IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 9756/21P

In the matter between:

TILSA PROJECTS (PTY) LTD **APPLICANT**

and

DEPARTMENT OF PUBLIC WORKD AND INFRASTRUCTURE **FIRST RESPONDENT**

MINISTER OF PUBLIC WORKD AND INFRASTRUCTURE **SECOND RESPONDENT**

THE REGAL PROPERTY TRUST T/A ONE FIFTY CAPITAL **THIRD RESPONDENT**

ORDER

The following order is granted:

> The application is dismissed with costs (on scale C for work done after 12 April 2024), such costs to include the costs of senior counsel, where so employed.

JUDGMENT

E Bezuidenhout J

[1] The applicant, Tilsa Projects (Pty) Ltd, originally brought this matter as an urgent application seeking, under Part A of the notice of motion, interim interdictory relief, pending the finalisation of a review application. It was unsuccessful in obtaining the interdictory relief. The relief it sought in the review application was set out in Part B of the notice of motion. The review application was argued before Sabela AJ on 26 August 2022. In the absence of a judgment, the Judge President directed that the matter be argued *de novo* and it subsequently came before me on 20 February 2025.

[2] The applicant sought an order in the following terms:

> (a) Reviewing and setting aside the decision of the first respondent, the Department of Public Works and Infrastructure, to award the tender under bid number BID/DBN20/11/03 (the bid) to the third respondent, the Regent Property Trust, trading as One Fifty Capital.
> (b) Reviewing and setting aside any agreement concluded between the first and third respondents in respect of the implementation of the tender.
> (c) Remitting the matter to the first respondent for reconsideration.
> (d) That the first respondent pays the costs of the application, and should the second respondent, the Minister of Public Works and Infrastructure, and the third respondent oppose the application, that the first, second and third

respondents be liable for the applicant's costs, jointly and severally, the one paying the other to be absolved.

[3] The review application centred around the award of a tender to the third respondent, following upon an invitation to bid, in terms of which the first respondent sought to procure alternative accommodation and parking for the Forensic Laboratory of the South African Police Services (SAPS) in Durban for a period of five years. The bids closed on 21 January 2021. The applicant submitted a tender on the basis that it held a mandate from the owner of a certain building (the bid building). The tender was awarded to the third respondent on 11 August 2021. The application was issued on 27 October 2021.

[4] The applicant *inter alia* contended that the first respondent's Bid Evaluation Committee (BEC) and the National Bid Adjudication Committee (NBAC) committed reviewable irregularities in that they took irrelevant considerations into account when deciding to recommend the third respondent and, in the process, ignored the bid responsiveness criteria, functionality criteria and/or the evaluation matrix. The NBAC further exceeded its powers by remitting the applicant's bid back to the BEC for a re-evaluation after it initially recommended that the applicant's bid be accepted. The NBAC unlawfully and/or wrongfully adjudicated the BEC's recommendations outside the criteria set out in the tender document and/or advert. The applicant also alleged that the first respondent's client, the SAPS, submitted an unsolicited report in respect of its preferred building amongst the bidders and insisted that it preferred the third respondent's building. The BEC subsequently re-evaluated the bids and resolved to recommend the third respondent's building, based on suitability in line with the daily operations and needs of the SAPS Forensic Laboratory. The NBAC thereafter met and approved the BEC's recommendation, and the third respondent became the successful bidder.

[5] The first respondent alleged that the applicant was mistaken when it alleged that the BEC's recommendation was based on the dictates of the SAPS. It also stated that the actions taken by both the BEC and the NBAC were taken in good faith and that the applicant had failed to substantiate or prove any allegations of irregularities. The applicant was also criticised for belatedly suggesting bias and

corruption against public officials in its replying affidavit. The first respondent further pointed out that the NBAC does not merely rubberstamp the recommendations of the BEC and that it was entitled to request the BEC to re-evaluate the issues the NBAC had highlighted.

[6] The third respondent raised two issues, namely, the applicant's *locus standi* to seek a review and whether the NBAC was entitled to consider the suitability of the premises in light of the end user, being the SAPS Forensic Laboratory's wishes. As far as the issue of *locus standi* is concerned, it was contended that the applicant, at best, had a mandate from the owners of the bid building to find a tenant and that it was therefore an agent and should have lodged the review application in the name of its principal. The ownership of the building has, however, changed hands in the meantime. This issue and the applicant's mandate are dealt with below.

