



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable
Case no: 345/2024

In the matter between:

JULIE LOPES

FIRST APPELLANT

DEMOCRATIC ALLIANCE

SECOND APPELLANT

and

**EXECUTIVE MAYOR OF THE KNYSNA
LOCAL MUNICIPALITY**

FIRST RESPONDENT

AUBREY TSENGWA

SECOND RESPONDENT

**DEPUTY EXECUTIVE MAYOR OF
THE KNYSNA LOCAL MUNICIPALITY**

THIRD RESPONDENT

ALBERTO MARBI

FOURTH RESPONDENT

**SPEAKER OF THE KNYSNA
LOCAL MUNICIPALITY**

FIFTH RESPONDENT

MNCEDISI SKOSANA

SIXTH RESPONDENT

**ACTING MUNICIPAL MANAGER
OF THE KNYSNA LOCAL
MUNICIPALITY COUNCIL**

SEVENTH RESPONDENT

COUNCIL OF THE KNYSNA

EIGHTH RESPONDENT

LOCAL MUNICIPALITY

KNYSNA LOCAL MUNICIPALITY

MICHELLE BOTHA

MARVINE PLAATJIES

MORTON GERICKE

LORRAINE HELGER

MOYISI MAGALELA

NANDIPHA SEPTEMBER

ELRICK VAN ASWEGEN

and

In the matter between:

JULIE LOPES

DEMOCRATIC ALLIANCE

and

**SPEAKER OF THE KNYSNA
LOCAL MUNICIPALITY**

MNCEDISI SKOSANA

**ACTING MUNICIPAL MANAGER
OF THE KNYSNA MUNICIPALITY**

ROLAND BUTLER

**COUNCIL OF THE KNYSNA
LOCAL MUNICIPALITY**

NINTH RESPONDENT

TENTH RESPONDENT

ELEVENTH RESPONDENT

TWELFTH RESPONDENT

THIRTEENTH RESPONDENT

FOURTEENTH RESPONDENT

FIFTEENTH RESPONDENT

SIXTEENTH RESPONDENT

FIRST APPELLANT

SECOND APPELLANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

**EXECUTIVE MAYOR OF THE KNYSNA
LOCAL MUNICIPALITY**

SIXTH RESPONDENT

**DEPUTY EXECUTIVE MAYOR OF THE
KNYSNA LOCAL
MUNICIPALITY COUNCIL**

SEVENTH RESPONDENT

KNYSNA LOCAL MUNICIPALITY

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MICHELLE BOTHA

NINTH RESPONDENT

MARVINE PLAATJIES

TENTH RESPONDENT

MORTON GERICKE

ELEVENTH RESPONDENT

LORRAIN HELGER

TWELFTH RESPONDENT

MOYISI MAGALELA

THIRTEENTH RESPONDENT

NANDIPHA SEPTEMBER

FOURTEENTH RESPONDENT

ELRICK VAN ASWEGEN

FIFTEENTH RESPONDENT

MICHAEL NOGWAZA

SIXTEENTH RESPONDENT

**MINISTER OF CO-OPERATIVE
GOVERNANCE AND
TRADITIONAL AFFAIRS**

SEVENTEENTH RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL,
LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING,
WESTERN CAPE PROVINCE**

EIGHTEENTH RESPONDENT

Neutral citation: *Lopes and Another v Executive Mayor of the Knysna Local Municipality & Others* (345/2024) [2025] ZASCA 157 (20 October 2025)

Coram: MAKGOKA, MOKGOHLOA and KATHREE-SETILOANE JJA, and
DAWOOD and MODIBA AJJA

Heard: 22 May 2025

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 time and date for the hand-down is deemed to be 11h00 on 20 October 2025.

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

ORDER

On appeal from: Western Cape Division of the High Court (Maher AJ, sitting as court of first instance):

The appeal is dismissed with costs, including those of two counsel.

JUDGMENT

Kathree-Setiloane JA (Makgoka and Mokgohloa JJA, Dawood and Modiba AJJA concurring):

[1] This is an appeal against the judgment and order of the Western Cape Division of the High Court (the high court) dismissing two review applications. The judgment was handed down on 6 February 2024. In both applications,¹ the second appellant, the Democratic Alliance, amongst others, sought to set aside the appointment of support staff for senior political office-bearers in the Knysna Local Municipality (the Municipality).² In each instance, it was represented by the first appellant, Ms Julie Lopes. The appeal, which is with the leave of the high court, is opposed by the

¹ In this judgment, these will be referred to as the first urgent application and the second urgent application, respectively. The citation of the eighteenth respondent, in the second urgent application, as the ‘Minister of Local Government, Environmental Affairs and Development Planning, Western Cape Province’ is constitutionally inaccurate. While the Democratic Alliance uses this term to refer to a Member of the Executive Council in the Western Cape Province, the term is a misnomer. Section 125(1) and (2) of the Constitution are clear, the executive authority of a province is vested in the Premier, who exercises that authority together with the other Members of the Executive Council, not Ministers.

