



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not reportable

Case no: 260/2024

In the matter between:

KURT ROBERT KNOOP N O

FIRST APPELLANT

JOHAN LOUIS KLOPPER N O

SECOND APPELLANT

and

ISLANDSITE INVESTMENTS 180 (PTY) LTD

FIRST RESPONDENT

RONICA RAGAVAN N O

SECOND RESPONDENT

DHANESVARIN APPAVOO N O

THIRD RESPONDENT

HUGH VINCENT COOKE

FOURTH RESPONDENT

And

Case no: 746/2024

In the matter between:

ISLANDSITE 180 INVESTMENTS (PTY) LTD

FIRST APPELLANT

RONICA RAGAVAN N O

SECOND APPELLANT

and

KURT ROBERT KNOOP N O

FIRST RESPONDENT

JOHAN LOUIS KLOPPER N O

SECOND RESPONDENT

DINESH APPAVOO N O

THIRD RESPONDENT

HUGH VINCENT COOKE

FOURTH RESPONDENT

Neutral Citation: *Knoop N O and Another v Islandsite Investments 180 (Pty) Ltd and Others* (260/2024); *Islandsite Investments 180 (Pty) Ltd and Another v Knoop N O and Others* (746/2024) [2025] ZASCA 125 (3 September 2025)

Coram: MAKGOKA, MOTHE and BAARTMAN JJA and PHATSHOANE and HENNEY AJJA

Heard: 13 May 2025

Delivered: 3 September 2025

Summaries:

Knoop N O and Another v Islandsite Investments 180 (Pty) Ltd and Others Company Law – Companies Act 71 of 2008 – company under business rescue – whether interim interdict in respect of Part A moot.

Islandsite Investments 180 (Pty) Ltd and Another v Knoop N O and Others Procedural law – whether appeal moot by virtue of the transfer of disputed property.

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Cronjé AJ sitting as court of first instance in Part A and Van Rhyn J sitting as court of first instance in Part B)

In Knoop N O and Another v Islandsite Investments 180 (Pty) Ltd and Others:

1 The appeal is dismissed with costs in terms of s 16(1)(a) of the Superior Courts Acts 10 of 2013, including costs of two counsel where applicable.

In Islandsite Investments 180 (Pty) Ltd and Another v Knoop N O and Others:

1 The application by the fourth respondent to adduce new evidence in the appeal, is granted with costs, including costs of two counsel, such costs to be paid by the second appellant.

2 The appeal is dismissed with costs in terms of s 16(1)(a) of the Superior Courts Acts 10 of 2013, including costs of two counsel where applicable. Such costs to be paid by the second appellant.

JUDGMENT

Mothle JA (Makgoka and Baartman JJA and Phatshoane and Henney AJJA concurring):

[1] Before us are two appeals heard together, as they arose from the same application heard in the Free State Division of the High Court, Bloemfontein (the high court). The application was brought by Ms Ronica Ragavan (Ms Ragavan) the second respondent in the first appeal, purportedly¹ on behalf of Islandsite Investment 180 (Pty) Ltd (Islandsite), the first respondent in the first appeal. The application was against Messrs Kurt Robert Knoop N O and Johan Louis Klopper N O, the first and

¹ There was a challenge of Ms Ragavan's *locus standi* to litigate on behalf of Islandsite. The question of *locus standi* is referred to in detail in the determination of the cost order in Part B. For the purposes of this judgment, where reference is made to 'Ms Ragavan', unless the context indicates otherwise, it will mean Islandsite and Ms Ragavan in their citation as respondents in the first appeal and as appellants in the second appeal.

second appellants in the first appeal. Messrs Kurt Robert Knoop N O and Johan Louis Klopper N O opposed the application. In the high court, Ms Ragavan sought certain relief, about which I will say more later. The application was in two parts, 'A' and 'B'. Part A was heard on an urgent basis, pending the determination of Part B. After hearing Part A, the high court granted an interim interdict against Messrs Kurt Robert Knoop N O and Johan Louis Klopper N O. Aggrieved by that order, the latter sought, and obtained, leave from this Court to appeal against the interim interdict. This forms the basis of the first appeal.

[2] While the first appeal was pending in this Court, the high court heard Part B. It discharged the interim interdict it had granted pursuant to Part A, and dismissed the application. Ms Ragavan, also with the leave of this Court, appeals against the dismissal of the application in Part B of the application. This forms the basis of the second appeal.

