

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG.**

Case Number: 2024-112123

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

SIGNATURE

12 November 2024

In the matter between:

ASI FINANCIAL SERVICES (PTY) LTD

First Applicant

(Registration No.: 2010/024437/07)

ASI WEALTH WESTERN CAPE (PTY) LTD

Second Applicant

(Registration No.: 2016/042040/07)

ANTHONY GOVENDER

Third Applicant

And

MICHAEL GERALD ESLICK

Respondent

JUDGMENT

Noko J

Introduction.

[1] The applicants launched application for leave to appeal judgment an order I made on 22 October 2024 in terms of which I ordered, *inter alia*, that the respondent be allowed access to the business premises of the second applicant including that his access to internet and the server be restored. The comprehensive reasons for the judgment have been detailed and same will not be repeated herein unless necessary.

[2] In brief the respondent was firstly, appointed as a managing director of the second applicant, secondly as a key Individual in terms of the FAIS Act and also as an intermediary in accordance with the mandate agreement signed *inter se*. The second applicant suspended the respondent, terminated his access to the company's email and server. The respondent then launched urgent proceedings for spoliation and interdict against the applicants which relief I granted.

Leave to appeal.

[3] In his address the applicants' counsel stated it is axiomatic that the reasons upon which the application by the respondent was launched were primarily that the applicants were not entitled to decide as they did without having regard to the provisions of both the Companies Act and FAIS Act in dealing with the first respondent as both the director, the Key Individual and being an intermediary in terms of the mandate agreement of the second applicant.

[4] The applicants have now terminated the respondent's services to the second applicant and compliance with the applicable legal instruments, namely, Companies Act and FAIS Act. Confirmation for both the termination in terms of the Companies Act and the FAIS Act were uploaded on CaseLines. Further that the respondent participated when these decisions were made and he is not challenging same. In the circumstances the application for leave to appeal (which relates to, *inter alia*, suspension) has been overtaken by events and should ordinarily not be

proceeded with. As such, the argument continued, the court should either remove the application from the roll alternatively postpone same without an order for the costs. When asked why this application could not be removed before the hearing, the applicants' counsel submitted that the respondent was already opposing same and further that it could not be removed without the approval of the court.

[5] The applicants' counsel further submitted that if I am not agreeable that the issues became moot it is the applicants' contention that the prospects of success in the appeal on merits are good and the application for leave to appeal may have to be adjudicated and the court would be persuaded to grant it. In view of the decision, I arrived at the merits of the application were not entertained.

[6] The counsel for the respondent submitted that the documents in support of the termination as a director and or key individual were not provided to them as they only received an unsigned resolution and further that they did not have confirmation from FAIS with regard to the position of the first respondent. As such the request for the removal should not be entertained. If anything, the application for leave to appeal has no merits and should be dismissed with costs.

[7] As it would appear below the question of mootness is determinative of the application and as such this judgment will be circumscribed to that specific issue.

Legal principles and analysis

[8] Ordinarily the case become moot or academic when the case itself no longer has practical effect or affect the interest of the parties¹ and in such an instance the courts are reluctant to exert their resources to adjudicate over such cases. It was stated by the Supreme Court of Appeal in *Solidariteit*² that

“The general principle is that a matter is moot when a court's judgment will have no practical effect on the parties. This usually occurs where there is no longer an existing or live controversy between the parties. A court should refrain from making rulings on such matters, as the court's decision will merely amount to an advisory opinion on the identified legal questions, which are abstract, academic

¹ *J T Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* 1997 (3) SA 514 (CC). See also *Minister of Tourism v AfriForum NPC* 2023 ZACC 7 CC at para 23, where the Constitutional Court stated that ‘A case is moot when there is no longer a live dispute or controversy between the parties which would be practically affected in one way or another by a court's decision or which would be resolved by a court's decision. A case is also moot when a court's decision would be of academic interest only.’

² *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* [2023] ZASCA 35 (31 March 2023). Footnote not added.

or hypothetical and have no direct effect; one of the reasons for that rule being that a court's purpose is to adjudicate existing legal disputes and its scarce resources should not be wasted away on abstract questions of law. In *President of the Republic of South Africa v Democratic Alliance*, the Constitutional Court cautioned that 'courts should be loath to fulfil an advisory role, particularly for the benefit of those who have dependable advice abundantly available to them and in circumstances where no actual purpose would be served by that decision, now'.³

[9] Notwithstanding what is referred to above, mootness cannot be a bar for a court to hear case. In this regard it was stated in *Legal Aid South Africa*⁴ that: "*Mootness is no bar to deciding an appeal if it is in the interest of justice to do so. As this Court said in Van Wyk, relevant considerations are whether the order that the Court may make will have any practical effect either on the parties or on others, whether it is in the public interest for the court to exercise its discretion to resolve the issues and whether the decision will benefit the larger public or achieve legal certainty.*"⁵ Neither of the party in this *lis* serving before me have advanced this argument.

[10] Having noted the submission of mootness by the applicants, I believe that the respondent should not have pursued its argument on merits but accept the likely outcome without demur. That notwithstanding to the extent that the applicants were not eager to tender the costs persisting with opposition would be justified for the dismissal or removal with costs. It is further noted that though the respondent contended that the correct documentation were supporting termination of the respondent as a director and key individuals no challenge has been mounted on their veracity.

[11] The request by the applicants that the matter be removed or postponed implies that the issues raised therein remain alive and maybe entertained at some stage later. This cannot be the case as the respondent has now been terminated and cannot consequently raise issues of suspensions. In this case neither of the parties stand to derive any gain from an order dealing with the moribund issue of suspension of a party who is now terminated. In the premises I find that the application moot.

[12] There are no reasons advanced to persuade me to unsettle the principle that costs should follow the results.

[13] In the premises I struck off the application with costs.

³ *Id* at para 12

⁴ *Legal Aid South Africa v Magidiwana & Others* 2015(6) SA 494 (CC).see also *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC).

⁵ *Id* at para 58.



M V NOKO
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, JOHANNESBURG.

Dates:

Hearing: 1 November 2024.

Judgment: 12 November 2024.

Appearances:

For the Applicant: E Malherbe.

Instructed by Alhadeff Attorneys

For the Respondent: Roux SC with Ms Fourie.

Instructed by Gerhold & Van Wyk Attorneys.