THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Minister of Electricity and Energy v African Climate Alliance and Others (516/2025) [2026] ZASCA 146 (30 October 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal on the basis that the decision sought will have no practical effect or result, as contemplated in s 16(2)*(a)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act). The appellant, the Minister of Electricity and Energy (the Minister), was ordered to pay the costs of appeal including the costs of two counsel.

The matter arises from a notice published by the Minister on 25 September 2020 in terms of s 34(1) of the Electricity Regulation Act 4 of 2006 (ERA), in which he determined that new generation capacity was necessary for the energy security of the country, which included 1 500 megawatts (MW) to be generated from coal, amongst other energy sources (the determination). The National Energy Regulator of South Africa (NERSA) concurred in the determination. The Minister also published an Integrated Resource Plan on 18 October 2019 (IRP 2019).

The respondents (African Climate Alliance, Vukani Environmental Justice Movement in Action, and the Trustees of Groundwork Trust for the time being) filed an application in the Gauteng Division of the High Court, Pretoria (the high court), in 2023 for an order declaring the Minister's determination, NERSA's concurrence and IRP 2019 (the impugned decisions) inconsistent with the Constitution and invalid, to the extent that those decisions included 1 500 MW of coal-fired power as an energy source. The high court held that the impugned decisions 'impact negatively on the rights of children under sections 24 and 28 of the Constitution in the absence of cogent facts to the contrary', thereby upholding the constitutional challenge. As a result, the impugned decisions were reviewed and set aside insofar as they allowed for the generation of 1 500 MW of coal-fired power. The high court granted leave to appeal to this Court.

On 28 October 2025, prior to the hearing of this matter before the Court, the Minister published the Integrated Resource Plan 2025 (IRP 2025), which makes no provision for coal-fired power. In light of these events, this Court invited the parties to submit arguments regarding whether the appeal had become moot. The Minister argued that the appeal had not become moot as the

real issue was whether a plan or policy devised by Government, which had not yet been implemented, was reviewable. The Minister argued that a decision on the issue would still have a practical effect because he is entitled to deviate from an integrated resource plan in an emergency or if it is necessary to do so in the national interest. The respondents argued that the determination had not been withdrawn and continued to have legal effect and that, while IRP 2019 had been replaced by IRP 2025, it remained in the interests of justice to decide the validity of the inclusion of 1 500 MW of new coal-fired power, because it raised legal questions of wider public importance.

Section 16(2)*(a)* of the Superior Courts Act provides that where the issues on appeal 'are of such a nature that the decision sought would have no practical effect or result, the appeal may be dismissed on this ground alone'. The appeal was dismissed under s 16(2)*(a)* because IRP 2019, to which the 1 500 MW of coal-fired power was expressly linked, was superseded by IRP 2025 – the operative national electricity plan. This plan makes no provision for coal-fired power. Consequently, and on the evidence, any decision on the constitutionality of IRP 2019 would have no practical effect. It cannot restore IRP 2019 as the operative national electricity plan. Moreover, setting aside the high court's order of unconstitutionality would remove the declaration of invalidity of the impugned decisions, but would not enable the procurement of 1 500 MW of coal-generated electricity, because the Minister cannot bypass the current framework stipulated in s 34 of the ERA. In the result, the parties failed to identify any material consequence that a successful appeal would produce for them or others.

The SCA stated that in exercising the discretion as to whether it is in the interests of justice to decide a moot appeal, the court must consider, among other things, the nature and extent of any practical effect the order may have, the importance and complexity of the issues, the fullness of the argument advanced and the public interest in their determination. The court must also guard against deciding abstract or academic questions where their resolution would serve no useful purpose.

The SCA had regard to the following considerations in exercising this discretion. The respondents' challenge was solely directed at 1 500 MW of coal-fired power under IRP 2019. It was not a challenge to legality of every future decision to procure coal-fired generation, nor did it seek a general prohibition on such generation. A decision on the validity of the impugned decisions would not resolve the legality of any future coal procurement as this would have to be assessed by reference to the statutory powers, planning instruments, decisions and procedural requirements applicable to that procurement. The high court had not decided the defences advanced by the Minister and NERSA, with the result that the SCA would effectively be undertaking a first-instance adjudication of substantial constitutional and administrative law questions. Our courts have declined to decide on appeal issues not determined by the court of first instance. Although this consideration does not independently preclude the exercise of an appeal court's decision, it weighed against deciding the appeal where coal-fired power has been excluded from IRP 2025. The SCA further held that it was not in the public interest to exercise the discretion to decide the appeal despite its mootness, because the parties had not demonstrated sufficient practical utility, a sufficiently concrete need for authoritative guidance, or another compelling interest of justice that outweighs the absence of a live controversy and the change in the statutory framework.

The SCA thus concluded that the appeal should not be decided in the exercise of the Court's discretion. Consequently, the appeal was dismissed under s 16(2)*(a)*(i) of the Superior Courts Act. The Minister was directed to pay the respondents' costs, including the costs of two counsel.

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