² Cited as the ninth respondent in the first urgent application and eighth respondent in the second urgent application.

Municipality.³ The support staff whose appointments are challenged, did not participate in the appeal.

The facts

[2] On 16 September 2022, the Council of the Knysna Local Municipality (the Council)⁴ considered a proposal of the Acting Municipal Manager at the time, Mr Johannes Jonkers (Mr Jonkers),⁵ to add temporary support staff positions to the Municipality's organisational structure for the Executive Mayor's office, Deputy Executive Mayor's office, and the Speaker's office (political office-bearers). The Democratic Alliance opposed the proposal but lost when it was put to a vote.⁶ Shortly thereafter, contracts of employment were concluded between the Municipality and what were believed to be seven appointees,⁷ who commenced employment on 1 October 2022. It was later discovered that an eighth person⁸ had also been appointed, despite the Council resolution, which purportedly only approved seven posts. I refer, in the judgment, to the respondents who were appointed into the support staff positions collectively as 'the employees', and the other respondents collectively as the 'Municipality'.

[3] On 21 October 2022, the Democratic Alliance brought an urgent application to review and set aside the Council's decisions to create and appoint support staff to the posts (the first urgent application). The case of the Democratic Alliance in this

³ The respondents which collectively constitute the Municipality are the first to the ninth respondents in the first urgent application and the first to eighth respondents in the second urgent application.

⁴ Cited as the eighth respondent in the first urgent application and the fifteenth respondent in the second urgent application.

⁵ Cited as the seventh respondent in the first urgent application and the third respondent in the second urgent application.

⁶ Cited as the first and second appellant in the first and second urgent applications.

⁷ Cited as the tenth to fifteenth respondents in the first urgent application and ninth to fifteenth respondents in the second urgent application.

⁸ Cited as the sixteenth respondent in the second urgent application.

application was that the creation and filling of the posts had not been made in accordance with certain provisions of the Local Government: Municipal Staff Regulations (the Regulations),⁹ the Local Government: Guidelines for the Implementation of the Municipal Staff Regulations (the Guidelines);¹⁰ the Knysna Local Municipality Recruitment and Selection Policy (the Recruitment Policy);¹¹ and the Knysna Local Municipality Placement Policy (the Placement Policy).¹² Central to the case of the Democratic Alliance was that the Council did not consider the budgetary implications of creating the posts, and did not subject them to a public advertisement and recruitment process before appointing the employees.

[4] Although the Democratic Alliance did not seek interim relief in the first urgent application, it did seek an undertaking from the Council that the employees would cease working, pending the resolution of an urgent review application. The Municipality refused to give an undertaking. Instead, on 8 November 2022, at an ‘in committee meeting’ (not open to the public), it resolved to pay the employees for October. After the employees had received payment for October 2022, they vacated their positions at the end of November 2022 at the instance of Mr Butler, the Acting Municipal Manager of the Municipality at the time.¹³

[5] On 14 November 2022, the Democratic Alliance launched another urgent application (the second urgent application), in which it sought interim relief pending the resolution of the first urgent application. It also sought, among other relief, a

⁹ Local Government: Municipal Staff Regulations No. 890, published in *Government Gazette* 45181 on 20 September 2021.

¹⁰ Local Government: Guidelines for the Implementation of the Municipal Staff Regulations No. 891, published in *Government Gazette* 45181 on 20 September 2021.

¹¹ Knysna Local Municipality Recruitment and Selection Policy of 30 May 2019, as approved in Council Resolution C03/05/19.

¹² Knysna Local Municipality Placement Policy of 30 May 2019, as approved in Council Resolution C03/05/19.

¹³ Cited as the fourth respondent in the second urgent application.

review of the Council’s decision made on 8 November 2022, to pay the employees. On 25 November 2022, the high court granted the Democratic Alliance the interim relief it sought in the second urgent application. It ordered that pending the finalisation of *both* urgent applications, including all appeals, the Municipality is ‘not to pay and otherwise proceed with or implement the appointments of the [employees]’.

