

SOUTH AFRICA / JUDGMENT

Provincial Heritage Authority, Eastern Cape v Mellon Developments (CA 254/2019; 515/2018) [2021] ZAECHGHC 100 (18 November 2021)

[2021] ZAECHGHC 100

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Hartle, Schoeman, Rusi

CASE / FILE NUMBER

CA 254/2019; 515/2018

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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO. CA 254/2019

515/2018

In the matter between:

PROVINCIAL HERITAGE AUTHORITY,

EASTERN CAPE Appellant

and

MELLON DEVELOPMENTS (PTY) LTD Respondent

APPEAL JUDGMENT

HARTLE J

- [1] The respondent, a property owner and developer, successfully sought an order in the court a quo setting aside the appellant's decision to refuse a permit to it authorising the demolition of a more than sixty-year-old structure on a property in Walmer, Port Elizabeth, which it had hoped to develop.

- [2] The application was made pursuant to the provisions of Section 34 (1) of the National Heritage Resources Act, No 25 of 1999 (“The Heritage Act”) which provides that no person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.
- [3] Arising from a judicial review of the administrative decisions of the appellant directing the respondent to submit stipulated additional information to the respondent before a decision could be taken, as well as its final decision refusing the permit in respect of the structure in question, the court a quo set aside both impugned decisions. It further ordered the appellant to issue to the respondent within 14 days of the service on it of its order a permit in terms of section 34 (1) of the Heritage Act to allow the respondent to demolish the structure.
- [4] Not happy, the appellant sought and was granted leave to appeal against that decision to this court. Its stance is that it refused the permit because information essential to its granting was not provided to it. One of the components in assessing whether to grant a permit involved consultation with neighbours and heritage organisations. It asserts, through the appeal, that despite the mandatory obligations on it to manage heritage resources in a way that acknowledges the right of affected communities to be consulted and to participate in their management before approving a demolition permit, that the effect of the order appealed against is that it unjustifiably condoned the respondent’s refusal to carry out such consultations, or to provide the stipulated additional information requested from it. In the result it claimed that the court a quo had disregarded the peremptory provisions of section 5 (4) of the Heritage Act.[1]
- [5] The judgment appealed against was handed down on 27 June 2019. The application for leave to appeal was issued on 22 July 2019. Leave to appeal was argued and granted on 13 August 2019. The notice of appeal was filed on 4 September 2019, followed by the usual steps to progress the matter to the point of it being heard by the full bench. The record was prepared, filed, and delivered on 23 October 2019.
- [6] In preparing heads of argument[2] Mr. Richards who appeared for the respondent called attention to the fact - for the first time as far as the appellant was aware, that the property on which the structure is situated (which is the subject matter of the review application) had been sold, probably rendering the appeal academic.
- [7] Section 16 (2)(a)(i) of the Superior Courts Act, No.10 of 2013 provides 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.”*
- [8] With not much time to spare before the appeal was due to be heard, the respondent heralded that it would approach the Judge President for his intervention in terms of section 16 (2) (b) of the Superior Courts Act. This subsection provides that if, at any time prior to the hearing of the appeal, the Judge President (or the judge presiding) is prima facie of the view that it would be appropriate to dismiss the appeal on the ground set out in section 16

- (2) (a), he/she must call for written representations from the respective parties as to why the appeal should not be dismissed. The process envisages a referral by the Judge President, upon receipt of the representations, to three judges to deliberate the question whether the appeal should be dismissed on the ground set out in section 16 (2) (a) in chambers (unless they order that the question be argued before them at a place and time appointed), no doubt to obviate the appeal proceeding in the ordinary course.
- [9] In this instance however the appeal was already due to be heard in the ordinary course and such suggestion made too late in the day for a chamber consideration on the basis envisaged in section 16 (2) (b) –
- (d) of the Superior Courts Act.

“2. The parties are to address the following:

- 2.1 Is the respondent still the owner of the property on which the structure is situated?
- 2.2 If not, when was it alienated and to whom?
- 2.3 If the respondent is no longer the owner, and the appeal is successful, would the outcome of the appeal have any practical effect?
- 2.4 If the appeal will have no practical effect, should the appeal not be dismissed on that ground alone?
- 2.5 If so, which party should pay the costs?”

