

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

APPEAL CASE NO: A2024/107540

COURT A QUO CASE NO: 2024/107540

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

Date: 2 December 2025

DATE: 2 December 2025

In the matter between:

ERVEN 1[...] WADEVILLE (PTY) LIMITED

Appellant

and

JC IMPELLERS (PTY) LIMITED

Respondent

Coram: Dippenaar *et* Yacoob JJ and M Van Nieuwenhuizen, AJ

Heard on: 29 October 2025

Delivered: 2 December 2025

Summary: *Mootness - appeal having no practical effect - whether discrete legal issue arises - general principles restated*

JUDGMENT

M VAN NIEUWENHUIZEN, AJ (DIPPENAAR Et YACOOB JJ CONCURRING):

- [1] This is an appeal against the judgment and substantive order of Senyatsi J, sitting as court of first instance, granted in the urgent court on the 2nd of October 2024. The court *a quo* granted, *inter alia*, a spoliation order directing the appellant to restore the electricity supply to the leased premises situated at 1[...] I[...] Road, W[...] (“*the leased premises*”). The court *a quo* granted leave to appeal. The respondent opposes the appeal.

COMMON CAUSE

- [2] The following facts and/or circumstances are common cause between the parties:
- [2.1] The respondent is a foundry which specialises in the manufacturing of custom casings using a variety of materials for a variety of clients.
- [2.2] The respondent uses two electrically operated induction furnaces to manufacture the custom casings.
- [2.3] The parties concluded a written three-year lease agreement pertaining to the leased premises on the 1st of January 2022, which expires on 31 December 2025.
- [2.4] The respondent defaulted in making payment in respect of its August 2024 rental invoice.
- [2.5] On the 12th of August 2024 the appellant issued a letter demanding that the respondent pays arrear rental and utilities and followed this up with a letter on the 24th of August 2024

cancelling the lease agreement and threatening ejectment proceedings against the respondent.

- [2.6] On or about the 9th of September 2024, it came to the respondent's attention that the appellant had caused the electricity to be disconnected.

ISSUES FOR DETERMINATION ON APPEAL

- [3] The primary issue on appeal is whether the disconnection of electricity by the appellant constituted spoliation. In this regard this court was *inter alia* requested to determine:

- [3.1] whether the respondent's electricity supply was incidental to its possession of the leased premises in question;

- [3.2] whether spoliation in each case must be determined on its own facts;

- [3.3] whether the appellant resorted to self-help in terminating the respondent's supply of electricity without due process;

- [3.4] whether the appellant was empowered by legislation to terminate the electricity supply to the respondent without due process and therefore the supply of electricity should not be regarded as incidental possession of the leased premises, and

- [3.5] whether the respondent discharged the onus for proving spoliation.

- [4] Prior to the hearing of the appeal this court requested and received supplementary written submissions from the parties on whether:

- [4.1] the appeal has become moot;
- [4.2] there remains a live controversy between the parties in this appeal, and
- [4.3] any order granted in this appeal will have a practical effect.

**COMMON CAUSE FACTS REGARDING THE CURRENT STATE OF AFFAIRS
BETWEEN THE PARTIES**¹

- [5] It is common cause between the parties that:
 - [5.1] The respondent remains in physical occupation of the leased premises situated at Erven 1[...] and 1[...], W[...], G[...].
 - [5.2] The lease agreement was cancelled by the appellant on the 24th of August 2024, before the disconnection of electricity on or about the 8th of September 2024. The validity of the cancellation is in dispute.
 - [5.3] The electricity supply has not been restored since its disconnection, and the respondent continues to occupy the leased premises without electricity.
 - [5.4] After the judgment of the court *a quo*, the respondent instituted arbitration proceedings as envisaged in paragraph 25.3 of the order of the court *a quo*.² The arbitration proceedings have not been finalised and remain pending.
 - [5.5] A rent interdict action instituted by the appellant in the

¹ Joint Practice Note, CaseLines 0029-1 to 0029-6.

² Vol 3, Judgment, p 215, para 25.3, CaseLines, 009-229.

Germiston Magistrate's Court under case number 4925/2024³ in respect of which the appellant seeks, *inter alia*, confirmation of cancellation of the lease agreement as well as payment of arrear rental and arrear utilities, has also not been finalised and remains extant.

[5.6] In addition, following the order and judgment of the court *a quo*, the appellant instituted an eviction application in this court under case number 115868/2024.

