

SOUTH AFRICA / JUDGMENT

Klaas v Law Society of the Cape of Good Hope (1736/2014) [2015] ZAECHGC 139 (4 December 2015) [2015] ZAECHGC 139

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Pickering, Roberson

CASE / FILE NUMBER

1736/2014

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

REPORTABLE/NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE, GRAHAMSTOWN)

Case no: 1736/2014

Date heard: 3 December 2015

Date delivered: 4 December 2015

In the matter between

MACVICAR QAQAMBILE KLAAS

Applicant

vs

THE LAW SOCIETY OF THE CAPE OF

GOOD HOPE

Respondent

JUDGMENT

PICKERING J:

[1] Applicant herein seeks the following relief:

“1. That the interdict granted by the above honourable court on 2 December 1999 under case no 1389/99 cease to be operate, alternatively be declared terminated and of no force and effect;

2. That the applicant be granted leave to resume his practice and an attorney of the above honourable court;
3. Directing and empowering the Registrar of the above honourable court to release to applicant his certificate of enrolment as an attorney of this court.”
- [2] The application is opposed by respondent which, in a counter-application, seeks an order striking applicant off the roll of attorneys.
- [3] Applicant was admitted as an attorney on 4 June 1981. He commenced practice as from 12 June 1981 in partnership with Mqgabi

Siwisa and Partners at Mdantsane. As from June 1985 he commenced practising for his own account under the name and style of M.Q. Klaas and Company in Queenstown.

- [4] During or about 1999 the respondent received certain complaints relating to the administration by applicant of the deceased estate of a certain Mrs. F.N. Matanzima. An investigation of these complaints was undertaken. This investigation revealed a number of irregularities in the administration of the estate. I will return to these hereunder.
- [5] In consequence of its investigation respondent launched an application in this court for an order interdicting applicant from

practising as an attorney pending the decision of the court on an application to be launched by respondent against the applicant for the striking off of applicant’s name from the roll of attorneys of this court.

- [6] Although applicant initially opposed the relief sought he thereafter withdrew his opposition to the application and, on 2 December 1999, an order was duly granted by Van Rensburg J interdicting the applicant from practising, pending the aforesaid application by respondent to strike him off the roll.
- [7] The application to strike applicant off the roll was, however, never forthcoming. In the affidavit in support of the counter-application Mr. de Lange, a member of respondent’s council, states as follows:

“Firstly, the respondent wishes to express sincere regret to this honourable court for its failure to commence proceedings to have the name of the respondent struck off the roll after the interdict was granted by this honourable court. It is unable to establish how the matter came to be overlooked, as none of the officials who dealt with the matter at the time are presently employed by it, and no record explaining what happened can be found in the respondent’s files. It appears that the matter was not properly attended to, for which the respondent tenders its sincere apology to the court.”

- [8] In his replying affidavit to the counter-application Mr. de Lange reiterates that there are no records from which what happened can be reconstructed and that none of the officials who dealt with the matter were presently employed by respondent. He states that it is simply not possible for respondent at this stage to explain what happened.
- [9] Be that as it may, the applicant was eventually moved to launch his present application on 19 May 2014. There was then some delay whilst respondent considered its position. On or about 24 February 2015 respondent resolved not to oppose the application on condition that applicant complete a Practical Management Course. Thereafter, however, according to Mr. de Lange, respondent's attention was directed by its legal representatives to the decision in *Mtshabe v Law Society of Cape of Good Hope* 2014 (5) SA 376 (ECM). In the light of that decision respondent revisited its earlier decision and concluded that such earlier decision was wrong and that it in fact had a duty to oppose the main application and to bring the counter-application.
- [10] Applicant makes much in his papers of the failure by respondent to have launched the striking off application within a reasonable time as well as of the fact that it had changed its decision not to oppose the application for the setting aside of the interdict.
- [11] In this regard applicant made what are, in my view, a number of ill-considered and unfortunate remarks concerning respondent and its conduct. He stated that the reasons advanced by respondent for the delay were "not genuine and honest."
- [12] No basis whatsoever exists for applicant to have impugned the integrity of respondent's office bearers and his conduct in so doing is to be deprecated. As appears from the affidavit of Mr. de Lange respondent is quite simply not able to furnish an explanation for its failure in this regard, more especially as none of the officials who dealt the matter at the time are presently employed by it.
- [13] In any event, if applicant was of the view that he was unduly prejudiced by respondent's delay it was open to him at any time over the course of the nearly fifteen and a half years which elapsed since the granting of the interdict to seek the relief which he presently seeks.
- [14] Applicant avers further that respondent's failure to bring the application for a striking off was "clearly an indication that they did not consider it necessary; that they did consider me to be a fit and proper person to practice as an attorney."
- [15] This allegation is quite simply untenable. It is abundantly clear from the averments contained in the application by

