



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY

FROM The Registrar, Supreme Court of Appeal

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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Akani Retirement Fund Administrators (Pty) Ltd and Others v Moropa and Others (1125/2022 and 1129/2022) [2025] ZASCA 13 (21 February 2025).

Today the Supreme Court of Appeal furnished reasons for an order granted earlier dismissing the appeal by Akani Retirement Fund Administrators (Pty) Ltd (Akani) and Chemical Industries National Provident Fund (CINPF) in terms of s 16(1)(a) of the Superior Courts Act 10 of 2013. The Court had concluded that the appeal was moot and that its outcome would have no practical effect, and there was no reason to exercise its discretion to determine its merits despite its mootness.

CINPF, a pension fund registered under the provisions of the Pension Funds Act 24 of 1956, had for over thirty years, had a suite of agreements (the agreements) with the ninth respondent, NBC Holdings (Pty) Ltd and the tenth respondent, NBC Fund Administration Services (Pty) Ltd (collectively 'NBC'). In terms of the agreements, NBC provided administration, consulting and actuarial services to CINPF. On 21 and 22 November 2019, the board of trustees of CINPF (the board) resolved to terminate the agreements with NBC. On 11 December 2019, the board decided to appoint Akani and two other entities to replace NBC.

The first to eighth respondents, as members of CINPF, together with NBC, challenged the board's decision in the Gauteng Division of the High Court, Johannesburg (the high court). The high court dismissed the application, but the member respondents and NBC appealed to the Full Court of the Gauteng Local Division of the High Court, Johannesburg (the full court). By the time the full court heard the appeal Akani had been replaced by Momentum Retirement Administrators (Momentum). This triggered the mootness question. The full court dismissed the mootness point on two bases: (a) the point was not properly before it because it was only

raised in CINPF's heads of argument and not in an affidavit; (b) it was in the interests of justice to determine the appeal as the outcome could affect future business relations between the parties.

The full court accordingly entered into the merits of the appeal. It found that CINPF's decision to terminate its agreements with NBC and to appoint Akani, constituted a reviewable administrative action as defined in s 1 of the Promotion of Administrative Justice Act (PAJA). It further found that the payments made to the impugned trustees were bribes paid by Akani to facilitate the removal of NBC and to replace it with Akani. The decisions, so reasoned the full court, stood to be set aside 'on the grounds that they were underpinned by acts of fraud and bribery.'

Consequently, the full court upheld the appeal with costs. It set aside the order of the high court and replaced it with one: (a) reviewing and setting aside: (i) the decision by CINPF and its board members to terminate the NBC agreements; and (ii) the decision to appoint Akani and other entities as the administrators, consultants and actuaries to CINPF; (b) ordering the removal of Messrs Sithole and Sema as trustees of the CINPF; and (c) ordering CINPF and Akani to pay the costs of the review application. Akani and CINPF appeal against the full court's order, with the special leave of this Court.

On appeal, the Supreme Court of Appeal pointed out that the legal dispute has essentially always been between Akani and NBC, ie the removal of the latter as CINPF's administrator and its replacement with the former. Both have been removed and that relationship, to the extent it concerns CINPF, has come to an end. Neither Akani nor NBC sought to challenge Momentum's appointment. The historical dispute between Akani and NBC has simply been overtaken by Momentum's appointment and consequently the appeal had become moot.

The Court then considered whether, despite its mootness, the appeal should nonetheless be heard in the exercise of our discretion. It decided against do so as there was no discrete legal issue of public importance that would affect matters in the future and on which the adjudication of a court is required.

The Court also corrected a conclusion in the judgment of the full court that the mootness question should always be raised formally in an affidavit. The Court pointed out that there can be no absolute procedural bar to mootness being raised for the first time in the heads of argument filed on appeal.

The appeal was accordingly dismissed in terms of s 16(1)(a) of the Superior Courts Act, with Akani and CINPF being ordered to pay the costs.

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