[5.7] The eviction application was set down for hearing on 24 November 2025.

[5.8] Accordingly, excluding this appeal, there are three disputes between the parties which remain extant.

POSITION OF THE PARTIES REGARDING MOOTNESS

[6] The appellant's position is that the respondent's continued occupation without electricity confirms that no dispossession occurred, the appeal remains live and justifiable, and the judgment of the court *a quo* continues to have practical and financial consequences.

[7] The respondent's position is that given that the lease agreement lapses on the 31st of December 2025 and that the justiciable disputes between the parties remain extant and are to be determined in other forums, the appeal has become moot and any order granted in respect of this appeal would not have any practical effect – in other words, should the appeal succeed, any order restoring electricity would have no continuing relevance beyond the life of the lease.⁴ The respondent emphasises that the lease between the parties expires on the 31st of December

³ Vol 2, Appellant's AA, Annexure "**AB1**", pp 164-165, CaseLines 009-175 to 009-176.

⁴ Para 17 and 18, Supplementary Joint Practice Note, CaseLines 029-4 to 029-5.

2025, and that the appellant has, in any event, cancelled the lease. Accordingly, so it is submitted, any order or judgment in respect of this appeal will not alter these facts. The respondent submits that the appeal should be dismissed on this ground alone.

STATUTORY FRAMEWORK AND LEGAL PRINCIPLES OF MOOTNESS

[8] Section 16(2)(a)(i)⁵ reads as follows:

“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.”

[9] This provision codifies the mootness doctrine, reflecting the principle that courts exist to resolve live controversies, not academic, hypothetical, or absurd disputes.⁶

[10] The law on mootness is well-established.⁷ A case is moot where there is no longer a live dispute or controversy between the parties, and the court’s judgment will have no practical effect on them.⁸ Mootness is, however, not an absolute bar to determining an appeal. An appeal court has the discretion to determine an issue that is moot where it is in the interests of justice to do so. In *Independent Electoral Commission v*

⁵ Superior Courts Act 10 of 2013 (as amended).

⁶ *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (CC) at para 21.

⁷ *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploration (SOC) Ltd and Others* [2020] ZACC 5, 2020 (6) BCLR 748 (CC); 2020 (4) SA 409 (CC) para 47 (Normandien Farms); *Aptitude Trading Enterprise (Pty) Ltd v The City of Tshwane Metropolitan Municipality and Another* [2025] ZASCA 72; 2025 JDR 2395 (SCA) (Aptitude), paras 14-16, quoting *Solidariteit Helpende Hand NPC v Minister of Co-Operative Governance and Traditional Affairs* [2023] ZASCA 35, para 12; *Centre for Child Law v The Governing Body of Hoërskool Fochville* 2015 ZASCA 155; [2015] 4 All SA 571 (SCA); 2016 (2) SA 121 (SCA) (Centre for Child Law), para 11; *Western Cape Provincial Government and Others v DC Security (Pty) Ltd t/a DC Security and Others* [2025] ZASCA 35; [2025] JOL 68755 (SCA) paras 18-20.

⁸ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs* [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC), para 21; *Normandien Farms*, para 47.

Langeberg Municipality,⁹ the Constitutional Court held:

*“A prerequisite for the exercise of the discretion is that any order which [the court] may make will have some practical effect either on the parties or on others. Other factors that may be relevant will include the nature and extent of the practical effect that any possible order might have, the importance of the issue, its complexity, and the fullness or otherwise of the argument advanced.”*¹⁰

[11] An added consideration is whether the issue is a discrete legal one of public interest that will affect matters in the future on which the adjudication of the court is required.¹¹

[12] In *Akani Retirement Fund Administrators (Pty) Ltd and Others v Moropa and Others*,¹² the Supreme Court of Appeal stated the following:¹³

*“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.”*¹⁴ 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*

⁹ *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) (IEC). See also *Road Traffic Management Corporation v Tasima (Pty) Ltd; Tasima (Pty) Ltd* [2020] 12 BLLR 1173 (CC); 2021 (1) SA 589 (CC), para 127.

¹⁰ *IEC* para 11.

¹¹ *Centre for Child Law* paras 14.

¹² (1125/2022 and 1129/2022) [2025] ZASCA 13 (21 February 2025).

¹³ *Ibid* para 14.

¹⁴ *Legal Aid South Africa v Magidiwana and Others* 2014 ZASCA 141; 2015 (2) SA 568 (SCA); [2014] 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).

