



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 29 November 2019

**STATUS** Immediate

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

*Mabotwane Security Services CC v Pikitup Soc (Pty) Ltd & others*  
(1027/2018) [2019] ZASCA 164 (29 November 2019)

### **MEDIA STATEMENT**

The SCA today furnished reasons for an order that it granted on 18 November 2019, in terms of which the appeal was dismissed in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013, with costs, such costs to include the cost of two counsel, for the reason that a decision in the appeal would have no practical effect or result. The main ground advanced by the appellant as to why the appeal was not moot, was that in terms of the decision in *Allpay Consolidated Investment Holdings (Pty) Ltd & others v Chief Executive Officer, South African Social Security Agency & others* [2013] ZACC 42; 2014 (1) SA 604 (CC) para 25, it was held that once a ground of review under the Promotion of Administrative Justice Act 3 of 2000 was established, s 172(1)(a) of the Constitution required that the decision be declared invalid. The declaration of unlawfulness then had to be dealt with in a just and equitable order in terms of s 172(1)(b) of the Constitution. It was submitted that these provisions of the Constitution required the decisions of the first respondent to be declared unlawful, despite the fact that the administrative acts which formed the subject of the appeal, had already been acted upon. It was submitted that this, however, did not release this court from its obligation, to declare that the impugned administrative acts of the first respondent were unlawful. It was held that *Allpay* was no authority for the proposition that a court is compelled, in terms of the Constitution, to review and set aside an unlawful administrative act, where doing so will have no practical effect or result in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013. In any event,

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 orders sought by the appellant, in terms of s 172(1)(b) of the Constitution, when they could have no practical effect or result, in terms of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013.