THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 1027/2018

In the matter between

MABOTWANE SECURITY SERVICES CC	**APPELLANT**
and	
PIKITUP SOC (PTY) LTD	**FIRST RESPONDENT**
SIDAS SECURITY GUARDS (PTY) LTD	**SECOND RESPONDENT**
FIDELITY SECURITY GUARDS (PTY) LTD	**THIRD RESPONDENT**
IMVULA QUALITY PROTECTION (PTY) LTD	**FOURTH RESPONDENT**

Neutral citation: *Mabotwane Security Services CC v Pikitup Soc (Pty) Ltd & others* (1027/2018) [2019] ZASCA 164 (29 November 2019)

Coram: Leach, Saldulker, Swain, Mokgohloa and Dlodlo JJA

Heard: 18 November 2019

Delivered: 29 November 2019

Summary: Superior Courts Act 10 of 2013 – s 16(2)*(a)*(i) – relief sought on appeal having no practical effect or result – appeal moot – failure of duty by legal representatives of appellant – appeal dismissed with costs.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Carelse J sitting as court of first instance):

The appeal is dismissed in terms of s 16(2)*(a)*(i) of the Superior Courts Act 10 of 2013, with costs, such costs to include the costs of two counsel.

JUDGMENT

Swain JA (Leach, Saldulker, Mokgohloa and Dlodlo JJA concurring):

[1] At the hearing of the appeal, counsel were directed to present argument on the preliminary question of whether a decision in the appeal would have no practical effect or result, within the meaning of s 16(2)*(a)*(i) of the Superior Courts Act 10 of 2013 (the Act). Having considered the submissions of counsel, the appeal was dismissed with costs, such costs to include the costs of two counsel, with reasons to follow. These are the reasons.

[2] The conclusion that the issues in the appeal are moot, is based upon uncontroversial facts, which it is necessary to briefly set out. The first respondent, Pikitup Soc (Pty) Ltd is a company with limited liability, owned by the City of Johannesburg (the City), which qualifies it as a 'municipal entity' as defined in s 1 of the Local Government: Municipal Systems Act 32 of 2000. The first respondent's mandate is to provide sustainable integrated waste management to the City. It is therefore obliged in terms of s 217(1) of the Constitution to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

[3] The appellant, Mabotwane Security Services CC, had been providing security services to the first respondent in terms of a fixed term contract that was due to expire

on 30 November 2015. On 5 July 2015, in order to ensure that the security services it required were not interrupted by the expiration of the contract with the appellant, the first respondent embarked upon a tender process (the first tender). Interested bidders were invited to submit proposals for the appointment of a service provider, to provide physical security for the first respondent for a period of 36 months. The budget approved by the finance department of the first respondent for the tender, was an amount of R78 674 000, exclusive of VAT. A total of 68 bids were received, including bids from the appellant, the third respondent, Fidelity Security Guards (Pty) Ltd, and the fourth respondent, Imvula Quality Protection (Pty) Ltd. The bids were then referred to the Bid Evaluation Committee (BEC) of the first respondent, which ultimately identified the appellant, together with the third and fourth respondents, as the leading contenders for the award of the tender.

[4] In order to ensure that the process of the BEC was compliant with the relevant legal requirements, an auditing firm was appointed to check for compliance. On 24 September 2015 the audited findings revealed a number of significant errors in the evaluation process, the merits of which are not relevant to the present enquiry. These findings were then considered by the BEC which forwarded its report to the Bid Adjudication Committee (BAC) of the first respondent. After considering the recommendations of the BEC, the BAC recommended to the managing director of the first respondent that the bid be cancelled, principally on the ground that the budget of R78 674 000 was insufficient, as the lowest bid, being that of the appellant, was for an amount of R110 171 366,18. It therefore recommended that the tender be re-issued with an available budget of R78 000 000, VAT exclusive, and R88 920 000, VAT inclusive.

[5] Because the first respondent required security services at all times and the contract with the appellant was due to expire on 30 November 2015, the BAC also recommended that the tender be re-advertised for a shorter period of 14 days in accordance with regulation 22.2 of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA). This regulation authorises the advertisement of bids above R10 000 000 for a period of less than 30 days, where there is an urgent need to award a tender. These recommendations were accepted by the managing director of the first respondent. The first tender was cancelled and on

25 October 2015, a new tender (the second tender) was issued and advertised, containing the following provision: ‘Scope of contract must be reduced to come within the budget of R78 million’.