Avusa (Qoboshiyane)¹⁵ where the following was said:

*‘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.’*¹⁶
(Emphasis added)

The aforesaid legal principles were recently reaffirmed by the Supreme Court of Appeal in *Lopes and Another v Executive Major of the Knysna Local Municipality and Others*.¹⁷

[13] In *Minister of Tourism v Afriforum NPC*¹⁸ the Constitutional Court stated as follows:

“[23] 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.”
(Emphasis added)

[14] Mootness plays a critical role in ensuring judicial economy, which refers to the efficient use of court resources. Courts are overburdened with

¹⁵ *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA).

¹⁶ *Ibid*, para 5; *Akani Retirement Fund Administrators (Pty) Ltd and Others v Moropa and Others* (1125/2022 and 1129/2022) [2025] ZASCA 13 (21 February 2025).

¹⁷ (345/2024) [2025] ZASCA 157 (20 October 2025) at para 13

¹⁸ *Minister of Tourism and Others v Afriforum NPC and Another* 2023 ZACC 7 (CC) para 23 dated 8 February 2023 and also dealing with the effects of the Covid-19 pandemic

cases, and the principle of mootness helps ensure that only disputes that require resolution are brought before the judiciary. By filtering out cases that no longer present a live issue, the doctrine of mootness prevents the judiciary from expending time and resources on academic or irrelevant matters. This, in turn, allows the courts to focus on cases that have practical significance and require immediate adjudication.¹⁹

- [15] Mootness need not always be raised formally in affidavits. Indeed, it may not always be possible to raise the question on affidavit, particularly where the issues raised for consideration have been overtaken by subsequent events that either arise after the filing of, or are not foreshadowed in, the earlier affidavits. There can be no absolute procedural bar to mootness being raised for the first time in the heads of argument filed on appeal. If anything, it has come to be raised, not infrequently, *mero motu* by courts.²⁰

THE APPELLANT'S CONTENTIONS

- [16] The appellant contends that the appeal is not moot for the following reasons:

[16.1] The respondent remains in occupation of the leased premises without electricity. The dispute between the parties as to the lawfulness of the disconnection and the effect of the lease cancellation persists in fact and in law.

[16.2] The order of the court *a quo* continues to have tangible consequences: It declared the appellant's conduct unlawful, imposed a costs order, and impliedly limits the appellant's

¹⁹ *Boyosinyane v Maroga and Others (UM 197/2022)* [2024] ZANWHC 221; [2024] 4 All SA 378 (NWM) (23 August 2024) at para 36. Also see *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Ltd and Others Ibid* at para 47

²⁰ *Akani supra* at para 30

ability to exercise contractual rights in similar future matters.

- [16.3] The ongoing arbitration proceedings and eviction application underscore that the parties remain in dispute over their respective rights and obligations. The controversy has not been extinguished.
- [16.4] Even apart from the direct effect between the parties, the appeal raises a question of law of general and recurring significance, namely, whether a landlord's disconnection of electricity after lawful cancellation of a lease constitutes spoliation.²¹
- [17] The appellant argues that a determination by this court will have direct and substantial practical effect in that:
- [17.1] it will reverse the adverse costs order imposed by the court *a quo*;
- [17.2] it will clarify the appellant's legal position and remove the stigma being branded a "*spoliator*", and
- [17.3] it will provide authoritative guidance to lower courts and practitioners on the intersection between contractual rights and the possessory remedy of spoliation.
- [18] These consequences the appellant submits meet the "*practical effect*" requirement articulated in *Qoboshiyane NO v Avusa Publishing Eastern Cape (Pty) Ltd*.²²

²¹ Appellant's supplementary heads of argument on mootness, CaseLines, 002-58 to 002-59, para 11

²² *Qoboshiyane NO v Avusa Publishing Eastern Cape (Pty) Ltd (supra)*

DELIBERATION

No practical effect

- [19] Having regard to the common cause facts as set out in paragraph 5, no practical effect will be served by the outcome of this appeal.
- [20] The respondent approached the court *a quo* for a direction to forthwith, upon granting of the order of the court *a quo*, restore the electricity supply at the leased property. A further order was sought by the respondent interdicting and restraining the appellant from disconnecting the supply of electricity or any other services from the property pending finalisation of the arbitration proceedings which were to be initiated by the respondent.²³
- [21] Due to the effluxion of time, the respondent will not achieve the end sought to be achieved by approaching the court *a quo*. On the other hand, even if the order of the court *a quo* were to be set aside on appeal, such order would have no practical effect or result for the appellant because the appellant never complied with the order of the court *a quo*.
- [22] It is clear from the appellant's supplementary heads of argument that it seeks this court's judgment to determine the course of future litigation. It is not within the purview of courts to give advisory opinions about future events on the notional or hypothetical possibility that they could occur in the future.²⁴ As recently held in *Akani Retirement Fund Administrators*

²³ Order of Senyatsi J, CaseLines, section 009-282 to 009-229.