[3] The disposal of Part B raised the question whether the first appeal has been rendered moot. As a result, at the hearing of the two appeals, we directed the parties to first make submissions on the question of mootness of that appeal. After hearing the submissions from the parties on the mootness point, we dismissed the first appeal with costs in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 (Superior Courts Act), and undertook to furnish reasons for that order, later. These are the reasons.

[4] Islandsite is a company under business rescue. Ms Ragavan is its sole director. Messrs Knoop and Klopper were appointed as the Business Rescue Practitioners (BRPs) for Islandsite. On 26 April 2018, the BRPs adopted a business rescue plan, in terms of which, among other things, the BRPs were mandated to sell Islandsite's property situated at erf 770, Constantia, Cape Town (the property).

[5] On 2 June 2021, the National Director of Public Prosecutions obtained a preservation order in the high court in terms of s 38 of the Prevention of Organised Crime Act 121 of 1998, provisionally restraining, among others, the assets of Islandsite. The restraint order was issued as a result of a criminal prosecution that had commenced against Ms Ragavan and several other persons. Islandsite's

property was part of the restrained assets. Mr Dhanesvarin Appavoo is the court-appointed curator in terms of the preservation order. He is the third respondent in both appeals, but took no part in either.

[6] The BRPs, in executing the mandate to market the property for sale, consulted the curator who agreed that the property be put on the market for sale. Ms Ragavan became aware of the intended sale of the property and objected to it. A dispute between the BRPs and Ms Ragavan then ensued as to whether the BRPs were entitled to sell the property without consulting her as the sole director of Islandsite. On 22 February 2023, the BRPs and the curator concluded a sale agreement, with the fourth respondent, Mr Hugh Vincent Cooke (Mr Cooke) in respect of the property. On 22 March 2023, Ms Ragavan launched an urgent application in the high court, which, as mentioned, gave rise to the two appeals before this Court.

[7] Part A of that application was heard by the high court (per Cronjé AJ) on 20 April 2023. The BRPs raised, as preliminary points, that: (a) the high court lacked jurisdiction to adjudicate the matter because the property in dispute was situated in the Western Cape; and (b) Ms Ragavan lacked the necessary standing (*locus standi*) to act on behalf of Islandsite in that application. On 2 May 2023 the high court delivered its judgment, in which it dismissed the BRPs' preliminary points. It accordingly granted an interim interdict order, restraining the sale and transfer of the property, pending the hearing of Part B. As already stated, the BRP's application for leave to appeal the interim order, was subsequently dismissed by the high court, but granted by this Court.

[8] While that appeal was pending in this Court, Ms Ragavan set down the hearing of Part B in the high court. In that application, they sought to review the BRPs' decision to sell and transfer the property. They also sought declaratory orders to: (a) set aside of the decision to place Islandsite under business rescue; and (b) terminate the BRPs' appointment. In response the BRPs delivered a notice in terms of rule 30(1) of the Uniform Rules of Court,² complaining of the premature set down

² Rule 30(1) provides: 'A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.'

of Part B while the appeal against the order in Part A was pending in this Court. The BRP's also persisted with the same preliminary points raised in Part A. In the alternative, they sought a postponement of the application; further alternatively, a stay of proceedings of Part B, pending the determination of Part A appeal in this Court.

[9] Part B came before the high court (per Van Rhyn J) on 5 and 6 December 2023. On 20 February 2024, the high court dismissed the application, having found, contrary to the judgment and order of Part A, that the high court had no jurisdiction to hear the matter, and that Ms Ragavan lacked standing to act on behalf of Islandsite. Consequently, the high court did not deal with the merits of other declaratory relief sought in Part B.

[10] It is against this backdrop that the question of mootness of the interim order granted under Part A of the application, had to be determined. Section 16(2)(a)(i) of the Superior Courts Act provides:

'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.'

[11] In *Akani v Moropa*,³ this Court, with reference to some of the authorities dealing with the question of mootness, explained:

'The principles and authorities on mootness and the court's discretion to hear appeals despite mootness, are settled, and are conveniently collated in *Legal-Aid South Africa v Magidiwana*.⁴ Key among the principles is that courts ought not to decide issues of academic interest only. Accordingly, where the outcome of an appeal would have no practical effect, the appeal would be dismissed on that basis alone. The other is that, notwithstanding the mootness of the appeal as between the parties to the litigation, the court has a discretion to deal with the merits of an appeal. In this regard reference was made to *Qoboshiyane v Avusa (Qoboshiyane)*⁵ where the following was said:

³ *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others* [2025] ZASCA 13 para 14.

