



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case numbers: 1125/2022 and 1129/2022

In the matter between:

**AKANI RETIREMENT FUND ADMINISTRATORS
(PTY) LIMITED**

FIRST APPELLANT

**CHEMICAL INDUSTRIES NATIONAL
PROVIDENT FUND**

SECOND APPELLANT

DANGAZELE, BONGINHLANHLA

THIRD APPELLANT

SEMA, REGINALD

FOURTH APPELLANT

SITHOLE, AYANDA

FIFTH APPELLANT

MASHEGO, LUCAS

SIXTH APPELLANT

BALOYI, JOHN

SEVENTH APPELLANT

MOTLAKENG, POPPY

EIGHTH APPELLANT

MAKHABA, CASWELL Z

NINTH APPELLANT

TJIANE, DAN

TENTH APPELLANT

DYONTA, MONDE

ELEVENTH APPELLANT

NGONYAMA, ZWELIHLE REGINALD

TWELFTH APPELLANT

ZUNGU, BHEKI

THIRTEENTH APPELLANT

SIQITI, TEMBA

FOURTEENTH APPELLANT

ARENDSE, ALEXANDER

FIFTEENTH APPELLANT

PELO, SINA

SIXTEENTH APPELLANT

TSHAMBU, JOHN

SEVENTEENTH APPELLANT

OLIVIER, LIZETTE

EIGHTEENTH APPELLANT

SHOLOKO, SBONGILE

NINETEENTH APPELLANT

MATLOGA, WILLIAM

TWENTIETH APPELLANT

SIBIYA, GLORIA JOYFUL
 JOHN, SHANDRIKA
 LOOTS, ENRNOLENE
 DE VOS, LAURA
 NOLINGO, BULELANI
 MAGAGULA, ZANELE ESTHER
 DAVIDS, FAIZ

TWENTY FIRST APPELLANT
 TWENTY SECOND APPELLANT
 TWENTY THIRD APPELLANT
 TWENTY FOURTH APPELLANT
 TWENTY FIFTH APPELLANT
 TWENTY SIXTH APPELLANT
 TWENTY SEVENTH APPELLANT

and

MOROPA, CHRIS LEGAKWA
 MAKAMOLE, ESAU FRANS
 NKOSI, SHALIMANE RICHARD
 SELEPE, VUSI JOHANNES
 RAMBAU, MATHAPELO SHIRLEY
 GAMEDE, DINEO PRISCILLA
 MAZWI, SIKHWEBU CHRISTOPHER
 NKGAPELE, JACK TEMA
 NBC HOLDINGS (PTY) LIMITED
 NBC FUND ADMINISTRATION SERVICES
 (PTY) LIMITED

FIRST RESPONDENT
 SECOND RESPONDENT
 THIRD RESPONDENT
 FOURTH RESPONDENT
 FIFTH RESPONDENT
 SIXTH RESPONDENT
 SEVENTH RESPONDENT
 EIGHTH RESPONDENT
 NINTH RESPONDENT
 TENTH RESPONDENT

Neutral citation: *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others* (1125/2022 and 1129/2022) [2025] ZASCA 13 (21 February 2025).

Coram: ZONDI DP, PONNAN and MAKGOKA JJA and BAARTMAN and MASIPA AJJA

Heard: 5 September 2024

Delivered: 21 February 2025.

Summary: Mootness – appeal having no practical effect – whether a discrete point of law arises – general principles restated.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Adams J, Dippenaar J and Lenyai AJ, sitting as court of appeal):

The appeal is dismissed with costs in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013.

JUDGMENT

Makgoka JA (Zondi DP, Ponnann JA and Baartman and Masipa AJJA concurring):

[1] At the hearing of this matter on 5 September 2024, we made the following order: 'The appeal is dismissed with costs in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013.' We undertook to furnish the reasons for the order in due course. These are the reasons.

