

SOUTH AFRICA / JUDGMENT

Molatoli v Legal Practice Council and Another (2024/037762; 2024/027752) [2024] ZAGPPHC 383 (9 April 2024)

[2024] ZAGPPHC 383

COURT

North Gauteng High Court, Pretoria

BEFORE

Labuschagne

CASE / FILE NUMBER

2024/037762; 2024/027752

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FLYNOTES:

PROFESSION – Suspension – Stay application – Trust account advocate – Bridging finance – Misappropriation of trust funds – Evidence establishes misappropriation of trust funds and further conduct inconsistent with professional character requirements of honesty and integrity – Conduct establishes prima facie that respondent poses a risk to legal profession – Suspension from practice warranted – Legal Practice Act 28 of 2014. IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA Before His Lordship Mr Justice Labuschagne AJ on 9 April 2024 Case No: 2024/037762 Case

No: 2024/027752
(1)
REPORTABLE: NO
(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED.

SIGNATURE:

DATE: 19/4/2024
In

the stay application of: CHABELI
JOHANNES MOLATOLI
Applicant
and
LEGAL
PRACTICE COUNCIL
First Respondent
ASHWIN
REDDY
Second Respondent
In

re: The
application of
LEGAL
PRACTICE COUNCIL
Applicant
CHABELI
JOHANNES MOLATOLI
Respondent
For
his suspension from practice as legal practitioner

JUDGMENT

- [1] The Legal Practice Council brought an urgent application under case number 2024/027752 for the suspension of the respondent, Chabeli Johannes Molatoli. When this matter was called at roll call on 9 April 2024, the respondent appeared in person and handed up an application to stay the suspension application. The stay application was brought under case number 2024/037762. For clarity sake I refer to Adv Molatoli as the respondent.
- [2] In the suspension application the respondent has elected not to file an answering affidavit, but rather to rely on his stay application.

THE STAY APPLICATION

- [3] Only Part A of the stay application served before me. It provides for the stay of the LPC's urgent application for his suspension from practice pending the finalisation of a review application of Reddy's report in Part B.
- [4] In Part B the applicant seeks the reviewing and setting aside of Reddy's report in terms of PAJA, the setting aside of the LPC Investigation Committee decision to accept Reddy's report and costs on an attorney and client scale, including the costs of Part A.
- [5] In argument before me, the respondent contended that he was also attacking the decision of the LPC and its finding in respect of the Reddy report. He particularly referred to the conclusion by the LPC that he had character flaws inconsistent with continuing to practice as an advocate.
- [6] The decision of Council to bring the matter to court is not being attacked in either Part A or Part B of the respondent's stay application.
- [7] The respondent argued that the LPC had overstepped the mark and had pronounced on his guilt. In that sense, he contended, the LPC had made a decision that can be reviewed.
- [8] As pointed out, the decision by the LPC was never part of the stay application. If it were, there is authority that the decision of the Law Society to bring misconduct to the notice of the court is not a "decision" in terms of Public Law. In particular, it is not a conduct reviewable under PAJA (see: *Meyer v Law Society, Transvaal* 1978 (2) SA 209 (T) at page 214 C – D). In *Law Society of the Northern Provinces v Adekeye and Another* 2018 JDR 1095 (GP) the following was stated at par [21]:

"A decision taken by the applicant is not an administrative decision. Equally the decision to hold an enquiry did not adversely affect the rights of the first respondent, because this court is still going to hold an enquiry. An enquiry cannot be said to be premature because the same issues will still be placed before the court. That is a process in terms of section 22 of the Act. PAJA does not apply in this instance."

- [9] In the *Legal Practice Council v Motlhabani* 2021 JDR 1439 (NWM) the court stated at par [25]:
- "The suspension and removal/striking off application constituted sui generis disciplinary proceedings which becomes the Court's proceedings. These proceedings are merely referred by the applicant to the Court. When the applicant exercises its discretion to refer the alleged offending conduct to the Court for the Court to take a decision on whether the practitioner should be suspended and or removed/strike off as not being a fit and proper person to continue to practice as an attorney, the exercising of such discretion does not constitute a decision within the ambit of administrative action as defined in section 1 of PAJA."*