[7] Prior to the hearing of the matter, I requested the parties to file supplementary heads of argument to deal with the issue of mootness, especially considering the time that has elapsed since the application was first issued. As mentioned earlier, the tender was awarded to the third respondent on 11 August 2021 and the contract period was only for five years. There was also an issue regarding the applicant's mandate.

[8] The applicant, in its supplementary heads of argument, dealt with the general principles as far as mootness was concerned, to which I will return below. It was in essence submitted that even if the matter is moot, a court may still entertain it if it is in the interests of justice to do so. The applicant made no particular submissions as to what factors were present which would indicate that it was in the interests of justice in this matter. It was submitted that the matter is not moot, as the contract between the first and third respondents would only come into effect when the first respondent takes occupation. It was submitted that the first respondent had not yet taken occupation of the third respondent's building and had not implemented the lease agreement, pending the outcome of this application. In the alternative, it was submitted that if it was argued that the contract had in fact commenced on 11 August 2021, the five-year period would only lapse on 10 August 2026. The dispute therefore remained live and was not moot.

[9] In argument before me, counsel for the applicant submitted that even though it appeared as though the applicant's mandate had lapsed due to the transfer of the bid building, the court must still determine whether the decision to make the award was lawful. Once the court finds that the decision was wrong, the court must consider a remedy and can grant any type of relief. It was also submitted that the applicant needs to know if it was a lawful decision in order for it to consider its remedies, such as a damages claim.

[10] The first respondent submitted in its supplementary heads of argument that the application was moot for the following reasons. The applicant's bid was adjudicated because it, together with the returnable documents, had been received within the prescribed tender period. I pause to mention that it is common cause that the applicant submitted a bid on the basis that it held a mandate from the Panduranga Sivalinga Das Family Trust (the trust), which was the owner of the bid building. The mandate put up by the applicant, and which forms part of the review record, gave the applicant a mandate 'to procure a tenant for the Remainder of Portion 29 and 30 of Erf 1[...] Durban, situate at 1[...] M[...] M[...] Road, subject to reaching an agreement on terms and conditions'. This property is the bid building.

[11] The first respondent submitted further that the applicant's mandate over the bid building had terminated, alternatively lapsed, as the sale and transfer of the bid building commenced on 15 December 2020 and the transfer to a new owner was effected on 5 November 2021. The bid building was therefore no longer available for a valid lease with the first respondent, and the bid building was no longer owned by the trust, who had appointed the applicant as its agent.

[12] The first respondent also submitted that the applicant, in a clandestine manner, concealed the material changes in the ownership of the bid building, which impacted on its mandate and the offer of the building to the first respondent. Attention was also drawn to the fact that on 27 May 2021, the trust appointed Mr Mahomed Shafee Khan, through a power of attorney, to pass transfer of the bid building. This was apparent from the deed of transfer, which was attached to an

additional affidavit filed by the third respondent. Despite these material changes in the ownership of the bid building, the applicant failed to disclose this to the first respondent. It was further pointed out that the eThekwini Municipality produced a rates clearance certificate on 25 October 2021, whereafter the Registrar of Deeds effected transfer of the bid building on 5 November 2021 to Argin Investments (Pty) Ltd (Argin).

[13] It was further submitted that the applicant issued its application papers on 27 October 2021 and, as at the date of the hearing on 10 November 2021, its mandate over the building had lapsed, alternatively, had already lapsed when Mr Khan was appointed on 27 May 2021 to pass transfer. It was submitted that the applicant likewise had no mandate when it persisted with the review application.

[14] It was also submitted that it is apparent from the deed of transfer, which I will refer to more fully below, that the trust had already entered into an asset-for-share transaction with Argin on 5 December 2020, whilst the invitation to bid was published on 20 November 2020. It was submitted that the applicant ought to have been aware that its mandate was impacted by the transfer and that it should not have persisted with the review application. It had no building to offer, and its conduct rendered its offer impractical and impossible.

[15] It was also submitted before me that it was not logical for the applicant to say that its mandate has terminated but that it still wants the court to deal with the relief it is seeking and the merits of the review. It was submitted that the applicant cannot claim damages because it did not have a mandate. If the court were to remit the matter for reconsideration, the bid building would not be available for the first respondent to consider. It was further submitted that the application was a waste of the court's time and that the applicant’s persistence was purely out of a pecuniary interest, especially since the third respondent raised the issue of ownership from the outset. It was further submitted that to date, the applicant has not instituted a damages claim, which is an indication that it does not have faith in such a claim.

