

SOUTH AFRICA / JUDGMENT

Coetzee and Another v South African Legal Practice Council and Others (6368/2023) [2024] ZAFSHC 385 (4 December 2024)

[2024] ZAFSHC 385

COURT

Free State High Court, Bloemfontein

BEFORE

JP Daffue, BB Mahlatsi

CASE / FILE NUMBER

6368/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable:

NO
Of
interest to other Judges: NO
Circulate

to Magistrates:

NO
Case
no: 6368/2023
In

the matter between:

REHAN
COETZEE
1st
Applicant
IZAK
JACOB STEENKAMP
2nd
Applicant
and
THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
1st
Respondent
STEENKAMP
& JANSEN INC

2nd
Respondent
THEUNIS
GOOSEN
3rd
Respondent

Coram: JP DAFFUE J et BB MAHLATSI AJ

Heard: 28 NOVEMBER 2024

Delivered: 04 DECEMBER 2024

This
judgment was handed down electronically by circulation to the
parties' representatives by email and release to SAFLII.
The date and time for hand-down is deemed to be 12H00 on 04 DECEMBER
2024.

Summary: On 26 September 2023 two attorneys were suspended from practice in
terms of s 43 of the Legal Practice Act 28 of 2014 pending
finalisation of investigations against them and subsequent
disciplinary proceedings. They applied for the setting aside
of their
suspensions. The Legal Practice Council (LPC) has received several
complaints and have been conducting investigations
over a number of
years. After the aforesaid suspension several further complaints were
received. In the meantime, the one attorney
was found guilty of
several charges of misconduct by the disciplinary committee, but has
filed a notice of appeal. The court held
that it was in the interests
of justice to get finalisation sooner than later and ordered the LPC
to finalise the disciplinary
processes against the attorneys before
the end of May 2025, failing which the suspensions would
automatically lapse.

ORDER

1.
The first respondent shall, as undertaken,
serve its detailed charge
sheets on the applicants on/or before 15 January 2025.
2.
The disciplinary hearings shall, as undertaken,
be scheduled to start
not later than 31 March 2025 and continued until finalised.
3.
The first respondent shall finalise its disciplinary
proceedings
against the applicants on/or before 31 May 2025, failing which their
suspensions shall lapse automatically.
4.
The application is removed from the roll,

but, in the event of the first respondent failing to comply with either paragraph 1 or paragraph 2 supra, leave is granted to the applicants to set the application down for hearing on the opposed motion court roll with 21 days'

notice to the first respondent, which notice shall be accompanied by their supplementary affidavits.

5.

In the event of a notice of set down as envisaged in paragraph 4 supra, the first respondent shall file an answering supplementary affidavit within 7 days, whereafter the parties shall file supplementary heads of argument in accordance with the practice directives of this court.

6.

Costs shall stand over for later adjudication if required.

JUDGMENT

Daffue J (Mahlatsi AJ concurring)

- [1] Messrs Rehan Coetzee and Izak Jacob Steenkamp (herein after referred to as the applicants unless I need to refer to any one of them individually), apply for the setting aside of their suspension from practising as legal practitioners pending the finalisation of the investigations against them and any subsequent disciplinary proceedings to be instituted. The order of suspension was granted in application 6176/2022 on 26 September 2023. That application was not placed before us.
- [2] The applicants filed an application for leave to appeal the aforesaid judgment, relying on a submission that the order was final and/or appealable. The judgment is still outstanding. They brought an application in terms of s 18 of the Superior Courts Act 10 of 2013 which was dismissed on 21 November 2023. That application was also not placed before us.
- [3] On 23 November 2023 and immediately after the handing down of judgment in the second application, the applicants brought the present application. Instead of the normal set of affidavits in application procedure, the applicants and the South African Legal Practice Council (LPC), cited as first respondent, filed supplementary affidavits. Consequently, the papers became voluminous and the full set of application papers consists of 1231 pages. It is not my intention to deal with the history of the litigation and the ongoing investigations of the LPC. I considered the judgment

suspending the applicants. I also noticed that the LPC was of the view that this court should consider both the suspension application

as well as the subsequent s 18 application. In view of the outcome of this judgment it was really not necessary to consider the various allegations in especially the suspension application.