[11] In response to the directive and further questions raised by the court at the hearing, it was established that the respondent was no longer the owner of the property but that it had, evidently even before the judgment of the court a quo was handed down, been sold on 21 June 2019 to another entity, subject to a suspensive condition. This condition was met when a bank approved the financing for the purchase price on 19 July 2019, but the deposit and transfer costs were only paid on 2 and 5 September 2019 respectively. Transfer to the new owner was registered on 4 December 2019.

[12] As was pointed out by Mr. Richards in the respondent’s heads of argument, the mootness arises because of the unique provisions of the Heritage Act in relation to applications made for a demolition permit under its general provisions. Section 34 (1) provides as follows:

“No person may alter or demolish any structure or part of the structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority”. (Emphasis added)

[13] Section 48 (2) of the Heritage Act empowers the appellant to issue a permit such as was sought by the respondent at the relevant time to a party applying for it:

“On application by any person in the manner prescribed under subsection (1) a heritage resources authority may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit...” (Emphasis added)

- [14] A permit to demolish a structure affords a personal right to “the person” to whom or which it is issued, which is not transferable upon the sale of the property on which the structure occurs. Indeed, the court a quo also directed the appellant in the order appealed against to issue a demolition permit to the respondent.
- [15] It follows that in the event that the appeal is not upheld that the appellant would be obliged to issue to the respondent a permit which would relate to a structure forming part of a property which it no longer owns and in respect of which it has no rights whatsoever.
- [16] Conversely, if the appeal is upheld it would not serve to preserve the structure on the property sought to be demolished since the respondent no longer has any control over it.
- [17] Self-evidently, therefore, the outcome of the appeal could have no practical effect or result. [3] The demolition permit in the hands of the respondent “is utterly irrelevant”[4] and the upholding of the appeal (thereby reinstating the refusal of the appellant to grant the permit) would be equally lacking in effect.
- [18] Mootness arises “when the matter no longer presents an existing or live controversy.” 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.[5]
- [19] Whilst mootness is not an absolute bar to the justiciability of an issue, and a court may still in the exercise of its discretion entertain an appeal where the interests of justice so require, [6] the parties are in agreement that this is not one of those matters where a legal issue of public importance arises. Indeed, the

appellant in its notice of appeal and in the heads of argument submitted on its behalf pursues its appeal on the basis of the facts

relied upon by the court a quo and has not raised a legal issue of more general application. The grant of the order appealed against was decided on the basis of specific facts and no “discrete legal issue of public importance”, which would be in the interests of justice to hear, arises in this matter.[7]

- [20] Given these developments and features of the matter, the parties fairly accepted that the appeal should be dismissed, and this is the order which we propose to make. That leaves only the issue of costs.

[21] Section 16 (2)(d) of the Superior Courts Act allows for an order dismissing an appeal on the basis of mootness to be made “with or without an order as to the costs incurred in any of the courts below or in respect of the costs of appeal, including the costs in respect of the preparation and lodging of the written representations”. This involves an obvious consideration of the costs both of the original hearing that would have formed part of the appeal costs, as well as the costs of the appeal itself.

[22] In introducing the suggestion that the appeal had become academic the respondent made no concession in respect of either set of costs. In its supplemented heads of argument, the respondent contended that since the appellant would not likely have succeeded in persuading this court that the judgement of the court a quo fell to be set aside on appeal, this court should leave the award of costs by the first court undisturbed. As for the costs of appeal, it was submitted that it was only once the property on which the structure occurs had been transferred that it could be concluded that the appeal would have no practical effect. Further, it was contended that this was not a typical scenario in which it could be suggested that costs had been unnecessarily incurred by the respondent through its failure to take proper steps or through taking wholly unnecessary steps. Further and in any event, by the time the applicability of section 16 (2) (a) of the Superior Courts Act “became apparent,” most of the costs of prosecuting the appeal had already been incurred. In the circumstances it was argued on behalf

of the respondent that the costs of the appeal, including the costs of making submissions in accordance with this court’s

directive, should follow its conclusion on the merits and be awarded in its favour. As a sop it was suggested that this court might

however exercise its discretion to order that each party pays its own costs of the appeal.

