

SOUTH AFRICA / JUDGMENT

Mokoena and Another v South African Legal Practice Council (49286/2020) [2025] ZAGPPHC 236 (4 March 2025)

[2025] ZAGPPHC 236

COURT

North Gauteng High Court, Pretoria

BEFORE

Brand, Mbongwe

CASE / FILE NUMBER

49286/2020

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IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case number:

49286/2020

Date: 4 March 2025

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE 04/03/2025

SIGNATURE

In

the matter between: KARABO
MONTGOMERY MOKOENA
First
Applicant
MOKOENA
(KARABO) INCORPORATED
Second
Applicant
And
THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
Respondent
In

re: THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
Applicant
And
KARABO
MONTGOMERY MOKOENA
First
Respondent
MOKOENA
KARABO INCORPORATED
Second
Respondent

JUDGMENT

BRAND AJ (WITH MBONGWE J concurring)

[1] This is an application for leave to appeal against this court's judgment of 13 June 2024, in which the applicant herein was found guilty of a range of instances of serious misconduct as legal practitioner; held not to be fit and proper to be a legal practitioner; and struck from the roll of legal practitioners

(attorneys).

[2] The application was brought on 31 August 2024, 41 court days after judgment was handed down. It was in other words well out of time – it should have been brought within 15 court days after judgment was handed down.

[3] At first, the application was not accompanied by an application for condonation of its late filing. After this was pointed out by the respondent through a Uniform Rule 30 and 30A notice, a second

application was filed, this time with at least a purported application for condonation of late filing.

[4] On the basis of this second notice of application for leave to appeal we must decide two issues:

4.1 Whether the late filing of the notice of leave to appeal should be condoned.

4.2 Whether leave to appeal should be granted.

Condonation

- [5] Condonation can be granted in our discretion on good cause shown. Good cause includes explanation of the reasons for late filing and the impact that granting of condonation would have on the other party and refusal on the applicant.
- [6] The applicant offered two reasons for late filing. First, he relates that he only came to know of the judgment, which was emailed to him on 13 June when it was handed down, on 23 June and then needed time to read, analyse and digest it. Second, he submits that he did not have the funds available readily with which to acquire representation to bring the application.
- [7] The former is no reason at all. The judgment was emailed to the applicant at the email address he provided for that purpose. Had he regularly checked this email address as one would expect, he would have come to know of the judgment earlier. Also, having received the judgment he, as on his own version a seasoned legal practitioner should not have required any more than the time allowed to read the judgment, decide whether to proceed with an appeal and prepare that appeal.
- [8] The latter reason offered bears more weight. The applicant has been suspended from practice for a considerable time, during which he could not earn an income as attorney. Although it is true that he could have decided to represent himself, it is usually a salutary rule not to do so. Accordingly, he required legal representation and had to pay to receive it. In this he was hindered by his finances.
- [9] Taken together with the fact that the public – whose interest the respondent had at heart when approaching this court to have the applicant struck from the roll – will not be placed at further risk should this application be allowed to proceed (the applicant has been suspended from all practice for a considerable time and will remain so) and the fact that this matter obviously holds great importance for the applicant, we are persuaded to grant the application for condonation.

Should leave to appeal be granted?

- [10] We may grant leave to appeal, as determined by section 17(1) of the Superior Courts Act 10 of 2013, only if the appeal for which leave is sought holds reasonable prospects of success; or if there is some other compelling reason why leave should be granted.
- [11] In his application for leave to appeal, the applicant does not challenge this court's conclusion that he is indeed guilty of the several counts of misconduct the respondent raised against him. That, he accepts.

[12] Instead, the application is broadly based on three claims:

12.1 that the respondent acted ultra vires and so unlawfully in approaching this court directly with an application for striking, without first holding and concluding its own disciplinary hearing concerning the applicant;

12.2 that even if the respondent had the authority in law to approach this court to have the applicant struck, it could only exercise that authority in cases involving serious misconduct, and none of the misconducts the applicant committed was serious;

12.3 that there were exceptional circumstances warranting this court to order the applicant's suspension from practice for a further period, instead of striking him from the roll, to wit, that the applicant showed the potential to be rehabilitated; and

12.4 that the impact that this court's striking the applicant from the roll would have on him in his personal and professional capacities, on its own warranted grant of leave to appeal.

[13] The first three of these grounds for leave to appeal concern the prospects of success of the appeal; the fourth constitutes for the applicant another compelling reason why leave should be granted. None assist him.

[14] Concerning the first, the applicant could again direct us to no authority in law for his reading of the power of the respondent to approach this court to have him struck, as against the surfeit of authority to the contrary.[1] Indeed, this ground for leave to appeal is so clearly devoid of merit that it should properly not have been taken.

[15] Likewise the second: the applicant's submission that his practicing without a fidelity fund certificate and his failure to render his statements of account when required are not serious misconduct simply ignores the copious authority to the contrary;[2] and he fails at all to address the other several instances of misconduct this court found him guilty of, including his willful disregard of orders of this court and his lack of integrity.

[16] For the third, it was submitted on behalf of the applicant that he had shown the potential during his suspension from practice preceding this court's order striking him from the roll, the potential to be rehabilitated. But this court was directed to no

facts

on record to substantiate this claim. The many facts showing the contrary – that while suspended, the applicant continued to maintain his innocence, adopted an obstructionist and adversarial attitude, refusing to be open with and cooperate with the respondent; and contravened orders of this court – are not accounted for.

[17] Of course, concerning the third ground for leave, as correctly submitted on behalf of the respondent, the applicant faces a much higher bar than simply persuading us of their cogency on the law and the facts. Because it challenges this court's exercise of a so-called strict discretion, the applicant must show that this court 'failed to bring an unbiased

judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously, or exercised its discretion upon a wrong principle or as a result of a material misdirection’ – in short, that it was not exercised judicially.[3] This he has not even attempted to do.

[18] Concerning the fourth, the applicant must also fail. Every erstwhile legal practitioner struck from the roll by order of this court is affected by that order in broad terms in the same way as the applicant – they are all probably permanently barred from the profession through which they earn a living, with the serious consequences economically and otherwise that inevitably flow from that. The applicant shows no circumstance outside of the norm – compelling, that is – that would warrant grant of leave absent reasonable prospects of success.

[19] Accordingly, the applicant shows no prospects for success on appeal; and raises no other compelling reason why leave to appeal should be granted, and we order as follows:

1. The late filing of the application for leave to appeal is condoned.
2. The application for leave to appeal is dismissed, with costs.

JFD Brand

Acting Judge of the High Court

Gauteng Division, Pretoria

M Mbongwe

Judge of the High Court

APPEARANCES

Counsel for the applicant: Adv M Makoko Instructed by: Counsel for the respondents: Mr R Stocker Instructed by: Rooth & Wessels Inc. Date of the Hearing: 3 March 2025 Date of Judgment: 4 March 2025

- [1] See paragraphs [13] and [14] of this Court’s judgment in the striking out application.
- [2] See paragraph [71] of this Court’s judgment in the striking out application.
- [3] *Malan and Another v Law Society, Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at para [13].

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Prepared on 9 October 2026 · Esheria