

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
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 2025-250950

In the matter between:

CITY OF CAPE TOWN

Applicant

And

CAPE TOWN MINSTREL CARNIVAL ASSOCIATION

Respondent

Neutral citation: *Cape Town Minstrel Carnival Association v City of Cape Town* (Case no 2025-250950) [2026] ZAWCHC ... (22 June 2026)

Coram: LEKHULENI J

Summary: Application for leave to appeal. Applicable test – Appeal Moot – Appeal has no reasonable prospects of success – nor there exist any compelling reasons why an appeal should heard - Application dismissed.

Heard: 4 May 2025

Delivered: 22 June 2026

JUDGMENT – LEAVE TO APPEAL

LEKHULENI J:

Introduction

[1] This is an application for leave to appeal to the Supreme Court of Appeal (*the SCA*), alternatively, to the Full Court of this Division in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013 (*the Superior Courts Act*), against the whole judgment and order of this Court (*the main Judgment*) handed down on 29 December 2025. In that judgment, this Court made an order compelling the applicant (*“the City”*) to make available to the respondent a suitable venue within its jurisdiction for the hosting of the respondent’s minstrel competition events, being a medium-risk gathering as contemplated in the Safety at Sports and Recreational Events Act 2 of 2010 (*“SASREA”*), on the following dates:

1 January 2026;

10 January 2026;

17 January 2026; and

24 January 2026.

[2] The Court also ordered the city to pay the costs of the application on a party and party scale with such costs to include the costs of counsel on scale B. The city now seeks leave to appeal to the SCA, alternatively to the Full Court of this Division, against this Court’s decision. The respondent opposed the City’s application and contended that there were no reasonable prospects of success on appeal and that the appeal was moot.

Grounds of Appeal

[3] The city raised six grounds of appeal in its application for leave to appeal.

The city's grounds of appeal, as discernible from the notice of appeal, may be summarised as follows:

- 3.1 That this Court erred in finding that the matter was urgent in law;
- 3.2 That the Court erred in granting a final mandatory interdict in circumstances where none of the three established requirements for an interdict were satisfied;
- 3.3 That the Court erred in failing to apply the *Plascon-Evans* rule correctly to material factual disputes;
- 3.4 That the Court erred in making factual findings relating to SASREA compliance, including an unwarranted inference of bad faith against the city;
- 3.5 That the Court erred in finding that the city bore a positive constitutional obligation derived from section 30 and 31 of the Constitution to provide the respondent with an alternative venue; and
- 3.6 That the Court erred in finding that the city had created a legitimate expectation, more particularly in treating the expectation as a source of substantive entitlement rather than procedural protection.

[4] To this end, the city asserts that the appeal has a reasonable prospect of success.

Facts

[5] I have already dealt with the facts of this matter in detail in the main judgment. Notwithstanding, to provide context to the order that follows, I propose to set out a brief background to the present application. I do not, however, intend to traverse the reasons for my findings, as those have been comprehensively addressed in my written reasons delivered in terms of Rule 49 of the Uniform Rules of Court.

[6] The respondent brought an urgent application for a mandatory order compelling the city to make available to it a suitable venue for the hosting of its minstrel competition events scheduled for 1, 10, 17 and 24 January 2026. It is common cause that on 13 August 2025, Mr Kamaar, the respondent's event coordinator, formally requested the booking of Vygieskraal Stadium from the city for 1, 10, 17 and 24 January 2026, for the respondent's minstrel competition. Ms Naude of the city confirmed that the requested dates were available and that the booking could proceed. Pursuant thereto, the respondent submitted a complete application for the letting of the stadium facility, complying with all requirements set out by the city.

[7] On 17 September 2025, Mr B Kempt, the Area Head: Recreation and Parks, of the city issued a booking confirmation letter confirming the booking requested by the respondent. On 19 September 2025, following a correction of a typographical error regarding the year, Mr Kemp issued a revised confirmation letter confirming that Vygieskraal Stadium was booked for the respondent's minstrel competition for 1, 10, 17, and 24 January 2026.

[8] On 22 September 2025, three days after the corrected confirmation, Mr Kemp suddenly cancelled the booking by way of a letter stating: *"Please note Vygieskraal Stadium is unavailable for the dates 01, 10, 17 and 24 January 2026 as your booking has been cancelled."* The respondent contended that no reason was furnished for the withdrawal of the booking confirmation. Moreover, no explanation was provided as to why the stadium was suddenly deemed unavailable when it had been confirmed as available only days earlier. The respondent further asserted that no consultation preceded this arbitrary decision, nor were any alternative dates or venues offered.