[16] It was finally submitted that there is no value in proceeding with the review application as it is moot, and it should accordingly be dismissed with costs, such

costs to include the costs consequent upon the employment of senior counsel on the attorney and client scale.

[17] The third respondent also filed supplementary heads of argument, submitting that although the lease agreement it concluded with the first respondent in October 2021 had not yet lapsed, the case was moot for another reason. It referred to the fact that the bid property was initially owned by the trust, as contended in the applicant's bid. It was also submitted that in the third respondent's main answering affidavit, it was pointed out that the bid building had been transferred to Argin. In support of this allegation, a document reflecting the results of a search at the Deeds Office was attached to that affidavit. The applicant, in its replying affidavit, responded to these allegations by simply stating that it had no knowledge of the contents and disputed the allegations. Considering this dispute, the third respondent's attorney obtained a copy of the latest Deed of Transfer in respect of the bid building, which was attached to an affidavit which was filed together with the supplementary heads of argument.

[18] It was submitted, without admitting it, that whilst the applicant may have been able to lease the bid building to the first respondent at the time it lodged its bid, there is no evidence that after 5 November 2021, it still had such ability.

[19] It was submitted that this renders the application moot. Even if the relief sought by the applicant was granted, it would have no practical benefit for the applicant. It was also submitted that the applicant has not shown that it would be in the interests of justice to hear the application, even if it is moot. Reliance was placed on *Agribee Beef Fund Ltd and Another v Eastern Cape Rural Development Agency and Another*,[1] where the Constitutional Court dealt with the issue of mootness and, in particular, the question of the interests of justice. It was submitted that if the Constitutional Court was not willing to hear the matter in that instance, this court should most definitely not hear this case. Consequently, the application should be dismissed with costs, including counsel's costs on scale C. This would of course not be permissible, as the amendment regarding the scales of costs only came into effect on 12 April 2024 whilst the application was issued in October 2021.

[1] *Agribee Beef Fund Ltd and Another v Eastern Cape Rural Development Agency and Another* [2023] ZACC 6; 2023 (6) SA 639 (CC) paras 26-29.

[20] The next day after the hearing, counsel for the third respondent, Mr C J Pammenter SC, sent an e-mail to my registrar, with the consent of counsel for the applicant, Mr Hlongwane, and counsel for the first respondent, Mr B S Khuzwayo SC. He wished to bring a decision to my attention which had been handed down by the Supreme Court of Appeal on 21 February 2025, which dealt with whether the appeal in that matter was moot or not. It was believed that *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others*[2] may have a bearing on my judgment in the present matter and that all counsel believed that it was appropriate to bring it to my attention.

Mootness

[21] It is generally accepted that courts do not determine academic questions or grant orders that will have no practical effect. In *Voltex (Pty) Ltd v Venkatas and Others*[3] the court held that mootness does not deprive the court of jurisdiction, but it may affect the justiciability of the matter and that an application that will have no practical effect or result may be dismissed on that ground alone. Often, the issue of mootness arises in appeals, where, in terms of section 16(2)*(a)*(i) of the Superior Courts Act 10 of 2013, the court may dismiss an appeal on this ground alone. All the authorities relied upon by counsel dealt with appeal courts' approach to mootness. In *Erasmus: Superior Court Practice*[4] the following is stated:

> 'The subsection confers a discretion on the court. Where, for example, questions of law, which are likely to arise frequently, are at issue the court of appeal may hear the merits of the appeal and pronounce upon it. If facts relevant to the exercise of a court of appeal's discretion under the section do not appear from the record, they should be placed before the court by way of affidavit by the party seeking to rely upon them and in sufficient time to enable the other party to deal therewith. The same applies to an application for leave to appeal in whatever court it is brought. It is a prerequisite for the exercise of

[2] *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others* [2025] ZASCA 13.
[3] *Voltex (Pty) Ltd v Venkatas and Others* [2025] ZAKZDHC 41 para 7.
[4] D E van Loggerenberg *Erasmus: Superior Court Practice* (RS 5, 2025) at D-94J.

the discretion that any order that the court may ultimately make will have some practical effect on one or the other of the parties.' (Footnotes omitted.)

