



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 66128/2020**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: YES [REDACTED]  
Date: 27 September 2024

In the matter between:

**SOUTH AFRICAN CIVIL AVIATION AUTHORITY**

**APPLICANT**

And

**CIVIL AVIATION APPEAL AUTHORITY**

**1<sup>st</sup> RESPONDENT**

**CEMAIR (PTY) LTD**

**2<sup>nd</sup> RESPONDENT**

**MINISTER OF TRANSPORT OF SOUTH AFRICA**

**3<sup>rd</sup> RESPONDENT**

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**JUDGMENT**

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**ALLY AJ**

**INTRODUCTION**

[1] This is a review application launched by the Applicant against rulings made by the First Respondent in appeal proceedings before it.

[2] The First and Third Respondents have chosen to abide by the Court's decision.

[3] The Applicant was represented by Adv. P. Mokoena SC with Adv. M.C. Makgato and the Second Respondent was represented by Adv. G. Ameer SC.

[4] As contained in Applicant's notice of motion<sup>1</sup>, the Applicant has requested an Order, *inter alia*, in the following terms:

4.1. Reviewing, setting aside and declaring invalid the First Respondent's decision made in respect of the preliminary points of jurisdiction and mootness at the hearing on or about 29 September 2020;

4.2. Reviewing, setting aside and declaring invalid the written judgment communicated to the parties on 9 December 2020;

4.3. Declaring the dispute between the parties pertaining to the non-compliance notice AW#01 dated 4 June 2020 and/or subsequent grounding order made in respect of aircraft ZS-DHC to be moot and not justiciable;

[5] The Second Respondent besides contesting the review application, also launched a conditional counter-application. As I understood the parties, it is only in the event of this Court upholding the review that the counter-application be adjudicated upon.

## **FACTUAL BACKGROUND**

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<sup>1</sup> Caselines: Section A1-A5

[6] The Applicant has been established in terms of Section 71 of the Civil Aviation Act<sup>2</sup>, hereinafter referred to as 'the Act'. It is common cause that the Applicant is the regulatory authority responsible, *inter alia*, for the safety and security oversight of civil aviation in South Africa.

[7] On or about 3 July 2020, the Second Respondent launched an internal appeal to the First Respondent in terms of sections 120(2)(a) and 120(2)(d) of 'the Act' against a decision of the Director of the Civil Aviation Authority, hereinafter referred to as 'the DCA'.

[8] 'The DCA' had issued the Second Respondent with a non-compliance notice in respect of aircraft ZS-DHC and subsequently, a grounding order pertaining to the same aircraft because the Corrective Action Plan, hereinafter referred to as 'CAP', was not provided by the Second Respondent within 24 hours of the non-compliance notice.

[9] 'The DCA' then subsequently received a 'CAP' from the Second Respondent and the grounding order was lifted.

[10] The appeal proceedings before the First Respondent were initiated before the lifting of the grounding notice. The 'CAP' having been submitted to 'the DCA' on 10 June 2020 and the grounding notice lifted on 25 June 2020.

[11] The Applicant informed the First Respondent during the appeal proceeding that it intended raising certain points *in limine*. The Second Respondent had objected on the basis that the whole case should be argued which included the

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<sup>2</sup> 13 of 2009

merits, but the First Respondent ruled that the points *in limine* will be heard and adjudicated upon first.

[12] The First Respondent then ruled against the Applicant on both points *in limine*, namely the mootness point as well as the jurisdiction point.

[13] Applicant then informed the First Respondent that it would be launching these proceedings.

### **ANALYSIS AND EVALUATION**

[14] The Applicant submits that these proceedings are being launched in terms of Section 22 of the Superior Courts Act<sup>3</sup>, hereinafter referred to as 'the SCA', alternatively, in terms of the Promotion of Administrative Justice Act<sup>4</sup>, hereinafter referred to as 'PAJA' and further alternatively, on the broader principles of legality.

[15] The relevant part for purposes of this review in Section 22 of 'the SCA' provides as follows:

*"(1) The grounds upon which the proceedings of any Magistrate's Court may be brought under review before a court of a Division are –*

*(a) absence of jurisdiction of the court;*

*(b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;*

*(c) gross irregularity in the proceedings;*

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<sup>3</sup> 10 2013

<sup>4</sup> 3 of 2000

*(d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence*

2...”