[9] Aggrieved by this decision, the respondent's erstwhile attorney addressed a formal letter of objection to the city and contended that the cancellation was ultra vires and lacked legal foundation. The respondent's attorney also argued that the city failed to provide any valid reasons for the withdrawal and that the city breached the doctrine of legitimate expectation by confirming the booking and then withdrawing it arbitrarily. The respondent's attorney asserted that the cancellation constituted an unlawful, unreasonable and procedurally unfair administrative action and that the city was discriminating against the respondent.

[10] On 16 October 2025, the city's attorney responded, denying the allegations of unfair discrimination against the respondent. The city's attorney stated that the withdrawal was attributed to operational concerns regarding risk grading under the SASREA which rendered the venue unsuitable for hosting a minstrel event. The city's attorney further asserted that the venue did not possess the required risk grading to host events of this nature in terms of SASREA. Moreover, the city's attorney stated that the city's decision to withdraw the provisional booking was based solely on legitimate operational, safety, and risk-management considerations and was in full compliance with applicable laws and event management standards.

[11] On the other hand, the respondent contended that the city's reliance on SASREA as a justification for the withdrawal of the booking was made in bad faith. In the respondent's view, the city had at least one SASREA-compliant venue that could accommodate minstrel events. Yet, it had refused the respondent's request and failed to offer this alternative venue.

[12] On 23 December 2025, the respondent's attorney addressed a letter to the City Manager requesting a reversal of the decision to withdraw the booking of Vygieskraal Stadium and that the respondent association be permitted to proceed with its planned event. In the alternative, the attorney requested that the city provide the respondent and its members with assistance by identifying an alternative venue within Cape Town capable of accommodating the event, which had been classified as a medium-risk gathering, on the scheduled dates.

[13] The Court's attention was also drawn to the fact that the respondent addressed several letters to the city on 1 October 2025, 11 November 2025, and 21 November 2025 with a view to addressing the impasse between the parties. According to the respondent, the city did not respond to these letters. The respondent urged the Court to grant the relief sought to enable the respondent and members of its association to participate in their cultural life and to protect their living heritage as guaranteed in the Constitution.

[14] After considering the matter, I granted an order directing the city to provide an alternative suitable venue to the respondent, thereby enabling it and its association to vindicate their cultural heritage, as set out in the main judgment. The City now seeks leave to appeal against that judgment to the SCA, alternatively to the Full Court of this Division.

The applicable legal principles

[15] The city's application for leave to appeal is based on section 17(1)(a) of the Superior Courts Act. Section 17 of the Superior Courts Act regulates applications for leave to appeal from a decision of a High Court. It provides as follows:

‘(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[16] The Superior Courts Act has raised the bar for granting leave to appeal. Expressed differently, the provisions of section 17 of the Superior Courts Act have now elevated the test to be applied for granting leave to appeal. The use of the word ‘would’ when considering the prospects of success in section 17(1)(a)(i) now imposes a more stringent and vigorous threshold. In terms of section 17(1)(a)(i), leave to appeal should be granted only when there is a sound rational basis for the conclusion that there are prospects of success on appeal. Under section 17(1)(a)(ii), leave to appeal may be given where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[17] In *Ramakatsa and Others v African National Congress and Another*,¹ the SCA held that the test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the city needs to convince this Court on proper grounds that it has prospects of success on appeal. Those prospects of success must not be remote,

¹ (724/2019) [2021] ZASCA 31 (31 March 2021) para 10.

but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.

[18] As foreshadowed above, the use of the word ‘would’ in section 17(1)(a)(i) of the Superior Courts Act implies that the test for leave to appeal is now more onerous. The intention is clearly to avoid our courts of appeal for being flooded with frivolous appeals that are doomed to fail.² The use of the word ‘would’ in subsection 17(1)(a)(i) of the Act imposes a more stringent threshold compared to the provisions of the repealed Supreme Court Act 59 of 1959.³

[19] In *MEC for Health, Eastern Cape v Mkhita*,⁴ the SCA emphasised the application for the test for leave to appeal and stated:

‘[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’

² See *Valley of the Kings Thaba Motswere (Pty) Ltd and Another v Al Mayya International* (EL926/2016, 2226/2016) [2016] ZAECGHC 137 (10 November 2016) para 4.