[2] Section 16(2)(a)(i) of the Superior Courts Act¹ provides that:

(i) 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.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

[3] The second appellant, Chemical Industries National Provident Fund (CINPF), is a pension fund registered under the provisions of the Pension Funds Act.² For over thirty years, it 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 (administration services) to CINPF. On 21 and 22 November 2019, the board of trustees of CINPF (the board) resolved to terminate the

¹ Superior Courts Act 10 of 2013.

² Pension Funds Act 24 of 1956.

agreements with NBC. On 11 December 2019, the board decided to appoint the first appellant, Akani Retirement Fund Administrators (Pty) Ltd (Akani) and two other entities³ in the stead of NBC to provide the administration services.

[4] The first to eighth respondents (member respondents) are members of CINPF. They, together with NBC, were the applicants in the Gauteng Division of the High Court, Johannesburg (the high court) in which they challenged CINPF's decision referred to above. CINPF was cited as the first respondent. The third to twenty-seventh appellants, cited as the second to twenty-sixth respondents, were members of the board of CINPF. Akani was cited as the twenty-seventh respondent.

[5] The member respondents and NBC sought relief in two parts. Part 'A' was an urgent interdict in which they sought to prevent Akani from taking over the administration services previously provided by NBC. In Part 'B', the member respondents and NBC sought to review and set aside the appointment of Akani (the review application). Part 'A' came before Vally J, who on 12 March 2020, granted an interdict restraining CINPF and Akani from implementing Akani's appointment as the provider of administration services to CINPF.

[6] The review application also came before Vally J on 20 July 2020. The member respondents and NBC relied on two principal grounds. First, that CINPF's trustees had failed to consult with the member respondents and other stakeholders regarding the termination of the NBC agreements. Second, that the decision to appoint Akani had been influenced by an improper and corrupt relationship between Akani and three of CINPF's trustees, namely: Mr Dangazele, then the Principal Officer; Mr Sema, then the Chairperson of the board; and Mr Sithole, then deputy Chairperson of the board (the impugned trustees). The member respondents and NBC also sought an order removing the impugned trustees from the board of CINPF. The impugned trustees are cited as the

³ Those entities are Novare Actuaries and Consultants (Pty) Ltd and Moruba Consultants and Actuaries. These entities do not take part in this appeal.

third to fifth appellants in this Court. It is common cause that both Messrs Dangazele and Sema have passed on, and Mr Sithole has been removed as a trustee.

[7] It was common cause that a week after Akani's appointment, the impugned trustees had received payments from a company related to Akani, Neighbour Funeral Scheme (NFS). Mr Dangazele received R40 000, while Messrs Sema and Sithole each received R25 000. The member respondents and NBC characterized these payments as bribes paid by Akani to facilitate its appointment. In answer to those allegations, Akani and the impugned trustees explained that the monies were paid in terms of their membership of a funeral scheme run by NFS. Each had apparently bought insurance policies sold by NFS in terms of which they had taken life cover in respect of relatives. The insured relatives subsequently died and the impugned trustees, respectively, became entitled to payment of the insurance proceeds.

[8] In its judgment delivered on 31 July 2020,⁴ the high court held that the decision to replace NBC with Akani and others was one within the exclusive powers of the board, which it was entitled to exercise without consultation. As regards allegations of corruption levelled against Akani, the high court noted that the allegations were also being investigated by the Financial Services Conduct Authority (FSCA), among others. The high court reasoned that it would not be appropriate for it to make findings while the investigation before the FSCA was pending. It accordingly dismissed the applications and the subsequent applications for leave to appeal. This Court granted leave to the member respondents and NBC to appeal to the Full Court of the Gauteng Local Division of the High Court, Johannesburg (the full court).

[9] By the time the full court heard the appeal on 21 February 2022, two events had occurred. First, Akani's mandate with CINPF was terminated on 10 August 2021, and on 1 November 2021, Momentum Retirement Administrators (Momentum) was appointed in Akani's place. Second, Mr Dangazele had passed away. CINPF submitted that the

⁴ The judgment is reported as *Moropa and Others v Chemical Industries National Provident Fund and Others* [2020] 4 All SA 197 (GJ); 2021 (1) SA 499 (GJ).

removal of Akani and the appointment of Momentum had rendered the appeal moot. In its judgment, the full court noted that Mr Dangazele's death rendered any relief sought against him moot, and accordingly did not make any order against him. With regard to the termination of Akani's services and its replacement with Momentum, 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.

