

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

**Appeal: A254/2023
First Court: 4948/2022**

Reportable: No
Of interest to other Judges: No
Revised: No



SIGNATURE

Date: 4 December 2025

In the matter between:

THE UNIVERSITY OF MPUMALANGA

1st Applicant

SELLO LEGODI

2nd Applicant

and

KITSO MAFOKANE

Respondent

JUDGEMENT

MOOKI J (Neurkicher J and Swanepoel J concurring)

- 1 The Supreme Court of Appeal granted the appellants leave to appeal to this court. The appeal is in connection with the judgement and order by Roelofse AJ on 13 January 2023, in the Mpumalanga division of the High Court (the High Court).
- 2 The University suspended the respondent, a student at the University, following disciplinary proceedings against him. The respondent then brought urgent proceedings on 13 January 2023, seeking leave to sit for special examinations scheduled from 16 January 2023. He also sought to be allowed to be registered and enrolled as a student for the 2023 academic year. The respondent sought relief pending a review application to be instituted within 30 days of the grant of the order being sought.
- 3 The University opposed the application, contending that the application was not urgent and that the respondent had not shown a basis for relief on the merits. The history of the prior exchanges between the parties is of particular importance when considering the issue of urgency – these are detailed below.
- 4 The University called the respondent to a disciplinary proceeding based on the respondent's participation in what the University charged was conduct

contrary to the rules of the University. Specifically, the respondent was said to have participated in protests by students that resulted in damage to property belonging to the University. The University found the Respondent guilty following a disciplinary hearing. The Respondent was suspended for two years.

- 5 The Respondent brought an urgent application on 8 November 2022. He sought to be allowed to sit for examinations pending the outcome of his appeal of the decision of the disciplinary committee. The High Court granted the interdict. The appeals committee dismissed the appeal on 17 November 2022.
- 6 The respondent launched a further application on 13 January 2023, for the relief as stated in paragraph 2 above. The application was, once again, brought on an urgent basis. This time, the application was launched on 13 January 2023 and gave the appellant but hours within which to appoint attorneys, consult and draft answering papers.
- 7 The bases upon which the urgent application was launched, and the reasons for the extreme urgency and severely truncated time periods, were alleged by the respondent to be that the appeals committee dismissed his appeal on 17 November 2022 but he still had several examinations to write at the time of the dismissal of his appeal. He mentioned that he suffered severe anxiety attacks and depression after the dismissal of his appeal. On approximately 10 December 2022, he contacted his attorneys and informed them of the outcome of the appeal but they could not obtain an opinion

from counsel before the December holidays. His attorneys closed for the holidays on 14 December 2022 and opened on 11 January 2023.

- 8 The respondent further stated that he received knowledge on 12 January 2023 that examinations and special examinations were to commence from the 16th of January 2023. He was supposed to sit for special examinations on the 16, 17, and 19 January 2023. He told his attorneys that the dates were his last opportunity to sit for the 2022 academic year examinations. His attorneys arranged for consultation with counsel on 13 January 2023 and the application was launched on the same day.
- 9 The University pointed out that it became aware of the application at 12:25 on 13 January 2025, with the University given very limited time to consult and file answering papers. The University contended that the application was not urgent, pointing out that the respondent was advised of the decision by the appeal committee on 16 November 2022. The University further pointed out that the respondent did not attend the appeal hearing and took no steps after 16 November 2022 and yet he approached the court in the morning of 13 January 2023 on an extremely urgent basis. The University complained about how the respondent was litigating, pointing out that the respondent previously brought an application on an urgent basis on 8 November 2022 in which he sought relief pending his appeal. The University pointed out that the respondent did not bother to attend the appeal hearing. The University further pointed out that the intended review application would be prejudicial to the University's disciplinary processes because students found guilty of serious misconduct would seek to

indefinitely or at least for a long period, frustrate the final determination of disciplinary proceedings by rushing to court, as witnessed by the Respondent. The University asked that the matter be removed from the roll, with the respondent paying the wasted costs of counsel.

- 10 The High Court, in considering the application, stated that the court must apply "very strict rules when considering urgent applications, because ultimately an applicant asks a court for condonation for not keeping to the time limits prescribed by the rules for normal proceedings." The High Court pointed out that the court has a discretion in that regard; that the University was given a day and a few hours to file an answering affidavit and that there had been a delay by the Respondent. The High Court was "... of the view that this delay was not properly explained, however the nature of the urgency and the prejudice that might be suffered by – that will be suffered by the applicant if the matter is not heard urgently outweighs the fact that the applicant has not come to court with the necessary speed and haste that would be expected." Ultimately, the High Court granted the relief sought by the respondent. The University sought leave to appeal, raising various grounds. Those grounds included that the High Court improperly exercised its discretion that the matter was urgent. The High Court refused leave to appeal. The University petitioned the Supreme Court of Appeal, which granted the petition, resulting in this hearing.

- 11 Counsel for the University accepted, when the matter came before this court, that the appeal was moot. Counsel sought, however, to persuade the court to express a view on what he submitted were students frustrating the

University's disciplinary processes by launching court proceedings. In my view, with the dispute being moot, a court should not enter the terrain by expressing a view in relation to what is no longer a live dispute.

12 The High Court had made various cost orders against the University. The University raised this as a ground of appeal, namely that the orders ought not to have been made. The Supreme Court of Appeal, in granting leave to the University, ordered that "The cost order of the court a quo in dismissing the application for leave to appeal is set aside AND the cost of the application for leave to appeal in this court and the court a quo are costs in the appeal. If the applicant does not proceed with the appeal, the applicant is to pay these costs."

13 The University should be made good for the costs in the appeal. The University was entitled to vindicate its rights. The fact of the appeal being moot when the matter came before this court is not on account of the University.

14 I propose the following order:

- (1) The appeal is dismissed for being moot.
- (2) The respondent is ordered to pay the costs.
- (3) The costs referred to are costs of the appeal, including the cost of the application for leave to appeal in the Supreme Court of Appeal and the costs in the application for leave to appeal in the High Court.



O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

I agree and it is so ordered:


B NEUKIRCHER

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA


C SWANEPOEL

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the appellant:

R Rothlisberger

Instructed by:

Zwane Sambo Attorneys

Counsel for the respondent:

No appearance

Date heard:

5 November 2025

Date of judgement:

4 December 2025