

SOUTH AFRICA / JUDGMENT

Coetzee and Another v South African Legal Practice Council and Others (6055/2023)

[2023] ZAFSHC 453 (21 November 2023)

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COURT

Free State High Court, Bloemfontein

BEFORE

Reinders, Opperman

CASE / FILE NUMBER

6055/2023

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable: NO

Of Interest to other Judges: YES

Circulate to Magistrates: YES

Case no: 6055/2023

In the matter between: REHAN COETZEE First Applicant IZAK JACOB STEENKAMP Second Applicant And THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL First Respondent STEENKAMP & JANSEN INCORPORATED Second Respondent THEUNIS GOOSEN Third Respondent

CORAM: REINDERS ADJP et OPPERMAN J

HEARD ON: 17 NOVEMBER 2023

DELIVERED ON: 21 NOVEMBER 2023

- [1] On 26 September 2023 this court (Naidoo J and Mahlangu AJ presiding) under civil case number 6176/2022 granted two identical orders (the “suspension/court order/s”) in respect of the applicants now before court. In terms of the court order the applicants are suspended from practice as legal practitioners of the High Court of South Africa pending the finalisation of investigations against them by the South African Legal Practice Council (the “LPC”) and subsequent disciplinary proceedings which may be instituted. Both applicants were to surrender and deliver to the Registrar of this Court their certificates of admission and enrolment as attorneys.

- [2] The applicants intend to appeal against the aforementioned orders and have filed a notice of application for leave to appeal, setting out various grounds upon which they base the latter.
- [3] It is common cause that the aforementioned application for leave to appeal has not been adjudicated yet. The applicants aver that they engaged in correspondence with the LPC on whether it shares their view that the filing of the notice of application for leave to appeal suspends the operation and execution of the suspension order.
- [4] In initial correspondence the LPC held the view that the filing of the application for leave does not suspend the execution and operation of the order. Ostensibly it indicated that this aspect would be discussed at a meeting. According to the applicants however, no answer had been forthcoming.
- [5] The applicants ultimately launched this application (the “main application”) seeking an order declaring the notice to have the effect of suspending the operation and execution of the suspension order pending the outcome of the application for leave to appeal.
- [6] The LPC opposes the main application. It avers that the court order is interlocutory and interim in nature and therefore not appealable. It contends that for an order to be final it must not be susceptible of alteration by the court of first instance, it must be definitive of the rights of the parties and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.
- [7] The LPC filed a conditional-counter application in the event of this court granting the declarator as sought by the applicants and further a counter-application seeking relief which we consider in essence to be ancillary to the suspension order of 26 September 2023.
- [8] The relief sought by both parties is premised thereon that we condone non-compliance with Uniform Rule 6(12). As the matter is of importance to both parties and as the parties contended the matter to be urgent, we took the matter on the roll.
- [9] Recently our brother Daffue J in *South African Legal Practice Council v Mokhele* (5511/2022) [2023] ZAFSHC (17 March 2023) dealt comprehensively with the principles regarding the finality or not of interim orders (although the application dealt primarily with contempt of court). I quote the following paragraphs from Daffue J’s judgment (footnotes are not in accordance with the judgment):

“[22] The position under s 16 of the Superior Courts Act pertaining to appeals is in accordance with the general rule laid down in Zweni v Minister of Law and Order of the Republic of South Africa.[1] The three attributes of a ‘judgment or order’ subject to an appeal are the following:

- a. it must be final in effect and not susceptible of alteration by the court of first instance;
- b. it must be definitive of the rights of the parties, i.e., it must grant definite and distinct relief; and

- c. it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

It is accepted that an interlocutory order with a final and definitive effect on the main application is a 'judgment or order' which is appealable. The real question is whether it can be altered and/or corrected on the return date or whether it can only be attacked on appeal..."

[25] It is important to quote subsecs 18(1) to 18(3) of the Superior Courts Act:

'18 Suspension of decision pending appeal

- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and

execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.' (emphasis added).

[27] Subsection 18(2) deals with interlocutory orders not having the effect of a final judgment. In such a case the operation and execution of such an interlocutory order is not suspended pending the decision of the application for leave to appeal or the appeal, unless the court under exceptional circumstances orders otherwise. This subsection is applicable in casu.

[28] In *Knoop NO v Gupta (Execution)*[2] the Supreme Court of Appeal held that the effect of subsections 18(1) and 18(3) is that an applicant seeking an execution order must prove three things: (a) namely exceptional circumstances; (b) that it will suffer irreparable harm if the order is not made; and (c) that the party against whom the order is sought will not suffer irreparable harm if the order is made. Contrary to the situation in subsec 18(1), and as mentioned, subsec 18(2) provides that the operation and execution of an interlocutory order not having the effect of a final judgment which is the subject of an application for leave to appeal or an appeal is not suspended pending the decision of the application or appeal, unless the court under exceptional circumstances orders otherwise..."

[10] The applicants in the main application sought to distinguish Daffue J's judgment on the basis that therein the court order included a rule nisi whereas the order under consideration in casu, does not have a return date. In my view such distinction does not alter the consideration in following the principles laid down as above. The suspension order is clear. It is not for this court to pronounce its views on whether the order could or should have

been granted. We are not sitting as a court of appeal and in respect of the applicants, we are simply to adjudicate whether the order is interim or final in its operation. In respect of both applicants, the relevant orders granted stipulates that such orders are operational pending the finalisation of the investigation against them and subsequent disciplinary proceedings. The effect thereof is that the order will terminate on conclusion thereof.

[11] I agree with the respondent that the order would, if need be, susceptible to changes from time to time should any party make out a proper case for such amendment. Should the LPC therefore drag its feet in its investigations, same might constitute grounds for the applicants to approach this court to reconsider the order.

[12] I am therefore of the view that the relief sought by the applicants cannot be granted. Likewise, I am not prepared to grant the counter-application. As indicated herein above we hold the view that the relief sought by the LPC herein is ancillary to the suspension order, with some of the orders sought not being moved for ultimately and others superfluous having regard to the effect of the said court order.

[13] Accordingly the following orders are granted:

13.1 The main application is dismissed.

13.2 The counter-application is dismissed.

13.3 Each party to pay its own costs.

C REINDERS ADJP

I agree.

M OPPERMAN J

On behalf of the Applicants: Mr R Coetzee Mr IJ Steenkamp In person BLOEMFONTEIN
On behalf of the Respondent: Adv N Snellenburg SC Instructed by: Symington & De Kok Attorneys
BLOEMFONTEIN

[1] 1993

(1) SA 523 (A) at 532 i – 533 b; see also SA v JHA 2022

(3) SA 149 (SCA) para 23 and numerous other judgments since Zweni.

[2] 2021

(3) SA 135 (SCA) para 45.

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Prepared on 12 October 2026 · Esheria