[16] Section 127 of ‘the Act’ provides as follows:

*“(1) Any person affected by a decision of an appeal committee may appeal to any provincial or local Division of the High Court having jurisdiction.*

*(2) An appeal contemplated in subsection (1) must be noted and prosecuted as if it were an appeal against a judgment of a magistrate’s court in a civil case and all the rules applicable to such an appeal apply to an appeal in terms of that subsection.”*

[17] It should be immediately noted that section 127 of ‘the Act’ makes reference only to appeals and not review. It is not clear and on what basis the Applicant submits that review jurisdiction has been established in terms of section 127 of ‘the Act’. Insofar as that submission is relied upon, it is clear that the section itself does not make mention of a review and thus would not apply and is erroneously relied upon in my view.

[18] It should be noted however, that Section 22 (1) (a) of ‘the SCA’ provides for ‘absence of jurisdiction’ of the Court. In the context of these proceedings, it would appear that the Applicant submits that because Section 127 of ‘the Act’ regards an Appeal Committee as a ‘magistrate’s court’ a review of a decision of such appeal committee is justified. In my view, this interpretation of Section 22 of ‘the SCA’ read with Section 127 of ‘the Act’, by the Applicant cannot stand. Firstly, Section 22 of ‘the SCA’ read on its own does not apply to an appeal committee for the reason that it is not a court. Secondly, the appeal committee is only regarded as a court in proceedings where an appeal has been launched. Accordingly, in my view, this

submission also cannot stand and reliance on Section 22 of 'the SCA' read with Section 127 of 'the Act' is without merit.

[19] In the context of this matter, however, the Applicant has also relied on other provisions, such as 'PAJA' and the principles of legality in terms of the Constitution.

[20] In respect of 'PAJA' the Applicant submits that the First Respondent, being a statutorily established body, exercises a public power in terms of 'the Act' and as such any decisions made are subject to judicial review under the provisions of 'PAJA'.

[21] The submission as a broad statement cannot be faulted. However, the statement is still subject to other principles, such as, *inter alia*, piecemeal review and 'judicial deference'.

[22] As I understand the Applicant's submissions relating to 'PAJA, the decision of the First Respondent is attacked firstly on the basis that the First Respondent made a decision when it was *functus officio* and thus on that ground alone, the decisions of the First Respondent should be set aside. Secondly, the First Respondent had no jurisdiction to adjudicate the appeal and by attributing jurisdiction to itself, committed an illegality or irregularity liable to review and setting aside.

[23] In respect of the first issue of *functus officio*, if one has regard to the record of the proceedings, the First Respondent had ruled on the two points *in limine* and on reconvening the proceedings to determine a date of a hearing on the merits, the Applicant raised the issue of mootness that it submitted was not decided upon. This situation, resulted in a discussion and ultimate agreement that written submissions

would be made to the First Respondent by both parties. Accordingly, a written judgment was handed down regarding all the issues outlined.

[24] The written judgment does not raise, in my view, the issue of the principle of *functus officio* because after hearing submissions from both parties and an agreement to provide written submissions, the First Respondent was still seized with the matter and merely provided a written judgment on the submissions raised.

[25] Accordingly, the *functus officio* argument raised by the Applicant must fail for the reasons provided above.

[26] The Second Respondent raised the issue of 'piecemeal review' and submitted that the Applicant was engaged in a 'piecemeal review' and the Court should not condone same.

[27] As I understand this submission, the Second Respondent argues that our Courts have made it clear that a Court will not interfere with a decision of a *quasi-judicial* tribunal even though an irregularity has occurred unless the aggrieved party can show prejudice because of such irregularity<sup>5</sup>.

