THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 340/2024

In the matter between:

MAXIMUM PROFIT RECOVERY (PTY) LTD	**APPELLANT**

and

NALEDI LOCAL MUNICIPALITY	**FIRST RESPONDENT**
TRIPLE M ADVISORY SERVICES (PTY) LTD	**SECOND RESPONDENT**
SEGAPO MODISENYANE	**THIRD RESPONDENT**

Neutral citation: *Maximum Profit Recovery (Pty) Ltd v Naledi Local Municipality & Others* (340/2024) [2025] ZASCA 83 (10 June 2025)

Coram: HUGHES, KATHREE-SETILOANE, SMITH and KEIGHTLEY JJA and HENNEY AJA

Heard: 21 May 2025

Delivered: This judgment was handed down electronically to circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 10 June 2025.

Summary: Section 16(2)(*a*)(i) of the Superior Courts Act 10 of 2013 (the Superior Courts Act) – whether in the interest of justice to hear moot appeal – factors to be considered – s 16(2)(*a*)(ii) of the Superior Courts Act – no exceptional circumstances present to justify hearing of appeal to determine question of costs only – appeal dismissed for mootness.

ORDER

On appeal from: North West Division of the High Court, Mahikeng, (Djaje AJP sitting as court of first instance):

1 The appeal is dismissed.
2 The parties shall bear their own costs.

JUDGMENT

Smith JA (Hughes, Kathree-Setiloane and Keightley JJA and Henney AJA concurring):

Introduction

[1] This appeal concerns the validity of a contract for the provision of Value Added Tax (VAT) recovery services, which the first respondent, the Naledi Local Municipality (the municipality), awarded to the second respondent, Triple M Advisory Services (Pty) Ltd (Triple M), in April 2022. The contract was awarded for a period of three years, commencing on 5 April 2022 and terminating on 4 April 2025.

[2] On 22 April 2022, the appellant, Maximum Profit Recovery Services (Pty) Ltd (Maximum Profit), launched an application in the North West Division of the High Court, Mahikeng (the high court), for an order reviewing and setting aside the contract. It contended that the tender procedure adopted by the municipality in awarding the impugned contract to Triple M was unfair, untransparent and uncompetitive. The contention thus advanced is that the award, consequently, did not comply with the prescripts of s 217 of the Constitution, the Preferential Procurement Policy Framework Act 5 of 2000 (the PPPFA) or the municipality's Supply Chain Management Regulations.

[3] The high court (per Djaje J), in its judgment delivered on 15 September 2023, found that Maximum Profit had failed to establish that the award was reviewable on

any of the contended grounds. It consequently dismissed the application with costs. Maximum Profit appeals against that judgment with the leave of the high court.

[4] Both Maximum Profit and Triple M are duly registered companies which specialise in financial advice and revenue recovery services. Triple M was not involved in either the proceedings before the high court or in this appeal. The municipality is a local municipality, established in terms of the Local Government: Municipal Structures Act 117 of 1998. The third respondent, Mr Modisenyane Segapo (Mr Segapo), is cited in his official capacity as the municipality's municipal manager. I refer to the municipality and Mr Segapo collectively as the respondents, where the context so requires.

[5] The following issues require consideration:

(a) Whether the appeal has become moot because the impugned contract had terminated on 4 April 2025;

(b) If so, whether the appeal should nevertheless be heard in the interests of justice; and

(c) If the question in (b) is answered in the affirmative, then was the procurement procedure followed by the municipality in awarding the contract to Triple M fair, transparent and competitive.

The facts

[6] The circumstances which resulted in the award of the contract to Triple M are briefly as follows. On 23 June 2021, the municipality published a tender notice inviting service providers to submit bids for appointment to a panel that would provide diverse financial services, including VAT reviews and auditing services, to the municipality for a period of three years. By the closing date, namely 7 July 2021, sixteen bids had been submitted, including those of Maximum Profit and Triple M.

[7] All the bidders were notified on 6 September 2021 that their bids had been successful and they were required to accept their appointments in writing. Only Maximum Profit, Triple M and seven other bidders accepted their appointments.