²⁴ *JT Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC); *Police and Prisons Civil Rights Union v South African Commercial Services Workers Union and Others* 2018 ZACC 24; 2018 (11) BLLR 1035 (CC); 2018 (11) BCLR 1411 (CC); 2018 (39) ILJ 2646 (CC); 2019 (1) SA 73 (CC), para 43.

*(Pty) Ltd and Others v Moropa and Others:*²⁵

“... 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,²⁶ courts of appeal ‘do not give advice gratuitously. They decide real disputes and do not speculate or theorise ...’²⁷ 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:²⁸

‘[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.’^{29”}³⁰

The appeal is not relevant to the eviction and lease disputes

- [23] The parallel proceedings will determine the parties’ respective rights. The outcome of the appeal is not relevant to the eviction and lease disputes which remain extant.
- [24] The eviction, rental dispute and arbitration proceedings are independent and self-contained. These proceedings turn on questions of ownership, lease compliance and contractual breach, not on possession at the time of the spoliation.

²⁵ *Ibid*, para 26

²⁶ *Radio Pretoria v Chairperson of the Independent Communications Authority of South Africa and Another* [2004] ZASCA 69; [2004] All SA 16 (SCA); 2005 (1) SA 47 [SCA].

²⁷ *Ibid*, para 41.

²⁸ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC).

²⁹ *Ferreira v Levin NO and Others* para 199. Also see the recent matter of *Lopes and Another v Executive Mayor of the Knysna Local Municipality and Others* (345/2024); [2025] ZASCA 157 (20 October 2025) at para 13

³⁰ *Ibid*, para 26.

- [25] The outcome of this appeal will not affect whether the respondent lawfully occupies the leased premises – that is for the court considering the eviction to determine.
- [26] Further, the outcome of this appeal will not affect the rental dispute between the parties – this will be determined by the Germiston Magistrate's Court and the arbitration proceedings.
- [27] The existence of parallel proceedings does not preserve moot litigation where the issue is self-contained and has no practical bearing on those disputes.
- [28] Whether or not the appeal is heard, the aforesaid proceedings will continue independently, rendering the outcome of the appeal inconsequential to the live disputes between the parties.
- [29] In any event, even if the abovementioned parallel proceedings turn on the existence and/or absence of the spoliation order, that is not the test for determining the question of mootness.³¹ The test is whether or not there will be a practical effect or result. The appeal thus fails to meet the positive test set out in section 16(2)(a)(i) of the Act.
- [30] Insofar as the appellant argues that the court *a quo*'s judgment and order limit the appellant's ability to exercise contractual rights in similar future matters, it is not the remit of the court to deal with hypothetical or prospective situations or problems that have not already ripened or crystallised.³²
- [31] It is furthermore apposite to mention that the appeal process is not a

³¹ *Premier Provincial Mpumalanga v Groblersdal se Stadsraad* 1998 (2) SA 113 (6) SA at 1141D-F; *Dormell Properties 282 CC v Renasa Insurance Co Ltd and Others* NNO 2011 (1) SA 70 (SCA) at 91E-93C; *ABSA Bank Ltd v Van Rensburg* 2014 (4) SA 626 (SCA) at 629D-E; *City Capital SA Property Holdings Ltd v Chavonnes Badenhorst and St Clair Cooper* 2018 (4) SA 71 (SCA) at 65B-D.

³² *Ferreira v Levin* *Ibid* para 199.

forum for reputational rehabilitation.³³

Costs order in the court a quo

[32] The existing costs order, while incidental, does not justify the appeal being entertained.

[33] In any event, section 16(2)(a)(ii) provides as follows:

“Save in exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.”

