

SOUTH AFRICA / JUDGMENT

Bobotyana v South African Legal Practice Council (2259/2019) [2020] ZAECGHC 145 (10 December 2020) [2020] ZAECGHC 145

COURT

Eastern Cape High Court, Grahamstown

BEFORE

P N Kroon, NG Beshe

CASE / FILE NUMBER

2259/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION, GRAHAMSTOWN

Case No: 2259/2019

Date

Heard: 9 December 2020

Date

Delivered: 10 December 2020

In

the matter between:

MZWANDILE

TONY CEDRIC BOBOTYANA

APPLICANT

and

THE

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

RESPONDENT

JUDGMENT

KROON AJ:

INTRODUCTION

1. This is an application for leave to appeal against the judgment handed down on 13 October 2020 in terms of which the Applicant (the

Respondent in the main application) was struck from the roll of attorneys and other ancillary relief was granted pursuant to the

bringing of an application by the Respondent (the Applicant in the main application).

2. Although the grounds relied upon in support of the application for leave to appeal could have been more clearly stated, it seems that in substance it is contended that:

2.1. Firstly, the Court did not properly consider the Applicant's opposition, demonstrated "biasness" in its approach to the matter and should not have referred to a High Court decision wherein the Applicant was criticised;

2.2. Secondly, the Court should have identified the "material inconsistencies" which it found existed between the affidavit deposed to by the Applicant in support of the interdict proceedings and the affidavit deposed to in opposition to the interdict proceedings;

2.3. Thirdly, the Court erred in holding that the proceedings were disciplinary in nature and accordingly sui generis and, in this context, it was contended that the Court had approached the matter in an unconstitutional manner;

2.4. Fourthly, the Court erred in adjudicating on the matter in terms of the Legal Practice Act 28 of 2014 ("the LPA") and not the erstwhile Attorneys Act 53 of 1979 ("the Attorneys Act").

3. These four grounds of appeal will be dealt with separately below.

4. However, before so doing, it must immediately be observed that the striking feature of the application for leave to appeal is that the Applicant does not challenge the central finding by the Court that he fraudulently misrepresented that he had a mandate to sell immovable property and by way of the vehicle of that misrepresentation misappropriated, in March 2016 and April 2016, an amount of R2 176 000.00 entrusted to him by a member of the public, Azal Muhammad.

5. The Applicant does not challenge the finding of the Court that he thereafter, by way of more than seventy transactions and in flagrant

breach of the rules governing trust accounts of the Law Society of the Cape of Good Hope ("the Law Society"), dissipated the misappropriated funds between March 2016 and August 2016.

6. The Applicant does not challenge the finding by the Court that the Applicant, in perpetrating the fraud on Muhammad, acted in a grossly dishonest and disgraceful fashion. By way of illustration, the Applicant does not challenge the following finding:

“79. What makes the conduct of Bobotyana all the more outrageous is that he was set on defrauding Muhammad of his last cent when it came to the purchase price, he having insisted that the final amount of R837 450.00 be paid to him before he would cooperate in respect of the transfer of the property whilst, unbeknownst to Muhammad and Bester, he was, at the time when the demand for the R837 450.00 was made, deep into the exercise of dissipating the funds already received from Muhammad and was of the mind to do the same in respect of the R837 450.00 which he misrepresented would guarantee Muhammad ownership of the property.”

7. The undisputed misconduct aside, the Applicant does not, in his application for leave to appeal, challenge the finding by the Court

that he demonstrated no remorse and that he made no effort to repay even a cent of the monies which he stole from Muhammad.