[8] On 23 March 2022, the municipality invited four of the panellists (including Triple M) to quote for VAT recovery services. It is common cause that Maximum Profit was not invited to submit a quotation, nor was it informed of the municipality's intention to appoint one of the panellists to render those services exclusively.

[9] The letter inviting Triple M to submit proposals stipulated the applicable rate on which its quotation should be based. As stated earlier, the municipality subsequently awarded the contract to Triple M for a period of three years, which terminated on 4 April 2025.

[10] Although Maximum Profit launched the application because it was aggrieved by the manner in which Triple M was appointed to render the VAT advisory services, its notice of motion was ambiguous regarding the decision it sought to impugn. The order sought in its notice of motion was for the review and setting aside of 'the decision to award Tender NLM2021-009A: Provision of Panel for the Financial Services for 3 years ('the tender') to the second respondent [Triple M].' The municipality was, understandably, under the impression that the attack was directed at its initial decision to appoint the panel and only filed the rule 53 record pertaining to that decision.

[11] Consequently, the rule 53 record in respect of the decision to appoint Triple M for the provision of VAT recovery services was not before the high court, and nor is it before this Court. I explain the significance of this omission below.

[12] On 16 April 2025, the respondents' attorneys, being of the view that the appeal had become moot, wrote to Maximum Profit's attorneys proposing that they withdraw the appeal and tender costs. They explained that the offer was made in the belief that they bore the duty, where an appeal has become moot, to make a sensible settlement proposal to contribute to the 'efficient use of judicial resources'.

[13] Maximum Profit's attorneys replied to that letter on 16 May 2025, taking issue with the assertion that the appeal had become moot. Its view was that because the contract had been extended beyond the expiry date, the dispute between the parties remained extant. Consequently, they contended that the relief sought would have practical effect.

The parties' submissions

[14] In its founding papers, Maximum Profit asserted that the tender documents envisaged that the municipality would invite all the panellists to submit quotations as and when it required financial advisory services. This would have ensured that a service provider was appointed pursuant to a fair, transparent and competitive procurement process.

[15] The municipality's decision to invite only four panellists to submit proposals, without allowing others the same opportunity, was consequently unfair, irregular and contrary to the provisions of the s 217 of the Constitution, the PPPFA and the municipality's Supply Chain Management Regulations. This rendered the process procedurally unfair and reviewable under s 6(2)(*c*)[1] of the Promotion of Administrative Justice Act 3 of 2000.

[16] Maximum Profit further submitted that the municipality committed a material procedural irregularity by prescribing the rate on which Triple M's quotation should be based. The award of the contract to Triple M, so argued Maximum Profit, was accordingly unlawful, invalid and fell to be reviewed and set aside.

[17] In argument before us, counsel for Maximum Profit conceded that the issue whether the contract had been extended was not properly before us. He submitted, however, that it is nevertheless in the interest of justice that the appeal should be heard as there are conflicting judgments[2] on the issue of whether an organ of state, which has appointed a panel of service providers pursuant to a public procurement process, is entitled or has the discretion, to invite only certain members of the panel to submit quotations for specific services.

---

[1] Section 6(2)(*c*) of PAJA provides that a court has the power to judicially review an administrative action if the action was procedurally unfair.

[2] On 23 May 2025 the Kwazulu-Natal High Court, Durban handed down judgement in *Maximum Profit Recovery (Pty) Ltd v Umkhanyakude Distrcit Municipality and Another* (D12061/2024) [2025] ZAKZDHC 32 (23 May 2025), where Maximum Profit also challenged an award by the municipality to a competitor in substantially similar circumstances. In that matter, the municipality also contended that it had a discretion to invite only certain members of a panel to submit quotations. The high court reviewed and set aside the impugned contract based on its finding that the procedure adopted by the municipality did not accord with the provisions of s 217 of the Constitution and the PPPFA.

