

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: **597/2025**

In the matter between:

JACOBUS THOMAS DU PREEZ
and

Applicant

FERNANDO DU PREEZ

Respondent

Heard: Determined on the papers

Delivered: 05/09/2025

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, reasonable prospects of success. Applicant's lease agreement terminated by the lessor with effect from 30 June 2025. The question of the water supply from farm Springbokpan to Pringle has become moot and therefore not justiciable – the order would have no practical effect – no existing or live controversy. Section 16(2)(a)(i) of the Superior Courts Act. Further, not in the interests of justice to hear the application.

ORDER

In the result, the following order is made:

1. The application for leave to appeal is dismissed with costs on scale C of Rule 69(7).

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

Mamosebo J

- [1] On 14 March 2025 the applicant approached this court on an urgent basis seeking the following relief: (a) a final interdict prohibiting the respondent from interfering with the water supply from the farm Springbokpan to the farms occupied and leased by him; (b) spoliatory relief restoring the water supply from the farm Springbokpan to the farms occupied and leased by him; as well as (c) a punitive cost order. He now seeks leave to appeal to the Full Court of the Northern Cape Division against the whole of my judgment and order I delivered on 28 March 2025 in which I dismissed the application with costs on scale C of Rule 69(7). The applicants contend that the appeal would have a reasonable prospect of success as contemplated in s 17(1)(a)(i) of the Superior Courts Act.
- [2] The test whether to grant leave to appeal is trite, namely, if the applicant has satisfied the court that the appeal would have a reasonable prospect of success or that there is some compelling reason why the appeal should be heard¹. Leave to appeal may also be granted if it will be in the interests of justice to do so.
- [3] The respondent submitted that the application is moot and that leave to appeal should therefore be denied. I deal with the contention of mootness as it may be dispositive of the matter. The spoliatory relief sought by the applicant hinged on the lease agreement which the respondent maintained

¹ Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA); Mont Chevaux Trust v Goosen 2014 JDR 2325 (LCC); Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021).

would be terminated on 30 June 2025. The respondent contends that on this aspect alone the matter has become moot and the application for leave to appeal should be dismissed. The respondent further argued in the heads that, post the date of 30 June 2025, the applicant will not be able to rely on the lease agreement for any right to occupy the land from which the use of water from Springbokpan could form any alleged incidence of the possession of such land.

- [4] The parties' mother is the lessor who had leased the farms to her three sons, two of whom are the present litigants. Her attorney, Dr Hardus Van der Westhuizen, addressed the termination letter to the applicant and wrote a confirmatory affidavit to that effect. In his replying affidavit the applicant only contended that there was neither a confirmatory affidavit by his mother as the lessor nor any reference that he had instructed one Koorts to have their matter resolved amicably. This response by the applicant, however, only puts form over substance and is misplaced.

- [5] Section 16(2)(a)(i) of the Superior Courts Act stipulates:

‘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.’

- [6] The Constitutional Court in *Member of the Executive Council for Cooperative Governance and Traditional Affairs, Kwazulu-Natal v Nkandla Local Municipality and Others*²

² 2022 (8) BCLR 959 (CC); [2021] ZACC 46 paras 15 and 16

‘I will first deal with the respondents’ submissions on mootness because if this matter is indeed moot, granting leave to appeal will serve no purpose.

Mootness

The principles applicable to mootness are trite. Courts should not decide matters that are abstract or academic and which do not have any practical effect, either on the parties before the court or the public at large. The question is a positive one, namely whether a judgment or order of the court will have a practical effect and not whether it will be of importance for a hypothetical future case. A matter is also moot and not justiciable if it no longer presents an existing or live controversy. However, where the interests of justice so require, a court still has a discretion to determine a matter despite its mootness. Several factors are considered in order to determine whether the interests of justice require that the matter should be determined nonetheless. Where there are two conflicting judgments of different courts, especially where an appeal court’s outcome has binding implications for future matters, it weighs in favour of granting leave to appeal and thereby entertaining a moot matter. Another factor is the nature and extent of the practical effect that any possible order might have.’

See also *POPCRU v SACOSWU* [2018] ZACC 24; 2019 (1) SA 73 (CC); 2018 (11) BCLR 1411 (CC) para 43.

- [7] In my view, this appeal has become moot and no longer presents an existing or live controversy. The interests of justice do not require that it be entertained for the main reason that the lease agreement between the applicant and his mother was terminated on 30 June 2025. There is therefore no longer an existing or live controversy between the applicant and the respondent. Entertaining this matter further would just be an academic exercise with no immediate practical effect or result. I deem it unnecessary to deal with the remainder of the issues as the courts exist to determine concrete legal disputes and as this application has become moot the issues have become abstract. There is further no compelling reason why the appeal should be heard.

[8] I am not persuaded of any cognisable prospects of success or compelling reasons that warrant the attention of the Full Court of this Division. I am therefore satisfied that there are no reasonable prospects of a successful appeal. In the result application for leave to appeal to the Full Bench of this Division, must fail. There is no reason why costs should not follow the result.

[9] In the result, the following order is made:

1. The application for leave to appeal is dismissed with costs on scale C of Rule 69(7).



M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the Applicant:
Instructed by:

Adv. N Jagga
Kotzé Low & Swanepoel Attorneys
c/o Van de Wall Inc

For the Respondent:
Instructed by:

Adv. JG Van Niekerk SC
Dr. Hardus Van der Westhuizen Inc
c/o Haarhoffs Inc