end, Rule 49(6)(b) states that the court to which the appeal is made may, on application of the appellant and upon good cause shown reinstate an appeal which has lapsed as contemplated in terms of Rule 49(6)(a).[3] An appellant whose appeal has lapsed (or deemed to have lapsed) cannot simply proceed with such an appeal but must approach the court of appeal with an application to have the appeal reinstated or resurrected.[4]

(g) After the application for the hearing date of an appeal and the execution of the steps as referred to above, the registrar proceeds to enrol the appeal for the hearing thereof, whereafter the provisions of Rule 49(15) read with the practice directives of the division concerned find application in respect of the delivery of heads of argument.

[15] In this appeal, the Appellant failed to:

- (a) file a power of attorney as contemplated in terms of Rule 7(2), read with Rule 7(4); and
- (b) provide and enter security, as contemplated in terms of Rule 49(13)(a),

together with the Appellant's application for a hearing date in terms of Rule 49(6)(a).

[16] These facts are clearly evident from the fact that the Appellant on 26 April 2024 and after the hearing of this appeal wherein these non-compliances were pointed out to and raised by this Court with the Appellant's attorney, Mr Zisiwe, proceeded to deliver the following documents:

- (a) a "Special Power of Attorney" dated 26 April 2024; and
- (b) "Security for Costs" in the amount of R 250 000.00, also dated 26 April 2024.

[17] In *Smith v Sci Essel Offshore Services Limited*,^[5] the Court also recently considered the effect of a failure to comply with the provisions of Rule 7(2) upon a request for the allocation of a hearing date for an appeal in terms of the provisions of Rule 49(6)(a), and the following was stated by the court:

"[12] Rule 7(2) of the Uniform Rules provides: 'The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorizing him to appeal, and such power of attorney shall be filed together with the application for a date of hearing.'

[13] A power of attorney is necessary for the prosecution of an appeal because it is proof of authorisation for the conduct of further proceedings. It is to prevent a person whose name is used in the process from afterward repudiating the process altogether and denying the giving of authority and to prevent the institution of an appeal in the name of a person who never authorised it.

(footnote: *Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk en Andere* (1) 1978

- (1) SA 160 (W) at 162C-D; *Eskom v Soweto City Council* 1992
- (2) SA 703 (W) at 705E-F.)

[14] On a plain reading of the rule, it is evident that to prosecute an appeal, it is essential to file the power of attorney when the

application is made for a hearing date. Filing an application for a date of hearing without a power of attorney is not the proper ‘making’ of that application within the meaning of the rules.

(footnote: Corlett Drive Estate Ltd v Boland Bank Ltd and Another 1978

[4] SA 420 (C) at 425D-E, Aymac CC and Another v Widgerow 2009

[6] SA 433 (W) para [6].) The imperative of Rule 7(2) becomes clearer when considered in light of the fact that Rule 7(1) does not prescribe the general filing of a power of attorney when litigation commences.” (this Court’s emphasis)

[18] The Appellant also failed to timeously and as prescribed in terms of the provisions of Rule 49(7)(a),[6] read with Rule 49(6)(a) deliver the appeal record within a period of 60 days from the date of the delivery of the notice of appeal, i.e. at the time when the Appellant makes the application for a hearing date in the appeal in terms of Rule 49(6)(a). The appeal record was delivered on 12 December 2023 (instead of 8 December 2023) which is outside of the prescribed period of 60 days in terms of Rule 49(6)(a).

[19] Accordingly, there was no compliance with the provisions of Rule 49(6)(a) and, as such, this appeal is deemed to have lapsed.

[20] The Appellant did not proceed to launch an application as contemplated in terms of the provisions of Rule 49(6)(b), i.e., to reinstate the appeal which has lapsed upon good cause shown.

[21] Accordingly, there is no appeal before this Court to adjudicate.

THE MOOTNESS OF THIS APPEAL

[22] Notwithstanding the facts stated in the preceding paragraphs, and even if the Appellant’s appeal was in esse capable of being adjudicated, the relief requested by the Appellant in the notice of appeal (and as quoted above) is moot. It does not present “...a live dispute or controversy between the parties which would be practically affected in one way or another by a court’s decision or which would be resolved by a court’s decision...”.[7]

[23] On 7 September 2022, the Seventh Respondent invoked the provisions of section 139(1)(b) of the Constitution[8] in respect of the Second Respondent.

[24] On 20 September 2022, the First Respondent was appointed Administrator of the Second Respondent.

[25] On 5 October 2022, the First Respondent resolved to terminate the Appellant’s employment contract with the full benefits that would have accrued to the Appellant in terms of the Appellant’s employment contract and for the full duration of the said employment contract as per the provisions thereof. This resolution was communicated to the Appellant on 6 October 2022.

