

SOUTH AFRICA / JUDGMENT

Joubert v South African Legal Practice Council (5220/2022) [2023] ZAFSHC 374 (22 September 2023) [2023] ZAFSHC 374

COURT

Free State High Court, Bloemfontein

BEFORE

Berry AJ

CASE / FILE NUMBER

5220/2022

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THE HIGH COURT OF SOUTH AFRICA

FREE STATE PROVINCIAL DIVISION

Case No: 5220/2022

Reportable: yes/no

Circulate to other Judges: yes/no

Circulate to Magistrates: yes/no

In the matter between:

PETRUS JOHANNES JOUBERT

Applicant

and

THE SOUTH AFRICAN LEGAL PRATICE COUNCIL Respondent

In re: the matter between:

THE SOUTH AFRICAN LEGAL PRATICE COUNCIL Applicant

PETRUS JOHANNES JOUBERT

1st Respondent

KRAMER WEIHMANN INCORPORATED

2nd Respondent

JOHANNES ANDREAS KRAMER

3rd Respondent

JACOB LODEWYK WEIHMAN

4th Respondent

JAQCUES NORTJE

5th Respondent

CINDY LEE DICKENS

6th Respondent

ANDRIE LOUIS VISSER

7th Respondent

DANIEL MULLER

8th Respondent

HEARD ON:

15 MAY 2023

CORAM:

BERRY AJ

DELIVERED ON: 22 SEPTEMBER 2023

INTRODUCTION

- [1] The Applicant in the interlocutory Applications is the 1st Respondent in the main application. The Respondent is the Applicant in the main Application.
- [2] The Applicant in the main application is seeking an order to suspend or to strike the 1st Respondent from the roll of Legal Practitioners in terms of the Legal Practice Act, No. 28 of 2014 (“the LPC Act”).
- [3] The 1st Respondent brought an Application in terms of Uniform Rule 30(A) for the following interlocutory orders:
 - (i) That the Applicant be compelled to comply with the 1st Respondent’s notice in terms of Rule 7 which was served on 16 November 2022.
 - (ii) That leave be granted to the 1st Respondent, should the Applicant fail to comply with the order in terms of prayer 1, to approach the Court on the same papers, amplified where necessary, for an order that the Applicant’s main Application be struck off the roll.

[4] The 1st Respondent brought a further Application in terms of Uniform Rule 30(1) for the following interlocutory orders:

(i) That Applicant's main Application be stayed pending compliance, alternatively set aside due to the following irregularities.

(A) On 16 November 2022 the 1st Respondent delivered his notice in terms of Rule 7 which challenged the authority of Martus de Wet ("de Wet") - the deponent to the Applicant's Founding Affidavit and Attorneys' Amade & Company ("Amade") as follows:

(B) The Applicant failed to comply with the provisions of Rule 7 within the prescribed time in that the Applicant failed to satisfy the Court that the deponent to the Applicant's Founding Affidavit, as well as the Applicant's appointed attorney has the necessary authority to represent and act on behalf of the Applicant in these Applications.

(C) The provisions of Rule 7 provide that where a person's authority is disputed, such person may no longer act, unless he satisfies the Court that he so authorises to act.

(D) On 28 November 2022, subsequent to the filing of the Rule 7 notice, the Applicant served and filed a notice of set down, purporting to set the matter down for 16 February 2023.

(E) In the premises, the Applicant's notice of set down constitutes an irregular step as contemplated in Rule 30.

[5] The Court a quo held:

"[51] The resolution suffices as proof that Mr. Amade & Company Inc. had been authorised to act on behalf of the applicant.

[52] I am, thus, satisfied that Amade as well as De Wet were authorised by the Applicant to defend the action and to act in matters incidental to such proceedings (interlocutory applications), on its behalf.

[53] From the above and caselaw the following is clear:

(a) The Rule 7 notice was not given timeously.

(b) The Rule 7 notice was out of time and condonation should have been sought.

(c) The overriding consideration in evaluating condonation is that the matter rests in the flexible judicial discretion of the court, to be exercised with regards to all the circumstances, even if the good cause was not shown. In casu it would be in the interest of justice to condone the non-compliance. It would also be essential to finalise the main action as soon as possible. (own emphasis)

(d) The set down of the main application does not constitutes (sic) an irregular step in terms of R 30(1).