[4] Having said this, it is common cause that the applicants initially practised under the name and style of Steenkamp, De Villiers and Coetzee Inc. They never wound up that practice in accordance with the relevant rules and also failed to file the required final audit report. On 13 July 2017 Steenkamp, De Villiers and Coetzee Inc was suspended by an order of this court under application number 2815/2017. A curator was appointed with the usual powers and obligations. Although perhaps in dispute, it is alleged that the applicants took over the files, staff and infrastructure of this firm and continued to practise under the name and style of Steenkamp and Jansen Inc, cited as second respondent in this application. The applicants are the only directors of this entity. In Mr Coetzee's founding affidavit deposed to in November 2023 he alleged that he and Mr Steenkamp were merely professional assistants and employees of this entity and that Mr T Goosen, cited as third respondent, was the sole director. It is now common cause that Mr Goosen has resigned as director and that the applicants were appointed co-directors. This is still the situation as confirmed from the bar by Mr Coetzee during his oral argument. He added that he and Mr Steenkamp have no control over the trust account which was still under the control of Mr Goosen despite his resignation as director. More about this later.

[5] In the suspension application the court made the following observation:[1]

‘ ... The allegations by the LPC that the respondents were appointed as directors of the third respondent, at a time when they were not in possession of valid Fidelity Fund Certificates, and that they appear to be acting as directors of the third respondent, creates a sense of unease and disquiet that requires investigation. If such allegations are true, it would amount to serious misconduct on the part of the first and second respondents.’

[6] Since the suspension application was filed, several new complaints have been forthcoming against the applicants and further investigations are still being conducted. Mr Steenkamp was found guilty by the LPC's disciplinary committee on several counts of misconduct, but filed a notice of appeal. Consequently, he has not yet been sanctioned.

[7] I regarded Mr Coetzee's allegation from the bar pertaining to his and Mr Steenkamp's directorship of Steenkamp and Jansen Inc astonishing. Neither Mr Coetzee, nor Mr Steenkamp is in possession of a Fidelity Fund Certificate (FFC). As mentioned, he submitted that the two of them were not in control of the trust account of Steenkamp and Jansen Inc, but Mr Goosen, the former director. According to Mr Coetzee, he and Mr Steenkamp administer a business account only. Furthermore, they administer the bank accounts of the deceased estates under their control. Mr Coetzee's version is to an extent in line with the following allegation made by the LPC which he refuted:[2]

‘Mr Goosen’s evidence that the applicants in fact, according to him, practised for own account in the circumstances is understandably of grave concern to the LPC. So too his evidence that the applicants in fact only continued the erstwhile practice of Steenkamp De Villiers & Coetzee under the name of Steenkamp & Jansen.’

[8] Mr Goosen’s version is corroborated by the evidence of Mr T Davids, a representative of the LPC. He visited the premises of Steenkamp and Jansen Inc on 31 January 2024 where he met Mr Coetzee.[3] Mr Davids’ report is an eye-opener. Mr Goosen who was allegedly the director of the entity at that stage, was not present and did not even have an office on the premises. He apparently only came in from time to time to manage the trust account. About 1500 files of Steenkamp and Jansen Inc were found in cabinets. At that stage FS Law Inc also occupied the premises and the signage of Steenkamp and Jansen Inc had been removed and replaced with that of FS Law Inc. FS Law Inc has one director, to wit Mr FW Slabbert, who also acts as the applicants’ attorney in this application. Insofar as this court is not called upon to deal with the merits of any charges based on misconduct, nothing more needs to be said.

[9] Although the applicants denied in their replying affidavit that they are practising as attorneys and/or that they render any legal

services,[4] this is clearly an aspect that should be investigated, bearing in mind also Mr Coetzee’s responses to questions from my learned colleague, Mahlatsi AJ. He confirmed that they conduct the administration of various deceased estates and that he, Mr Coetzee, even appeared at the Commission for Conciliation, Mediation and Arbitration (CCMA).

