

SOUTH AFRICA / JUDGMENT

Associated Portfolio Solutions (Pty) Ltd and Another v Basson and Others (16224/2017) [2019] ZAWCHC 11 (1 February 2019)

[2019] ZAWCHC 11

COURT

Western Cape High Court, Cape Town

BEFORE

Sievers

CASE / FILE NUMBER

16224/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

WESTERN

CAPE DIVISION, CAPE TOWN

CASE

NO: 16224/2017

In

the matter between:

ASSOCIATED
PORTFOLIO SOLUTIONS (PTY)
LTD First
Applicant
PENTAGON
FINANCIAL SOLUTIONS (PRETORIA) Second
Applicant
(PTY)
LTD
and
PIETER
WILLEM
BASSON First
Respondent
REGISTRAR
OF FINANCIAL SERVICES PROVIDERS Second
Respondent
MOOSTONE
COMPLIANCE (PTY)
LTD Third
Respondent

JUDGMENT**IN APPLICATION FOR LEAVE TO APPEAL****DELIVERED ON 1 FEBRUARY 2019****SIEVERS AJ**

- [1] Applicants seek leave to appeal against the whole of the judgment handed down on 14 December 2018.
- [2] Section 17 of the Superior Courts Act, 10 of 2013, provides 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 the appeal should be heard, including conflicting judgments on the matter under consideration.
- [3] In respect of the application in convention Applicants submitted that the fulcrum of the application for leave to appeal is that there exists a reasonable prospect that an appeal court will rule that a reasonable person would, with knowledge of the circumstances of the preceding extensive disciplinary enquiry, not reasonably apprehend any bias in the subsequent debarment decision and will hold that there was thus no duty for the directors to recuse themselves.
- [4] It was further submitted that fairness in the context of administrative law is a highly variable concept dependant on the circumstances and that the court should be wary of overly technical arguments or over-judicialisation of administrative processes. The procedure followed in respect of the First Respondent's debarment should be viewed holistically and that there was a reasonable prospect that an appeal court would consider the approach adopted in the judgment as being unduly technical.
- [5] It was submitted that by the time the First Respondent received notification of the proposed directors' meetings the issues

indicative of bias were known to him. He was accordingly not entitled to raise the issue of bias at a late stage in the litigation.

- [6] It is common cause that the First Respondent was never given an impartial hearing to deal with the allegations in an enquiry as to his fitness for office in terms of the FAIS Act, 37 of 2002. The disciplinary enquiry was not such a hearing. Counsel for the Applicants conceded in this application that a hearing which was to deal with both the disciplinary enquiry and the debarment enquiry would have required more than the actual disciplinary enquiry which took place. This is not a case of putting form above substance as was found to be the case in *Minister of Health and Another N.O. v New Clicks SA (Pty) Ltd and others* 2006 (2) SA 311 (CC).

- [7] In the application for leave to appeal the Applicants themselves distinguish between the disciplinary enquiry and "the possible debarment proceedings" that might follow it.
- [8] The directors of the Applicants clearly had a duty recuse themselves from making decisions in the debarment enquiry. They were disqualified from doing so at the very least on the basis of a reasonable apprehension of bias. They were acting as judges in their own cause. They had been witnesses in the disciplinary enquiry, the findings of which formed the basis of their debarment decisions. They had a direct financial interest in the outcome of the debarment proceedings. The fact that an extensive and transparent disciplinary enquiry preceded the debarment cannot ameliorate this bias.
- [9] In the circumstances the arguments advanced are not plausible and it is clear that an appeal against the order made in the application in convention would not have reasonable prospects of success.
- [10] In respect of the counter application the Applicants asked for leave to appeal on the ground that the FSB was obliged to apply its mind as to whether First Respondent was a fit and proper person for reappointment. In this regard the Applicants referred to section 2(d) of Board Notice 82 and, in particular, its reference to section 8(1) of the FIAS Act. They sought to motivate a purposive interpretation of these provisions. It is clear that section 8(1) of the Act deals with the authorisation of financial services providers and not the appointment of representatives.
- [11] The Applicants contention that a purposive interpretation would be of assistance further confirms that there is no express legislative basis for any such obligation on the part of the FSB.
- [12] The argument furthermore overlooks the architecture of the act which provides for self-regulation by a Financial Services Provider, who places its licence at risk should it not do so.
- [13] It appears from the Act that reappointment of a debarred representative is not regulated by the Act at all, save for Section 13(1)(b)(ii) which vests in the registrar the power to determine the requirements for reappointment, which was done through Board Notice 82. This Board Notice makes no provision for this information to be provided to the FSB.
- [14] For all these reasons there is no reasonable prospect that another court will find otherwise in this regard.
- [15] With regard to mootness there is no sound basis advanced to attack the discretion exercised by the court in this regard.

[16] The application for leave to appeal is accordingly dismissed with costs, such costs to include the costs of two counsel where briefed.

SIEVERS, AJ

Acting Judge of the High Court

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2019/11.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/associated-portfolio-solutions-pty-ltd-and-another-v-basson-unknown-topic-awchc-2019>

Prepared on 10 October 2026 · Esheria