[23] The appellant argued conversely that the respondent should bear the costs of both the review (on the basis that the appeal would have succeeded but for the matter having become moot because the respondent sold the property), and of the appeal. Regarding the latter costs Mr. Cole submitted that it was incumbent upon the respondent to have said at the very latest (in relation to the sale date) when they heard that the appellant was seeking leave to appeal some two years ago, that it had sold the property and no longer required the demolition permit. He suggested that even before the judgment of the court a quo had been delivered the respondent had probably already appointed an estate agent to market the property and must have been aware then already that its need for the permit would fall away. Certainly, by the time the judgment appealed against had been delivered, and the appellant had launched its application for leave to appeal, the respondent ought to have reconciled itself with the inevitability of a transfer of the property and, as a reasonable litigant, should have indicated to the appellant that an important development had taken place that might render the result of its intended appeal of no practical effect or result. It could have advised the appellant not to incur any further costs or take any further steps. It

could have asked the appellant to hold its application for leave to appeal in abeyance pending fulfilment of the sale conditions and given it the assurance that it would not hold it to the necessary time limits and or that it would not oppose an application for condonation should the application for leave to appeal proved to have still been necessary as a result of the sale not proceeding for any reason. As it turned out, it was not informed of the critical development of the sale or its likely impact on the pending litigation until the filing of the respondent's heads of argument. Mr. Cole argued strongly that the principles of equity and justice demand that the respondent should be held liable for the costs of the appeal because these were unnecessarily or ineffectively incurred by the appellant because of the respondent's failure to have alerted it to this game changing development.

[24] The expectation since the appeal has become moot is that the court must do its best to make a fair allocation as to costs on the basis of the material at its disposal, employing such legal principles as are applicable to the situation.[8] The idea is to avoid a full and extended hearing to "investigate dead issues to see who would have won on such issues," which would be futile in all the circumstances.[9]

[25] Further, it does not necessarily follow that the cost as per the general rule should follow the event where, as in this instance, the appellant has had to concede - since coming to know that the respondent sold its property and no longer has need of the demolition permit, that the appropriate order is that its appeal of necessity falls to be dismissed on the basis that the issue of the demolition permit has become irrelevant. As was highlighted in *Gamlan Investments*:[10]

"Referring to the decisions in the Norwich Union decision and that in Herold's case supra, the Court in Llama

Restaurant Franchising Co (Pty) Ltd v Ivano (Pty) Ltd 1990

(1) SA 474 (C) held at 476F-G that:

'The general rule, stated above, is flexible and discretionary. . . . A successful appellant may be awarded all of his costs of appeal, or some of them, or none. He may be ordered to pay some or all of the respondent's costs of appeal. The appropriate order depends on the exercise of the Court's discretion in all the relevant circumstances, of which substantial success is one.'

And at 478E:

' . . . (T)hree main factors will usually influence the Court in the exercise of its discretion. They are: the measure of appellant's

success; the measure of appellant's failure; and the extent, if any, to which appellant has unnecessarily or unsuccessfully added to the costs.'"[11]

And,

*“A party must pay such costs as have been unnecessarily incurred through his failure to take proper steps or through his taking wholly unnecessary steps: see *Herbstein and Van Winsen* (op cit at 483); *De Villiers v Union Government (Minister of Agriculture)* 1931 AD 206 at 214.[12]*

In *Fripp v Gibbon & Co* 1913 AD 354, an appeal only on costs, De Villiers JP at 363 dealt with the matter as follows:

'I agree that as a rule it is fair and just that the costs should follow the event, whether of claim or of counterclaim. But I cannot agree with the view that the unsuccessful party should bear the burden of all the costs simply on the ground that in the final result he is the unsuccessful party. To me it seems more in accordance with the principles of equity and justice that costs incurred in the course of litigation which judged by the event or events, prove to have been unnecessarily or ineffectively incurred should, as a rule, be borne by the party responsible for such costs.'"[13]

*“...see also *Protea Assurance Co Ltd v Matinise* 1978*

- (1) SA 963 (A) at 977G-H. As Gardiner J put it in *Union Share Agency & Investment Ltd v Green* 1926 CPD 129 at 141:

'The victor had no right to make defeat unnecessarily expensive for the vanquished, and if he has not been content to rely on a good point, but has added to the expense by raising weak issues, he should bear the additional expense to which his adversary has been put.'"[14]

- [26] Further, despite the decision in respect of the issue of costs being 'separate' from the merits, as is the case where a decision on the merits is no longer sought, this does not mean that the decision on costs must of necessity be totally isolated from the merits. Indeed, in an appeal against a costs order, the Court's decision, in the absence of other relevant factors, would in the normal course be largely based on whether or not the appellant would have been successful on the merits.[15]

- [27] In *John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) and Another*[16] the Supreme Court of Appeal reaffirmed the proper approach to be adopted in respect of the issue of costs when as a relevant factor in the mix an appeal has become academic (albeit in that matter leave to appeal had yet to be granted), as well as the expected obligation on parties litigating to be reasonable in promoting the efficient use of judicial resources, as follows:

“[10] ...Where an appeal or proposed appeal has become moot by the time leave to appeal is first sought, it will generally be

appropriate to order the appellant or would-be appellant to pay costs, since the proposed appeal was stillborn from the outset.