[10] Adv Greyling made oral representations on instructions of FS Law Inc on behalf of Mr Steenkamp. Both Adv Greyling and Mr Coetzee submitted that the LPC was dragging its feet and that the suspensions should be set aside. As said, it is not this court’s function to entertain the merits of the allegations of misconduct against the applicants. However, I find it strange that the applicants administer a business account, and not a trust account, in dealing with client funds. It is common cause that clients often deposit monies into an attorney’s trust account with directions how that should be used. The applicants as directors of their law firm are not in possession of FFC’s. Clients whose monies may be entrusted to them will not be able to claim losses from the Fidelity Fund in the event of misappropriation and if the attorneys are unable to pay what is due to clients. I referred to depositum, (deposit in English and bewaargewing in Afrikaans) when dealing with s 26A of the now repealed Attorneys Act 53 of 1979, in *Legal Practitioners Fidelity Fund v Guilherme*. [5] Existing and new clients of the applicants may well believe that it is safe to entrust their monies to them.

[11] A personal liability company is a profit company duly recognised in s 8(2)(c) of the Companies Act 71 of 2008. These type of companies are incorporated associations of professional persons such as inter alia attorneys. The directors are rendered co-debtors with the company and this enables creditors of the company to hold the present and past directors liable, jointly and severally, for the debts and liabilities contracted during each director’s term of

office.[6]

[12] The LPA provides for personal liability companies in s 34 thereof. Sub-section 34(7) reads as follows:

‘(7) A commercial juristic entity may be established to conduct a legal practice provided that, in terms of its founding documents-

- (a) its shareholding, partnership or membership as the case may be, is comprised exclusively of attorneys;
- (b) provision is made for legal services to be rendered only by or under the supervision of admitted and enrolled attorneys; and
- (c) all present and past shareholders, partners or members, as the case may be, are liable jointly and severally together with the commercial juristic entity for-
 - (i) the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and
 - (ii) in respect of any theft committed during their period of office.’ (emphasis added)

[13] The Supreme Court of Appeal dealt with the fiduciary duty of directors towards the company and their liability in Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others (Chueu)[7] and stated the following:

‘[26] Every director has a fiduciary duty towards the company of which it is a director. To plead ignorance of financial matters, when faced with allegations of misappropriation, does not absolve a director. It

has been emphasised over the years that legal practitioners cannot escape liability by contending that they had no responsibility for the keeping of the books of account or the control and administration of the trust account. As this Court stated in *Hepple v Law Society of the Northern Provinces*, for an attorney to explain trust deficits on the grounds that he or she had no involvement in the financial affairs of the firm ‘is no defence at all’.

[27] Abdication of responsibilities does not absolve legal practitioners of their duties. As far back as *Incorporated Law Society, Transvaal v K and Others*, the court cautioned attorneys who attempted to excuse their conduct on the basis that they were responsible for other work in the firm, and did not concern themselves with the books of account. In that matter, as here, a particular individual in the firm was tasked with handling the books of account. The court stated:

“Every attorney must realise that it is a fundamental duty on his part, breach of which may easily lead to his being removed from the roll, to ensure that the books of the firm are properly kept, that there are sufficient funds at all times to meet the trust account claims, and that when he makes the declaration required for fidelity fund purposes there is no doubt that that declaration is truly and honestly made.” (footnotes omitted)

[14] I stated the following in *South African Legal Practice Council v Maree and Others (Maree)*:^[8]

‘The following should be born in mind. It is no defence at all for an attorney to explain trust deficits or any other irregularities on the grounds that they had no involvement in the financial affairs of the firm or company as clearly enunciated in *Hepple v Law Society of the Northern Provinces*. A legal practitioner should not be heard to say that they have abdicated their responsibilities in favour of their co-directors or co-partners. More recently, the Supreme Court of Appeal put the record straight in *Chueu* in the following words, also relying on *Hepple*:

“Every director has a fiduciary duty towards the company of which it is a director. To plead ignorance of financial matters, when faced with allegations of misappropriation, does not absolve a director. It has been emphasised over the years that legal practitioners cannot escape liability by contending that they had no responsibility for the keeping of the books of account or the control and administration of the trust account. ...” (footnotes omitted)

[15] Section 84 of the LPA places an obligation on every attorney who practises for their own account and any director of a practice which is a juristic entity to be in possession of a FFC and no such legal practitioner or a person employed or supervised by that legal practitioner may receive or hold funds belonging to any person, unless the legal practitioner is in possession of a FFC. Section 93 of the LPA stipulates that any person who contravenes s 84 in rendering legal services commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years, or to both such fine and imprisonment. I am not certain whether the applicants understand the seriousness of these provisions, but I do not have to say anymore on the subject. If the applicants believe that they are entitled as directors of Steenkamp and Jansen Inc to apply for and obtain FFC’s, they may decide to follow the route suggested in *SA Legal Practice Council v Louw*.^[9]