⁴ *Legal-Aid South Africa v Magidiwana and Others* [2014] ZASCA 141; 2015 (2) SA 568 (SCA); [2024] 4 All SA 570 (SCA). Confirmed on appeal in *Legal Aid South Africa v Magidiwana and Others* [2015] ZACC 28; 2015 (6) SA 494 (CC); 2015 (11) BCLR 1346 (CC).

⁵ *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA).

“The 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 deal with the merits. 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.”

[12] In the present case, the effect of the order dismissing Part B of the application is that the high court had discharged its interim order granted in Part A. There was therefore no longer any order of the high court against which an appeal could lie. An interim order does not have a lifespan of its own. It is always subject to either a discharge or confirmation in due course. Thus, the lifespan of the interim interdict in Part A, depended on the determination of Part B. By the time this appeal was heard, Part B had already been dismissed, and the interim interdict had been discharged. From a practical point of view, the dismissal of the application to review the decision to sell the property, had put paid to the interim interdict orders granted by Cronjé AJ in Part A.

[13] The issues in the appeal against the order of the interim interdict in Part A, are of such a nature that the decision sought will have no practical effect. The interim interdict granted pursuant to Part A has been overtaken by events, and has thus become moot. There is no basis to exercise this Court’s jurisdiction to hear the appeal notwithstanding its mootness. The appeal raises no discrete legal issue of public importance that would affect matters in the future and on which the adjudication of this Court is required. Thus, the appeal fell to be dismissed in terms of s 16(2)(a)(i) of the Superior Courts Act.

[14] On the question of costs, this Court accepted that Ms Ragavan had raised the question of mootness in her heads of argument. Despite this, the BRPs elected to proceed with the appeal. They therefore accepted the risk of being mulcted in costs. Having concluded that the appeal is moot, it followed that the BRPs must bear the costs of the appeal.

It is for the above reasons that we made the order dismissing the appeal with costs, as being moot.

[15] I now turn to the second appeal, which concerns Part B of the application. I first consider Mr Cooke's application to lead new evidence on appeal. As mentioned, Mr Cooke had concluded a sale agreement to purchase Islandsite's property. The new evidence he sought to introduce was to place on record that the property has since been transferred into his names. Ms Ragavan opposed Mr Cooke's application. Section 19(b) of the Superior Courts Act empowers this Court to 'receive further evidence'. Mr Cooke's application to present new evidence complies with the three factors set by this Court in *Asla Construction v Buffalo City Metropolitan Municipality*,⁶ namely: (a) there is an explanation why the evidence was not led before the high court; (b) there is prima facie likelihood of the evidence being true; and (c) the evidence is materially relevant to the outcome of the appeal.⁷ The application should therefore be granted.

[16] The effect of this order is that the question of mootness looms large. The transfer of the property into the name of Mr Cooke means that Islandsite no longer owns the property. As a result, the property can no longer be a source of a dispute between, on the one hand, Ms Ragavan, and the BRPs, on the other. At the heart of all the disputes between those parties was the competence and authority of the BRPs to sell the property without consulting Ms Ragavan. The property has now been sold and transferred into the name of Mr Cooke.

[17] It seems that Ms Ragavan was aware of this fact as early as 31 January 2024. Notwithstanding this knowledge, Ms Ragavan has sought to challenge the transfer of the property into Mr Cooke's name. This means that the appeal has thus been overtaken by the transfer of the property into Mr Cooke's name. The appeal is moot, and its outcome will have no practical effect.

⁶ *Asla Construction (Pty) Limited v Buffalo City Metropolitan Municipality and Another* [2017] ZASCA 23; [2017] 2 All SA 677 (SCA); 2017 (6) SA 360 (SCA). *Rail Commuters Action Group v Transnet Limited t/a Metrorail* [2004] ZACC 20; 2005 (2) SA 359 (CC) paras 42 to 43.

⁷ *Ibid* para 23.

[18] Similar to the first appeal, no discrete legal issue of public importance arises that would affect matters in the future and on which the adjudication of this Court is required. There is therefore no basis to exercise this Court's discretion to hear the appeal despite its mootness.