8. The Applicant also does not challenge the finding of the Court that when he opposed the application he did so in a manner singularly lacking in transparency and unbecoming an officer of the Court (he did not provide an explanation for even one of the seventy transactions which he effected to dissipate the misappropriated funds) and the Applicant does not challenge the finding by the Court that he adopted an obstructive approach both in response to the investigation conducted by the Law Society as well as in the manner in which he conducted litigation in this Court.
9. Decisively, the Applicant does not challenge the finding of the Court that, given the gravity of the Applicant's misconduct and his lack of remorse as well as his failure to co-operate with the Law Society and his lack of transparency in the proceedings, the Applicant was not a fit and proper person to practise as an attorney, that there was no scope for corrective discipline and that the only appropriate order for the Court to have made as a consequence was that the Applicant fell to be struck from the roll.
10. Given that the Applicant has failed, in his application for leave to appeal, to tackle the findings which formed the foundation of the judgment it must follow that there is no room to find that another Court may come to a different conclusion.
11. Insofar as it may be necessary to do so and for the sake of completeness, the grounds of appeal are dealt with below.

First ground

12. As to the contention that the Court demonstrated bias and did not properly consider the Applicant's opposition to the application, the Applicant did not place anything of substance before the Court to support these contentions.

13. These averments are not reconcilable with the content of the Judgment from which it is clear that the Court carefully analysed and evaluated the Affidavit deposed to in opposition to the application.
14. Counsel who appeared on behalf of the Applicant was, when pressed by the Court, not able to draw to the attention of the Court any fact which was overlooked. Indeed he informed the Court that he had only been briefed to appear on the morning of 9 December 2020, namely the day when the application for leave to appeal was argued, and that he had not had an opportunity to read the judgment.
15. No basis was laid as to why the Court was not permitted to have had regard to another decision of the High Court in terms of which the Applicant was criticised for unprofessional conduct.
16. There is accordingly no merit in this ground.

Second ground

17. It suffices to record that the Court is satisfied that there were material inconsistencies between the two affidavits deposed to by the Applicant and it is not necessary, for the purposes of this application, to list those inconsistencies other than to refer to what was stated at paragraph [96] of the judgment.
18. There is accordingly no merit in this ground.

Third ground

19. The Applicant contended that in describing and treating the proceedings before the Court as *sui generis* proceedings which are disciplinary in nature, the Court adopted an approach which was unconstitutional.
20. The Applicant did not furnish any basis in law as to why the proceedings, in which he participated without objection, were unconstitutional.
21. It suffices to record that the Constitutional Court has itself held that proceedings of the nature before the Court are in fact *sui generis* and disciplinary in nature[1].
22. Under this heading the Applicant also appeared to contend that there had been a breach of the *audi alteram partem* rule, this where the Applicant had first chosen not to cooperate with the Law Society and had thereafter failed to take the Court into his confidence when opposing the main application.
23. There is accordingly no merit in this ground.

Fourth ground

24. No basis was furnished to the Court to support the contention that the Court erred in adjudicating the application in terms of the LPA.

25. In particular it was not contended that the Court had erred in finding that because the proceedings were instituted after the commencement of the LPA, 1 November 2018, that they fell to be adjudicated upon terms of the LPA.
26. In any event, and as mentioned in the judgment at paragraph [11], under both statutes the enquiry as to whether an attorney falls to be struck from the roll is the same and thus it would have made no difference to the outcome whether the application was adjudicated upon in terms of the LPA or the Attorneys Act.
27. There is thus also no merit in this fourth ground.
28. I stress that even if one or more of the grounds did have merit, this would be of no assistance to the Applicant because, as stated earlier in this judgment, the grounds relied upon in the application for leave to appeal do not challenge or even address the finding by the Court that the Applicant committed misconduct warranting his striking off.

THE FOLLOWING ORDER IS ISSUED:

1. The application for leave to appeal is dismissed with costs, such costs to be on an attorney and client scale.

P N KROON

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

I agree,

NG BESHE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

Appearances:

For Applicant: Adv Matutu instructed by Mqeke Attorneys

For Respondent: Adv Watt instructed by NN Dullabh & Co.

[1] General Council of the Bar of South Africa v Jiba and Others 2019 (8) BCLR 919 (CC) at [66]

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Prepared on 13 October 2026 · Esheria