[22] The applicant's counsel made submissions on the assumption that I had a discretion to hear the matter on the merits if it was in the interests of justice to do so. In *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs,*[5] the Supreme Court of Appeal however held as follows:

> 'It must be borne in mind that s 16(2)*(a)*(i) of the Superior Courts Act confers a discretion on a court of appeal to hear an appeal notwithstanding mootness. Therefore, when a court of first instance has determined that the subject matter of litigation has ceased to exist before judgment, it has no jurisdiction to entertain the merits of the matter. Only an appeal court has a discretion to hear an appeal notwithstanding mootness.'

[23] The Supreme Court of Appeal also held in *MEC for Health, Gauteng v Dr Regan Solomons,*[6] with reference to what was held in *Minister of Justice and Others v Estate Stransham-Ford*,[7] that:

> '[28] This Court … made it clear that it was not open to high courts sitting as courts of first instance to make orders on causes of action that had been extinguished merely because they think that their decision would have broader societal implications. The Court in *Stransham-Ford* said courts of first instance are not vested with the same power conferred upon a court of appeal, which may exercise its jurisdiction to determine a matter because "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."
>
> [29] The Court distinguished between a case having become moot because it no longer presented a live issue for determination on appeal, on the one hand, and that of a claim having been extinguished before the

[5] *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* [2023] ZASCA 35 para 18.
[6] *MEC for Health, Gauteng v Dr Regan Solomons* [2024] ZASCA 184.
[7] *Minister of Justice and Others v Estate Stransham-Ford* [2016] ZASCA 197; 2017 (3) SA 152 (SCA).

judgment at first instance, on the other. The expression "mootness" in the jurisprudence of the appellate courts, so the Court found, was not used in the latter case. It said:

> "Mootness is the term used to describe the situation where events overtake matters after judgment has been delivered, so that further consideration of the case by way of appeal will not produce a judgment having any particular effect. Here we are dealing with a logically anterior question, namely, whether there was any cause of action at all before the high court at the time it made its order. Was there anything on which it was entitled to pronounce? The principles governing mootness have little or no purchase in that situation."

[30] The present case plainly falls into the latter category, as by the time the matter came before the court of first instance, it was common cause that Prof Solomons did not have possession of the information pertinent to the relief sought. Consequently, in the words of the above extract, there was no cause of action at all before the court at the time it made its order. This means that the high court had no jurisdiction to enter into the merits of the matter.' (Footnotes omitted.)

[24] Whilst it is in my view clear that as a court of first instance, I would have no jurisdiction to entertain the merits of the matter, should I find it to be moot, the parties were clearly not aware of these authorities. None of them referred me to the above cases and all addressed me as if I would be able to consider the merits. I deem it nonetheless appropriate to refer to some of the authorities relied upon by the parties for the sake of completeness and to enable the applicant to fully consider its position.

[25] In *Agribee Beef Fund Ltd and Another v Eastern Cape Rural Development Agency and Another*,[8] the Constitutional Court said the following regarding mootness:

> '[22] The applicants concede that the matter is indeed moot, but contend that the matter still presents an existing or live controversy and that the interests of

[8] *Agribee Beef Fund Ltd and Another v Eastern Cape Rural Development Agency and Another* [2023] ZACC 6; 2023 (6) SA 639 (CC) (*Agribee*).

justice favour the granting of leave to appeal, as the applicants potentially have a claim for punitive constitutional damages against the respondents, as a result of their failure to perform in terms of the contract. The respondents oppose this application on the basis that the interests of justice do not require the application to be heard because there are no reasonable prospects of success.

[23] The fact that a matter engages this court's jurisdiction is insufficient for leave to be granted. The question must still be answered whether it is in the interests of justice for the court to entertain the matter. It is common cause that the contractual nexus between the parties expired by effluxion of time in March 2021 and that a successful appeal would not result in the contract being reinstated. The parties agree that the matter is moot. Notwithstanding this, we have to consider whether it is indeed moot and, if so, whether it is in the interests of justice to grant leave to appeal. I now proceed to deal with the issue of mootness.

[24] A matter is moot "where issues are of such a nature that the decisions sought will have no practical effect or result". The factors that bear consideration when determining whether it is in the interests of justice to hear a moot matter include –

"(a) whether any order which it may make will have some practical effect either on the parties or on others;

(b) the nature and extent of the practical effect that any possible order might have;

(c) the importance of the issue;

(d) the complexity of the issue;

(e) the fullness or otherwise of the arguments advanced; and

(f) resolving disputes between different courts".' (Footnotes omitted.)