[10] 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 Act⁵ (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.'⁶

[11] 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.⁷

[12] In their heads of argument in this Court, counsel for CINPF mentioned in passing that in the light of the termination of Akani's services and the appointment of Momentum

⁵ Promotion of Administrative Justice Act 3 of 2000.

⁶ *Moropa and Others v Chemical Industries National Provident Fund and Others* [2022] ZAGPJHC 420 (*Moropa*) para 51.

⁷ Akani and CINPF sought, and obtained, the special leave of this Court in separate applications, hence two case numbers have been allocated to the appeals.

in its place, the review relief had become moot before the full court, and that the full court ought to have dismissed the appeal on that basis. None of the other parties addressed the issue of mootness in the heads of argument.

[13] On 29 July 2024, at the instance of the Court, the Registrar directed the parties to file supplementary heads of argument on the issue of mootness in the light of the removal of Akani as the service provider of administration services to CINPF, and its replacement with Momentum. All parties obliged.

[14] The principles and authorities on mootness and the court's discretion to hear appeals despite mootness, are settled, and are conveniently collated in *Legal-Aid South Africa v Magidiwana*.⁸ Key among the principles is that courts ought not to decide issues of academic interest only. Accordingly, where the outcome of an appeal would have no practical effect, the appeal would be dismissed on that basis alone. The other is that, notwithstanding the mootness of the appeal as between the parties to the litigation, the court has a discretion to deal with the merits of an appeal. In this regard reference was made to *Qoboshiyane v Avusa (Qoboshiyane)*⁹ where the following was said:

'The court has a discretion in that regard and there are a number of cases where, notwithstanding the mootness of the issue as between the parties to the litigation, it has dealt with the merits of an appeal. With those cases must be contrasted a number where the court has refused to deal with the merits. The broad distinction between the two classes is that in the former 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, whilst in the latter no such issue arose.'¹⁰

[15] CINPF urged this Court to set aside the order of the full court and reinstate the order of the high court. Akani agreed with CINPF. In addition, it submitted that if this Court finds that the full court was correct in deciding the merits of the appeal, it cannot find that

⁸ *Legal-Aid South Africa v Magidiwana and Others* [2014] ZASCA 141; 2015 (2) SA 568 (SCA); [2014] 4 All SA 570 (SCA). Confirmed on appeal in *Legal Aid South Africa v Magidiwana and Others* [2015] ZACC 28; 2015 (6) SA 494 (CC); 2015 (11) BCLR 1346 (CC).

⁹ *Qoboshiyane NO & Others v Avusa Publishing Eastern Cape (Pty) Ltd & Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA).

¹⁰ *Ibid* para 5.

the appeal is now moot before it because the same considerations for mootness obtain ie the removal of Akani, the appointment of Momentum, and the death of Messrs Dangazele and Sema.

[16] Akani also submitted that the full court made adverse findings against it, in the course of which it committed various legal and factual errors in considering corruption allegations. According to Akani, this sets an incorrect precedent regarding how such factual disputes should be resolved in motion proceedings. Akani submitted that its officers against whom adverse findings were made, need to clear their names, and this remains a live issue. In this regard, Akani relied on *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators (NBC v Akani)*.¹¹ All these, it was submitted, serve to indicate that the appeal was not moot.

[17] For their part, the member respondents and NBC submitted that appeal was neither moot in the full court nor before us, and that the outcome of this Court's order would have a practical effect. It was further submitted, that if this Court finds that the appeal is moot, the appeal nevertheless had to be determined in the interests of justice. In support of their submission that the appeal will have a practical effect, the member respondents provided the following reasons: (a) NBC's notice of motion sought the removal of trustees; (b) the relief will inform any contractual dispute as to whether NBC's contract was lawfully terminated; (c) the decision of this Court will inform: (i) any future damages actions; (ii) decision-making of other pension funds across the country. As regards the interests of justice considerations, they submitted that the issues involved in the appeal are of wider importance, concerning the fiduciary duties of trustees overseeing pension fund interests.