- [10] At no stage did the LPC discipline, fine or suspend the respondent. The exercising of a discretion to refer the respondent's conduct for the Court's determination of his status as an officer of the Court, does not fall within the definition of administrative action. So too does the exercise of the applicant's discretion not adversely affect the rights of the applicant. It does not have a direct external legal effect.
- [11] The Courts, including the Supreme Court of Appeal have repeatedly pronounced that *sui generis* disciplinary proceedings are not normal civil proceedings. The LPC merely brings the attorney before Court by virtue of a statutory right and informs the Court as to what the attorney has allegedly done and asks the Court to exercise its disciplinary power. It does not institute any action or civil suit against the attorney. It merely submits to the Court facts which it contends constitute unprofessional, dishonourable and unworthy conduct.
- [12] The decisions that form the subject of the review are decisions that predate that of Council to refer the facts to the Court. There are no prospects in any event of those decisions being set aside on review, as they are not "decisions" in terms of PAJA and do not have an adverse legal effect on the respondent.
- [13] The LPC argued that the respondent's intended review application is academic and a *brutum fulmen*. It relies in this regard on *Bothma and Another v Law Society of the Northern Provinces; In re: Law Society of the Northern Provinces v Bothma and Another* [2017] ZAGPPHC 208 (25 May 2017) where the following is stated at par [36]:

"36.1 Counsel for the applicants contended that the resolution by the Law Society constitutes administrative action within the meaning of section 1(a) and 1(b) of PAJA.

36.2 Any finding in respect of the applicability of PAJA in relation to the Act, would, in the present circumstances, be academic. The complaints and findings contained in the main application raise serious questions in respect of the first applicant's fitness to continue practising as an officer of the court. I am of the view that the main application should be disposed of as soon as possible. The court would fail in its duty to the judiciary, the profession and more importantly the public, if the disconcerting allegations against the applicant are not promptly investigated by the court."

- [14] I agree with these sentiments.
- [15] The respondent contended that he is prejudiced in these proceedings with reference to the Lamna case for the liquidation of his previous firm. He is facing a liquidation of his firm. The LPC relies on facts which are markedly different from the facts relied upon in the Lamna liquidation proceedings. The respondent positively asserted to Reddy that he made payment of the Lamna funds to his three clients. This is a contention which turned out to be untrue. But, in the Lamna liquidation proceedings, the respondent makes no such allegation. The respondent cannot raise a prejudice argument if he is called upon to answer more than one application. He has to make a hard choice on whether to answer or not. I am satisfied that there is no substance to the purported prejudice raised by the respondent.

[16] The respondent can therefore not establish a prima facie right in his review application. There are no prospects of success in this regard as he is challenging decisions which do not affect the Council decision to bring the respondent's conduct to the attention of the court. And the Council decision does not fall within PAJA. Further, the balance of convenience does not favour the respondent. Rather, for the reasons set out above, the balance of convenience favours the LPC, the public interest and the LPIIF.

[17] Although not raised in argument by the respondent, he does contend in his heads of argument that the review application that he brings suspends the report to which it relates. This is not correct.

The former Rule 49(11) provided for such a suspension, but that Rule has been repealed. Where one is dealing with a decision which is reviewable in terms of PAJA, that decision will stand until set aside by a Court in judicial proceedings (*South African Broadcasting Corporation SOC Ltd and Others v Democratic Alliance and Others* 2016 (2) SA 522 (SCA) at par [45]).

[18] The stay application must therefore fail.

THE SUSPENSION APPLICATION

[19] The respondent was admitted as an attorney on 21 August 2017. He practised as a single practitioner under the style of Chabeli Molatoli Attorneys Inc at No. 2[...] V[...] W[...] Avenue, Corporate

Park 6[...], Centurion, Pretoria, Gauteng Province.

[20] The respondent converted his enrolment as an attorney to that of an advocate in terms of Rule 30 of the LPC Rules on 15 November 2022 and he closed his attorneys practice on 7 March 2023. He commenced

practising as Adv Chabeli Molatoli on 30 March 2023 and has chambers at First Floor, Sandton Close, 5th Street, Sandton, Gauteng Province. The respondent is a trust account advocate in terms of section 34(2)(b) of the Legal Practice Act.

[22] Mr Reddy brought out a report following his investigation and visit to the respondent's practice. He had regard to the application brought by Lamna Financial for the liquidation of the respondent's

practice. He had regard to the Council's records, including documents and information submitted by the respondent to

the Council concerning his trust bookkeeping in terms of Rule 54.23 of the LPC Rules.