³ *S v Notshokovu* [2016] ZASCA 112 para 2; *S v Van Wyk* 2015 (1) SACR 584 (SCA) para 14.

⁴ 2016 JDR 2214 (SCA).

[20] From the foregoing, it is abundantly clear that what the test of reasonable prospect of success postulate is a dispassionate decision, based on the facts and the law, that a Court of Appeal could reasonably arrived at a conclusion different to that of the trial court. Thus, to succeed in this application, the city must convince this Court on proper grounds that it has prospects of success on appeal and that those prospects are not remote but have realistic chance of succeeding.⁵ What is required of this Court is to consider, objectively and dispassionately, whether there are reasonable prospects that another court will find merit in the arguments advanced by the city.⁶

[21] I turn to consider the city's application together with the grounds of appeal *ad seriatim*.

Discussion

[22] At the hearing of the leave to appeal application, the respondent's counsel, Ms Naidoo, argued that this application and the intended appeal are moot. I therefore consider the question of mootness as the logically first question to be decided. Ms Naidoo submitted that the relief sought by the respondent was confined to specific dates and a defined time period. The filing and noting of the application for leave to appeal rendered the respondent unable to host its competition, with the result that the appeal has effectively become moot. On the other hand, Mr Kirk-Cohen SC, counsel for the city, argued that there are compelling reasons for the appeal to be heard. Counsel argued that the matter is not moot as it establishes a precedent and that there is a costs order that this Court granted against the city.

⁵ *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

⁶ *Valley of the Kings Thaba Motswere (Pty) Ltd and Another v Al Maya International* [2016] 137 (ZAECGHC) 137 (10 November 2016) para 4.

[23] I must mention that mootness is when a matter no longer presents an existing or live controversy.⁷ 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.⁸ In *Agribee Beef Fund Ltd and Another v Eastern Cape Rural Development Agency and Another*,⁹ the Constitutional Court noted that a matter is moot where issues are of such a nature that the decisions sought will have no practical effect or result.

[24] It is trite that courts of law exist for the settlement of concrete controversies and actual infringement of rights, not to pronounce upon abstract questions or to advise upon different contentions, however important. In *Voltex (Pty) Ltd v Venkatas and Others*,¹⁰ 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.

[25] In the present matter, the purpose of the main application and its urgency, as I understood it, was to compel compliance with a pre-existing expectation that had been created and to allow the respondent and its members to meaningfully celebrate their culture and tradition on the dates specified in the notice of motion. As discussed in the main judgment, the celebration of that heritage is time bound. It is celebrated on the second day of each year. Once that period passed, the purpose of the application became moot.

⁷ *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (CC) at para 21.

⁸ *J T Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC) para 15.

⁹ 2023 (6) SA 639 (CC) paras 26-29.

¹⁰ *Voltex (Pty) Ltd v Venkatas and Others* [2025] ZAKZDHC 41 para 7.

[26] Even if leave to appeal is granted and the appeal is ultimately dismissed by the Court of Appeal, the order previously granted by this Court directing the city to provide a venue for the respondent for the 2026 *Tweede Nuwe Jaar* minstrel competition will be pointless. The order will have no practical effect because, upon the filing of the application for leave to appeal, the order was automatically suspended. As a result, the minstrel competition could not take place. In the circumstances, the said order serves no purpose. It has been overtaken by events. The filing of the application for leave to appeal rendered the *lis* between the parties moot as the period within which the event was to be held had passed. In my opinion, a hearing of the appeal would constitute a futile academic exercise.

[27] The city seems to hinge its opposition of mootness on the grounds that this Court granted a costs order against it. It must be stressed that in an appeal against the exercise of a discretion on costs, the hurdle is formidable, as was held in *Zuma v Office of the Public Protector*.¹¹ In that case, the Constitutional Court noted that in granting a cost order, a lower court exercised a true discretion. The Court emphasised that an appellate court will not interfere with the exercise of that discretion, unless there was a material misdirection by the lower court. In exercising its true discretion, I am of the view that this Court did not misdirect itself when it granted the costs order against the city.

[28] Finally on this point, as stated in *Tecmed Africa v The Minister of Health*,¹² courts should and ought not to decide issues of academic interest that will have no practical effect. The cumulative effect of all the factors discussed in the preceding paragraphs, is that no practical effect or result can be achieved in this case. And for these reasons, the *lis* between the parties is

¹¹ [2020] ZASCA 138 (30 October 2020) para 19.