[6] The response of the appellant to the cancellation of the first tender and the issue and advertisement of the second tender, was to launch review proceedings in the Gauteng Division of the High Court, Pretoria (the first review application) on 4 November 2015. The primary relief sought was an interdict restraining the first respondent from making an award in terms of the second tender, pending the outcome of an application to review and set aside the tender process in terms of the first tender, as well as the decision to cancel the first tender process. Further orders were sought, referring the first tender back to the first respondent for reconsideration and interdicting the first respondent from appointing any security service provider through any procurement process, other than extending existing contracts (such as the contract between the appellant and the first respondent), pending the outcome of the review proceedings in respect of the first tender.

[7] The appellant in its founding affidavit in the first review application had stated that after the second tender was advertised, the appellant’s attorneys requested an undertaking from the first respondent that no award would be made under the second tender, before the appellant had been furnished with the documents relevant to the cancellation of the first tender. The appellant maintained that it required this documentation in order to decide whether to review the decision to cancel the first tender. The documentation was not supplied by the first respondent but on 2 November 2015, according to the founding affidavit of Mr Malatji, the Executive Director Operations of the appellant, he mysteriously received an envelope from the security guard on duty at the appellant’s offices, containing some of the documents that had been requested. The security guard was unable to say who had delivered the envelope which contained the confidential reports of the BEC and the BAC, as well as the confidential audit report in respect of the first tender. According to the appellant, these documents revealed that the appellant was the preferred bidder, until the audit report indicated that certain ‘discrepancies’ occurred in the evaluation process of the bids. The appellant maintained that there was no merit in these findings. Again, whether this was so, is not relevant to the present enquiry.

[8] The response of the first respondent to the revelation that the appellant had gained access to confidential documents, was one of dismay. The first respondent maintained that it was the task of the appellant, as the incumbent security service provider on its premises, to ensure that this documentation which contained sensitive information in regard to the appellant's competitors, was not made public. This breach of the first respondent's security resulted in the first respondent cancelling the second tender process. This was because the first respondent maintained that the confidentiality of the first tender process had been severely compromised, it was not certain of the extent of the breach of its security or confidentiality, and it was not assured of the integrity of the second tender process.

[9] Because the first and second tenders had been cancelled by the first respondent and the contract with the appellant was due to expire on 30 November 2015, the first respondent faced the prospect of not having a security provider. The first respondent therefore considered alternative procurement processes, within the ambit of the governing legal framework, in order to appoint a security service provider on an expedited basis. The first respondent stated that a suitable security provider could not be appointed on a long-term basis because of the pending review application and that neither the appellant, nor the third and fourth respondents could be appointed because in the event of the review application being successful, it wished to avoid any perception that an unfair advantage had been afforded to a competing entity by virtue of its presence at the first respondent's premises.

[10] The first respondent therefore decided to appoint the second respondent, Sidas Security Guards (Pty) Ltd, on an interim basis pending the resolution of the first review application, in terms of a short-term contract, which was concluded on 27 November 2015. The second respondent was appointed to render security services to the first respondent for a twelve-month period commencing on 1 December 2015. The first respondent, in its sole discretion, was entitled to extend the agreement for second and third twelve-month periods and to cancel the agreement, for any reason, on ten days' notice.

[11] The response of the appellant to the appointment of the second respondent to render security services to the first respondent, was to launch a further review application on 10 February 2016 (the second review application). Orders were sought reviewing and setting aside the appointment of the second respondent and declaring that any contract entered into between the first and second respondents was invalid and unenforceable ab initio. The first and second review applications were thereafter consolidated and on 21 December 2017, the court a quo (Carelse J), dismissed both applications with costs on the scale as between attorney and client.