- (e) Applicant was not at the time compelled in terms of Rule 30 A to respond to the Rule 7 filed out of the 10- day period.
- (f) The Rule 7 was not raised promptly or at the earliest stage.
- (g) It was not necessary for the First Respondent to launch the Rule 7 application due to the fact that an authorisation (resolution) was presented.”
- [6] The appeal lies against this decision.
- [7] The Rule 7 notice was given three days prior to the hearing of the Rule 30(A) and 30(1) Applications.

GROUND OF APPEAL

- [8] The main grounds of appeal are that the Court a quo erred in finding that the deponent to the Answering Affidavit as well as the Founding Affidavit in the main Application, is duly authorised to depose to the Affidavit on behalf of the Applicant.
- [9] That the attorney acting on behalf of the Applicant is duly authorised and that the Rule 7 Notice was filed out of time, thus necessitating a Condonation Application.
- [10] That the set down of the main Application does not constitute an irregular step in terms of Rule 30(1).
- [11] That the Applicant was not compelled in terms of Rule 30(A) to Respond to the Rule 7 Notice, before setting the main Application down for hearing.

ANALYSIS

- [12] The main thrust of the appeal is that the Provincial Council is not empowered by the Legal Practice Act 28 of 2014 to bring an Application to suspend or remove an attorney from the roll of legal practitioners and that the Application can only be brought by the of the National Legal Practice Council.
- [13] The grounds of appeal would entail that only the National Legal Practice Council is be empowered to bring Applications of this nature, thus disempowering the Provincial Legal Practice Councils to act against attorneys acting in the jurisdiction of the Court they are situated.
- [14] The Provincial Council is empowered under section 40(3)(a)(iv), read with section 43 and Sec 44(1) of the Legal Practice Act, to bring an Application for the striking off the roll or suspension from practice of a legal practitioner.
- [15] Sec 44 provides that the provisions of the Act do not derogate in the power of the High Court to adjudicate upon and make orders in respect
of matters concerning the conduct of a legal practitioner.

[16] The Provincial Council has the following powers and functions in terms of the Legal Practice Act:

[17] Section 17(1) of the Superior Court's Act 10 of 2013 provides that leave to appeal may only be granted if the judge concerned is of the opinion that:

1. The appeal would have a reasonable prospect of success or if there are some compelling reasons why leave should be granted.
2. The decision sought on appeal does not fall within the ambit of s16(2)(a) of the Act.
3. Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[18] In *Matoto v Free State Gambling and Liquor Authority and Others*[1] the Court held:

"There can be no doubt that the bar for granting leave to appeal has been raised. Previously, the test was whether there was a reasonable

prospect that another court might come to a different conclusion. Now, the use of the word 'would' indicate a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."

[19] In *S v Smith*[2] the Court dealt with the question of what constitutes reasonable prospects of success as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial Court. To succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[20] In *MEC for Health, Eastern Cape v Mkhitha and Another* [3] the Court held:

"[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Court Act 10 of 2013 makes it clear 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 it should be heard."

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[21] The issues raised in this Application for leave to Appeal deals with interlocutory matters which are nothing more than an effort to delay the main Application.

[22] The mere fact that the Rule 7 Notice was filed three days before the interlocutory Applications were set down to be heard, is indicative.

[23] The bar has been raised for granting leave to appeal.

[24] The Appeal does not have reasonable prospects of success.

[25] ORDER

The following order is made:

1. The Application for leave to appeal is dismissed with costs.

AP BERRY, AJ

For the Applicant: Adv. A Sander Instructed by: Peyper Attorneys BLOEMFONTEIN For the Respondent: Adv N Snellenberg SC Adv MS Mazibuko Instructed by: Amade & Company Inc. BLOEMFONTEIN

[1] (4629/2015)

[2017] ZAFSHC 80 (8 June 2017).

[2] 2012(1) SACR 567 (SCA) par [7].

[3] (1221/2015[2015] ZASCA 176(25 November 2016).

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