¹² (495/11) [2012] ZASCA 64 (21 May 2012) para 20.

moot and the application for leave to appeal on this ground alone must fail. However, for completeness, I will consider the six grounds of appeal that the applicant raised in this matter.

Urgency

[29] The city contended that the respondent's application was not urgent and constituted an abuse of process and that the urgency pleaded was self-created. The city argues that the respondent became aware of the withdrawal of its Vygieskraal Stadium booking on or about 22 September 2025, and the city's attorneys wrote to the respondent's attorneys setting out the SASREA reason for the withdrawal. Notwithstanding this knowledge, the respondent failed to approach the court for relief until 27 December 2025, a period of more than two months.

[30] It is trite that 'urgency' is not appealable. It is further trite that in pronouncing on the issue of urgency, this Court exercised a discretion in a wide sense. An appeal Court can only interfere with that discretion if it is manifest that this Court misdirected itself.¹³ In the main judgment, this Court explained that the respondent did not immediately take legal steps to resolve the impasse between the parties; however, it attempted to engage the city directly and cordially to avoid litigation costs. To this end, the court referred to correspondences dated 31 October 2025, 11 November 2025, and 21 November 2025, that the respondent addressed to the city none of which received any response from the city.

¹³ *Cornerstone Logistics (Pty) Ltd and another v Zacpak Cape Town Depot (Pty) Ltd* [2022] 2 All SA 13 (SCA) para 30.

[31] In my view, the matter was extremely urgent. It is incontestable that litigation is expensive. The respondent approached the court as a measure of last resort. In the letter withdrawing the booking confirmation, the city provided no reasons for its decision. It did, however, undertake to engage with the respondents. When the respondents engaged the city, they were met with deafening silence. As a result, the respondent vindicated its constitutional rights in terms of section 34 of the Constitution and approached this Court on an urgent basis for appropriate relief. From the objective facts, the suggestion that the matter was not urgent is devoid of substance and was accordingly rejected. In any event, in my view, the urgency issue is now moot. This Court had decided to hear and dispose of the matter on an urgent basis. That decision cannot be undone.¹⁴

Erroneous grant of final interdictory relief

[32] The city contends that this Court erred in granting final relief in the form of a mandatory interdict in circumstances where, so it avers, the respondent failed to establish the essential requirements for such relief. In particular, the city argues that the respondent failed to establish a clear right, which includes any legal or constitutional right entitling it to compel the city to provide an alternative venue. Moreover, the city asserts that the respondent failed to establish a reasonable apprehension of irreparable harm and failed to demonstrate that it could not obtain substantial redress in due course.

[33] I have already addressed these issues in the main judgment and deem it unnecessary to revisit them in this judgment. Nonetheless, it is important to note that in the main judgment this Court observed that the respondent made a

¹⁴ *Cornerstone Logistics (Pty) Ltd and another v Zacpak Cape Town Depot (Pty) Ltd* [2022] 2 All SA 13 (SCA) para 30.

booking which the city initially confirmed but subsequently withdrew it without providing any reasons or offering the respondent any avenue of appeal. The withdrawal occurred after the city had confirmed the booking. At the hearing of this application, I asked Mr Kirk-Cohen whether it was competent for the city to withdraw the booking, particularly considering the principle expressed in *Oudekraal Estates (Pty) Ltd v City of Cape Town*,¹⁵ (*Oudekraal*) which holds that an administrative decision such as the confirmation of the booking in this case remains valid until it is set aside by a competent court. In response, counsel submitted that the city's confirmation and withdrawal of the booking arose from a commercial contractual transaction and did not constitute administrative action. On that basis, counsel contended that it was competent for the city to withdraw the booking.

[34] Ms Naidoo, however, submitted that the confirmation of the booking constituted administrative action and that, having granted the booking, the city was *functus officio* and lacked the competence to revoke its decision unilaterally. Counsel articulated this argument both at the hearing of the main application and again during the hearing of the application for leave to appeal. For the record, I agree with Ms Naidoo's proposition.

