



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: **22630/2024**

In the matter between:

CAPRICORN PETROCHEMICALS (PTY) LTD

Applicant

and

**PETROLEUM OIL AND GAS CORPORATION OF
SOUTH AFRICA SOC LIMITED**

Respondent

Coram: TJ Golden, AJ

Date of hearing: 30 October 2025

Date of judgment: 9 March 2026

ORDER:

- (a) Condonation is granted for the late filing of the answering affidavit in the Rule 30A application and for the late filing of the Rule 6(5)(d)(iii) Notice.
- (b) The respondent's point of law raised in its Rule 6(5)(d)(iii) notice, that the main review application has become moot, is upheld.

(c) The main review application is dismissed with costs on Scale C.

(d) The Rule 30A application is dismissed with costs on an attorney and client scale, costs to be paid on Scale C.

JUDGMENT

GOLDEN AJ,

Introduction

1. The applicant instituted review proceedings against the respondent on 18 October 2024 in which it sought the following principal relief:

1.1 *“Declaring as unlawful and setting aside the decision by the Respondent not to award and/or not to appoint the Applicant as the service provider for the tender of Diesel 50ppm for deliver into Matola, East London, Mossel Bay, Cape Town and Walvis, three (3) months terms commencing October 2023 terminating in December 2023, with November and December.*

1.2 *Remitting the matter back to the Respondent to re-advertise and/or to reissue a new tender for supply and delivery of Diesel 50ppm.”*

2. The tender period in question was for the period October 2023 to December 2023, a period of three months. The closing date for the tender was Wednesday, 13 September 2023 and the successful bidder was to be notified by Friday, 15 September 2023, although it appears that the respondent had

decided on the successful bidder after this date. It is undisputed that the tender was implemented and that it had terminated in December 2023.

3. For the reasons explained below, it is not necessary to deal with the evaluation of the tender and the additional grounds upon which the applicant has sought to challenge the decision to award the tender. I refer only to the most salient facts necessary for the determination of the application.
4. The applicant and several other bidders submitted bids for the supply of diesel for a period of three months ("the tender").
5. The respondent had contacted the applicant in relation to a due diligence process prior to the advertisement of the tender which engagement seemed to be ongoing between the period August 2023 and September 2023.
6. According to the founding affidavit, the respondent had informed the applicant on 23 April 2024 that its bid was unsuccessful. Aggrieved by this decision, the applicant wrote to the respondent in April 2024 enquiring as to the reasons for the decision in respect of the due diligence process and the tender. The applicant then appointed attorneys in August 2024 to engage further with the respondent.
7. The applicant launched its review application on 18 October 2024, approximately one year after the commencement of the three-month tender period.
8. The respondent was required in terms of Rule 53 of the Uniform Rules to deliver the record of the decision to the Registrar within 15 days of receipt of the application together with such reasons as it may be required in terms of the law to provide.

9. The respondent filed an incomplete record on 8 November 2024. On 12 November 2024, the applicant's erstwhile attorneys addressed correspondence to the respondent's attorneys, Fairbridges Wertheim Becker ("FWB") accompanied by a notice in terms of Rule 30A dated 12 November 2024. The notice described several documents which, according to the applicant, ought to have formed part of the record and which related directly to the adjudication of the tender as well as the due diligence process.
10. The respondent filed a supplementary record dated 12 December 2024 which included 35 additional items. Dissatisfied with what was produced, the applicant filed a second Rule 30A notice on 8 January 2025. This was followed with an application to compel compliance with the Rule 30A notice served on 4 February 2025. In this application, the applicant sought an order directing the respondent, within ten days of service of the order, to comply with Rule 53(1)(b) by dispatching to the applicant a complete record containing all documents that relate to the decision which is the subject of the review application. It sought the documents not limited to and including relevant documents *"that will shed light as to the decision-making process, those documents listed in the Rule 30A notice served on the Respondent"*.
11. The respondent's attorneys then filed a second supplementary record on 4 March 2025 by way of an electronic link. The documents produced were filed in response to the applicant's letter dated 8 January 2025 wherein certain of the documents were requested. According to the applicant, this record was still deficient.
12. In paragraph 9 of its supplementary founding affidavit, the applicant lists the

documents which the respondent had furnished as part of the 4 March 2025 supplementary record. It alleged that the respondent had still not provided it with all the relevant documents that it had requested which compelled it to launch its Rule 30A application.