[18] The point of departure for both Akani and CNIPF was that the appeal was indeed moot before the full court. But because that court had not dismissed the appeal based on mootness, this Court should likewise enter into the merits of the appeal. In my view,

¹¹ *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators* [2021] ZASCA 136; [2021] 4 All SA 652 (SCA).

whether the full court was correct in dismissing the mootness point raised before it hardly needs detain us. Given the further passage of time, the factors and considerations that were raised by Akani and CNIPF before the full court, apply more so now.

[19] As mentioned, Akani submitted that if we find that the appeal was not moot before the full court, and that the full court was correct to determine the merits of the appeal, we cannot in the same vein find that the appeal is moot in this Court because the same considerations apply. For this submission Akani placed heavy reliance on *NBC v Akani*. But, that is to misconstrue the position because reliance on other cases is generally unhelpful as each case is decided on its own facts and in a particular context. Nevertheless, the facts in *NBC v Akani* were briefly as follows. After the interim interdict was granted on 12 March 2020, NBC publicised a notice in which it stated that the court had ‘found strong evidence of corruption in the matter at hand and that the appointment of Akani was unlawful.’¹² In response, Akani sought, and obtained, an urgent interdict, directing NBC, among other things, to publish a correction. The high court subsequently granted leave to this Court. By the time the appeal reached this Court, the review application had been decided by the high court, which made no finding in favour of NBC that Akani’s conduct was corrupt. This triggered the mootness enquiry.

[20] This Court considered the following in that regard: (a) the effect of the judgment remained that NBC’s statement was defamatory of Akani and that NBC had no defence to a claim based on defamation; (b) if the judgment remained in place, it would possibly provide a foundation for a claim for damages and could, in any event, be used in the market place to discredit NBC; and (c) that NBC was entitled to clear its name by having the judgment overturned; (d) certain important issues in regard to the conduct of proceedings based on defamation required the attention of the court. For these reasons, it concluded that the appeal was not moot.

¹² *Akani Retirement Fund Administrators (Pty) Ltd v NBC Holdings (Pty) Ltd and Another* [2020] ZAGPJHC 174 para 10.

[21] *NBC v Akani* was essentially an appeal against a finding by the high court that NBC had defamed Akani. Upon such a finding, the high court had ordered NBC to take certain steps to correct the perception it had created. The order of the high court to that effect had an on-going practical effect. It is plain that there were live and controversial issues between the parties which potentially could impact future relations between them. The appeal in this Court was therefore deemed not to be moot. None of those considerations find application in the present appeal. *NBC v Akani* is clearly distinguishable from the present appeal.

[22] It is important to emphasise that an appeal does not lie against the reasons for judgment but against the substantive order of the lower court.¹³ Thus, whether or not a court of appeal agrees with a lower court's reasoning would be of no consequence if the result would remain the same.¹⁴ In the present appeal, the removal of Akani as CNIPF's administrator and its replacement with Momentum, means that the outcome of the appeal will have no practical effect. In addition, two of the impugned trustees have died. The third, Mr Sithole, has been removed as a trustee.

[23] 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 seeks to challenge Momentum's appointment. Nor for that matter was Momentum sought to be joined as a party to the proceedings after its appointment in Akani's stead. Thus, whatever may be said about the merits of the dispute between Akani and NBC, Momentum's position as the new service provider to CINPF would remain unaffected and unaltered. The historical dispute between Akani and NBC has simply been overtaken by Momentum's appointment and consequently the appeal has become moot.

¹³ *ABSA Bank Ltd v Mkhize and Two Similar Cases* [2013] ZASCA 139; 2014 (5) SA 16 (SCA) para 64.

¹⁴ *Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd* 1948 (3) SA 853 (A) at 354.