[18] More importantly, so submitted Maximum Profit, it is in the interests of justice for this Court to determine the appeal on the basis, which is common cause, that the municipality had readvertised the tender, and has again appointed a panel of service providers, which include Triple M and Maximum Profit. Absent guidance from this Court, Maximum Profit asserts, the respondents will act on the view, endorsed by the high court, that they have a discretion to invite only selected panellists to submit quotations without following due process. The point made was that the respondents were likely, once again, to commit the same irregularity. For this submission, Maximum Profit relied on the judgment of the Western Cape High Court (per Rogers J) in *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Another*[3] (*WWF South Africa*). In that matter, the applicant challenged the determination of the total allowable catch for the 2017/18 season under the Marine Living Resources Act 18 of 1998. The respondents argued that the matter had become moot because the 2017/18 season had already closed. Rogers J, however, found that the order sought by the applicant would have practical effect because 'a previous year's determination may be relevant to the succeeding year's determination.'[4]

[19] In addition, Maximum Profit argued that monies paid to Triple M pursuant to an invalid contract may constitute irregular or unauthorised spending in terms of the Local Government: Municipal Finance Management Act 56 of 2003 (the Municipal Finance Management Act). An order by this Court declaring the contract invalid would oblige Triple M to repay all monies paid to it by the municipality. The order sought in its notice of motion would consequently also have practical effect in this regard.

[20] The respondents took issue with those contentions and asserted that the appeal has been rendered moot by the fact that the contract awarded to Triple M had expired on 4 April 2025. They argued that any order granted by this Court will therefore have no practical effect.

[21] The respondents further argued that the process the municipality followed in appointing Triple M, in any event, complied with the applicable legislation and its own

---

[3] *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Another* [2018] ZAWCHC 127; [2018] 4 All SA 889 (WCC); 2019 (2) SA 403 (WCC).
[4] Ibid para 71.

Supply Chain Management Regulations. The municipal regulations sanction the two-stage bidding process, which resulted in Triple M's appointment. The municipality was entitled, in the first stage, to invite and consider proposals on 'conceptual design' and performance specifications. It was only during the second stage that it was required to consider final technical proposals and priced bids.

[22] While in their answering affidavit the respondents contended that the municipality had a discretion to invite only certain members of the panel to submit quotations, in argument before us, their counsel conceded that the exclusion of the other panellists from that process was irregular. Counsel argued, however, that the irregularity was not material in the context of the award, particularly because the tender was based on a two-stage bidding process.

Analysis and discussion

[23] I will deal first with the mootness point, as it may well be dispositive of the appeal. In my view, the appeal is self-evidently moot because the impugned contract terminated on 4 April 2025. Maximum Profit conceded this. The question which then remains for consideration is whether this Court should, nevertheless, hear the appeal in the interests of justice.

[24] Section 16(2)(*a*)(i) of the Superior Courts Act 10 of 2013 (the Superior Courts Act) provides that where issues, which fall for decision in an appeal, are of such a nature that the order sought will have no practical effect or result, the court hearing the appeal may dismiss it on this ground alone. In *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exploration and Exploitation SOC Ltd and Others*[5], the Constitutional Court held that a court of appeal, when exercising its discretion, in the interests of justice, to hear an appeal that has become moot, must have regard, among others, to the following factors: whether the order sought will have any practical effect for the parties or others; the importance of the matter; the complexity of the issues; the fullness or otherwise of arguments advanced; and the need to resolve conflicting judgments.

---

[5] *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exploration and Exploitation SOC Ltd and Another* [2020] ZACC 5; 2020 (6) BCLR 748 (CC); 2020 (4) SA 409 (CC) para 50.

[25] I find that none of these factors are present in this appeal. First, it is not the function of courts to provide legal advice to litigants. Maximum Profit's reliance on *WWF South Africa* for the contention that the order sought will have practical effect because a pronouncement by this Court will provide guidance to the municipality in respect of future awards, is misplaced.

[26] *WWF South Africa* is distinguishable on the facts. In that matter Rogers J found that the case raised 'important questions about alleged non-compliance by the DDG [Deputy Director General] with binding constitutional and statutory objectives and principles in determining the TAC [total allowable catch] of a highly depleted resource.'[6] The present case is fact specific and does not implicate any constitutional issues or the rule of law.

