

SOUTH AFRICA / JUDGMENT

Mayekiso v Law Society of the Cape of Good Hope (1868/2015) [2017] ZAECMHC 51 (28 November 2017) [2017] ZAECMHC 51

COURT

Eastern Cape High Court, Mthatha

BEFORE

J W Eksteen, D Van Zyl

CASE / FILE NUMBER

1868/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE LCOAL DIVISION, MTHATHA

Case No.: 1868/2015

Date Heard: 23

November 2017

Date Delivered: 28

November 2017

In

the matter between:

RONALD

MANGENA

MAYEKISO

Applicant

and

THE

LAW SOCIETY OF THE CAPE OF GOOD HOPE

Respondent

JUDGMENT

EKSTEEN J:

- [1] The applicant herein (the applicant) seeks leave to appeal to the Supreme Court of Appeal against an order which we granted, inter alia, interdicting the applicant from practising as an attorney pending the respondent launching an application to strike his name from the roll of attorneys and appointing a curator to take over the practise of the applicant.
- [2] The first ground for leave to appeal contends that there is a reasonable prospect that a Court of Appeal may hold that we erred in finding that the applicant had failed to account “faithfully, accurately and timeously” in respect of the complaint lodged against him by one Jones Frimpong (Frimpong) when the complainant himself had confirmed under oath that the applicant accounted to him fully to his satisfaction. It contends that we ought to have found that the applicant did in fact fully and accurately account to Frimpong, more so in the light of the confirmation under oath by Frimpong himself that the applicant did fully account to him and to his satisfaction which version has not been controverted.
- [3] The accuracy of the account to Frimpong cannot be ascertained as the applicant has consistently over a substantial period declined to provide his books when specifically requested to do so by the respondent. The accounting, such as it was, occurred years after the complaint had been lodged and after the main application was launched and was clearly not timeous. It is not disputed that he has failed to account to the Law Society. It is true that Frimpong is satisfied with the ultimate accounting, however, such accounting did not occur faithfully. It occurred only in response to a summons issued against the applicant by Frimpong for the repayment of monies held in trust and almost two months after the commencement of the main application. At the time that the main application was launched no account at all had occurred.
- [4] Ground 3 of the Notice of Application for Leave to Appeal (the Notice) proceeds to contend that there is a reasonable prospect that a Court of Appeal may hold that we erred in rejecting the applicant’s version that the monies that informed Frimpong’s complaint in the main application were not trust monies in circumstances where such version has not been denied under oath by Frimpong. The applicant’s version in this regard, on a consideration of the papers and his numerous conflicting explanations, was rejected as being so far-fetched as not to raise a bona fide dispute of fact.

- [5] The reasons which led us to the findings addressed in grounds 1 and 3 are fully set out in the judgment and I do not consider it necessary to repeat same herein in any greater detail. Suffice it to state that we have heard argument on behalf of the applicant and we have considered the submissions made to us in this regard. I do not, however, think that there is a reasonable prospect that another court will come to a different conclusion on these issues.
- [6] The grounds set out in paragraphs 2, 4, 6 and 7 of the Notice may conveniently be considered in tandem. Paragraph 6 of the Notice contends that upon our finding that the main application was not an application to strike the applicant off the roll of practising attorneys we ought to have found that the requirements for the granting of an interdict were applicable in the present case and that these requirements were not satisfied. Paragraph 2 of the Notice repeats these assertions and proceeds to contend more particularly that there was an alternative remedy available to the respondent. It is contended that we ought to have found that the respondent had the alternative remedy to refer the matter back to the respondent's disciplinary committee for further determination in view of the complainant's version that the applicant has fully accounted to them.
- [7] Paragraph 4 of the Notice contends that there is a reasonable prospect that another court may find that we erred in finding that we were required to consider whether the applicant was a fit and proper person to continue to practise as an attorney when the application before us was not that of striking the applicant from the roll of practising attorneys but merely for an interdict which involved a determination on whether the respondent had satisfied all the requirements for the granting of an interdict.
- [8] Paragraph 7 of the Notice proceeds to contend that there is a reasonable prospect that another court may find that we erred in holding that the election exercised by the applicant to refer the matter to a formal disciplinary hearing in keeping with the respondent's rules "does not, however, assist" in the circumstances where such an option was extended to the applicant by the respondent.
- [9] We have approached the main application on the basis that it formed part of the disciplinary process to protect the interest of the public, the legal profession and the justice system pending the launching of the application to strike the name of the applicant from the roll of attorneys. For purposes of the present ruling we shall accept that there is a reasonable prospect that another court may hold that we erred in that regard and that we ought to have enquired into the specific requirements for the grant of an interdict.
- [10] An appeal can however only lie against the order granted. It is necessary therefore to consider whether there is a reasonable prospect that another court may hold that the requirements for an interdict have not been satisfied.
- [11] The main application proceeded on the basis that the only inference which could be drawn from the facts was that the applicant, when called upon to repay Frimpong's money, was no longer in possession of the funds (an assertion which is now admitted) and that the respondent's actions demonstrate character defects and a lack of integrity inconsistent with

the standards of the profession. The respondent accordingly contended that it was not in the interest of the public and the profession that the respondent should continue to practise. On this basis the respondent contended that an interdict was warranted pending the institution of the proceedings to strike the respondent's name from the roll of attorneys. They contended that the conduct of the applicant may lead to a lack of confidence amongst the public in the members of the profession and consequently to a lack of confidence in the justice system as a whole.