[24] What remains to be considered is whether, despite its mootness, the appeal should nonetheless be heard in the exercise of our discretion. As explained in *Qoboshiyane*, for a court to exercise its discretion, a discrete legal issue of public importance that would affect matters in the future and on which the adjudication of a court is required, should arise. Such an issue does not arise in this appeal. First, the full court's conclusion that Akani's appointment was vitiated by fraud and bribery, was based purely on its factual findings. Those findings were arrived at on the strength of allegations in the application papers before the court. Any future contemplated litigation will undoubtedly have to proceed to trial. One can hardly imagine a trial court, that has had the benefit of witnesses, who have testified and being subjected to cross-examination before it, considering itself bound by the findings, such as there may be, of the full court. Moreover, it can hardly go unnoticed that whatever issues do arise in the envisaged litigation, they have not been fully ventilated or finally determined by the full court.

[25] The only point of law decided by the full court was that the decision by CINPF to remove NBC and replace it with Akani, constituted an administrative action reviewable under PAJA. The test applicable to whether powers and functions that are exercised are public in nature, and therefore constitute administrative action, is a flexible one. Such cases are routinely decided on a case-by-case basis.¹⁵ Viewed in this light, the full court's conclusion that the trustees' decision to remove NBC as provider of administration services to CINPF amounted to the exercise of public power reviewable under PAJA, does not amount to a 'discrete legal issue of public importance' envisaged in *Qoboshiyane*.

[26] It is clear from the parties' supplementary heads of argument that some of the parties seek this Court's judgment to determine the course of future litigation. For

¹⁵ See, for example, *Dawnlaan Beleggings (Edms) Bpk v Johannesburg Stock Exchange and Others* 1983 (3) SA 344 (W); *Johannesburg Stock Exchange and Another v Witwatersrand Nigel Ltd and Another* 1988 (3) SA 132 (A); *Calibre Clinical Consultants and Another v National Bargaining Council for the Road Freight Industry and Another* [2010] ZASCA 94; 2010 (5) SA 457 (SCA); *Trustees for the time being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Another* [2021] ZASCA 157; [2022] 1 All SA 138 (SCA); 2022 (1) SA 424 (SCA).

example, NBC seeks confirmation that its removal as CINPF was lawfully terminated as the decision of this Court will ‘inform any future damages actions’. Equally, Akani is concerned that the judgment of the full court might be used against it in future litigation. What the parties seek is this Court’s opinion as to possible future litigation prospects. This we decline to provide. As pointed out in *Radio Pretoria v Chairperson ICASA*,¹⁶ courts of appeal ‘do not give advice gratuitously. They decide real disputes and do not speculate or theorise. . .’.¹⁷ In addition, the doctrine of ripeness stands in the way of considering prospective litigation. As was put by the Constitutional Court in *Ferreira v Levin*:¹⁸

‘[T]he doctrine of ripeness serves the useful purpose of highlighting that the business of a court is generally retrospective; it deals with situations or problems that have already ripened or crystallized, and not with prospective or hypothetical ones.’¹⁹

[27] In all the circumstances the appeal is moot in this Court. Its outcome will have no practical result. There is no basis to exercise this Court’s discretion to hear it despite its mootness.

[28] Before concluding, it is necessary to say something about the full court’s reasoning in dismissing the mootness point. The full court said the following:

‘Finally, I need to briefly deal with a ‘moot point’ raised, almost in passing in his updated practice note by Mr Maleka SC, who appeared on behalf of the first to twenty sixth respondents with Ms Kekana. In the practice note the Court’s attention was directed to the fact that Akani’s mandate with the CINPF was terminated on 1 November 2021 and Momentum has since been appointed as the Fund administrators. This means, so the submission went, that the order sought against Akani would have no practical effect or outcome and that the appeal could conveniently be disposed of on this ground alone, in terms of section 16(2)(a)(i) of the Superior Courts Act, 10 of 2013.

Mr Botha SC, who appeared for the appellant members together with Ms Martin, contended that this issue is not properly before this court and for that reason alone, the point should be dismissed.

¹⁶ *Radio Pretoria v Chairperson of the Independent Communications Authority of South Africa and Another* [2004] ZASCA 69; [2004] 4 All SA 16 (SCA); 2005 (1) SA 47 (SCA).