respondent for the order interdicting respondent from practising as an attorney that respondent did not in fact consider applicant to be a fit and proper person to practise as such. Respondent's view was amply justified in the light of the irregularities revealed in the course of its investigations referred to above from which it appears that applicant stole an amount of approximately R200 000,00 from his trust funds. In the founding affidavit in support of the interdict the then vice president of respondent, Mr. McDonald, concluded by stating:

"1. There is a shortage in the Trust Fund held by the respondent;

2. The aforesaid shortage has arisen in partial consequence of the use by respondent of trust funds to pay his personal expenses;
3. The respondent has committed theft of trust funds;
4. The respondent has contravened the provisions of Rule 13.13.4 and 13.13.7."

[16] Mr. McDonald stated further, and correctly so, that the allegations against the applicant were extremely serious and that there existed a likelihood of prejudice to applicant's clients and trust creditors should he be permitted to remain in control of his trust accounts.

[17] Any suggestion therefore that respondent considered applicant to be a fit and proper person to practise as an attorney is spurious.

Moreover, the suggestion flies in the face of applicant's own acceptance in his founding affidavit that he had "behaved in a scandalous and dishonest fashion which is unbecoming to a person who practises as an attorney."

[18] Applicant further assailed the respondent's reconsideration of its decision not to oppose his application, alleging that it was "not made in good faith, was irregular, unconstitutional and unlawful and that the belated recommendation [to oppose his application] lacked a factual basis."

[19] There is equally no merit in these averments. The respondent was fully entitled to revisit the decision taken by it in the light of the Mtshabe judgment to which it was referred.

[20] Applicant avers further that by not proceeding within a reasonable time with the application to strike him off the respondent had "waived its right to have my name struck off the roll of attorneys." This submission discloses a fundamental misunderstanding of the role of the respondent in matters such as this. As appears from Mtshabe's case supra at paras 59 to 65 the respondent is obliged to fulfil its responsibility as an interested party in proceedings for the suspension or removal from the roll of a practitioner. Goosen J, with whom Griffiths J concurred, stated at para 62 that "the particular role which it plays in relation to court proceedings goes beyond that of an ordinary party to legal proceedings. In such instances the Law Society also stands as amicus curiae to the courts seized with the matter."

[21] In *Law Society, Cape of Good Hope v Berrangé* 2005 (5) SA 160 (CPD) Desai J, Erasmus J concurring, stated at 164 D – E:

“This Court must decide upon the papers filed by the parties whether the respondent has conducted himself unprofessionally and, if so, what sanction to impose. The Court is not bound by the views of the applicant. On the other hand, it is not an ordinary litigant. It brings this application in its capacity as the custodian of the status and dignity of the profession and seeks to protect the

interests of the public in their dealings with attorneys. The applicant's views should accordingly be given proper weight (see *Law Society, Cape v Koch* 1985

(4) SA 379 (C) at 386G).”

[22] There can therefore be no question of any waiver of any right by respondent. The decision whether an attorney should be struck off or suspended is a matter for the discretion of the court and, as was stated in the matter of *Botha v Law Society, Northern Provinces* 2009 (1) SA 227 (SCA), at this stage of the enquiry the function of the court is primarily to protect the public. In deciding to oppose this application the respondent acted entirely responsibly.

[23] It is regrettable that applicant saw fit to raise spurious technical defences instead of dealing squarely with the matter on its merits.

[24] I turn then to consider those merits.

[25] There was some debate between counsel as to the proper approach to be followed in the present matter, having regard to the fact that exactly sixteen years have now elapsed since the suspension of applicant on 2 December 1999.

[26] Respondent contended in its papers that the principles governing re-admission applications were applicable to this matter. I agree, however, with the submission by Mr. Koekemoer, who appeared on behalf of the applicant, that it would not be appropriate to approach the matter on the same basis as that of an application for re-admission. The fact of the matter is that applicant has not been struck off and accordingly does not seek his re-admission and re-enrolment as an attorney in terms of s 15(3) of Act 53 of 1979. In my view section 22 of the said Act is applicable. Section 22(1)(d) of the Act provides:

“Any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the Court within the jurisdiction of which he practises ... if he, in the discretion of the Court, is not a fit and proper person to continue to practice as an attorney.”