[19] In light of the above, it would serve no purpose to consider Ms Ragavan's contentions that her application was dismissed without being afforded an opportunity to address the court on the merits of the application. Given the mootness of the appeal, it is immaterial that the high court might have erred in how it considered the application. We must bear in mind the trite principle that an appeal does not lie against the reasons for judgment but against the substantive order of the lower court.⁸ Whether or not a court of appeal agrees with a lower court's reasoning would be of no consequence if the result remains the same.⁹

[20] Lastly, I turn to the question of costs. The default position is that a director or directors of a company have limited authority to litigate on behalf of a company in business rescue.¹⁰ The rationale of this provision was stated by this Court in *Islandsite Investments 180 (Pty) Ltd v National Director of Public Prosecutions and Others*¹¹ thus:

'...In addition, as was held by the high court, a decision to enter into litigation on behalf of the company, whether as initiator or defender, has potential costs implications which bear on the property of a company.'

[21] However, s 133(1)(b) of the Companies Act, 71 of 2008 makes an exception in terms of which a court may grant a director written consent to do so.¹² In the present case, the high court in Part A granted Ms Ragavan such consent to commence litigation on behalf of Islandsite, but limited it to Part A. In other words,

⁸ *ABSA Bank Ltd v Mkhize and Two Similar Cases* [2013] ZASCA 139; 2014 (5) SA 16 (SCA) para 64.

⁹ *Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd* 1948 (3) SA 853 (A) at 354.

¹⁰ *Knoop N O v Gupta* 2021 (2) SA 88 (SCA) at para 34. *Ragavan and Others v Optimal Coal Terminal (Pty) Ltd and Others* 2023 (4) SA 78 (SCA) para 25.

¹¹ *Islandsite Investments 180 (Pty) Ltd v National Director of Public Prosecutions and Others* [2023] ZASCA 166 para 20.

¹² The section reads: 'During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except- (a) with the written consent of the practitioner; (b) with the leave of the court and in accordance with any terms the court considers suitable;...'

Ms Ragavan had to seek another consent in respect of part B. Although the correctness of such an order is doubtful, Ms Ragavan has elected not to cross-appeal against it, and accordingly, she is bound by it. She has not sought consent to litigate on behalf of Islandsite in part B. As a result, the high court in part B held that she did not have the necessary standing to litigate on behalf of Islandsite in that part of the application. That applies to this appeal, which we have found to be moot, an aspect which, as mentioned, Ms Ragavan should have reflected upon much earlier.

[22] In the circumstances, it would not be appropriate for Islandsite to bear any costs. Ms Ragavan, as the second appellant in the second appeal, should personally bear the costs.

[23] The following orders are made:

In *Knoop N O and Another v Islandsite Investments 180 (Pty) Ltd and Others* (260/2024):

1 The appeal is dismissed with costs in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013, including costs of two counsel where applicable.

In *Islandsite Investments 180 (Pty) Ltd and Another v Knoop N O and Others* (746/2024):

1 The application by the fourth respondent to adduce new evidence on appeal is granted with costs, including costs of two counsel, such costs to be paid by the second appellant.

2 The appeal is dismissed with costs in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013, including costs of two counsel where applicable. Such costs to be paid by the second appellant.

S P MOTHLE
JUDGE OF APPEAL

Appearances

Case no: 260/2024

For appellants:

Instructed by:

L V R van Tonder SC with B Casey

Smit Sewgoolam Inc., Johannesburg

Mcintyre Van Der Post, Bloemfontein

For first and second respondents:

Instructed by:

M Hellens SC with B Prinsloo

Van der Merwe & Van der Merwe

Attorneys, George

Honey Attorneys, Bloemfontein

Case no: 746/2024

For appellants:

Instructed by:

M Hellens SC with B Prinsloo

Van der Merwe & Van der Merwe

Attorneys, George

Honey Attorneys, Bloemfontein

For first and second respondents:

Instructed by:

L V R van Tonder SC with B Casey

Smit Sewgoolam Inc., Johannesburg

McIntyre Van Der Post, Bloemfontein

For fourth respondent:

Instructed by:

A Katz SC with K Perumalsamy

C & A Friedlander Attorneys,

Cape Town

Webbers Attorneys, Bloemfontein.