[6] The two urgent applications were heard together by the high court, which dismissed the relief sought in both applications. The high court held that the issues for determination in both applications were moot, as the employees’ six-month contracts had already expired, leaving no live issue for determination. Despite this finding, the high court also dealt with the merits of the applications. Regarding the applicability of the Regulations to the appointment of temporary support staff for political office-bearers, the high court found that because these were temporary appointments, the Regulations did not apply. On the challenge to the ‘in committee’ Council meeting, the high court found that the Democratic Alliance had failed to establish that the Speaker’s decision to exclude members of the public from attending was unlawful.¹⁴ It premised this decision on the omission of the Democratic Alliance to request a rule 53 record from the Council which, it held, left it without crucial evidence to assess the Speaker’s reasons for excluding the public from the meeting.

[7] After the dismissal of the applications, the Democratic Alliance brought an application for leave to appeal. The application was heard by the high court, and while judgment in the application was pending, the Democratic Alliance also applied

¹⁴ The Democratic Alliance did not, in the appeal, persist in seeking the relief it sought in the second urgent application in respect of this issue.

for leave to appeal directly to the Constitutional Court.¹⁵ On 16 July 2024, the application was dismissed on the grounds that a case had not been made out for direct appeal. The Constitutional Court added that the ‘matter appears to be moot’.

Mootness

[8] In this Court, the Municipality sought the dismissal of the appeal on the basis that the appeal is moot, and its outcome will have no practical effect. This, it contended, was because the employees had vacated their positions at the end of November 2022, and there is no prospect of them returning.

[9] The Democratic Alliance’s argument to the contrary is four-fold. The first is that even though the posts are vacant, the Council’s decision to create them was unlawful and irrational; the posts could conceivably be filled as they remain part of the Municipality’s staff establishment. The ‘live controversy’,¹⁶ it argued, was whether the Municipality lawfully and rationally created and filled the posts,¹⁷ hence the practical effect of the appeal would be to set aside these decisions. Second, it argued that in both cases, part of the relief it had sought was that the relevant respondents be held personally liable for the irregular or fruitless and wasteful expenditure occasioned by monies expended on the employees.

[10] Third, it argued that even if moot, this Court has the discretion to consider the appeal as it raises discrete issues of public importance that will influence future

¹⁵ By this stage, the first appellant (the first applicant in the first and second urgent applications) had resigned as a member of the Democratic Alliance.

¹⁶ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (*National Coalition*) para 21.

¹⁷ *Buthlezi and Another v Minister of Home Affairs and Others* [2012] ZASCA 174; 2013 (3) SA 325 (SCA) para 4.

matters.¹⁸ The Democratic Alliance contended, on this score, that the appeal raises an important and novel legal issue for local authorities that will have far-reaching consequences for their recruitment powers. In support of this argument, it relied on *City of Tshwane Metropolitan Municipality v Nambiti Technologies (Pty) Ltd (Nambiti)*,¹⁹ where this Court, despite finding the appeal to be moot, nevertheless determined it because it raised a discrete legal issue for the first time. And the order had ‘far-reaching’ consequences for the procurement powers of municipalities. The Democratic Alliance argued that this appeal is on all fours with *Nambiti* as it raises a discrete legal issue that will influence future matters: whether standard recruitment processes apply to the appointment of support staff for political office-bearers in municipalities.

[11] Lastly, the Democratic Alliance contended that it took all necessary steps to prevent the matter from becoming moot by approaching the high court in the second urgent application for urgent interim relief, which the high court granted by suspending the implementation of the appointments. Therefore, this Court should exercise its discretion to determine the appeal, even if moot.

[12] The law on mootness is well-established.²⁰ A case is moot where there is no longer a live dispute or controversy between the parties, and a court’s judgment will

¹⁸ *Centre for Child Law v The Governing Body of Hoërskool Fochville* [2015] ZASCA 155; [2015] 4 All SA 571 (SCA); 2016 (2) SA 121 (SCA) (*Centre for Child Law*) para 11. See also *Western Cape Provincial Government and Others v D C Security (Pty) Ltd t/a D C Security and Others* [2025] ZASCA 35; [2025] JOL 68755 (SCA) paras 18-20; *Aptitude Trading Enterprise (Pty) Ltd v The City of Tshwane Metropolitan Municipality and Another* [2025] ZASCA 72; 2025 JDR 2395 (SCA) (*Aptitude*) paras 14-16.