¹⁷ *Ibid* para 41.

¹⁸ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC).

¹⁹ *Ibid* para 199.

I agree. In *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*, the court held that *the issue of mootness stands or falls on the case made for it by the litigant claiming mootness*. In casu, no such case in made out on behalf the respondents. For that reason alone, the point of mootness should fail. . .²⁰ (Emphasis added.)

[29] *Capitec v Coral Lagoon*²¹ (*Capitec*) concerned a complex commercial matter. Relying on a particular set of facts, the first respondent, Coral and the second respondent, Ash Brook, asserted that the appeal to this Court was moot. The fourth respondent, Rorisang and the fifth respondent, Lemoshanang, who had been given leave by the high court to intervene, supported the mootness point taken by Coral and Ash Brook. After a thorough analysis of the facts relied on by Coral and Ash Brook, this Court concluded that the appeal was not moot, and remarked:

*‘The issue of mootness stands or falls on the case made for it by Coral and Ash Brook. I have found that Coral and Ash Brook have failed to make out a case for mootness. Accordingly, if the appeal remains live in respect of the principal litigants, there is no basis to rule that the appeal is moot as against Rorisang and Lemoshanang as intervenors.’*²² (Emphasis added.)

[30] It is clear that the full court misconceived the import of *Capitec* on this issue. The point made there is that because the case for mootness was asserted by Coral and Ash Brook, as the principal litigants, once it was found that the appeal was not moot in relation to them, it could not be moot in relation to the intervening parties, Rorisang and Lemoshanang. This Court did not say that mootness should always be raised formally in the affidavits, as the full court seemed to suggest. Indeed, it may not always be possible to raise the question on affidavit, particularly where the issues raised for consideration have been overtaken by subsequent events that either arise after the filing of, or are not foreshadowed in, the earlier affidavits. There can be no absolute procedural bar (as the full court seemed to perceive) to mootness being raised for the first time in the heads of argument filed on appeal. If anything, it has come, not infrequently to be raised *mero motu* by courts.

²⁰ *Moropa* paras 85 – 87.

²¹ *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA).

²² *Ibid* para 21.

[31] Here the facts were undisputed. The fact of Akani's removal and its replacement with Momentum as CINPF's provider of administration services, and the death of Messrs Dangazele and Sema, are common cause. Insistence on affidavits, not only placed form above substance, but also put the parties, the full court and in turn this Court to the unnecessary trouble and expense of having to consider issues that on any reckoning are academic. Therefore, to the extent that the approach by the full court may in the future be considered by other courts to have some precedential significance, this Court is enjoined to correct it.

[32] It remains to deal with the issue of costs. The appellants, Akani and CINPF, were afforded an opportunity to reflect carefully on the mootness issue when it was raised by this Court. Both appellants elected to persist with the appeal. It is a risk they assumed. Now that the appeal has been found to be moot in this Court, there is no reason why they should not bear the costs. Those costs should include the costs of two counsel for the first to eighth respondents and for the ninth and tenth respondents, respectively.

[33] For all the reasons set out in this judgment, we made the order referred to in paragraph 1.

T MAKGOKA
JUDGE OF APPEAL

Appearances:

For appellant (Akani):

Case number: 1125/2022 AE Franklin SC (with him JPV McNally SC and BL Manentsa)

Instructed by: Webber Wentzel Attorneys, Johannesburg
Symington de Kock Inc., Bloemfontein

For appellant (CINPF):

Case number: 1129/2022 VI Maleka SC (with him N Kekana)

Instructed by: TD Mashele Attorneys Inc., Johannesburg
Phatshoane Henny Attorneys, Bloemfontein

For 1st - 8th respondents: AC Botha SC (with him SJ Martin)

Instructed by: Knowles Husain Lindsay Inc., Johannesburg
McIntyre Van der Post Inc., Bloemfontein

For 9th and 10th respondents: CE Watt-Pringle SC (with him KS McLean)

Instructed by: Shepstone and Wylie, Johannesburg
McIntyre Van der Post Inc., Bloemfontein.