[34] Where the only remaining issue upon appeal is costs and the substantive relief is moot, an appeal may be dismissed on that ground unless the costs order has some additional practical effect or the discretion was not judicially exercised.³⁴

[35] In terms of this subsection the question whether the judgment or order of the court of appeal will have a practical effect or result could be determined with reference to considerations of costs in exceptional circumstances: for example, where considerable costs have been incurred in the case, the judgment of the court of appeal will indeed have a practical effect or result and the appeal should not be dismissed in terms of section 16(2)(a)(i) of the Act.³⁵ The costs referred to in this subsection are the costs incurred in the court against whose decision

³³ *Akani Retirement Fund Administrators (Pty) Ltd and Others v Moropa and Others supra.*

³⁴ *Minister of Justice and Others v Estate Stransham-Ford* 2017 (3) SA 152 (SCA) at para 21

³⁵ *Oudebaaskraal (Edms) Bpk v Jansen van Vuuren* 2001 (2) SA 806 (SCA) at 812C-F; *John Walker Pools v Consolidated Aone Trade and Invest 6 (Pty) Ltd (In Liquidation)* 2018 (4) SA 433 (SCA) at 436C-F and see *Minister of Rural Development and Land Reform v Phillips* [2017] 2 All SA 33 (SCA) at para 37

the appellant is seeking to appeal, not the costs in the appeal.³⁶

[36] The Supreme Court of Appeal has held that when interpreting the concept “*exceptional circumstances*”, courts “*will best give effect to the intention of the legislature by taking a stricter rather than a liberal view of applications for exemption, and by carefully examining any special circumstances relied upon*”.³⁷ A failure to exercise judicial discretion constitutes an exceptional circumstance for purposes of this subsection.³⁸ So too where the exercising of a true (i.e. strict) discretion was affected by a misdirection.³⁹

[37] In *Radio Pretoria v Chairman, Independent Communications Authority of South Africa and Another*⁴⁰ the court found that there may be rare cases where the court considers it in the interests of justice to clarify or adjust the costs order. This is not one of those instances.

[38] In *casu*, the discretion of the court *a quo* in granting costs against the appellant cannot be interfered with as there are no exceptional circumstances justifying this extraordinary measure, nor has any been alleged.

The interests of justice

[39] It is trite that despite the absence of a practical effect, the matter may

³⁶ *John Walker Pools v Consolidated Aone Trade and Invest 6 (Pty) Ltd (In Liquidation)* 2018 (4) SA 433 (SCA) at 436D-E

³⁷ *Ngwenya NO v Kruger* (Unreported SCA case number 1060/16 dated 6 September 2017) at para 8, citing *Norwich Union Life Insurance Society v Dobbs* 1912 AD 395 at 399, *Zuma v Office of the Public Protector* (Unreported, SCA case number 1447/2018 dated 30 October 2020) at para 20.

³⁸ *Van Staden and Others NNO v Pro-Wiz (Pty) Ltd* 2019 (4) SA 532 (SCA) at para 8; *Roadmac Surfacing (Pty) Ltd v MEC for the Department of Police, Roads and Transport* (Unreported, SCA case number 462/2023 dated 14 November 2024) at para 16.

³⁹ *Fidelity Security Services (Pty) Ltd v The City of Cape Town* (Unreported, WCC case number A250/2018 dated 6 February 2019) at para 15 and see *Kwafel CC v KwaDukuza Municipality* (Unreported, KZD case number AR691/2017 dated 16 October 2020) at para 29.

⁴⁰ *Radio Pretoria v Chairman, Independent Communications Authority of South Africa and Another* 2005 (1) SA 47 (SCA).

still be heard if it would be in the interests of justice to do so.⁴¹

- [40] Mr Carstens on behalf of the appellant argues that even apart from the direct effect between the parties, the appeal raises a question of law of general and recurring significance, namely, whether a landlord's disconnection of electricity after lawful cancellation of a lease constitutes spoliation.
- [41] Mr Carstens argues that the interests of justice strongly favour that this court determine the merits of the appeal. He submits that the judgment of the court *a quo* has created uncertainty as to whether the electricity supply under a lease (commercial lease) is an incident of possession capable of protection by the *mandament* and that the correct delineation of this principle has implications far beyond the present litigants. In this regard Mr Carstens places reliance for his contentions on the matters of *Eskom Holdings SOC Ltd v Metchem Steelpoort CC*⁴² and *Zungu v Nilgra Flats CC*.⁴³
- [42] Mr Carstens argues that the decision in *Eskom Holdings SOC Ltd v Masinda*⁴⁴ read with the judgment of Van der Linde J in *Metchem Steelpoort CC v Eskom Holdings SOC Ltd*,⁴⁵ underscores that spoliation relief operates as an interim restoration of possession, not as a mechanism for enforcing contractual performance. He submits that clarifying this remains of pressing doctrinal importance.
- [43] In developing the appellant's argument, Mr Carstens argues that contrastingly, conflicting rulings have emerged from the judgment in *Eskom Holdings SOC Ltd v Masinda*.⁴⁶ Mr Carstens argues that these judgments, amongst other things, have determined that although the