[12] The court a quo found in the first review application, that the cancellation by the first respondent of the first tender had been lawful, in terms of reg 8(4) of the Preferential Procurement Policy Framework Act (5/2000): Preferential Procurement Regulations, 2011 GN R502, *GG* 34350, 8 June 2011. This regulation authorised the first respondent to cancel a tender, where funds were no longer available to cover the total envisaged expenditure, or no acceptable tenders were received. The first respondent did not have the necessary budget to perform its obligations in terms of the tender.

[13] As regards the second review application, the court a quo found that the appointment of the second respondent after the expiration of the contract with the appellant on 30 November 2015, was an emergency. It held that reg 36 of the first respondent's Supply Chain Management Regulations allowed the accounting officer to dispense with the official procurement processes and to procure any services through any convenient process which may include direct negotiations with a service provider, in an emergency situation. The emergency was created by the fact that the first respondent only had 14 days to appoint a new service provider between the cancellation of the first tender on 16 October 2015 and the date when a new service provider had to be appointed, namely, 1 December 2015. Leave to appeal to this court was thereafter granted by the court a quo on 15 August 2018.

[14] Against this factual background and for the reasons that follow, the decision and the relief sought by the appellant, could have no practical effect or result. Orders were sought setting aside the orders of the court a quo, dismissing the first and second review applications and their substitution with the following orders. In the first review

application, the first respondent was to be ordered to consider and adjudicate all qualifying bids in terms of the evaluation methodology prescribed in the tender document, within 30 days of the grant of the order. In the second review application, the appointment of the second respondent as the security provider to the first respondent, was to be set aside. In addition, the first respondent was to be ordered to pay the costs of the application in the court a quo, as well as the costs of the appeal, such costs to include the costs of two counsel.

[15] Section 16(2)*(a)* of the Act provides as follows:

'(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.'

In *National Coalition for Gay and Lesbian Equality & others v Minister of Home Affairs* [1999] ZACC 17; 2000 (2) SA 1 (CC) para 21 footnote 18, it was stated that:

'A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.'

In *Centre for Child Law v Hoërskool Fochville & another* [2015] ZASCA 155; 2016 (2) SA 121 (SCA) para 11, the manner in which this discretion is to be exercised was described in the following terms:

'This 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 enter into the merits of the appeal. 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.' (Authorities omitted.)

In *Minister of Justice & others v Estate Stransham-Ford* [2016] ZASCA 197; 2017 (3) SA 152 (SCA) para 22, the nature of the discretion was described as follows:

'It is a prerequisite for the exercise of the discretion that any order the court may ultimately make will have some practical effect either on the parties or on others. Other factors that may be relevant will 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.'

[16] On 3 December 2018, the first respondent's attorneys wrote to the appellant's attorneys, informing them that in their view the relief sought by the appellant in the notice of appeal had become moot, for the following reasons:

(a) The first tender for the provision of security services to the first respondent was for a period of 36 months, commencing on 1 December 2015. This was the basis on which the tenders were submitted and were to be adjudicated. The period for which the security services were to be provided therefore expired at midnight on 30 November 2018. Accordingly, the first tender could not be revisited, re-adjudicated or awarded whether on its original terms, or at all. The relief sought by the appellant in respect of the first tender, namely, that the first respondent be ordered to consider and adjudicate all the original qualifying bids in terms of the evaluation methodology prescribed in the original tender document, within 30 days of the granting of the order, could no longer be granted.

(b) The contract concluded between the first and second respondents for security services commenced on 1 December 2015 for an initial period of 12 months, which could be renewed for two further periods of 12 months each, at the election of the first respondent. The first respondent therefore submitted that the period of this contract had now, also come and gone, but that in any event, it would be an exercise in futility to review and set it aside, once the review in respect of the first tender could no longer be granted.

(c) The first respondent had in the interim, re-aligned its operations by insourcing security services, with the result that it no longer had any need for any of the services that formed the subject matter of the first tender, or the contract concluded with the second respondent.

The appellant was requested to reconsider its position and advise whether it persisted with the appeal. In the event of the appellant persisting with the appeal it was given notice that a copy of the letter, together with any response thereto, would be placed before this court together with a request for an appropriate costs order.