Different considerations apply where the appeal or proposed appeal becomes moot at a later time. The appellant or would-be appellant may consider that the appeal had good merits and that it should not be mulcted in costs for the period up to the date on which the appeal became moot. The other party may hold a different view. As a general rule, litigants and their legal

representatives are under a duty, where an appeal or proposed appeal becomes moot during the pendency of appellate proceedings, to contribute to the efficient use of judicial resources by making sensible proposals so that an appellate court's intervention is not needed. If a reasonable proposal by one of the litigants is rejected by the other, this would play an important part in the appropriate costs order. Apart from taking a realistic view on prospects of success, litigants should take into account, among other factors, the extent of the costs already incurred; the additional costs that will be incurred if the appellate proceedings are not promptly terminated; the size of the appeal record; and the likely time it would take an appellate court to form a view on the merits of the moot appeal. There must be a proper sense of proportion when incurring costs and calling upon judicial resources."

[28] It would appear that the approach of the courts in deciding the issue of costs according to the general principles is, in unique situations like the present matter, not only to adjudge critically the event or events giving rise to the state of mootness which renders the continuation of the appeal unnecessary, ineffective or irrelevant, and from what point, but to consider objectively the conduct of the litigants and their legal representatives against the yardstick of reasonableness[17] (in this instance based on his/her duty where an appeal or proposed appeal becomes moot during the pendency of appeal proceedings to contribute to the efficient use of judicial resources by making sensible proposals so that an appeal court's intervention is not needed), in order to determine which of the costs were unnecessarily or ineffectively incurred by either party for which

they should be held responsible. The exercise it seems is not only aimed at ensuring a just and equitable outcome, but also possibly

censuring a party who has unnecessarily called upon judicial resources.

[29] In this instance the mootness has not arisen from some step which the appellant is responsible for. Indeed, it would not have known that the issue which was at the core of the appeal had become academic unless it was informed of the sale, from which juncture it would no doubt have dawned upon it that it was pursuing an abstract issue before the court by pressing ahead with the appeal (indeed even its application for leave to appeal) in order to vindicate its perceived obligations arising from the provisions of the Heritage Act. (Evidently from the grounds of appeal raised by the appellant felt itself strongly compelled to take up the cudgels of the neighbours and heritage organisations whose views it believed had been overlooked by the court a quo). Certainly, from the moment it was brought to its attention that the issue of the demolition permit had been rendered irrelevant, it fairly conceded that the proper order to be issued was one contemplated by the provisions of section 16 (2) (a) of the Superior Courts Act.

[31] Conversely, the respondent was well placed to see that the issue between the parties would be the selling and transfer of the property on which the structure stands have rendered the utility of the permit worthless and should have met its obligation as a reasonable litigant, even if the appellant was the initiator of the appeal process, to make the sensible proposal

that was belatedly made by Mr. Richards on its behalf that the efficient use of the court's resources should be taken under advisement and the mootness of the matter under appraisal. The only question which arises is when that realisation should have reasonably dawned on the respondent.

[32] Since the sale was subject to what appears to have been the customary suspensive conditions relating to the financing of the purchase price, at least by the time those conditions had been met (on 19 July 2019), there was, objectively assessed, no basis upon which the respondent could have avoided noticing that the proverbial rug, as it were, had been pulled from under the appellant and that the court granting it leave to appeal was a useless exercise.

[33] Even though the respondent itself might not have realised the import of the sale of the property until Mr. Richards noticed that the applicability of section 16 (2) (a) of the Superior Courts Act had "become apparent," it is obvious from the approach adopted by the courts in *Gamlan Investments* and *John Walker Pools*

that the test of the reasonable litigant (assisted by his/her legal representative) is the standard to be adopted. In my view a duty would have rested on the respondent, as a reasonable litigant, to have raised the issue of the sale and its impact with the appellant even before leave to appeal had been granted, rendering the costs incurred after that date entirely unnecessary and ineffective.

