



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 602/2024

In the matter between:

KHAMUSI SHONISANI MUDAU-MAMODE

APPELLANT

and

VHUHWAHO DENGE

RESPONDENT

Neutral citation: *Khamusi Shonisani Mudau-Mamode v Vhuhwaho Denge*
(602/24) [2025] ZASCA 145 (7 October 2025)

Coram: HUGHES and GOOSEN JJA and CHILI AJA

Heard: This appeal was, by consent between parties, disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013.

Delivered: This judgment was handed down electronically by 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 7 October 2025.

Summary: Civil procedure – Magistrates' Court Rules – rule 55(1)(k) – whether the regional court and the full bench were correct in dismissing the appellant's application to refer the matter for oral evidence – whether the appeal is moot.

ORDER

On appeal: Limpopo Division of the High Court, Thohoyandou (Phatudi J and Nemutandani AJ) sitting as a court of appeal:

The appeal is struck off the roll with no order as to costs.

JUDGMENT

Chili AJA (Hughes and Goosen JJA concurring)

[1] This appeal serves before us by way of special leave of this Court granted on 22 May 2024. At counsel's request, the appeal was decided without hearing oral argument in accordance with s 19(a) of the Superior Courts Act 10 of 2013 (Superior Courts Act).

[2] The issue on appeal is very narrow. It encompasses two questions for determination: (a) whether the Regional Court in the Regional Division of Limpopo, Sibasa (the regional court) misdirected itself when denying the appellant, the opportunity to refer the matter for oral evidence and (b) whether the court of appeal, the full bench of Limpopo Division of the High Court, Thohoyandou (the high court) misdirected itself when upholding the decision of the regional court.

Factual background

[3] On 11 November 2019, Mr Khamusi Shonisani Mudau-Mamode, the appellant, launched an application before the regional court, seeking the eviction of Mr Vhuhwavho Denge, the respondent, from the property described as Erf 760 Tshisaulu (also known as Tshisaulu Maternity home) together with costs. The respondent opposed the eviction application.

[4] On 03 October 2022, the matter served before the regional court as an opposed motion. At the inception of the hearing, the appellant brought an application in terms of Magistrates' Court rule 55(1)(k), for the referral of the matter for the hearing of oral evidence on the basis that there was a dispute of fact. That application was dismissed with costs. Immediately thereafter the regional court adjudicated the eviction application on the papers and subsequently dismissed it with costs. Both judgments were delivered *ex tempore*. On 15 March 2023, the appellant appealed the order refusing to refer the matter for the hearing of oral evidence.

The appeal before the high court

[5] The issue on appeal before the high court was limited to the regional court's refusal to refer the matter to oral evidence. It was contended that when refusing to refer the matter to oral evidence, the regional court failed to exercise its discretion judiciously. Unpersuaded, the high court rejected that argument and dismissed the appeal with costs.

The appeal before this Court

[6] It is contended by the appellant in the heads of argument that the regional court was wrong in its discretion to refuse to refer the matter for the hearing of oral evidence and that the high court was wrong in confirming that decision. We

were therefore invited to set aside that decision and remit the matter to the regional court for the hearing of oral evidence.

[7] In the light of the view, I take of this matter, it is not necessary to enter the merits of the appeal. The scope of issues for determination on appeal is limited to the decision appealed against. Section 19(d) of the Superior Courts Act provides: ‘The Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law – confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require.’

[8] There are two decisions that were made by the regional court. The first was to dismiss the appellant’s application to refer the matter for the hearing of oral evidence. The second was to dismiss the application for eviction with costs. Only the first decision and consequent order was the subject of appeal in the high court and before this Court. The order dismissing the eviction application, which is final in effect, is not the subject of appeal. That being so, the question that confronts us is, would it serve any purpose to set aside the decision of the regional court and remit the matter for the hearing of oral evidence? The answer is no. The relief sought by the appellant will not have any practical effect. It is moot and does not illustrate exceptional circumstance that warrants the granting of special leave. A course of action can be moot only if its resolution will have no practical effect.¹ I am not persuaded that granting the relief sought would serve any practical purpose. Accordingly, this appeal must be struck off the roll.

¹ *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC) para 11.

Costs

[9] The general rule in civil litigation is that costs should follow the result.² That decision rests in the court's discretion to be exercised judicially.³ Neither party addressed the mootness of the appeal in their respective heads of argument. The mootness of the appeal was decided without the benefit of argument from either side. In the circumstances, the dictates of fairness warrant that no order as to costs should be made.

[10] The appeal is struck off the roll with no order as to costs.

N E CHILI
ACTING JUDGE OF APPEAL

² *Motala v Master of the North Gauteng High Court, Pretoria* [2019] ZASCA 60; [2019] 3 All SA 17 (SCA); 2019 (6) SA 68 (SCA) para 97.

³ *ST v CT* [2018] ZASCA 73; [2018] 3 All SA 408 (SCA); 2018 (5) SA 479 (SCA) para 166.

Heads of argument prepared by:

For appellant: V R Mathivha

Instructed by: Mathivha Attorneys, Thohoyandou
TP Mudzusi Inc, Bloemfontein

For respondent: M S Sikhwari SC and M Musetha

Instructed by: Netshilema Attorneys, Thohoyandou
Phatshoane Henney Attorneys, Bloemfontein.