[23] The respondent's bank statements for the period 1 January 2020 to 7 March 2022 were obtained from the respondent's bank in terms of section 91(4) of the LPA. Mr Reddy further obtained

information from the CIPC and SearchWorks. He had regard to representations made by the respondent during his meeting with Reddy on 19 September 2022. Mr Reddy also had regard to the incomplete accounting records and the bank statements provided by the respondent to Reddy.

[24] In the founding affidavit in the liquidation application, a director of Lamna Financial explained that Lamna Financial is a bridging finance house and is a registered credit provider. During the period March 2022 to May 2022 the respondent approached Lamna Financial for bridging finance, purportedly on behalf of his clients Gugu Precious Sikhosana, Modi Aslina Tshikila and Letsekang Arial Tetsoane.

[25] In third party proceedings the court had awarded Sikhosana an amount of R2 063 679.00 in respect of general damages and future loss of earnings and her legal costs. The court ordered the RAF to pay R1,5 million in respect of general damages and legal costs.

[26] Tetsoane was awarded an amount of R1 322 568.00 in respect of loss of earnings and legal costs.

[27] The court orders in favour of these successful plaintiffs, served as a form of security for purposes of bridging finance. All amounts advanced by Lamna Financial had to be repaid upon payment by the RAF of the amounts due to the clients in terms of the court

orders.

[28] The bridging finance agreements were discounting agreements. In each of the agreements the respondent provided an undertaking to Lamna Financial to repay the monies advanced upon receipt of the payments from the Road Accident Fund.

[29] The respondent approached Lamna Financial for bridging finance on behalf of Tshikila on 30 March 2022, recording that he was authorised to do so. In terms of an agreement concluded on behalf of Tshikila, Lamna Financial concluded an agreement in terms of which it advanced R200 000.00 for the benefit of Tshikila. The agreement bears a signature by Tshikila at Katlehong dated 30 March 2022.

[30] The respondent provided his undertaking to repay the money on 31 March 2022. Lamna Financial then paid the amount of R200 000.00 into the respondent's trust banking account.

[31] The respondent provided Lamna Financial with an agreement purportedly signed by Sikhosana on 13 April 2022. He provided his written undertaking to repay the monies on the same day. Lamna

Financial approved the request for bridging finance and paid an amount of R250 000.00 for the benefit of Sikhosana into the

trust account of the respondent on 13 April 2022.

[32] An agreement in respect of Tetsoane provided for bridging finance in the amount of R150 000.00 and it is purported to be signed by Tetsoane. The respondent handed the agreement and his written

undertaking to repay the monies to Lamna Financial on 26 May 2022. Lamna Financial approved the advance and paid the amount of R150 000.00 into the respondent's trust banking account on 27 May 2022. All the aforesaid agreements were personally

negotiated by the respondent with representatives of Lamna Financial (Pholo and Joffa).

[33] On 15 June 2023 the respondent requested further bridging finance for the benefit of Ms Sikhosana in an amount of R60 000.00.

[34] Mr Franck, a director of Lamna Financial, found it peculiar that the three applications for bridging be paid directly to the respondent's trust account and not the client's bank account, as is normally the case.

[35] Franck and Pholo independently traced Ms Sikhosana and obtained her contact details. Ms Sikhosana informed Franck and Pholo that she did not request the respondent to apply for bridging finance and did not

sign any documents relating to bridging finance.

[36] Franck and Pholo also traced and contacted Tshikila. Tshikila likewise informed them that she did not request bridging finance, did not sign any documents relating to bridging finance and did not instruct the respondent to apply for bridging finance on her behalf.

[37] Franck concluded that the respondent had acted fraudulently, had made

fraudulent misrepresentations to Lamna Financial when negotiating the bridging finance transactions and fraudulently used the names of his clients to obtain a financial benefit for himself.

[38] The Council of the LPC referred the complaint of Lamna Financial to the respondent for his comments and he responded by providing a copy of his answering affidavit in the liquidation application.

[39] In the answering affidavit the respondent disputed Lamna Financial's

locus standi and contended that Lamna Financial is not a creditor of his practice and that the bridging finance agreements were concluded between Lamna Financial and his clients.

[40] Lamna Financial's liquidation application served before the court on 12 July 2022 and was referred on certain aspects to oral evidence. This matter is still pending. The respondent provided Reddy with his bank statements and proof of payments allegedly made to the account in respect of the bridging

finance.