- [26] The Appellant's employment contract would have terminated its duration period during November 2022.
- [27] On 10 October 2022, the Fifth Respondent approved the section 139(1)(b) intervention as contemplated in terms of the provisions of section 139(2)(b) of the Constitution.
- [28] The relief which the Appellant is requesting from this Full Court in terms of this appeal, and as quoted in paragraph 4 above, can achieve no more than provide resolution to a set of stated facts of which the practical implication and effect amounts to nullity, and which will only be academic. The issues presented and addressed by the Appellant's notice of appeal do not present relevant issues that will have practical effect or import.
- [29] Section 16(2)(a)(i) of the Superior Courts Act states that: "When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone."
- [30] In *City of Ekurhuleni Metropolitan Municipality v Tshepo Gugu Trading CC and Another*,^[9] the Supreme Court of Appeal stated the following in respect of the consideration of "mootness" in an appeal:
- "[31] A further point raised by the municipality was that, at the time the respondent had approached the Full Court the appeal was moot. The Victor J order had a two-year lifespan. The settlement agreement provided that 'unless novated by a further agreement (including any further agreement concluded following an approval of the regularisation application), this agreement will operate for a period of two years, namely until 11 September 2020'.*
- [32] The jurisprudence on mootness is trite. Courts generally shy away from entertaining issues that are no longer relevant and have no practical effect. The limited resources of courts should be directed at dealing with live disputes. In *Police and Prisons Civil Rights Union v South African Correctional Service Workers' Union and Others (Police and Prisons Civil Rights Union)* (footnote: *Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union and Others* [2018] ZACC 24; [2018] 11 BLLR 1035 (CC); 2018 (11) BCLR 1411 (CC); (2018) 39 ILJ 2646 (CC); 2019 (1) SA 73 (CC) paras 43-44; *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* [2023] ZASCA 35 paras 12-14.) the Constitutional Court, however, reiterated that mootness should not be an absolute bar to the justiciability of an issue. The court may entertain an appeal, even if moot, where the interests of justice so dictates. (footnote: *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC)[2001] ZACC 23; ; 2001

- (9) BCLR 883 (CC) para 9. See also: Minister of Mineral Resources v Sishen Iron Ore Company (Pty) Ltd [2013] ZACC 45; 2014
- (2) SA 603 (CC); 2014
- (2) BCLR 212 (CC) para 104.) The determination whether the interests of justice so dictate involves an exercise of a discretion by the court after considering various factors, including whether the order will have some practical effect as well as the extent of its importance to the parties or to others. (footnote: Ibid fn 14 para 44.)” (this court’s emphasis)
- [31] Furthermore, in Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs[10] the same Court stated the following in respect of “mootness”:
- “[12] The general principle is that a matter is moot when a court’s judgment will have no practical effect on the parties. (footnote: Section 16(2)(a)(i) of the Superior Courts Act 10 of 2013; A B and Another v Pridwin Preparatory School and Others [2020] ZACC 12; 2020 (9) BCLR 1029 (CC); 20 20 (5) SA 327 (CC).) This usually occurs where there is no longer an existing or live controversy between the parties. (footnote: Pridwin para 50.) A court should refrain from making rulings on such matters, as the court’s decision will merely amount to an advisory opinion on the identified legal questions, which are abstract, academic or hypothetical and have no direct effect; (footnote: National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others [1999] ZACC 17; 2000*
- (2) SA 1 (CC)[1999] ZACC 17; ; 2000
- (1) BCLR 39 (CC) para 21 fn 18.) one of the reasons for that rule being that a court’s purpose is to adjudicate existing legal disputes and its scarce resources should not be wasted away on abstract questions of law. (footnote: Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union and Others [2018] ZACC 24; 2018
- (11) BCLR 1411 (CC); 2019
- (1) SA 73 (CC) para 43.) In President of the Republic of South Africa v Democratic Alliance, (footnote: President of the Republic of South Africa v Democratic Alliance and Others [2019] ZACC 35; 2019
- (11) BCLR 1403 (CC); 2020
- (1) SA 428 (CC) para 35.) the Constitutional Court cautioned that ‘courts should be loath to fulfil an advisory role, particularly for the benefit of those who have dependable advice abundantly available to them and in circumstances where no actual purpose would be served by that decision, now’.

