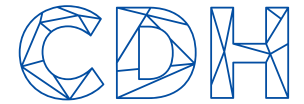


Dispute Resolution

ALERT | 22 April 2025



In this issue

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Too late to litigate

Generally, courts will be loath to hear a 'moot' matter, which is one where the matter has become moot or academic as it no longer has a practical effect or no longer affects the interested parties.

The recent Supreme Court of Appeal (SCA) case of *Western Cape Provincial Government and Others v D C Security (Pty) Ltd t/a D C Security and Others* (971/2023) [2025] ZASCA 35 (1 April 2025) dealt with the issue of mootness concerning a security services tender which had been set aside by the High Court following a dispute over its allocation process.

In short, the Western Cape Provincial Government called for bids for the framework agreement for the provision of security services and established a panel of service providers who met the qualification criteria. The provincial government thereafter employed an allocation system where service providers were allocated contracts based on a ranking.

Several security service providers challenged the rationality of the tender process, arguing that the allocation system was flawed and posed security risks. The Western Cape High Court ruled in favour of the security companies and set aside the tender. The provincial government appealed the judgment to the SCA, asserting that the framework agreements were crucial for future procurement and that the legal principles involved were significant enough to warrant the SCA's intervention.

Before the SCA

The primary issue before the SCA was whether the appeal had been rendered moot in circumstances where a contract concluded at the heart of a review application had come to an end and whether the court should exercise its discretion to hear the appeal despite the matter being moot.

By the time the leave to appeal application was heard in the High Court, the bid had already been cancelled, and a new bid was re-advertised. Leave to appeal was not granted in the High Court, but later granted by the SCA.

At the hearing of the appeal, the provincial government conceded that the appeal was moot but that the framework agreements remained of interest to the provincial government for use in the future.

Cliffe Dekker Hofmeyr

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CONTINUED

Given that the lifespan of the tender was over, all the issues raised by the provincial government were academic, and would have no practical effect on the parties.

The SCA noted that the appeal was brought purely for advice and clarification of the erstwhile framework transversal agreement, despite the provincial government having conceded the mootness of the appeal, and there were not compelling reasons or exceptional circumstances why the SCA should hear the matter in spite of the mootness. The SCA was scathing in its critique that courts of appeal already face congested court rolls and are not there to give advice gratuitously, but rather to decide real disputes.

The SCA upheld the High Court's ruling, dismissing the appeal with costs. The court found that the provincial government's attempt to challenge the review of the tender was ineffective, as the tender had already expired, and a new bidding process was underway.

Conclusion

This case serves as a reminder that timing is crucial in tender disputes, and litigants must assess whether an appeal will have a tangible impact on existing contractual arrangements. The court highlighted that setting aside a tender does not automatically result in a loss of acquired rights. Litigants must assess whether their interests are meaningfully affected before pursuing a challenge.

The SCA reinforced the principle that courts do not adjudicate purely academic disputes. If a case no longer has any practical effect, such as when a tender has expired, an appeal will likely be dismissed. Although courts have the discretion to hear moot matters if they raise important legal principles, the SCA found that this case did not present a sufficiently compelling issue that required its intervention.

Corné Lewis, Claudia Moser, and Zamanyamande Twala



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Dispute Resolution

Chambers Global 2022–2025 ranked our Dispute Resolution practice in:
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Lucinde Rhodie ranked by Chambers Global 2023–2025 in **Band 4:** Dispute Resolution.

Natascha Harduth ranked by Chambers Global 2025 in **Band 4:** Restructuring/Insolvency.

Clive Rumsey ranked by Chambers Global 2025 in **Band 5:** Dispute Resolution.

Anja Hofmeyr ranked by Chambers Global 2025 in **Band 5:** Dispute Resolution.

Jackwell Feris ranked by Chambers Global 2023–2025 as an "Up & Coming" dispute resolution lawyer.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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