[27] In *Botha v Law Society* supra Cloete JA stated as follows at para 2, page 230 C - E:

“[T]he section contemplates a three-stage inquiry: First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry. Second, the court must consider whether the person concerned

“in the discretion of the court” is not a fit and proper person to continue to practise. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. Third, the court must inquire whether in all the circumstances the attorney is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice.”

- [28] Applicant’s offending conduct has been clearly established as at the time of the application by respondent for his suspension.

It is not in dispute that he stole R200 000,00 of trust funds. There can, in my view, be little doubt that had respondent timeously brought an application for applicant’s removal of the roll it would have succeeded. As was stated by Harms JA in *Malan and Another v Law Society, Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at para 10:

“Obviously, if a court finds dishonesty, the circumstances must be exceptional before the court will order a suspension instead of a removal...”

- [29] It now falls to us to decide, in the exercise of our discretion, whether, having regard to the passing of sixteen years from the time of applicant’s suspension, that suspension should be set aside and applicant be permitted to resume the practice of an attorney; or whether the period of suspension shall be further extended or whether his name should be removed from the roll of attorneys.
- [30] It appears from the applicant’s affidavits that subsequent to his suspension he worked at various centres in the Eastern Cape as an acting magistrate but was, because of the interdict, precluded from being appointed to a permanent position as a magistrate. Since 2007 he was employed by a firm of attorneys, Zepe and Company, as an office administrator and according to him, has kept abreast of developments in the law. As pointed out by Mr. de la Harpe, who appeared for the respondent, both applicant and the attorneys who employed him were obviously unaware of the provisions of section 83(5) of the Attorneys Act 53 of 1979 which prohibits a practitioner from employing in any capacity a person who has been struck off the roll or suspended from practice without the written consent of the Law Society concerned.
- [31] Be that as it may applicant has expressed sincere regret for his actions and has accepted that his conduct was “scandalous and dishonest.” He states that he is ashamed of himself and “accepts his guilt without reservation”. He points out that he did not oppose the application to suspend him.
- [32] Applicant is presently 65 years of age and is married with both children and grandchildren. He states that it is his wish “to end my remaining years as an honest and reliable person.”

- [33] In cases involving an application for readmission where the applicant has been struck off the roll of attorneys for dishonesty, it has been held that a substantial or lengthy period of time should elapse between the striking off and the application for readmission in order that the Court may be satisfied that there has been reformation. See, for instance, *Ex parte Potgieter* 1958 (2) SA 220 (TPD) and the cases cited therein at 222 – 3.
- [34] In the present case an extremely long period of 16 years has elapsed since his suspension during which applicant has conducted himself honourably as an acting magistrate and an attorneys' office administrator, albeit that he held the latter position unlawfully. It seems clear, as was submitted by Mr. Koekemoer, that applicant has learnt a hard and painful lesson and that he has indeed experienced a genuine reformation of his character over the past 16 years.
- [35] In my view applicant has shown that he is now a fit and proper person to continue his practice as an attorney subject to the condition that he complete the Practice Management Course referred to by the respondent.
- [36] As to costs I am of the view that the respondent was not only justified in opposing the application but also in bringing the
- counter-application. Indeed, the application could not sensibly have been opposed in the absence of a counter-application. The two issues were inextricably intertwined.
- [37] In the circumstances where applicant is seeking the indulgence of the court it would be appropriate to order applicant to pay the costs of both the application and the counter-application.
- [38] The following order will issue:
- a. The application succeeds and the counter-application is dismissed.
 - b. The interdict granted by this Court on 2 December 1999 under Case no 1389/99 is hereby set aside.
 - c. The applicant is granted leave to resume his practice as an attorney of this Court subject to his first having completed the Practice Management Course to the satisfaction of the respondent.
 - d. The applicant is ordered to pay the costs of both the application and the counter-application.

J.D. PICKERING

JUDGE OF THE HIGH COURT

I agree,

J.M. ROBERSON

Appearing on behalf of Applicant: Adv. Koekemoer

Instructed by:

Yokwana Attorneys, Mr. Yokwana

Appearing on behalf of Respondent: Adv. de la Harpe

Instructed by:

Neville Borman & Botha, Ms. Jagga

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/ZAECGHC/2015/139.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/klaas-v-law-unknown-topic-aecghc-2015>

Prepared on 12 October 2026 · Esheria