



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 8 March 2018  
**STATUS** Immediate

***John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) & another (245/2017 [2018] ZASCA 012 (8 March 2018)***

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

The Supreme Court of Appeal (the SCA) today dismissed with costs an application for leave to appeal which had been referred to open court for argument. The application was against a refusal by the KwaZulu Natal Division of the High Court, Pietermaritzburg, to grant leave to appeal against an order evicting the applicant from commercial premises.

The SCA found that the application for leave to appeal should be refused because an order on appeal would have no practical effect or result. This flowed from the fact that the applicant's defence to eviction was based on an alleged lease agreement which came to an end while the application for leave to appeal was pending in the SCA.

The SCA held that where an appeal or application for leave to appeal becomes moot during the pendency of proceedings in the appellate court, it is

the duty of litigants to make sensible proposals inter se with a view to bringing the pending proceedings to an end without the need for the appellate court's intervention. The parties' proposals should be informed by a realistic assessment of their respective prospects of success, the extent of costs already incurred in the appellate process, the costs that will still be incurred if the proceedings are not promptly terminated, the size of the appeal record and the likely time it would take an appellate court to form a view on the merits of the moot appeal for purposes of determining costs. There must be a proper sense of proportion when incurring costs and calling upon judicial resources.

In the present case the SCA itself raised the question of mootness. Since neither of the parties had done so, and because the record was short and the issue uncomplicated, the SCA considered the merits of the moot appeal solely for the purposes of determining the costs of the application for leave to appeal. Since the applicant's prospects of success on the merits were poor, the applicant was ordered to pay the costs of the application.

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