- [12] Although the interdict granted is framed as a temporary interdict it seems to me to be final in effect. We shall accordingly accept, in the applicant's favour that the requirements for a final interdict must be satisfied. Whether it be viewed as an interim interdict or a final interdict what emerges from the notice is that it is contended that the final requirement for an interdict (whether interim or final) is absent. For purposes of a final interdict an applicant is required to show an absence of similar protection by any other ordinary or suitable legal remedy. Where an interim interdict is sought an applicant is usually required to show the lack of another remedy adequate in the circumstances.
- [13] The factual findings which were made on the papers appear from paragraph 67 of the main judgment, which includes a finding that the applicant had in fact misappropriated an amount of R1 221 770 which belonged to Frimpong. The question which must necessarily arise, is whether, in the light of those factual findings, referral of the matter for further disciplinary proceedings would provide "similar protection" to that given by the interdict, or, put differently (for purposes of an interim interdict), whether it would be a remedy "adequate in the circumstances". The harm which the respondent seeks to protect is the public confidence in members of the profession and the justice system as a whole. The applicant in the main application (the respondent) has resolved in due course to launch an application to remove the name of the applicant from the roll of attorneys. It is entitled to do so with or without an internal disciplinary process being followed.

- [14] The enquiry as to whether the alternative remedy contended for provides similar protection or would be adequate in the circumstances therefore necessarily requires an assessment as to whether the applicant is a fit and proper person to continue in practise in the interim, pending the launching of an application to strike his name from the roll of attorneys. Once it is found, as we did, that he is not fit and proper to continue in practise in view of the factual findings set out in paragraph 67 of the main judgment the alternative remedy contended for is clearly inadequate for the protection of the public confidence in the legal profession and the justice system. For these reasons we do not think that there is a reasonable prospect that another court will come to a different conclusion in respect of paragraphs 2, 4, 6 and 7 of the Notice.

- [15] As recorded earlier the Notice does not contend that any of the other specific requirements for the granting of an interdict were absent. For the sake of completeness, however, we record that we do not consider that there is a reasonable prospect that a Court of Appeal would find that such other requirements are not satisfied. Our reasons are the following.
- [16] The factual findings on the papers show that the applicant misappropriated Frimpong's money in 2011 as set out earlier. He did not, even in the face of the complaint laid with the respondent, account to Frimpong in this regard until Frimpong sued him for the return of his money and the respondent had launched the main application. When respondent called on him to account he intentionally misled them for several years and still has not accounted to it. The respondent as *custos moris* of the profession has therefore established an unquestionable clear right to the interdict granted.
- [17] For the same reason the application establishes an injury actually committed and a reasonable apprehension that other members of the public may be subjected to similar abuse. This in turn (to the extent that the interdict may be viewed as interim) founds a reasonable apprehension of irreparable harm to the interests which are sought to be protected by the main application as recorded earlier.
- [18] Even if the interdict may be considered to be an interim interdict (it being temporary in form) the balance of convenience need not be established where a clear right (as opposed to a *prima facie* right) has been established.
- [19] Paragraph 8 of the Notice contends that there is a reasonable prospect that another court may find that we erred in placing reliance on the provisions of section 72 of the Attorneys Act in circumstances where the application before us was not one for the suspension or for the striking from the roll of attorneys of the name of the applicant. As recorded earlier the respondent has resolved in due course to launch an application to strike the name of the applicant from the roll of attorneys and we considered the present application to be part of the disciplinary process where no particular *lis* exists between the parties and whereby the respondent merely placed facts before the court to allow the court to exercise its authority over officers of the court. The interdict granted is therefore preparatory to the application to strike the name of the respondent from the roll of attorneys. Even if we erred in this regard, as set out earlier herein, we are satisfied that there is no reasonable prospect that another court will come to the conclusion that the alternative remedy contended for is adequate in the circumstances or that it offers protection to the interests of the public, the good name and reputation of the profession and the

confidence in the legal system similar to that which the interdict is designed to do. In these circumstances, even if it were to be held that we erred in placing reliance upon the provisions of section 72 of the Attorneys Act there is no reasonable prospect that another court will come to a different conclusion in respect of the relief granted by virtue hereof.

[20] Finally, the Notice contends that there is a reasonable prospect that another court may find the failure by the respondent to refer the matter to a formal disciplinary hearing is inconsistent with the respondent's rules, is a denial of the applicant's right to a fair hearing, is a violation of the rules of natural justice and the Constitution of the Republic of South Africa and thus invalid and unconstitutional. No constitutional issue has been raised in the main application and accordingly it does not arise.

[21] The issue in the main application is not about an internal disciplinary proceeding or a finding of guilt. By virtue of the provisions of section 72 of the Attorneys Act an application to suspend the applicant from practise or to remove his name from the roll of Attorneys may be brought by respondent even if the respondent's own disciplinary hearing has not been completed. The respondent may even do so without any preceding investigation having been conducted. (See *Du Plessis v Prokureursorde, Transvaal* 2002 (4) SA 344 (T).) By parity of reasoning, an interdict may be granted without any prior investigation and notwithstanding an incomplete disciplinary proceeding. The applicant has been afforded the full opportunity to present his case in the main application and he will be afforded a further opportunity when the application is brought to strike his name from the roll of attorneys. It does not constitute any violation of the rules of natural justice nor does it deny the applicant a fair hearing.

[22] For these reasons we do not think that there is any reasonable prospect that another court will come to a different conclusion.

[23] In the result, the application for leave to appeal is dismissed with costs.

J W EKSTEEN

JUDGE OF THE HIGH COURT

VAN ZYL DJP:

I agree.

D VAN ZYL

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

Appearances:

For Applicant:

Adv Zilwa SC instructed by H S Toni Attorneys, Mthatha

For Respondent: Adv Tarr instructed by Borman & Botha c/o Smith Tabata Attorneys, Mthatha

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Prepared on 27 October 2026 · Esheria