[17] At the hearing of the appeal the appellant objected to the admission of the contents of the letter as evidence. In terms of s 19*(b)* of the Act, this court has the power to receive further evidence on appeal. In *Rail Commuters Action Group & others*

v Transnet Ltd t/a Metrorail & others 2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC); [2004] ZACC 20 para 43, the following was stated:

'The Court should exercise the powers conferred by s 22 [of the Supreme Court Act 59 of 1959] "sparingly" and further evidence on appeal (which does not fall within the terms of Rule 31) should only be admitted in exceptional circumstances. Such evidence must be weighty, material and to be believed. In addition, whether there is a reasonable explanation for its late filing is an important factor. The existence of a substantial dispute of fact in relation to it will militate against its being admitted.'

[18] In *Moseme Road Construction CC & others v King Civil Engineering Contractors (Pty) Ltd & another* 2010 (4) SA 359 (SCA); [2010] ZASCA 13 para 17, in response to an argument by the appellant that the contract in question was now near completion and that because of the intervening facts, the order of the court below should be set aside, the following was stated:

'There is a conceptual problem with the submission. The issue on appeal is whether the order granted by the court below was correct at the time it issued. Supervening events cannot affect the answer, although they might conceivably affect enforceability on the ground of supervening impossibility.'

[19] Although *Moseme* was not concerned with whether the appeal had been rendered moot by supervening events, the possibility that supervening events might affect the enforceability of any order granted on appeal, is relevant on the present facts. In any event, an enquiry as to whether issues on appeal have become moot, invariably requires a consideration of supervening events. The gravamen of the appellant's objection was directed at the first respondent's statement that it had in the interim, realigned its operations by insourcing security services, with the result that it no longer had any need for any of the services that formed the subject matter of the first tender, or the contract concluded with the second respondent.

[20] The first respondent stated in the letter that if it was ordered to reconsider and adjudicate the original bids submitted by the qualifying bidders (which the appellant submitted should be the case), the first respondent would have to take into account the existing insourcing process. Consequently, even if the first respondent was ordered to adjudicate the original bids afresh, this would have to be based on a scope of works materially different from that issued under the original tender. In

addition, the prices provided by the qualifying bidders would no longer be valid and the first respondent would have to source new prices from these qualifying bidders, which prices would have to be based on a different scope of works. This would amount to a new tender process. In other words, it would be practically impossible for the first respondent to adjudicate all of the original qualifying bids, in terms of the evaluation methodology prescribed in the original tender document, as demanded by the appellant. Consequently, any order directing the first respondent to adjudicate the original bids afresh, could have no practical effect or result.

[21] The response of the appellant to these submissions, was that this court could simply declare the decision of the first respondent to cancel the first tender unlawful, but decline to order the first respondent to reconsider the original bids. In this regard the appellant submitted that there were two discrete stages in determining whether the appeal was moot. The first stage was to decide whether the decision of the first respondent was unlawful and if answered in the affirmative, the issue of mootness would only arise when it was considered whether equitable relief should be granted. As I understood the argument, this court could declare the challenged decision of the first respondent unlawful, but then decline to grant orders reviewing and setting aside the decision, on the ground that it would not be equitable to do so, as it would not have any practical effect or result. It was not explained how such a declaration of unlawfulness, in itself, could have a practical effect or result. In my view, there is no basis for such a distinction to be drawn. The enquiry as to whether the issues in the appeal are of such a nature, that the decision sought will have no practical effect or result, requires a consideration of these issues together with the consequential relief that is sought on appeal.

[22] As submitted by the first respondent, the evidence of the insourcing process is uncontentious and until the hearing of the appeal, the appellant raised no objection to its admission. The evidence is material to a determination of whether the issues in the appeal are moot and could not by its very nature, have been produced at an earlier stage, in the proceedings. To exclude its admission would be prejudicial to the first respondent and run counter to the interests of justice, as it establishes that the grant of the orders sought by the appellant, would not be equitable and could have no practical effect or result. The evidence is accordingly admitted.