[26] The court further held as follows in respect of the interests of justice:

'[26] It is well established that mootness is not an absolute bar to the justiciability of an issue, and that this court may entertain an appeal, even if moot, where the interests of justice so require. This court has the discretionary power to entertain even admittedly moot issues. In *Langeberg* the court held that it had —

> “a discretion to decide issues on appeal even if they no longer present existing or live controversies. That discretion must be exercised according to what the interests of justice require.”

[27] The applicants concede that they do not need a successful appeal to enable them to recover compensation for what they performed in terms of the contract. They contend, however, that, notwithstanding the mootness, the matter should still be heard, as they have a claim for punitive constitutional damages against the respondents, as a result of the respondents' failure to perform the obligations in terms of the contract. The applicants rely on this court's judgment in *Beadica* for this proposition, where this court held that the protection of the *pacta sunt servanda* principle is essential to the constitutional vision.

[28] The applicants' reliance on *Beadica* is misplaced, as punitive damages are most unlikely to arise out of the following circumstances. The contract was a positive attempt to empower emerging farmers. It sought to bolster the Eastern Cape's economy, and it particularly focused on upgrading and transforming its agrarian output and development. The applicants *proffer nothing further as to why it is in the interests of justice to hear this moot matter, save for a bald assertion to this effect*. A conclusion that it is not in the interests of justice to grant leave in this matter will have no impact on a possible claim for punitive constitutional damages.

[29] None of the factors outlined to establish that it is in the interests of justice to hear the matter, despite its mootness, find application here. The matter is moot and no longer has any practical effect between the parties, because the contract will not be reinstated. I, therefore, conclude that it is not in the interests of justice to grant leave in this matter.’ (My emphasis and footnotes omitted.)

[28] In *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others*[9] the court held as follows:

> '[24] What remains to be considered is whether, despite its mootness, the appeal should nonetheless be heard in the exercise of our discretion. As explained in *Qoboshiyane*, for a court to exercise its discretion, a discrete legal issue of public importance that would affect matters in the future and on which the adjudication of a court is required, should arise. Such an issue does not arise in this appeal. First, the full court's conclusion that Akani's appointment was vitiated by fraud and bribery, was based purely on its factual findings. Those findings were arrived at on the strength of allegations in the application papers before the court. Any future contemplated litigation will undoubtedly have to proceed to trial. One can hardly imagine a trial court, that has had the benefit of witnesses, who have testified and being subjected to cross-examination before it, considering itself bound by the findings, such as there may be, of the full court. Moreover, it can hardly go unnoticed that whatever issues do arise in the envisaged litigation, they have not been fully ventilated or finally determined by the full court.
>
> [25] The only point of law decided by the full court was that the decision by CINPF to remove NBC and replace it with Akani, constituted an administrative action reviewable under PAJA. The test applicable to whether powers and functions that are exercised are public in nature, and therefore constitute administrative action, is a flexible one. Such cases are routinely decided on a case-by-case basis. Viewed in this light, the full court's conclusion that the trustees' decision to remove NBC as provider of administration services to CINPF amounted to the exercise of public power reviewable under PAJA, does not amount to a 'discrete legal issue of public importance' envisaged in *Qoboshiyane.*' (Footnote omitted.)

[29] The court held further:

---

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

'[26] It is clear from the parties' supplementary heads of argument that some of the parties seek this Court's judgment to determine the course of future litigation. For example, NBC seeks confirmation that its removal as CINPF was lawfully terminated as the decision of this Court will "inform any future damages actions". Equally, Akani is concerned that the judgment of the full court might be used against it in future litigation. What the parties seek is this Court's opinion as to possible future litigation prospects. This we decline 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 theorise. . .". 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] In all the circumstances the appeal is moot in this Court. Its outcome will have no practical result. There is no basis to exercise this Court's discretion to hear it despite its mootness.'