[28] Furthermore, the Second Respondent argued that this review was premature and that the Applicant should have waited for a decision on the merits before approaching this Court<sup>6</sup>. This principle, in my view, however, does not mean that an Applicant may never launch a review application before a final decision on the merits and each case must be decided on its own facts. Where there is a glaring irregularity that prejudices a party, then one can conceive of an application or an

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<sup>5</sup> Rhino Oil & Gas Exploration SA v Normandien Farms (Pty) Ltd & Ano 2019 (6) SA 400 at para 30

<sup>6</sup> Rhino Oil supra at para 33

appeal to set aside such decision. However, such an avenue is fact dependant. In my view, the Applicant has not shown that it would be prejudiced if the appeal before the First Respondent is not allowed to proceed to its conclusion which involves a decision on the merits.

[29] The jurisdictional point taken by the Applicant also needs further interrogation. The Applicant submits that the First Respondent did not have jurisdiction to hear the appeal by the Second Respondent because the First Respondent is bound by the provisions of the statute it is bound by, namely, 'the Act'. The Applicant submits that where the First Respondent decides that it has jurisdiction in terms of a particular section of 'the Act', it cannot thereafter rely on a different section of 'the Act'.

[30] In my view, the issue of jurisdiction, is a legal issue and should be determined on the objective facts present in any given case. In this particular case, where the statute allows for the adjudication of an appeal on various grounds then, in my view, an appeal committee finds its jurisdiction on any of the grounds particularised in such legislation.

[31] On the question of mootness, the Applicant submitted that the issue to be dealt with by the First Respondent, namely, the lifting of the notice of non-compliance, was moot in that the Second Respondent had submitted a Corrective Action Plan [CAP] and thus there was no live issue before the First Respondent.

[32] The Second Respondent's response to this submission is that the Director of the Civil Aviation Authority never suspended nor withdrew the non-compliance notice in terms of 'the Act' and accordingly, the issue was still live and could be adjudicated upon by the First Respondent.

[33] Our Courts have made it clear that where a matter is moot, in other words, where a decision on a matter will have no practical effect, then a decision in regards thereto will be impracticable and of no value. However, there are exceptions wherein a Court will proceed to determine a matter that is moot<sup>7</sup>.

[34] In the context of this matter, the facts indicate that a non-compliance notice was issued and that a CAP was provided to the Applicant. Does this fact in and of itself resolve the issue of the validity or not of the non-compliance notice taking into consideration that the non-compliance notice was not withdrawn? In my view, not, this issue between the parties remains alive in that the parties form part of the industry and the correctness or not of the non-compliance notice remains an issue for determination by a committee such as the First Respondent.

[35] Accordingly, firstly, the issue before the First Respondent was not moot and secondly, in accordance with the principles set out above in relation to mootness, the First Respondent was within its rights to adjudicate and rule on the question of mootness.

[36] In the result, I am of the view that the Applicant has not made out a case for the setting aside of the decisions of the First Respondent on the grounds set out in the papers. As such the appeal before the First Respondent must proceed to its conclusion which involves an adjudication on the merits of the appeal.

## **COSTS**

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<sup>7</sup> Independent Electoral Commission v Langebaan Municipality 2001 (3) SA 925 (CC);

National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs 2000 (2) SA 1 (CC) at para 21

the papers. As such the appeal before the First Respondent must proceed to its conclusion which involves an adjudication on the merits of the appeal.

### **COSTS**

[37] It is trite that a Court has a discretion in relation to the awarding of costs and such discretion must be exercised judiciously. The Second Respondent has requested this Court to award punitive costs against the Applicant should the Court dismiss its application.

[38] I do not regard the launching of this review application as one demanding of a punitive sanction. The conduct of the Applicant can also not be described as one warranting punitive sanction.

[39] Accordingly, costs should follow the result but such costs should be on a party and party scale.

[40] As a result the following Order will issue:

- a). the Applicant's application to review and set aside the decisions of the First Respondent as set out in paragraphs 1, 2 and 3 of the Notice of Motion, is hereby dismissed;
- b). the Applicant is to pay the costs of the Second Respondent on a party and party scale.

  
GAREQ

**ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**

***Electronically submitted therefore unsigned***

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **27 September 2024**.

Date of virtual hearing: 6 June 2023

Date of judgment: 27 September 2024

**Appearances:**

Attorneys for the Applicant: **WERKMANS ATTORNEYS**

Counsel for the Applicants: **Adv. P. Mokoena SC with Adv. MC  
Makgato**

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Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Respondent: **No appearance [notice to abide]**

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