[34] I do not share Mr. Richard's view that the date of transfer (4 December 2019) fixed the date from when the duty first reasonably rested upon the respondent to inform the appellant about the sale and its impact upon the appeal on the premise that "fulfilment may not ultimately have guaranteed a transfer" as was contended for by him. It was not the finality of the sale that was of moment but the fact of a sale at all before the review judgment had even been delivered, as the relevant structure on the property sold was central to that application and ought to have been top of mind for it. A responsible litigant in the respondent's position (as opposed to a responsible business entity reckoning with the realistic possibility that the sale might still fail), would have reconciled itself to the inevitability of a transfer inherent in a sale agreement and that it was disposing of its interest in the property including the authority to demolish the structure that was standing in the way of its development. That should in my view have prompted it to say something to the appellant about the sale even if it thought that the suspensive condition might not be fulfilled.

[35] Further and in any event, by the time the application for leave to appeal was served and filed on 22 July 2019 (which is the relevant moment when the appeal process commenced), the suspensive condition(s) regarding the provisioning of finance by the bank had already been fulfilled, rendering the consequence of a transfer a predictable certainty. From this juncture (of lodging the application for leave to appeal), the respondent would not have had any entitlement to demolish the structure pending the hearing of the application and from 13 August 2019 when the application was heard and leave granted to the appellant to appeal, this encumbrance would have been foremost in its mind. A reasonable litigant would at this

point at least have informed the appellant that the remit of the permit to it (now suspended by the impending appeal process) was quite irrelevant since it had sold the property.

- [36] Whilst I accept Mr. Richard's intimation given at the hearing that the purchaser was struggling to get finance and delayed in paying the deposit and transfer costs until 5 September 2019 at the latest, this was a parochial problem that it had to concern itself with. This court was not taken into its confidence regarding what the deed of sale provided or whether these late payments were in breach of true suspensive conditions. In all probability they were not, otherwise the sale would have lapsed much earlier.
- [37] The position must in any event be assessed from the point of view of what a reasonable litigant would have done and from what stage the duty fell to it to recognize that the moment had arrived from when there could be no question that it no longer had an interest in the permit, and that it should forego its corresponding interest in the litigation concerning such entitlement. In my view that moment arrived on 19 July 2019 when the suspensive condition of the sale was fulfilled, and certainly by the date when the application for leave to appeal was launched, it would have been incumbent upon the respondent to have informed the appellant that it had disposed of the property. It was further doubly incumbent upon the respondent as a prudent litigant to inform the court of this significant development when the application for leave to appeal was argued and opposed by it, and or to have brought to the attention of the appellant that its proposed appeal would at the end of the process (whether it entered the fray or not) fail to yield a practical or effective result because it had by the sale of the property on which the structure stood erected obliterated the *raison d'être* for the appeal.
- [38] In the circumstances, and despite the order which I propose to make that the appeal is dismissed, it would be just and equitable in my view to order the respondent to pay the wasted costs of the appeal because these costs could have been avoided in their entirety by the respondent informing the appellant at the relevant time (at the latest by 19 July 2019) of the concluded sale and its impact on the envisaged appeal that, then, was in its infancy.
- [39] Concerning the costs of the review application, on a broad and general approach to the matter and the material placed before me, I do not agree with Mr. Cole that the appellant would have succeeded in persuading this court, but for the issue in the appeal having become moot, that the judgment of the court *a quo* fell to be set aside on any of the grounds of appeal relied upon by the appellant. He appeared to concede at the hearing that this was not the appellant's strongest armoury at its disposal.
- [40] The appellant made great moment of its perceived obligation to elicit the views of neighbours and heritage organisations before it could make its decision to grant or refuse a permit, but section 34 (1) of the Heritage Act deals with general protection against the alteration or demolition without a permit issued by it, of any structure or part thereof which is older than 60 years. It had previously granted such a permit which had lapsed. It had not refused the application and then in consequence invoked the provisions of section 34 (2),

which would have entailed it then bringing a generally protected structure within the ambit of any of the formal protections provided for in the Heritage Act. Had it done so, this would have involved a different kind of management of the structure as a heritage resource and established the applicant's peculiar interest in the property contended for.