[35] This case, in my view, bears a striking resemblance to what transpired in *Oudekraal*, discussed hereunder. In that matter, the Court emphasised that once an administrative decision has been taken, it remains valid and binding until properly set aside by a competent court. Similarly, in the present matter, once the city confirmed the respondent's booking, it became *functus officio* and could not revoke its decision unilaterally. It should have approached the court for a self-review in terms of principle of legality. I will return to the implications of *Oudekraal* shortly.

¹⁵ 2004 (6) SA 222 (SCA) (28 May 2004).

[36] Section 1 of the Promotion of Administrative Justice Act 3 of 2000 defines administrative action to mean a decision of an administrative nature which adversely affects rights and has a direct, external legal effect. Significantly, before a decision fall within the definition of administrative action, it must adversely affect the rights of any person and have a direct, external legal effect.¹⁶ A decision has direct legal effect when it is a legally binding determination of someone's rights and possesses the quality of finality. In *South African Police Union v The National Commissioner of South African Police Services*,¹⁷ the Court stated, quoting Currie and Klaaren in *The Promotion of Administrative Justice Act The Bench Book*, that the learned authors explain that, although the concept (external and legal effect) is borrowed from German law, it will be necessary to find a South African interpretation of the phrase. The court further noted that the authors submit that the phrase 'direct external legal effect' is intended to capture the idea that, to qualify as administrative action, decisions must have a real impact on a person's rights. The Court noted:

'Tracking the three components they suggest the following interpretation:

Legal effect

The decision must be a legally binding determination of someone's rights. In other words *a decision must establish what someone's rights are or change or withdraw them.*

Direct effect

There must be finality in the decision. If a number of steps are involved in a decision, then only the last step is reviewable.

External effect

The person affected must be someone *other than a person in government.*¹⁸ (emphasis added)

¹⁶ *Prime African Security (Pty) Ltd and Another v Eskom Holdings SOC Ltd and Others* (2025/146673) [2026] ZAWCHC 15 (23 January 2026) para 97.

¹⁷ *Greys Marine Hout Bay (Pty) Ltd v Minister of Public Works* 2004 (3) All SA 446 (C) para 19.

¹⁸ At para 19.

[37] Simply put, a decision has direct external legal effect when it is a legally binding determination of someone's rights, possessed of the quality of finality. To have an "external" effect it must affect outsiders and should not be a purely internal matter of departmental administration.

[38] In this matter, the respondents made a booking for the Vygieskraal Stadium, which the city duly confirmed. The respondent paid the requisite booking fees and undertook the necessary preparations. In granting permission to use the Stadium, the city was exercising public power. The subsequent and sudden withdrawal of the booking, without furnishing reasons, constituted a decision that adversely affected the respondent and, accordingly, had external legal effect. The decision bore the quality of finality. The respondent relied upon the confirmation of the booking and acted upon it by making preparations, a fact which has not been disputed by the City.

[39] As foreshadowed above, decisions made by organs of State which are not challenged in the appropriate proceedings, by the right parties seeking the right remedy, are treated as effective and binding, unless they are set aside by a court – even if the decisions may be vitiated by some irregularity.¹⁹ As the SCA observed in *Minister of Home Affairs and Another v The Public Protector*,²⁰ 'until a court is appropriately approached and an allegedly unlawful exercise of public power is adjudicated upon, it has binding effect merely because of its factual existence'.

[40] It must be stressed that once a subject has relied upon a decision, a government cannot, barring specific statutory authority, simply ignore what it has done. Organs of state are not entitled to simply disregard administrative

¹⁹ *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) paras [26]-[31]; and *Magnificent Mile Trading 30 (Pty) Ltd v Charmaine Celliers* 2020 (4) SA 375 (CC) para 1.

²⁰ *Minister of Home Affairs and Another v The Public Protector* 2018 (3) SA 380 SCA para 38.

actions, even if they believe the decisions to be unlawful, unless and until those decisions are set aside by a competent court. To do otherwise, would be impermissible self-help, which is contrary to the rule of law.²¹ Organs of state, including the city in this matter, bear a heightened duty to act in accordance with the law, to comply with procedural requirements, and to respect and protect rights in the exercise of public power.

[41] I now return to the *Oudekraal* case which Ms Naidoo raised at the hearing of the main application and during the hearing of this application (leave to appeal). As previously mentioned, I find this case to be a replication of the *Oudekraal* case.²² In summary, in *Oudekraal*, the owner of undeveloped land sought the court to grant declaratory orders confirming his rights to develop the land he bought in 1965.²³ Some decades previously, the Provincial Administrator had approved the establishment of a Township on the land. Thereafter, various administrative steps had been taken by the previous owner to ready the land for development, including obtaining approval of the general plan by the Surveyor-General and registering its incorporation at the Register of Deeds. However, when the new owner applied to the City Council for approval of an engineering services plan for the proposed development, the city refused to consider the application.