¹⁹ *City of Tshwane Metropolitan Municipality and Others v Nambiti Technologies (Pty) Ltd* [2015] ZASCA 167; [2016] 1 All SA 332 (SCA); 2016 (2) SA 494 (SCA) (*Nambiti*) paras 6 and 7.

²⁰ *Op cit* fn 18. See also *Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Limited and Others* [2020] ZACC 5; 2020 (6) BCLR 748 (CC); 2020 (4) SA 409 (CC) para 47 (*Normandien Farms*); *Aptitude* para 15, quoting *Solidariteit Helpende Hand NPC v Minister of Co-operative Governance and Traditional Affairs* [2023] ZASCA 35 para 12.

have no practical legal effect on them.²¹ Mootness is, however, not an absolute bar to determining an appeal. An appeal court has the discretion to determine an issue that is moot where it is in the interests of justice to do so. In *Independent Electoral Commission v Langeberg Municipality*,²² the Constitutional Court held:

‘A prerequisite for the exercise of the discretion is that any order which [the court] may make will have some practical effect either on the parties or on others. Other factors that may be relevant include the nature and extent of the practical effect that any possible order might have, the importance of the issue, its complexity and the fullness or otherwise of the argument advanced’.²³ An added consideration is whether the issue is a discrete legal one of public interest that would affect matters in the future on which the adjudication of the Court is required.²⁴

[13] By all accounts, this matter became moot when the employees vacated their posts in November 2022; well before the two urgent applications were heard by the high court. Although the posts remain on the Municipality’s staff establishment, there are no prospects of them being filled, as they were temporary posts created for a limited duration of six months. Even if, as suggested by the Democratic Alliance, there is a possibility that they may be filled in the future, this is not enough to avoid mootness. It is not within the purview of courts to give advisory opinions about future events on the notional or hypothetical possibility that they could occur in the

²¹ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs* [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 21; *Normandien Farms* para 47.

²² *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) (IEC). See also *Road Traffic Management Corporation v Tasima (Pty) Limited; Tasima (Pty) Limited v Road Traffic Management Corporation* [2020] ZACC 21; 2020 (10) BCLR 1227 (CC); (2020) 41 ILJ 2349 (CC); [2020] 12 BLLR 1173 (CC); 2021 (1) SA 589 (CC) para 127.

²³ IEC para 11.

²⁴ *Centre for Child Law* para 14.

future.²⁵ As recently held by this Court in *Akani Retirement Fund Administrators (Pty) Ltd and Others v Moropa and Others*:²⁶

‘...What the parties seek is this Court's opinion as to possible future litigation prospects. This we declined to provide. As pointed out in *Radio Pretoria v Chairperson ICASA*, courts of appeal “do not give advice gratuitously. They decide real disputes and do not speculate or theorize...”. 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*:

“[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.”²⁷ (Citations omitted.)

[14] The legality of the Council’s decision to create and fill the posts is not a discrete legal issue of public interest that will affect matters in the future on which the adjudication of the Court is required. It involves an interpretation of a suite of regulations, policies and guidelines within the context of a specific set of facts and a fluid political environment. Thus, this exercise does not occur in a vacuum but must be applied to the facts of the case.²⁸ In this regard, there are factual disputes on the papers as to:

- (a) whether the Council acted in bad faith;
- (b) who made the actual appointments;
- (c) the role played by Mr Butler (Acting Municipal Manager), the successor to Mr Jonkers.

²⁵ *JT Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC); *Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union and Others* [2018] ZACC 24; [2018] 11 BLLR 1035 (CC); 2018 (11) BCLR 1411 (CC); (2018) 39 ILJ 2646 (CC); 2019 (1) SA 73 (CC) para 43.

²⁶ *Akani Retirement Fund Administrators (Pty) Ltd and Others v Moropa and Others* [2025] ZASCA 13; [2025] JOL 68622 (SCA); 2025 JDR 0776 (SCA) (*Akani*).

²⁷ *Ibid* para 26.

²⁸ *Radio Pretoria v Chairperson of the Independent Communications Authority of South Africa and Another* [2004] 4 All SA 16 (SCA); 2005 (1) SA 47 (SCA) para 41.

These considerations extricate the issues in this appeal from what is properly considered to be ‘a discrete legal issue’.