[27] Second, the public procurement of goods and services is extensively regulated by the Constitution, the PPPFA and – in this case – also by the municipality's own Supply Chain Management Regulations. Moreover, our courts have over the years carefully considered and pronounced on almost every facet of procurement law. The applicable legal principles are thus well established. I therefore find that it will not serve any practical purpose for this Court to pronounce on issues that will effectively only confirm established jurisprudence.

[28] Third, the existence of conflicting judgments on a disputed issue is but one of the factors a court must consider in deciding whether it is in the interests of justice to hear a moot appeal.[7] I am, however, mindful of the Constitutional Court's dictum in *Normandien Farms* that '[w]here there are two conflicting judgments by different courts, especially where an appeal court's outcome has binding implications for future matters, it weighs in favour of entertaining a moot matter'.[8]

[29] In this appeal there are compelling reasons why that consideration must yield to other factors, which overwhelmingly militate against the appeal being heard. These are that although the tender was readvertised and a new panel has been appointed

---

[6] Ibid para 78.
[7] *Normandien Farms* fn 2 para 50.
[8] Ibid para 49.

for a period of three years, the municipality has conceded, rightly so, that it does not have the discretion to invite only certain panel members to quote for specific services. More importantly, the full rule 53 record pertaining to the impugned decision is not before us and we do not know why, or by what process, the four panellists were selected to submit quotations or how Triple M ultimately was selected. This means that there is no proper factual basis to enable this Court to pronounce authoritatively on the disputed issue.

[30] Fourth, there is the question whether the setting aside of the contract would have financial consequences for Triple M and the municipality because, Maximum Profit submitted, the contract payments would then be categorised as unauthorised and wasteful expenditure under the provisions of the Municipal Finance Management Act. Maximum Profit contended that this engaged this Court's constitutional powers to grant just and equitable relief in appropriate circumstances and was an additional reason why the appeal should be considered. This issue was not, however, properly canvassed in this appeal. It was not raised in the founding papers, nor were any facts alleged that would enable this Court to make any sensible determination on what just and equitable relief should follow in the event of the appeal being heard.

[31] In making these findings, I am fortified by this Court's judgment in *Laser Transport Group (Pty) Ltd and Another v Elliot Mobility (Pty) Ltd and Another*.[9] In that matter, this Court dismissed an appeal on a point of mootness although there were still three months of the contract period left. For the abovementioned reasons, I find that the appeal is moot and that there are no compelling circumstances which require the matter to be heard in the interests of justice.

Costs and order

[32] Regarding the issue of costs, I am mindful of the injunction in s 16(2)(*a*)(ii) of the Superior Courts Act, which provides that '[s]ave under exceptional circumstances, the question of whether the decision would have no practical effect or result is to be

[9] *Laser Transport Group (Pty) Ltd and Another v Elliot Mobility (Pty) Ltd (835/2018)* [2019] ZASCA 140 (1 October 2019).

determined without reference to any consideration of costs.' For the reasons stated above, I find that there are no such exceptional circumstances present in this matter.

[33] Maximum Profit was timeously alerted to the fact that the respondents would raise the issue of mootness at the hearing of the appeal. Apart from the letter of 16 April 2025, the respondents had raised the issue squarely in their heads of argument, filed in September 2024. Maximum Profit nonetheless persisted with the appeal, thus assuming the risk of an adverse costs order in the event of the appeal being dismissed for mootness.

[34] The respondents are, however, not blameless. They conceded that it was irregular for the municipality to invite only four of the panellists to submit quotations. Therefore, although they argued that the irregularity was not material and did not vitiate the award of the contact to Triple M, Maximum Profit's challenge was not without merit. If that concession had been made earlier, the proceedings may well have taken a different course. The appropriate order would therefore be for the parties to bear their own costs.

[35] In the result I make the following order:

1 The appeal is dismissed.

2 The parties shall bear their own costs.

J E SMITH

JUDGE OF APPEAL

Appearances

For the appellant:	APJ Els SC and AA Basson
Instructed by	Albert Hibbert Attorneys, Pretoria
	Webbers Attorneys, Bloemfontein
For the 1st & 3rd respondents:	T Moretlwe and B Nthambeleni
Instructed by:	Modiboa Attorneys, Mahikeng
	McIntyre Van der Post Attorneys, Bloemfontein.