[23] On 10 December 2018, the appellant's attorneys responded to the letter of the first respondent's attorneys and rejected the view that the relief sought in the appeal, had become moot. In doing so, reliance was placed upon the decision in *Allpay Consolidated Investment Holdings (Pty) Ltd & others v Chief Executive Officer, South African Social Security Agency & others* [2013] ZACC 42; 2014 (1) SA 604 (CC) para 25, where it was held that once a ground of review under the Promotion of Administrative Justice Act 3 of 2000 was established, s 172(1)*(a)* of the Constitution required that the decision be declared invalid. The declaration of unlawfulness then had to be dealt with in a just and equitable order in terms of s 172(1)*(b)* of the Constitution.

[24] This argument was repeated in the appellant's heads of argument, as the central submission in support of the contention, that the relief sought in the appeal had not become moot. It was submitted that these provisions of the Constitution required the decisions of the first respondent to be declared unlawful and that the dilemma that arose in the appeal, was that the administrative acts which formed the subject of the appeal, had already been acted upon. However, and so the argument went, this dilemma did not release this court from its obligation, to declare the impugned administrative acts of the first respondent, unlawful.

[25] I find myself in no such dilemma. *Allpay* is no authority for the proposition that a court is compelled, in terms of the Constitution, to review and set aside an unlawful administrative act, where doing so will have no practical effect or result in terms of s 16(2)*(a)*(i) of the Act. But, in any event, even if it were to be assumed in favour of the appellant, that the conduct of the first respondent was unlawful and that this court was legally obliged to declare it so, it would not be just and equitable to grant the orders sought by the appellant, in terms of s 172(1)*(b)* of the Constitution, when they could have no practical effect or result in terms of s 16(2)*(a)*(i) of the Act.

[26] The appellant also submitted that notwithstanding any finding that the issues between the parties are moot, this court should nevertheless exercise its discretion and deal with the merits of the appeal, for the reason that a discrete legal issue of public importance arose on the merits of the dispute between the parties, that would

affect matters in the future and on which the adjudication of this court was required. The discrete legal issue of public importance was said to be the correct interpretation of reg 13 of the Preferential Procurement Policy Framework Act (5/2000): Preferential Procurement Regulations, 2017 GN R32, *GG* 40553, 20 January 2017, as well as the correct interpretation of reg 36 of the first respondent's Supply Chain Management Regulations. As correctly pointed out by the first respondent, the regulations applicable to the present appeal are the Preferential Procurement Policy Framework Act (5/2000): Preferential Procurement Regulations, 2011 GN R502, *GG* 34350, 8 June 2011 and more particularly reg 8(4). However, the distinction is not of importance, because the relevant portion of reg 13 in the 2017 edition of the regulations is cast in the same terms as reg 8(4) of the 2011 Regulations.

[27] In *The Merak S: Sea Melody Enterprises SA v Bulktrans (Europe) Corporation* 2002 (4) SA 273 (SCA) para 4, factors to be considered in the exercise of a discretion to allow the appeal to proceed, were described as follows:

'In view of the importance of the questions of law which arise in this matter, the frequency with which they arise and the fact that at the time of the decision in the Court a quo and of the granting of leave to appeal those questions were, as Mr Shaw for the appellant put it, "live issues", I am satisfied that this is an appropriate matter for the exercise of this Court's discretion to allow the appeal to proceed.'

[28] I am not persuaded that an interpretation of the regulations in question, constitutes an important discrete question of law of public importance that frequently arises and affects matters in the future, on which the adjudication of this court is required. In addition, although at the time when leave to appeal was granted on 15 August 2018, the period for which the security services were to be provided in terms of the first tender, would only expire at midnight on 30 November 2018, it could hardly be contended that because three out of the 36 months of the original tender period still remained, the award of the tender could still be regarded as a 'live issue'. The appellant nevertheless submitted that because the first tender was never awarded, but was in fact cancelled, the period for which the tenders were to be awarded had not yet expired. In other words, because the review and setting aside of the decision by the first respondent to cancel the first tender was sought, the grant of this relief would result in the tender still being extant and capable of being awarded in the future. This

argument entirely ignores the fact that it would be practically impossible for the first respondent at this stage, to adjudicate all the original qualifying bids in terms of the evaluation methodology prescribed in the original tender document, as demanded by the appellant.