⁴¹ *Qoboshiyane NO v Avusa Publishing Eastern Cape (Pty) Ltd supra* at para 6

⁴² (A5049/2019) [2020] ZAGPJHC 31 (19 February 2020), at paras 22-25 and 35

⁴³ (2017/44199) [2017] ZAGPJHC 417 (23 November 2017), para 11

⁴⁴ 2019 (5) SA 386 (SCA)

⁴⁵ GJ, 2019

⁴⁶ *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA)

purported right to electricity supply is a personal right, they still acknowledged the availability of the *mandament van spolie*'s protection.

- [44] Specific reference was made to *Wilrus Trading CC and Another v Dey Street Properties and Others*⁴⁷ where the court stated that the authorities in *Masinda* can be divided into three categories.⁴⁸ In this, the court relied on the decision of *Makeshift 1190 (Pty) Ltd v Cilliers*.⁴⁹
- [45] The respondent correctly contends that the *Makeshift* matter is not as controversial as the appellant makes it out to be.
- [46] The appellant contends that the matter raises a legal issue of general importance, namely whether a landlord may lawfully disconnect electricity where a tenant defaults. The issue articulated by the appellant is too broadly stated, given that each case is fact specific.
- [47] The law on this point is well-settled – a spoliation order is competent where there has been unlawful deprivation of possession or quasi-possession, including interference with electricity supply.⁵⁰
- [48] This appeal does not raise any novel and/or constitutional questions – the existing jurisprudence provides sufficient clarity. The interests of justice exception applies only in exceptional circumstances typically where the issue affects the public at large, has recurring implications, or where the clarification of law is urgently needed.⁵¹
- [49] This is not such a case. The present matter concerns a private dispute, there is no recurring public controversy, no constitutional dimension, and no gap in the law requiring clarification. In addition, each matter ought to

⁴⁷ 2021 ZAGPPHC (9 February 2021)

⁴⁸ Appellant's authority bundle, 004(2-29), para 32

⁴⁹ 2020 (5) SA 538 (WCC), para 32-35

⁵⁰ *Impala Water Users Association v Lourens NO* 2008 (2) SA 495 (SCA) at paras 19-20; *Telkom SA Ltd v Xsinet (Pty) Ltd* [2003] ZASCA 35; 2003 (5) SA 309 (SCA) (31 March 2003) at para 9

⁵¹ *Qoboshiyane NO v Avusa Publishing Eastern Cape (Pty) Ltd supra* at para 6

be determined on its own facts/merits. Courts do not provide legal advice in a vacuum.

[50] For all the reasons stated above we find that this matter does not meet the threshold for interests of justice.

[51] There is no discrete live issue before this court. In the circumstances, it was not necessary to go into the merits of the matter.

CONCLUSION

[52] The appeal has become moot within the meaning of section 16(2)(a)(i) of the Act⁵² as the lease is nearing expiry. There exists no live controversy for this court to resolve. The outcome will have no effect on the pending eviction, arbitration, or rental proceedings. There are no interests of justice considerations that warrant us to overlook the mootness of this case. It follows that the appeal falls to be dismissed on this basis. Costs follow the result.

ORDER

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

The appeal is dismissed with costs on Scale B, including the costs of two counsel.

⁵² Superior Courts Act 10 of 2013 (as amended)

M VAN NIEUWENHUIZEN*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the Parties/their legal 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 on 2 December 2025.

HEARD ON: 29 October 2025

DATE OF JUDGMENT: 2 December 2025

FOR APPELLANT: J C Carstens
K M Carstens

INSTRUCTED BY: Martin Attorneys
E-mail: jason@martinattorneys.co.za

FOR RESPONDENT: S R Mabaso
C V Beukes

INSTRUCTED BY: Mota Africa Incorporated
E-mail: thabo@motamota.africa.com