13. On 24 March 2025, the respondent's attorneys had addressed detailed email correspondence to the applicant's attorneys, advising that many of the documents which it complained of in the Rule 30A notice were provided in the further supplementary record. The correspondence also informed the applicant that the respondent would file a notice of intention to oppose the Rule 30A application should the applicant persist with the application. After the respondent had filed its notice of intention to oppose the application, the applicant's attorneys addressed further correspondence to the respondent's attorneys requesting additional documentation. In its supplementary founding affidavit filed on 5 May 2025, the applicant continued to allege that the further record filed on 4 March 2025 was still found to be lacking and that a lot of what was requested was not furnished.
14. The respondent confirmed in its answering affidavit that numerous documents referenced in the Rule 30A notice were included in the further supplementary record delivered on 4 March 2025.
15. On 16 May 2025, the respondent's attorneys addressed a letter to the applicant's attorneys, enclosing a table identifying the specific pages where the requested documents could be found within the various versions of the record served. A "*further further*" supplementary record together with an index, containing the remaining documents requested by the applicant accompanied the respondent's letter of 16 May 2025. Having received no response to its

letter of 16 May 2025, FWB addressed correspondence dated 2 June 2025 to the applicant's attorneys enquiring whether they were satisfied with the respondent's response of 16 May 2025 and the '*further further*' supplementary record that was filed. FWB also enquired whether the applicant would persist with the Rule 30A application given that it was now in possession of all the relevant documents to enable it to supplement its application in the main review application.

16. The applicant's attorneys responded on the same day indicating that the supplementary records were still incomplete including that no due diligence reports for all the companies and executive summaries for Gulwe Invest and HFavoured Reiland JV were produced.
17. FWB replied on 3 June 2025 pointing out the pages of the record where the documents could be found and recorded that due diligence reports for bidders who had previously traded with the respondent were not procured and therefore do not exist.
18. The applicant's attorneys responded to FWB that they were instructed to proceed with the Rule 30A application.

The respondent's notice in terms of rule 6(5)(d)(iii)

19. The respondent filed a notice in terms of Rule 6(5)(d)(iii) ("*the Notice*"), on the applicant via email on 22 September 2025 giving notice that it intended to raise certain questions of law at the hearing of the matter. I granted condonation for the late filing of the Notice in the hearing.
20. The principal point of law raised in the Notice was that the application had become moot by virtue of the tender having terminated in December 2023.

The additional points of law raised were whether:

- (a) the determination of the substantive relief sought by the applicant in the review application will achieve legal certainty;
- (b) that the record in the review application in any event shows that the applicant was non-compliant in two material respects reflected in the due diligence reports of Moore CT Forensic Services (Pty) Ltd (*“the Moore Report”*) and there is no point in proceeding with the review when the applicant was non-compliant in the respects identified in the Moore Report;
- (c) whether the applicant’s interlocutory application to compel presents a live dispute in circumstances where due diligence reports had not been procured in respect of bidders who had previously traded with the respondent and where the applicant was in possession of all documents required to enable it to supplement its review application; and
- (d) that the respondent cannot be compelled to file reports or any documents which do not exist.

21. It is appropriate for me to deal with the points of law raised in the Notice first, as the outcome thereof will determine the fate of the main review application and the Rule 30A application.

22. Rule 6(5)(d) provides as follows:

“(d) Any person opposing the grant of an order sought in the notice of motion must-

(i) within the time stated in the said notice, give applicant notice, in writing that such person intends to oppose the application

...

- (ii) *within fifteen (15) of notifying the applicant of his/her intention to oppose the application, deliver such person's answering affidavit, if any, together with any relevant documents; and*
- (iii) *if such person intends to raise any question of law only, such person must deliver notice of intention to do so, within the time stated in the preceding paragraph, setting forth such question."*

23. As to the process followed, this was aptly described in *Minister of Finance v Public Protector and Others* 2022 (1) SA 244 (GP) as follows:

"[14] Once a respondent intending to rely on a point of law only, delivers a rule 6(5)(d)(iii) notice of his or her intention to do so to the applicant, then the matter is ready to be set down for hearing in court. The applicant will have an opportunity, at the hearing, to present argument on, inter alia, why the law points raised, in the notice, fail to establish a defence capable of being adjudicated without a factual basis (supported by evidence) being put up by the respondent in an answering affidavit.

24. The applicant took issue with the procedure adopted by the respondent and contended during legal argument that the filing of the notice was irregular. It however did not file a notice of an irregular step. It also failed to address the Notice and the points of law contained therein in its heads of argument. I had raised my difficulties with counsel for the applicant who was unable to meaningfully address me on these deficiencies.

25. The applicant's complaints in relation to the procedure followed by the respondent is unfounded and need not be further entertained.

Is the matter moot?

26. The respondent contends that the main review application, and thus the Rule

30A application, is moot for the reason that the tender has ended. If I agree and find that there are no compelling reasons to otherwise hear the matter, then this would be dispositive of the main review application and the Rule 30A Notice.