[29] The remaining issue is the costs of the appeal. The first respondent in its heads of argument, as presaged in the first respondent's attorney's letter of 3 December 2018, gave notice that a special order for costs on the attorney and client scale, would be sought at the hearing of the appeal. The following passage in *John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (In Liquidation) & another* [2018] ZASCA 12; 2018 (4) SA 433 (SCA) para 10, is instructive with regard to the issue of costs:

'The remaining question is what to do about the costs of the application in this court. Where an appeal or proposed appeal has become moot by the time leave to appeal is first sought, it will generally be appropriate to order the appellant or would-be appellant to pay costs, since the proposed appeal was stillborn from the outset. Different considerations apply where the appeal or proposed appeal becomes moot at a later time. The appellant or would-be appellant may consider that the appeal has good merits and that it should not be mulcted in costs for the period up to the date on which the appeal became moot. The other party may hold a different view. As a general rule, litigants and their legal representatives are under a duty, where an appeal or proposed appeal becomes moot during the pendency of appellate proceedings, to contribute to the efficient use of judicial resources by making sensible proposals so that an appellate court's intervention is not needed. If a reasonable proposal by one of the litigants is rejected by the other, this would play an important part in the appropriate costs order. Apart from taking a realistic view on prospects of success, litigants should take into account, among other factors, the extent of the costs already incurred; the additional costs that will be incurred if the appellate proceedings are not properly terminated; the size of the appeal record; and the likely time it would take an appellate court to form a view on the merits of the moot appeal. There must be a proper sense of proportion when incurring costs and calling upon judicial resources.'

[30] Relevant facts in this enquiry are as follows:

(a) When leave to appeal to this court was granted by the court a quo on 15 August 2018, it should have been obvious to the appellant's attorneys that the period for which the security services were to be provided in terms of the first tender, would expire at

midnight on 30 November 2018. It should also have been obvious to them, that the contract concluded between the first and second respondents for security services, would also expire at the same time.

(b) The reasonable proposal made by the first respondent's attorneys on 3 December 2018, was rejected by the appellant's attorneys, for what I regard as spurious reasons. In addition, the appellant demanded a concession from the first respondent that the cancellation of the first tender and the award of the contract to the second respondent, were unlawful. The appellant also demanded that the first respondent abandon the orders obtained before the court a quo and pay the appellant's costs on an attorney and client scale, together with the costs incurred in the appeal up to that stage, also on an attorney and client scale.

[31] In acting as they did, the appellant's attorneys displayed a complete lack of proportion in incurring the costs of the appeal, particularly as the record consisted of 2892 pages. In addition, the appellant's attorneys failed in their duty, when it was obvious that the appeal had become moot during the pendency of the appellate proceedings, to contribute to the efficient use of judicial resources by making sensible proposals, so that the intervention of this court was not needed. I agree with the submission by the first respondent, that the appellant's attorney's intransigent response to the proposal made by the first respondent's attorneys, was entirely regrettable and wholly indefensible. Although the first respondent submitted that the conduct of the appellant's attorneys was sufficiently egregious to justify the grant of a punitive costs order on the attorney and client scale, when all of the facts are considered, a punitive costs order was not justified. The appellant was therefore ordered to pay the costs of the appeal, on the party and party scale, such costs to include the costs of two counsel.

[32] Finally, what was stated by this court in *Rand Water Board v Rotek Industries (Pty) Ltd* 2003 (4) SA 58 (SCA) para 26, demands repetition:

'The present case is a good example of this Court's experience in the recent past, including unreported cases, that there is a growing misperception that there has been a relaxation or dilution of the fundamental principle. . . that Courts will not make determinations that will have no practical effect.'

[33] In the result the appeal had to be dismissed in terms of s 16(2)*(a)*(i) of the Superior Courts Act 10 of 2013 with costs, such costs to include the costs of two counsel and it was so ordered, when the matter was heard on 18 November 2019.

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K G B Swain

Judge of Appeal

Appearances:

For the Appellant:	A Vorster (with N Nortjé)
	Instructed by:
	Albert Hibbert Attorneys, Pretoria
	Honey & Partners Inc, Bloemfontein
For the First Respondent:	B E Leech SC (with M D Stubbs)
	Instructed by:
	Bowman Gilfillan Inc, Johannesburg
	McIntyre Van der Post, Bloemfontein