- [41] It was not common cause that the structure in question enjoyed any special protection under the Heritage Act or that it required the public oversight and involvement suggested by the appellant. It should in terms of the provisions section 34 (1), read together with section 48 of the Heritage Act, either have granted the permit or refused it. In concerning itself with issues of "municipal planning" (which the court a quo was more than justified in finding), I agree that it strayed into a functional area that falls within the exclusive executive power of the relevant municipality.
- [42] There was further a peculiar history which pertained, namely that the respondent had felt itself obliged earlier to approach the court for an order to compel because the basic decision to refuse or grant the permit had not been forthcoming. But despite this legal imperative and the constraints of the Heritage Act itself regarding the exercise of the public power it had been called upon to perform, the appellant yet still resisted doing what it was required to do and appeared to misconceive of the true nature of its limited powers in the particular scenario.
- [43] In the premises the court a quo was spot on in its judicial review of the impugned decisions made by the appellant in the whole unfortunate saga.
- [44] In respect of these costs, it is my view that the order of the court a quo should be left undisturbed.
- [45] In the result I issue the following order:
1. The appeal is dismissed.
 2. The respondent is ordered to pay the costs of the appeal including the costs of the application for leave to appeal and the costs incurred in respect of the preparation and lodging of the written and oral representations made pursuant to the provisions of section 16 (2) (a) – (d) of the Superior Courts Act, No 10 of 2013.

B HARTLE

JUDGE OF THE HIGH COURT

I agree,

I SCHOEMAN

L RUSI

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 3 September 2021

DATE OF JUDGMENT: 18 November 2021*

*Judgment delivered electronically on this date by email to the parties.

APPEARANCES:

For the appellant: Mr. S H Cole instructed by Mgangatho Attorneys, Grahamstown (ref. Mr. Basson).

For the respondent: Mr. J G Richards instructed by Netteltons, Grahamstown (ref. Mr Hart).

- [1] Section 5 (4) provides that Heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.
- [2] These were filed on 12 August 2021.
- [3] Mr. Richards referred the court to a similar scenario in *Adonisi and Others v Minister for Transport and Public Works, Western And Others*, Case Nos. 7908/2017 & 12327/2017 ZAHCWCC dated 23 April 2021 (2 Judge Court) ([2021] JOL 50746 (WCC)) in which the Court considered an application for leave to appeal against its judgment in which inter alia the decision of the Premier to sell an immovable property, together with the consequent deed of sale were reviewed and set aside. Prior to the hearing of the application for leave, the Court was informed that the purchaser had sought to withdraw from the sale. The court postponed the application for leave pending confirmation that the Premier and the purchaser had reached agreement. The Minister nevertheless pursued the application for leave whereupon the Court found that the outcome of an appeal could have no practical effect or result and declined to grant leave on that issue (and further concluded that its findings as to the application of the empowering statute related to the specific circumstances of that case and were rendered obiter by the subsequent cancellation of the impugned sale). See also *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exploration and Exploitation SOC Ltd and another* 2020 (4) SA 409 (CC) at par [47].
- [4] *Centre for Child Law v The Governing Body of Hoërskool Fochville and another* 2016 (2) SA 121 (SCA) at par [9].
- [5] *Normandien Farms Supra* at para [47].
- [6] *Normandien Farms Supra* at para [48].
- [7] *Normandien Farms Supra* at paras [46] to [50]; *Centre for Child Law Supra* at para [11].

- [8] Gamlan Investments (Pty) Ltd and Another v Trilion Cape (Pty) Ltd and Another 1996 (3) SA 692 (C) at 700G-701G. See the dictum at 701 C where the court stated that “(c)osts...must be decided on broad general lines and not on lines that would necessitate a full hearing on the merits of a case that has already been settled....” See also Roupell v Metal Art (Pty) Ltd and Another 1972 (4) SA 300 (W) 302-303.
- [9] Jenkins v SA Boiler Makers, Iron & Steel Workers & Ship Builders Society 1946 WLD 15.
- [10] Supra, at 701 C-D.
- [11] At 704F-H.
- [12] At 701C-D.
- [13] At 7012D-F.
- [14] At 705B-C. In this instance the respondent has not raised any issues at all but simply remained passive. Such conduct has however by parity of reasoning contributed to the “additional expenses”.
- [15] Erasmus v Grunow en 'n Ander 1980
- (2) SA 793 (O) at 797B-H and 798D-H; Gamlan Investments, Supra at 701G.
- [16] 2018 (4) SA 433 (SCA) at par [10].
- [17] Gamlan Investments, Supra, at 701I-702C. This is also obvious from the dictum quoted above in John Walker Pools, Supra, at par [10]. The standard of reasonableness of the conduct in relation to the incurring of the ineffective or unnecessary costs is key.

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