27. The applicant contended that even if the tender has ended, which counsel on behalf of the applicant correctly conceded, the main application must still be determined given that it is an important matter which involves the procurement process of a state-owned enterprise. Counsel however did not meaningfully elaborate further on this proposition.
28. The approach to be followed was addressed by the Constitutional Court in *Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Limited and Others* 2020 (4) SA 409 (CC) where the Court held that:

[47] *Mootness is when a matter ‘no longer presents an existing or live controversy’. The doctrine is based on the notion that judicial resources ought to be utilised efficiently and should not be dedicated to advisory opinions or abstract propositions of law, and that courts should avoid deciding matters that are ‘abstract, academic or hypothetical’.*

[48] *This Court has held that it is axiomatic that ‘mootness is not an absolute bar to the justiciability of an issue [and that this] Court may entertain an appeal, even if moot, whether interests of justice so require’. This Court ‘has discretionary power to entertain even admittedly moot issues’.*

[49] *Where there are two conflicting judgments by different courts, especially where an Appeal Court’s outcome has binding implications for future matters, it weighs in favour of entertaining a moot matter.*

[50] *Moreover, this Court has proffered further factors that ought to be considered when determining whether it is in the interests of justice to hear a moot matter. These include:*

- (a) whether an 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 the disputes between different courts.”*

29. The SCA in *Mabotwane Security Services CC v Pikitup SOC (Pty) Ltd and Others* [2019] JOL 46361 (SCA), confirmed that an appeal may be dismissed if a decision on appeal would have no practical effect and where the application did not concern a discreet point of public importance. The SCA held that even if it were to be assumed in favour of the appellant, that the conduct of the first respondent was unlawful and that this Court was legally obliged to declare it so, it would not be just and equitable to grant the order sought by the appellant in terms of Section 172(1)(b) of the Constitution, when it could have no practical effect or result in terms of Section 16(2)(a)(i) of the Superior Courts Act 2013.

30. The Constitutional Court also dealt with the issue of mootness and the interests of justice in *Agrivee Beef Fund Ltd and Another v Eastern Cape Rural Development Agency and Another* [2023] ZACC 6; 2023 (6) SA 639 (CC), where the Court was not willing to hear the matter because it had become moot.

31. Although mootness arises mostly in appeals, the SCA in *MEC for Health, Gauteng v Dr Regan Solomons (2024) ZASCA 184*, with reference to *Minister of Justice and Correctional Services and Others v Estate Late Stransham-Ford 2017 (3)SA 152 (SCA)*, 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. It held that “*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*”.
32. It is not in dispute that the tender was implemented from October to December 2023. There is accordingly no live issue before me.
33. I am not persuaded that the main review application ought to be determined notwithstanding that the tender has ended for the reasons proffered by the applicant. There is no issue of legal or public importance raised in the application, or which may impact future matters of a similar nature which requires judicial determination. The applicant has not demonstrated any of the grounds set out in *Normandien Farms* which may entitle a court, in the interests of justice, to hear the application, nor am I persuaded on the facts, that the interests of justice require that I pronounce on the matter.
34. The application is clearly moot and must be dismissed.
35. The Rule 30A application must suffer a similar fate but its fate of dismissal is inevitable also for the reason that the applicant had persisted with the application when it had no basis to do so. Even if there was some merit to the application at the time when the first [deficient] record was filed, the basis of

the application fell away when the further supplementary records were filed and when the applicant was told that the respondent did not have the additional documents which the applicant continued to request. The respondent had produced at least three supplementary records. It could not produce the remainder of the documents which the applicant insisted upon simply because it did not have them. The applicant nevertheless persisted with its Rule 30A application notwithstanding the repeated production of the relevant documents and which the respondent had clearly exhausted. The respondent was also compelled at one point to direct the applicant's attorneys to the relevant index where the documents which they had [repeatedly] requested had been produced. Notwithstanding full production, the applicant persisted with the application. This is an abuse of process for which a punitive costs order is warranted.

36. The determination of the main review application will have absolutely no practical effect given that the tender had already terminated in December 2023. A remittal will clearly serve no purpose.
37. In the result, the respondent's point of law raised in its Rule 6(5)(d)(iii) Notice that the main review application has become moot, is upheld.
38. I do not deem it necessary to pronounce on any of the additional points raised in the Notice given that the mootness of the application is dispositive of the review application and the Rule 30A application.
39. In the result, I make the following Order:

(a) Condonation is granted for the late filing of the answering affidavit in the Rule 30A application and for the late filing of the Rule 6(5)(d)(iii) Notice.

(b) The respondent's point of law raised in its Rule 6(5)(d)(iii) notice, that the main review application has become moot, is upheld.

(c) The main review application is dismissed with costs on Scale C.

(d) The Rule 30A application is dismissed with costs on an attorney and client scale, costs to be paid on Scale C.

TJ GOLDEN

**Acting Judge of the High Court of South Africa
Western Cape Division, Cape Town**

APPEARANCES:

For the Applicant: Adv R Nelwamondo
Instructed by: Musetsho Law Inc

For the Respondent: Adv RT Williams SC
Instructed by : Fairbridges Wertheim Becker