- [13] However, this principle is not an absolute bar against deciding moot matters. An appeal court has a discretion to decide a matter even if it has become academic or moot in circumstances where ‘the interests of justice require that it be decided’. (footnote: *Sebola and Another v Standard Bank of South Africa Ltd and Another* [2012] ZACC 11; 2012 (5) SA 142 (CC); 2012
- (8) BCLR 785 (CC) para 32.) In *Independent Electoral Commission v Langeberg Municipality*, (footnote: *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001
- (3) SA 925 (CC); 2001
- (9) BCLR 883 (CC) para 11.) the Constitutional Court held as follows: ‘This Court has a discretion to decide issues on appeal even if they no longer present existing or live controversies. That discretion must be exercised according to what the interests of justice require. A prerequisite for the exercise of the discretion is that any order which this Court may make will have some practical effect either on the parties or on others. Other factors that may be relevant will include the nature and extent of the practical effect that any possible order might have, the importance of the issue, its complexity, and the fullness or otherwise of the argument advanced.’
- [14] It is so that the courts, in a number of cases, have dealt with the merits of an appeal, notwithstanding the mootness of the dispute between the parties. Those cases involved legal issues ‘of public importance . . . that would affect matters in the future and on which the adjudication of this court was required’. (footnote: *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another* [2015] ZASCA 155; [2015] 4 All SA 571 (SCA); 2016 (2) SA 121 (SCA) para 14. See also *MEC for Education, KwaZulu-Natal and Others v Pillay* [2007] ZACC 21[2007] ZACC 21; ; 2008
- (1) SA 474 (CC); 2008
- (2) BCLR 99 (CC) para 32.)
- [15] As previously stated, the main relief sought by the appellants in the high court was for the setting aside of the impugned regulations. Having regard to the fact that the impugned regulations were long since repealed and no longer in force before the matter came before the high court, there was nothing to set aside. There was no live issue for that court to adjudicate upon. (footnote: omitted)” (this court’s emphasis)
- [32] The Supreme Court of Appeal proceeded to state:[11]
- “[18] It must be borne in mind that s 16(2)(a)(i) of the Superior Courts Act confers a discretion on a court of appeal to hear an appeal notwithstanding mootness. Therefore, when a court of first instance has determined that the subject matter of litigation has ceased to exist before judgment, it has no jurisdiction to entertain the merits of the matter. Only an appeal court has a discretion to hear an appeal notwithstanding mootness. In the matter of Minister of Justice and Correctional Services v*

Estate Late Stransham-Ford, (footnote: *Minister of Justice and Correctional Services and Others v Estate Late Stransham-Ford* [2016] ZASCA 197; [2017] 1 All SA 354 (SCA); 2017

(3) BCLR 364 (SCA); 2017

(3) SA 152 (SCA) paras 25 and 26.) this Court said: “The appeal court’s jurisdiction was exercised because “a discrete legal issue of public importance

arose that would affect matters in the future and on which the adjudication of this court was required”. The high court is not vested with similar powers. Its function is to determine cases that present live issues for determination. . . If a cause of action ceases to exist before judgment in the court of first instance, there is no longer a claim before the court for its adjudication.’

[19] In a recent judgment, *Minister of Tourism v Afriforum NPC*, (footnote: *Minister of Tourism and Others v Afriforum NPC and Another* [2023] ZACC 7 (CC) para 23.) dated 8 February 2023, and also dealing with the effects of the COVID-19 pandemic, the Constitutional Court stated as follows: ‘A case is moot when there is no longer a live dispute or controversy between the parties which would be practically affected in one way or another by a court’s decision or which would be resolved by a court’s decision. A case is also moot when a court’s decision would be of academic interest only.’

[20] There is no discrete issue before us. In the circumstances, it was not necessary to go into the merits of the matter. To adjudicate on the circumstances that gave rise to the limitation on the right to freedom of religion that no longer exist would be to do so in a vacuum. Therefore, if the court were to decide on the validity of the limitation, there would be no effect other than a mere declaration that the limitation was either valid or not. Such a declarator would in all likelihood have no effect on future regulations introduced either to combat another strain of COVID-19 or the emergence of a new pandemic, because those regulations would be fact-specific to circumstances present during that relevant time. As a result, this Court’s decision in respect of the impugned regulations based on the current facts would have no effect, as there are no regulations in place at the present moment. This Court in *Estate Late Stransham-Ford* said the following: ‘Dealing with the situation where events subsequent to the commencement of litigation resulted in there no longer being an issue for determination, Ackermann J said in *National Coalition for Gay and Lesbian Equality & others v Minister of Home Affairs & others*: “A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.” At the time that Fabricius J delivered his judgment there was no longer an existing controversy for him to pronounce upon. The case

was no longer justiciable.’