[42] Defending its refusal in court, the city argued that the Administrator's approval of a Township development on the land was unlawful, because the Administrator had failed to consider the existence of Muslim graves and *Kramats* on the land, which would be desecrated in the development.²⁴ The SCA

²¹ *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) paras 89 and 103.

²² See also Qunit G; Bleazard AA and Budlender S J *Administrative Justice in South Africa – An Introduction* (2024) at 304.

²³ At paras 3 and 7.

²⁴ At para 12.

accepted that the Administrator's decision was unlawful, as the Administrator had failed to consider material information namely, the cultural and religious significance of Muslims burial rights.²⁵

[43] However, the SCA held that notwithstanding the unlawfulness of the Administrator's decision, the city was not entitled to disregard the decision and not to comply with its public function merely because it believed that the Administrator's decision was unlawful.²⁶ The Court noted that until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked.²⁷ The Court stressed that the proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question.

[44] From the above discussion, it is abundantly clear that the city was duty-bound to bring a self-review application to set aside the confirmed booking if it considered that decision unlawful. To do otherwise amounts to impermissible self-help, which is contrary to the rule of law. In addition, the city could have instituted a counterapplication as a collateral challenge to the respondent's case, but it failed to do so. In the absence of any judicial order setting aside the booking confirmation, that decision, in my view, stands and retains its binding effect. I now turn to consider the last two grounds.

Failure to apply the Plascon Evans Rule

²⁵ At para 26.

²⁶ At para 26.

²⁷ At para 26.

[45] The city argues that this Court erred in granting a final relief on motion proceedings without correctly applying the *Plascon Evans* Rule. The city believes that there were several material disputes of fact in the matter, none of which this court resolved by finding the city's version to be far-fetched or untenable; instead, according to the city, the Court accepted the respondent's version on the disputed facts. The *Plascon-Evans* rule is well settled in our law and does not need any elaboration in this judgment. Without regurgitating the issues traversed in the main application, it suffices to note that this Court dealt with the factual disputes in paragraphs 27, 28 and 29 of the main judgment. The Court found that the respondent's version was uncontroverted. Put simply, there was nothing to counter the respondent's account. In consequence, the city's version was rejected as unsupported.

[46] I emphasise again that the fact that Max September, the driver of the respondent, hand-delivered the correspondences mentioned above at the city's offices has to date not been disputed. The respondent filed an affidavit from Mr September in its replying affidavit, who stated that he personally delivered the three letters to the City of Cape Town offices at 1[...] H[...] Boulevard, Cape Town. Mr September further stated that upon arrival at the city's premises, he was directed by security to deliver the letters to the 10th floor. He made his way to the 10th floor and handed the letters to the person seated at the front desk. Mr September stated that he delivered these letters by hand on 31 October 2025, 11 November 2025, and 21 November 2025 to the person at the front desk.

[47] In the main judgment, this Court held that no affidavit was filed on behalf of the city by the front desk staff on duty on the dates in question to dispute the receipt of the respondent's letters. The applicant's version in this regard was therefore uncontroverted. The fact that the Court did not employ the phrase "far-fetched and untenable" in rejecting the city's version does not

detract from the reality that the city's version was indeed rejected as it did not counter the respondent's version. Importantly, when the respondent's version is weighed against the version advanced by the city, the disputes raised were not of such a nature that this Court could not determine them on the papers.

[48] As correctly pointed out by Ms Naidoo, throughout the course of the proceedings, the city relied on the SASREA argument, contending that Vygieskraal Stadium was SASREA non-compliant and that the booking was withdrawn merely because of this. However, at no point in the answering affidavit nor during the oral argument, despite being directly asked by this Court, did the city or its counsel explain when it became aware that Vygieskraal Stadium was non-compliant with SASREA. It was also never stated in the answering affidavit nor in argument that the booking confirmation was a mistake. The city now seeks to shift the goalposts in its head of argument on the application for leave to appeal by contending that the booking confirmation was made erroneously. This attempt is impermissible. The city cannot make its case in an application for leave to appeal; that ship has already sailed.