[16] My concern about the LPC’s dilatoriness is much greater in this case as in *Maree*. In that case, I insisted that the LPC should act speedily, specifically relying on the following dictum in *Chueu*:^[10]

‘Interim applications for the suspension of a legal practitioner pending an investigation are generally undesirable if the suspension sought is for a lengthy period. Such applications should be launched only where there is no other means of safeguarding the public from the alleged malfeasance of a legal practitioner. An interim order for suspension has a very grave impact on the professional life of a legal practitioner, who would nonetheless be severely prejudiced if exonerated at the end of an investigation by the LPC.’

[17] I also reiterated in *Maree* that investigations and disciplinary proceedings should be conducted by experienced and properly trained personnel in order to ensure that finality is reached. I quote:^[11]

‘As was the case in *Chueu* and pointed out in paragraph 33 of that judgment, the LPC with its far-reaching powers in taking control of MCI’s trust account and all accounting records should have done most of its investigative work by now. It has already taken over all the files and should have

investigated most of them by now. The matter cannot be allowed to carry on indefinitely. Therefore, an amendment of the rule nisi in respect of paragraph 4 was called for as suggested herein. It is expected that experienced and properly trained personnel had been appointed by the curator bonis to ensure that the curatorship is terminated sooner than later.'

[18] I have no doubt that the LPC cannot be allowed to drag their feet to the detriment of the applicants who are entitled to finality. Their professional and personal lives are at stake. Notwithstanding Adv Greyling and Mr Coetzee's submissions that the suspensions should be set aside now, I am not willing to accede to their request. There appears to be sufficient bright red lights as briefly mentioned above that stand in the way of granting relief to the applicants. I considered it prudent to grant the LPC a final opportunity to get their proverbial ducks in a row. Consequently, I directed Adv

Snellenburg SC during oral argument to provide an indication as to when final charge sheets would be ready and when disciplinary

hearings could be started. After an adjournment we were informed that the LPC would be able to serve final charge sheets on the applicants by not later than 15 January 2025 and that disciplinary hearings could start from the end of March 2025. I intend to hold the LPC to their undertaking. If finality is not reached by 31 May 2025, the suspensions shall lapse automatically. The order to be granted provides some relief to the applicants to approach the court on notice if the LPC fails to act in accordance with the order.

Order

[19] Consequently, the following order is made:

JP DAFFUE J

I concur

BB MAHLATSI AJ

Appearances For 1st Applicant: Mr R Coetzee Instructed by: In Person For 2nd Applicant: Adv P Greyling Instructed by: FS Law Inc Bloemfontein For 1st respondent: Adv N Snellenburg SC Instructed by: Symington De Kok Inc Bloemfontein

- [1] Record: p 33, judgment para 18.
- [2] Record: p 158, answering affidavit para 84.
- [3] Record: p 1089, annexure RSA16, read with Mr Davids' confirmatory affidavit, annexure RSA17.
- [4] Record: pp 181-182, replying affidavit paras 6.5-6.6.
- [5] (702/2007) [2023] ZASCA 96; 2023 (5) SA 409 (SCA) (13 June 2023) para 9 and further.
- [6] Maritz and Another v Maritz and Pieterse Inc 2006 (3) SA 481 (SCA) para 13.

- [7] (459/22) [2023] ZASCA 112 (26 July 2023).
- [8] (4309/2024) [2024] ZAFSHC 352 (31 October 2024) para 29; the full citation of the judgment referred to is *Hepple v Law Society of the Northern Provinces* (507/2013) [2014] ZASCA 75; [2014] 3 All SA 408 (SCA) (29 May 2014).
- [9] (10606/2023) [2024] ZAWCHC 88 (20 March 2024).
- [10] *Maree* loc cit para 31; in *Chueu* the court suspended the particular attorneys from practice for a period of 6 months pending finalisation of investigations failing which the suspension shall lapse; in *The Law Society of Northern Provinces v Morobadi* (1151/2017) [2018] ZASCA 185 (11 December 2018) the court suspended the attorney as an interim measure, but ordered that the disciplinary hearing shall be instituted and finalised within 3 months from the date of judgment.
- [11] *Maree* loc cit para 28.

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