[41] The particulars of these payments by the respondent to the clients were not contained in the answering affidavit to the liquidation application.

[42] Reddy obtained the respondent's trust bank statements for the period 1 January to 31 May 2023 directly from the respondent's bank, First National Bank (FNB). Upon inspection he found that

the trust bank statements differed from the trust bank statements provided by the respondent to Mr Reddy for inspection.

[43] The trust bank statements obtained from FNB reflected that the respondent received the payments from Lamna Financial into his trust banking account and then transferred the monies from his trust banking account to his business banking account, alternatively to another bank account held at FNB and linked to the respondent's

banking profile.

[44] Reddy found that the respondent had falsified the narration of transaction on the trust bank statements that were handed to him for inspection. He did not make the alleged payments to Sikhosana, Tshikila and Tetsoane and he falsified the entries on his trust bank statements to reflect such payments. The respondent likewise falsified the proof of payment which he provided to Reddy.

[45] Based on the aforesaid there was evidence of misconduct and the transgression of a multitude of the LPC's Rules and Code of Conduct.

[46] In respect of the client Sikhosana, Reddy compared the trust bank statements that he received from FNB and noted payments to Sikhosana in the amount of R1 095 304.31. This amount represents 23,34% of the capital award paid by the RAF to the respondent.

[47] Reddy found that the trust bank statements provided by the respondent

for inspection were falsified in order to understate the capital award paid to him by the RAF in respect of Sikhosana's third

party claim.

[48] In respect of the third-party claim of Tshikila, the trust bank statements handed by the respondent to Reddy reflected that the respondent did not receive any payment from the RAF as the proceeds of his third-party claim.

- [49] The trust bank statements provided by FNB however reflected a payment by the RAF to the respondent's trust banking account on 6 February 2023 in an amount of R851 109.55 for client Tshikila
- [50] The respondent therefore amended and falsified a set of trust bank statements regarding the receipt of R851 109.55 from the RAF.
- [51] Reddy's investigation found that there was a trust deficit in the respondent's bookkeeping as at 7 March 2023 in an amount of R1 851 456.32.
- [52] Even if the monies paid by Lamna Financial into the respondent's trust banking account were not trust funds, there was a still a trust deficit in the respondent's bookkeeping in an amount of R1 251 456.32.
- [53] Following a Deeds Office Search and comparison to the trust bank statements, Reddy found that the respondent had purchased an immovable property described as Erf 6[...] M[...] Ext. 6 on 13 January 2023 for an amount of R1 300 000.00. The respondent paid the purchase price of the property directly from his trust banking account. He also paid his office rental directly from his trust banking account. He paid R360 000.00 to his landlord on 24 February 2023 directly from his trust account.
- [54] The trust deficit in the respondent's bookkeeping was found to be the result of irregular payments by the respondent from his trust banking account and irregular and excessive transfers effected by the respondent from his trust banking account to his business banking account.
- [55] This constitutes a contravention of Rule 54.14.14 of the LPC Rules.
- [56] Reddy found that the respondent contravened at least the following provisions of the Legal Practice Act, the LPC Rules and the Code of Conduct:
- 56.1 Rule 54.32 of the LPC Rules, in that he failed to submit his closing auditors report to the Council timeously, within 3 (three) months of the closure of his practice;
- 56.2 Rule 54.6 of the LPC Rules, in that he failed to maintain proper accounting records in respect of his practice which reflect all assets and liabilities;
- 56.3 Section 87(1) of the LPA, in that he failed to maintain proper accounting records in respect of his practice which reflect all assets and liabilities;
- 56.4 Rule 3.1 of the Code of Conduct, in that he failed to maintain the highest standard of honesty and integrity by furnishing the Council and its Inspector with falsified trust bank statements and proof of payments;

56.5 Rule 3.15 of the Code of Conduct, in that he brought the legal profession into disrepute by falsifying documents and statements;

56.6 Rule 54.14.8 of the LPC Rules, in that he failed to ensure that the total amount of money in his trust banking account, trust investment account and trust cash at any date was not less than the total amount of the credit balances of his trust creditors;

56.7 Rule 54.14.14 of the LPC Rules, in that he failed to ensure that withdrawals from his trust banking account are only made in respect of payments to or for a trust creditor, alternatively as transfers to the business banking account in respect of monies due to his firm.