[15] The issues in this appeal are distinguishable from those in *Nambiti*, on which the Democratic Alliance placed reliance. As alluded to, in *Nambiti* the review application succeeded, and the high court ordered the Municipality to adjudicate and award a cancelled tender. On appeal, this Court exercised its discretion in favour of deciding a moot issue, because the order of the high court was far-reaching and impinged on the ‘power of a municipal council to determine for itself what goods and services it needed and would procure by a process complying with s 217 of the Constitution’.²⁹

[16] This case poses no such challenge. Although the high court exercised its discretion in favour of determining the merits despite mootness, it ultimately dismissed the two applications. The appeal lies against the substantive order of the high court; not its reasoning.³⁰ Thus, whether this Court agrees with the high court’s reasoning on issues that are moot is inconsequential if ‘the result would remain the same’.³¹

[17] The Democratic Alliance contended that the declaratory relief sought in relation to the irregular or fruitless and wasteful expenditure incurred in implementing the employees’ contracts remains alive, as it will have a practical effect on who is liable for that expenditure. It, seemingly, accepted that this Court

²⁹ *Nambiti* para 7.

³⁰ *ABSA Bank v Ltd v Mkhize and Two Similar Cases* [2013] ZASCA 139; [2014] 1 All SA 1 (SCA); 2014 (5) SA 16 (SCA) para 64. See also *Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd & Others* 1948 (3) SA 353 (A) at 355.

³¹ *Akani* para 22.

cannot grant a declarator regarding liability for irregular expenditure because such liability must be determined by the Municipality. Yet it maintained that this Court's judgment will, nonetheless, impact on any investigation by the Municipality into that liability.

[18] In terms of s 32 of the Local Government: Municipal Finance Management Act 56 of 2003 (the LGMFMA), the recovery of monies expended on fruitless and wasteful expenditure is within the remit of the Council. It is the Municipality that must recover 'unauthorised, irregular or fruitless and wasteful expenditure' from its political office-bearers or officials after carrying out an investigation.³² Assuming that this Court had the power to grant the Democratic Alliance the relief sought on appeal, the jurisdictional factor for it to do so is the invocation of s 32 by the Municipality. Without that, it would not be competent for us to grant the relief sought by the Democratic Alliance on the mere supposition that the Municipality intends to undertake an investigation, in terms of s 32 of the LGMFMA, to recover that

³² In relevant part, s 32 of the LGMFMA provides:

'Unauthorised, irregular or fruitless and wasteful expenditure—

(1) Without limiting liability in terms of the common law or other legislation—

(a) a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;

(b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);

(c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or

(d) any political office-bearer or official of a municipality who deliberately or negligently made or authorised fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure—

(a) in the case of unauthorised expenditure, is—

(i) authorised in an adjustments budget; or

(ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and

(b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

....'

expenditure. There is, manifestly, no evidence before us which suggests that the Municipality has any such intention. To reiterate, it is not the remit of this Court to make hypothetical decisions based on speculation.³³

[19] Equally ill-conceived, is the contention that the appeal is not moot because the high court's order, granting the Democratic Alliance interim relief in the second urgent application, suspended the implementation of the appointments of the support staff. That order merely precluded the Municipality from implementing the contracts further, pending the finalisation of both applications, including all appeals. The order was, however, overtaken by events when the employees vacated their posts in November 2022.

[20] What is clear from the second urgent application though, as pointed out by the high court, is that the Democratic Alliance was 'clearly alive to the issue of mootness' when elaborating on the grounds for urgency. In this respect, it stated as follows in its founding affidavit:

'The applicants cannot obtain relief in the ordinary course. The applicants have understood, based on the Executive Mayor's public statements, that the appointments have been made for a period of six months. If this is true, I am advised that by the time this matter is heard in the ordinary course, the appointees would have come and gone, with their pay cheques in their pockets. The matter, in many respects, may be moot and otherwise not in the interests of justice to hear.'

[21] For all these reasons, it is not in the interests of justice to consider the appeal, as the decision sought will have no practical effect. The appeal, accordingly, falls to

³³ *Op cit* fn 23.

be dismissed with costs in terms of s 16(2)(a) of the Superior Court's Act 10 of 2013.³⁴

[22] In the result, the following order is made:

The appeal is dismissed with costs, including those of two counsel.

F KATHREE-SETILOANE
JUDGE OF APPEAL

³⁴ Section 16(2)(a) of the Superior Courts Act 10 of 2013 provides:

‘(a)(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 or costs.’

Appearances

For the appellants: A Katz SC (with E Cohen)

Instructed by: Minde Schapiro & Smith Inc., Bellville
Symington de Kok Attorneys, Bloemfontein

For the respondents: M Tsele (with K Nqata)

Instructed by: Nandi Bulabula Inc., c/o Webber Wentzel, Cape Town
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