Erroneous factual finding relating to SASREA compliance

[49] The city contends that Vygieskraal Stadium had been graded and certified only for low-risk events under SASREA, whereas the minstrel competition event by reason of their size, nature and anticipated attendance fell within the medium risk category. The city argued that the minstrel events could not lawfully be hosted at Vygieskraal stadium, and that the booking confirmation had been issued in error before the relevant risk grading had been verified.

[50] As stated above, the city relied on the SASREA argument in its answering affidavit. The version that the booking was issued in error has never been articulated in the whole answering affidavit of the city, nor was it raised when the matter was argued. It has never been the version of the city that the booking was made erroneously. The city was given ample opportunity to explain to the court how the booking came to be confirmed if the venue was not compliant with SASREA. No explanation was advanced, and the answering affidavit does not address this issue either. The error version is only raised now on the application for leave to appeal following the reasons of judgement the court issued. The judgment and order that the city seeks to appeal against were based on the versions that were placed before the Court when the matter was heard and not on the version that is subsequently raised after the judgment was issued. It is impermissible, in my view, for the city to articulate a new version in support of its application for leave to appeal.

[51] In any event, I accept that SASREA plays a role in the risk grading of venues and compliance for sporting and other events. However, the obligation to ensure that venues are SASREA compliant falls strictly on the shoulders of the city. The only entity with knowledge of which venues are SASREA compliant was the city. In my view, when the city confirmed the booking, it knew or should have known of Vygieskraal's compliance with SASREA. The confirmation of the booking was made with that knowledge. Moreover, the relief sought by the respondent was for a suitable venue, not specifically Vygieskraal. The Court directed the parties to engage on that point and ordered the city to facilitate the events permit and application thereof.

[52] The last two grounds of appeal are intertwined, and I will deal with them jointly. The city argues that the court erred in finding that the city, in its capacity as an organ of State and the custodian of venues within its jurisdiction, bore a

constitutional obligation to provide the respondent with an alternative venue once it had cancelled the Vygieskraal booking. The city, among others, relied on *Government of the Republic of South Africa and Others v Grootboom*,²⁸ and contended that positive constitutional obligations are not absolute and do not impose on the State a duty to take specific action regardless of available resources, operational constraints or competing demands. Such obligations are progressively realisable, must be addressed through reasonable measures, and are always subject to the State's available resources.

[53] I agree with these established legal principles. However, as articulated in the main judgment, this matter stands on a different footing. The city confirmed the respondent's booking and withdrew it only after the respondent had paid the booking fee and incurred costs pursuant to that confirmation. The withdrawal was effected without reasons, and the respondents were afforded neither an opportunity to appeal nor to challenge the decision. Nor did the city engage with the respondent, despite its undertaking to do so. All engagements and correspondence exchanged were initiated by the respondent, who pleaded with the city to restore the booking. The city, as an organ of state, bore a heightened duty, in my view, to act consistently with constitutional prescripts, particularly when exercising public power.

[54] In conclusion, this matter is moot. Furthermore, the decision by the city to grant the booking was an administrative decision. I accept that the respondent still had to apply for a permit after the booking confirmation, which is a different process to the confirmation of the booking. However, after granting that booking, the city became *functus officio*. It was impermissible for the city to withdraw that decision on its own without the intervention of the court. Having considered the grounds of appeal against the backdrop of the

²⁸ 2001 (1) SA 46 (CC).

written reasons, and having weighed the submissions of both counsels, I am not persuaded that the appeal would have a reasonable prospect of success, nor that there exists any compelling reason why an appeal in this matter should be heard.

[55] In the circumstances, granting the city leave to appeal to the SCA or to the Full Court of this division will, in my opinion, be a waste of judicial resources. On a conspectus of all the facts placed before this Court, there are no reasonable prospects of success in granting leave to appeal.

Order

[56] In the result, the following order is granted:

56.1 The applicant's (the city) application for leave to appeal is hereby dismissed.

56.2 The applicant is ordered to pay the costs of this application on a party and party scale including the costs of two counsels where so employed on scale B.

**LEKHULENI J
JUDGE OF THE HIGH
COURT**

APPEARANCES

For the Applicant: Adv Naidoo

Adv Adriaanse

Instructed by: Roelf Jumat Attorneys Inc

For the Respondent: Adv Kirk-Cohen SC

Adv Wynne

Instructed by: Timothy and Timothy Attorneys