[57] The LPC provided the following summary of contraventions by the respondent.

57.1 Code of Conduct:

57.1.1 Rule 3.1, by failing to maintain the highest standards of honesty and integrity;

57.1.2 Rule 3.3, by failing to treat the interests of his clients or members of the general public as paramount;

57.1.3 Rule 3.4, by failing to honour undertakings given by him;

57.1.4 Rule 3.5, by failing to refrain from doing anything in a manner prohibited by law or by the Code of Conduct;

57.1.5 Rule 3.8, by failing to account faithfully, accurately and timeously for any monies or clients or members of the general public;

57.1.6 Rule 3.15, by bringing the legal profession into disrepute;

57.1.7 Rule 3.16, by failing to pay his annual fees to the Council;

57.1.8 Rule 3.18.2, by failing to comply with the requests of the Council;

57.1.9 Rule 3.18.3, by failing to comply with the directions of the Council;

57.1.10 Rule 3.18.4, by hampering the ability of the Council and its Inspector to carry out their functions.

57.2 LPC Rules:

57.2.1 Rule 54.6, by failing to keep proper accounting records in respect of his practice;

57.2.2 Rule 54.11, by failing to keep trust monies separate from other monies;

57.2.3 Rule 54.13, by delaying the payment of trust funds;

57.2.4 Rule 54.14.7, by failing to implement and retain adequate internal

controls to ensure compliance with the LPC Rules and to ensure that trust funds are safeguarded;

57.2.5 Rule 54.14.8, by having a trust deficit in his bookkeeping;

57.2.6 Rule 54.14.10, by failing to report a trust deficit in his bookkeeping to the Council;

57.2.7 Rule 54.14.12, by failing to employ and maintain a system to ensure

that the requirements of the LPC Rules are not infringed when amounts are transferred from the trust banking account to the business

banking account;

57.2.8 Rule 54.14.14, by making irregular withdrawals from his trust banking account;

57.2.9 Rule 54.14.14.2, by effecting irregular and excessive transfers from his trust banking account to his business banking account;

57.2.10 Rule 54.15.1, by failing to extract monthly lists of trust creditors and to compare the total of the lists to the credit of the firm's trust banking account, trust investment account and trust cash;

57.2.11 Rule 54.10, by failing to ensure compliance with the provisions of the LPA and the PLC Rules.

57.3 Legal Practice Act:

57.3.2 Section 37(2)(b), by refusing to produce all books, documents and statements to the Council and its Inspector after having been instructed to do so;

57.3.3 Section 87(5)(b), by refusing to provide the Council and its Inspector with the complete accounting records of his practice.

57.4 The aforesaid transgressions amounted to transgressions of the LPC Rules, the Code of Conduct and the LPA and constituted an offence in terms of section 93(9) of the LPA.

57.5 An Investigating Committee of the Council considered the respondent's

conduct and the Reddy report and referred the matter to Council for further consideration in terms of section 37(3)(a) of the LPA, read with section 43 of the LPA.

57.6 After consideration of these facts, Council concluded that the aforesaid complaints, whether considered alone or cumulatively, indicated that the respondent was guilty of unprofessional, dishonourable, or unworthy conduct. The Council also found that the respondent's conduct reveals character defects that preclude the respondent from continuing to practice as an advocate.

[58] The LPC applies for the suspension of the respondent, the appointment of a curator bonis and costs of the application on an attorney and client scale.

[59] Rather than answer the above case, the respondent has brought an application to stay the application pending a review of Reddy's report and the acceptance of that report by the Investigation Committee of the Council.

[60] In the absence of an explanation by the respondent and countervailing

evidence, the evidence presented by the LPC establishes misappropriation of trust funds and further conduct inconsistent with the professional character requirements of honesty and integrity for a legal practitioner. This conduct establishes prima facie that the respondent poses a risk to the legal profession, the public and the Legal Practice Indemnity Insurance Fund. His suspension from practice is warranted.

[61] In the premises I make the following order:

1. The application for a stay of the Legal Practice Council's suspension application as set out in Part A of the notice of motion is dismissed with costs.
2. In case number 2024/037762 I grant an order suspending the respondent from practice as legal practitioner in terms of the draft order appearing on CaseLines in case number 2024/027752 at CaseLines 07-12 to 07-21.

LABUSCHAGNE, AJ

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