- [21] In view of the foregoing, the high court was correct in finding that the matter was moot. Its findings are unassailable. Even if it was wrong at the time, as things stand, the regulations are no longer in place. The national state of disaster has been terminated. For all of the above reasons, there is no real purpose to be served by entertaining this appeal. Thus, this Court made an order dismissing the appeal on 14 March 2023.” (this court’s emphasis)
- [33] In short, a case is moot and therefore not justiciable if it no longer presents an existing or live controversy or if the applicant's prejudice or threat of prejudice no longer exists. This is because courts should avoid giving advisory opinions on abstract propositions of law. As noted above, mootness is closely linked to the justiciability of a matter, a core principle in legal proceedings that ensures courts resolve actual controversies rather than abstract or theoretical questions. A matter is moot when it no longer presents a live dispute between the parties, often due to changes in circumstances that render the issue irrelevant or the relief sought redundant. For instance, if a law that is being challenged is repealed before the conclusion of the case, the matter becomes moot because the resolution of the dispute will have no real-world effect.
- [34] While mootness generally precludes the need for judicial intervention, South African courts have consistently recognised that the doctrine is not rigid and must be applied flexibly. In particular, the courts have a discretion to hear moot cases where the interests of justice warrant it. This flexibility is especially important in matters that involve constitutional questions, issues of public importance, or rights that may affect others beyond the immediate parties to the dispute.[12]
- [35] The doctrine is based on the notion that judicial resources ought to be utilised efficiently and should not be dedicated to advisory opinions or abstract propositions of law, and that courts should avoid deciding matters that are “abstract, academic or hypothetical”. [13]
- [36] Mootness plays a critical role in ensuring judicial economy, which refers to the efficient use of court resources. Courts are overburdened with cases, and the principle of mootness helps ensure that only disputes that require resolution are brought before the judiciary. By filtering out cases that no longer present a live issue, the doctrine of mootness prevents the judiciary from expending time and resources on academic or irrelevant matters. This, in turn, allows the courts to focus on cases that have practical significance and require immediate adjudication.

[37] Irrespective of the fact that this appeal has lapsed and is no longer in esse, equally fatal to it is the fact that the relief requested by the Appellant has become moot and do not present “... an existing or live controversy...” which stands to be pronounced upon. In this case, there are no interests of justice considerations that warrant us to overlook the mootness of this case.

[38] Accordingly, the following order is made:

N G LAUBSCHER

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

I AGREE.

M MORGAN

R D HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT OF SOUTH AFRICA

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[1] 2022

(6) SA 162 (SCA) at para 13.

[2] CIV APP FB12/2022; 3352/2019) [2024] ZANWHC 101 (12 April 2024) at para 17 and 18.

[3] See *Herf v Germani* 1978 (1) SA 440 (T) at 443 D to E and 448 H and *PAF v SCF* supra at para 14 to 23.

[4] See *Ngaka Modiri Molema District Municipality v Quantibuild (Proprietary) Limited* supra at para 19 wherein this court stated that: “An appeal that has lapsed (or deemed to have lapsed) can be resurrected via a successful application for condonation and re-enrolment. It is trite that insofar as condonation is concerned, that the test for determining whether condonation should be granted or refused is the interests of justice.” (this Court’s emphasis)

[5] (A740/2014) [2024] ZAGPPHC 119 (15 February 2024) at paras 12 to 14.

[6] Rule 49(7)(a) states inter alia: ” At the same time as the application for a date for the hearing of an appeal in terms of sub-rule (6)(a) of this rule the appellant shall file with the registrar three copies of the record on appeal and shall furnish two copies to the respondent....” (this Court’s emphasis)

[7] *Minister of Tourism and Others v Afriforum NPC and Another*

[2023] ZACC 7 Para 23.

[8] Which deals with provincial intervention in local government and which states that: “139(1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including —...(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to —

(i) maintain essential national standards or meet established minimum standards for the rendering of a service; (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or (iii) maintain economic unity;...”.

[9] (1054/2022)

[2024] ZASCA 81 (28 May 2024) at paras 31 to 32.

[10] (104/2022)

[2023] ZASCA 35 (31 March 2023) at para 12 to 15.

[11] Ibid, para 18 to 21.

[12] AAA Investments (Pty) Ltd v Micro Finance Regulatory Council

(1) SA 343 (CC) at para 27, President of the Republic of South Africa v Democratic Alliance 2020 (1) SA 428 (CC) at para 17 and South African Reserve Bank v Shuttleworth 2015 (5) SA 146 (CC) at para 27.

[13] T Publishing (Pty) Ltd v Minister of Safety and Security

[1996] ZACC 23; 1997 (3) SA 514 (CC) at para 15.

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