[30] The title deed attached to the supplementary affidavit filed on behalf of the third respondent clearly shows that the relevant properties were transferred to Argin on 5 November 2021. As pointed out by the first respondent, it records that Mr M S Khan, as the appearer, was granted a power of attorney by the trust on 27 May 2021. It also contains the following on page 2:

'And the appearer declared that his said principal had, on 15 December 2020, by virtue of an asset- for- share transaction as contemplated in terms of section 42 of the Income Tax Act, 58 of 1962, entered into between the Transferor Trust and the Transferee Company, and that he/she, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

Argin Investments Property Limited Registration Number 2020/722628/07…'

[31] Recently, in *Knoop NO and Another v Islandsite Investments 180 (Pty) Ltd and Others; Islandsite Investments 180 (Pty) Ltd and Another v Knoop NO and Others,*[10] the Supreme Court of Appeal once again addressed the issue of mootness in two appeals before it and confirmed what was held in *Akani.* In the second appeal, it dealt with a property that had been sold to another person, which transaction was being disputed. The property had, however, in the meantime been transferred into the name of the buyer. The court found that the appeal had been overtaken by the transfer of the property and that the appeal was moot and that its outcome will have no practical effect.[11] It also found that there was '… 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'.[12]

[32] In my view, there can be no doubt that the applicant's mandate is no longer valid and that the matter is moot on this ground alone. It further appears that the applicant, or at least the trust, must have known from at least 15 December 2020 that a transaction was imminent in terms of which the trust, which granted the applicant its mandate, would no longer be the owner of the bid building. The applicant, however, still submitted a bid and now, after it has become common cause that there is no building available to lease to the first respondent, it wants this court to provide it with advice or a decision on the merits of the review, to enable it to pursue a possible damages claim. It wants me to do exactly what the court declined to do in *Akani,* namely, to provide an opinion as to possible future litigation prospects. This I can in any event not do as I am precluded from dealing with the merits.

[33] I am therefore of the view that the matter has become moot and that it should be dismissed.

[34] As far as costs are concerned, the court in *Voltex (Pty) Ltd v Venkatas and Others* held that:[13]

---

[10] *Knoop NO and Another v Islandsite Investments 180 (Pty) Ltd and Others; Islandsite Investments 180 (Pty) Ltd and Another v Knoop NO and Others* [2025] ZASCA 125.
[11] Ibid paras 16-18.
[12] Ibid para 18.
[13] *Voltex (Pty) Ltd v Venkatas and Others* [2025] ZAKZDHC 41 para 10.

> ‘The general rule is that costs follow the result. However, where the application becomes moot before final determination, the court must consider the parties’ conduct, the reasonableness of the litigation, and whether the applicant acted oppressively or the respondents unreasonably withheld consent.’

[35] The first respondent pointed out that shortly after launching the application, the property was transferred to Argin. This information was not brought to the attention of the first respondent and the applicant furthermore persisted with the review application, even after becoming aware of the fact that the bid building was no longer the property of the trust. This much is apparent from the sequence of the events and the litigation set out above. I am of the view that there is no reason to deviate from the general rule. Despite the conduct of the applicant in this regard, and in exercising my discretion, I decline to grant a punitive cost order, as requested by the first respondent.

[36] I accordingly grant the following order:

> The application is dismissed with costs (on scale C for work done after 12 April 2024), such costs to include the costs of senior counsel, where so employed.

____

E BEZUIDENHOUT J

Date of hearing: 20 February 2025

Date of judgement: 15 September 2025

The judgment is handed down electronically by circulating it by email to the respective parties and publication on SAFLII. The date of hand down is 15 September 2025.

Appearances:

For the applicant: Mr Hlongwane
Instructed by: Mhlanga Incorporated
Unit 2, First Floor
21 Richefond Circle
Ridgeside Office Park
Tel no: 031 305 7537
Email: tkhwela@gmail.com
Ref: Mr Hlongwane/L COM: T023/21
c/o Stowell & Co
295 Pietermaritz Street
Pietermaritzburg
Tel no: 033 845 0500
Email: sumayan@stowell.co.za
Ref: S NORGOT/MHL 185/ 0023

For the first and second respondent: Mr BE Khuzwayo SC
Instructed by: The State Attorney (KwaZulu-Natal)
6 th Floor, Metlife Building
391 Anton Lembede Street
Durban
Tel no 031 365 2544/ 2582
Email: ThMaphumulo@justice.gov.za
Ref: 289/0011505/21/T/P9/ncm
c/o State Attorney(KwaZulu-Natal) Satellite office
2nd Floor, Magistrate's Court Building
302 Church Street
Pietermaritzburg

For the third respondent: Mr J Pammenter SC
Instructed by: Larratt Law Inc
Suite B
130 Adelaide Tambo Drive

Durban North

Durban

Email: Tanusha@larrattlaw.co.za

Ref: Lance Larratt/tp

c/o Tatham Wilkes

Tel no: 033 394 9199

Ref: Mr Malcom Harris