

SOUTH AFRICA / JUDGMENT

Matsi and Another v South African Legal Practice Council (GP) (078312/2023)

[2024] ZAGPPHC 120 (12 February 2024)

[2024] ZAGPPHC 120

COURT

North Gauteng High Court, Pretoria

BEFORE

Kumalo

CASE / FILE NUMBER

078312/2023

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Policy

IN THE HIGH COURT

OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO.:

078312/2023

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: [N]

(3)

REVISED: [N]

(4)

Signature:

Date:

12/02/24

In

the matter between: MMATLOU
 LESLEY
 MATSI
 First Applicant
 MATSI,
 MAILULA INC
 ATTORNEYS
 Second Applicant
 (ALSO
 KNOWN AS MATSI LAW CHAMBERS)
 And
 THE
 SOUTH AFRICAN LEGAL PRACTICE COUNCIL (GP)
 Respondent
 In

Re: THE
 SOUTH AFRICAN LEGAL PRACTICE COUNCIL
 (GP)
 Applicant
 and
 MMATLOU
 LESLEY
 MATSI
 First Respondent
 MATSI,
 MAILULA INC
 ATTORNEYS
 Second Respondent

JUDGMENT

Kumalo J

[1]. This is an application for leave to appeal this court's judgment delivered on 27 November 2023 wherein this court granted an order in terms of section 18(2) of the Superior Courts Act, 10 of 2013 (the 'Act') that the judgment and order of his Lordship Davis J of 30 August 2023 operate and be executed in full pending the outcome of the Applicants' leave to appeal including any future appeals that may be lodged.

[2]. The First Applicant is a legal practitioner admitted and enrolled as an attorney of this court on 13 January 2000 and his name appeared on the roll until the judgment of my brother Davis J on 30 August 2023.

[3]. He was practicing for his own account as a single practitioner under the name and style of Matsi Mailula Inc Attorneys, also known as Matsi Law Chambers, the Second Applicant in the matter which is a firm established on 5 January 2012 and is situated at No. 3[...] S[...] Road Riveira, Pretoria.

[4]. The Respondent is the South African Legal Practice Council: Gauteng Province established in terms of section 4 of the Legal Practice Act No. 28 of 2014 (the “LPA”) as a body corporate with full legal capacity and which exercises jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in the LPA.

[5]. Due to the manner in which the Applicants have prosecuted this matter, it is perhaps apposite that I outline its history and judgments in the various courts.

[6]. The matter was first heard in the urgent court on 30 August 2023 by my brother Davis J who delivered an ex tempore judgment and granted an order suspending the First Applicant from practising as a Legal Practitioner pending the finalization of the application on certain conditions that I need not repeat herein.

[7]. The First Applicant filed an application for leave to appeal the judgment and order of his Lordship Davis J on 31 August 2023 and the Respondent filed its notice of intention to oppose on 19 September 2023.

[8]. The Respondent further served and filed its section 18(3) application in the urgent court on 6 October 2023 and the matter was heard by this court on 10 October 2023 and judgment delivered on 27 November 2023.

[9]. Prior to the delivery of the judgment of 27 November 2023, his Lordship Davis J delivered his judgment on 22 November 2023 dismissing the Applicant’s application for leave to appeal and the said judgment was uploaded on Caselines.

[10]. On the same day i.e. 22 November 2023, Applicant filed a further application for leave to appeal to the Supreme Court of Appeals.

[11]. On 28 November 2023, Applicant filed yet again another application for leave to appeal the judgment and order of this court delivered on 27 November 2023.

[12]. I am of the view that it was erroneous or an irregular step on the Applicant’s side as he sought to invoke the provisions of section 17 of the Act. The Applicant did not require leave of this court to pursue an appeal against my judgment and order as he had an automatic right to do so in terms of section 18(4).

[13]. Section 18 provides for the suspension of a decision pending appeal and states the following
'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.
- (4) If a court orders otherwise, as contemplated in subsection (1) –
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right to appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 - (iv) such order will be automatically suspended, pending the outcome of such appeal.

[14]. In these circumstances, the Applicants had an automatic right to appeal the judgment of this court to the Full Court of this Division. In *Knoop N.O. v Gupta* 2021 3 SA 88 SCA, the Supreme Court of Appeal phrased the purpose and effect of section 18(4) as follows:

‘This section provides a safeguard against irreparable prejudice being occasioned as a result of a court granting an execution order when it should not have done so. The court must record its reasons immediately and the aggrieved party has an automatic right of appeal, unlike the ordinary situation where it is necessary to obtain leave to appeal. An appeal against an execution order is one of right and the party that obtained the execution order cannot object to it. If they wish to sustain the execution order, they must oppose the appeal. If they wish to avoid being prejudiced by the execution order being suspended, their remedy is to approach the head of the court to which the appeal lies and take all steps within their power to secure a hearing of the extremely urgent appeal for which the section provides.’

[15]. In Erasmus et al commentary, the learned authors state correctly in my view that the provisions of section 18(4)(iv) are clear and emphatic. The suspension of the original order in terms of section 18(1) continues until the disposal of the urgent appeal. The court that granted the order to execute in terms of section 18(3) has no power, whether statutory, inherent or otherwise, to make an order overriding the provisions of section 18(4)(iv) of the Act and such order would be void and could be disregarded.

[16]. Thus, an application for leave to appeal in these circumstances would serve no purpose whatsoever.

[17]. The Applicants in this matter chose to pursue its matter on the basis of section 17 and served an application for leave to appeal. This matter was addressed in a meeting with the Deputy Judge President of this Division and the anomaly pointed out to him that in the circumstances he did not require leave to appeal and can simply proceed with the urgent appeal before the Full Court of this Division.

[18]. The First Applicant was adamant that this is a matter of interpretation, section 18 does not oust the provisions of section 17 and insisted that his application for leave to appeal be heard.

[19]. I must mention that the application for leave to appeal was commenced on Thursday, 8 February 2024 and I stood the matter down to consult with the Deputy Judge President with the view to correct a step that I viewed to be irregular and assist the parties to resolve the issue speedily.

[20]. A case management meeting with the Deputy Judge President was held with the parties the following morning whereat the First Applicant insisted that he wants the application for leave to appeal to be heard and continued with and this was done after the conclusion of the said meeting.

[21]. I have already indicated that the application for leave to appeal was unnecessary in these circumstances and superfluous in the circumstances. I therefore do not intend to deal in great detail with the submissions other than that these were submissions that ought to have been made in the urgent appeal that still has to be convened.

[22]. In the circumstances, the following order is made:

1. The Applicants' application for leave to appeal is dismissed;
2. The Applicants are to pay the costs of the leave to appeal on an attorney and client scale including the two days over which the matter was heard.

KUMALO M.P

Judge of the High Court of South Africa

Gauteng Division, Pretoria

For the applicants: In person For the respondent: Adv I. Hlaletsoa Instructed by: Mphokane Attorneys

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