

SOUTH AFRICA / JUDGMENT

S v Philander and Others (Special Review) (29/2025) [2025] ZAWCHC 291 (6 June 2025)

[2025] ZAWCHC 291

COURT

Western Cape High Court, Cape Town

BEFORE

Le Grange, Holderness

CASE / FILE NUMBER

29/2025

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IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE DIVISION, CAPE TOWN)

REPORTABLE

Regional

Court Case no: SHB

154/2;

SHD

49/20;

SHE

109/23;

SHE

116/23;SHB 140/21.

Special

review no: 29/2025

In

the matter between: THE
STATE
and
1.
RYAN PHILANDER
2.
RICARDO CARTER
3.
MUSTAPHA HENDRICKS
4.
SIMONE BAREND
5.
NICO STOFBERG

Coram: Le Grange J et Holderness J

Received: 5 March 2025/16 May 2025

Delivered: 6 June 2025
Summary: Special
review- accused represented in the regional court by advocate who had
no right of appearance after his name
was struck from roll of legal
practitioners – whether court proceedings are a nullity.

JUDGMENT

DELIVERED: 6 JUNE 2025

Le Grange J

- [1] The matter of S v Philander came before us on special review at the request of the regional magistrate of Wynberg (the regional magistrate). It came to our attention that there are other matters facing the same difficulty. Four matters were subsequently placed before us. We have decided to prepare one judgment covering all five matters.
- [2] The accused, Mr. Rian Philander (Philander) was arrested on 5 September 2023 and charged with one count of murder and one count of attempted murder. He pleaded not guilty to both charges. The accused is currently out on bail.
- [3] At all relevant times since his arrest Philander was represented by a former advocate, Mr. Patrick Scott (Scott).
- [4] On 26 November 2024 the regional magistrate addressed an e-mail to the Legal Practice Council: Western Cape (the LPC) stating it had come to his attention that the Western Cape High Court had struck Scott off the roll of advocates.
- [5] On 5 December 2024, the LPC confirmed by email that:

5.1 In terms of a judgment handed down on 29 October 2021, Scott was struck from the roll of advocates following an application by the Cape Bar Council (the CBC) to have him removed.

5.2 To her knowledge he has not appealed the judgment. The CBC confirmed that they have not received any application for leave to appeal.

5.3 The CBC confirmed that Scott is neither an admitted advocate, nor a member of the Cape Bar Council.

[6] The basis of the special review is set forth in the cover letter by the regional magistrate wherein the following was recorded:

‘1. The accused appeared before me in regional court B on a charge of murder. The accused is out bail. Advocate P Scott is the legal representative for the accused.

2. One state witness testified. The witness was duly cross-examined by Adv Scott. The case was adjourned until 7 February 2025 for further evidence.

3. It only came to light before the second witness testify (sic) that Advocate Scott was struck from the roll of advocates by the High Court of the Western Cape in Cape Town on 29 October 2021.

4. The matter is now referred to the High Court for review and the Honourable Judge for guidance (sic).

5. Attached find a copy of the charge sheet.’

[7] According to the regional magistrate, four of the five cases are partly heard, and one is at sentence stage.

[8] The regional magistrate confirmed that since November 2024, Scott failed to appear in any of these matters after it became known that he was struck from the roll. According to the regional magistrate, this is but the tip of the iceberg as there are several matters pending in different courts, awaiting the outcome of this review, where Scott appeared whilst being struck from the roll of advocates.

[9] The main reason Scott, a legal practitioner of 20 years’ standing was struck from the roll of advocates was because of his direct interaction with a client during 2014 and 2015 and the receiving of funds without an instructing attorney. This happened before the commencement of the Legal Practice Act 28 of 2014 (LPA) when there was a clear divide between the attorneys and advocates profession. At the time our law recognised a divided profession coupled with the referral system. In terms of that system an advocate may, (save in certain exceptional circumstances which is not relevant in these cases) only accept instructions from an attorney[1]. Advocates, unlike attorneys, were not obliged to operate trust accounts nor were they required to hold fidelity fund trust certificates.

- [10] It is well known among legal practitioners that the obligations to hold trust accounts and fidelity fund trust certificates operate for the protection of the public and to ensure that there was a proper account for monies received and an insurance fund against which a claim could be lodged. During the referral system the public had simply no such protection under the fund when monies were received by an advocate [2].
- [11] The complaint against Scott was about his acceptance of monies directly from a client, to prosecute an appeal. Scott appeared on behalf of the client during the trial. The client was convicted of murder, the unlawful possession of a firearm and sentenced to a long term of imprisonment. The appeal was never prosecuted and lapsed.
- [12] Scott blamed the instructing attorney for not following the necessary steps to prosecute the appeal. In turn, the attorney blamed Scott for consulting directly with the client and accepting fees without his knowledge. It is not in dispute that the client subsequently obtained judgment in the small-claims court against Scott in the amount of R10 000. The monies were allegedly for the fees paid to prosecute the appeal. The Court in striking Scott from the roll of advocates, made

the following remarks[3]:

“[10.1] The respondent’s dishonesty in deposing to this answering affidavit, that he accepted monies directly from Maritz and that he interacted with clients directly without the intervention of an attorney, leads to the conclusion that (i) the impugned conduct was established and that (ii) the respondent is not a fit and proper person to continue with practice.”

At para 22 and 24 it continued:

“The respondent’s attitude towards the proceedings was almost contemptuous, and lacked a discernible appreciation of the seriousness of the matter...”

The respondent’s failure to appreciate the wrongfulness of his conduct and absence of true remorse weighed heavily with the Court. These factors indicated that a recurrence of the offending conduct was highly probable.”

- [13] As the prosecuting authority has a direct and substantial interest in the outcome of these matters, the opinion of the Director of Public Prosecutions, Adv Bell, was sought and obtained. I would like to express our gratitude to Advocates Friester Sampson and Hendry-Sidaki for the comprehensive memorandum furnished to this Court.
- [14] The DPP recorded that due to the serious nature of the crimes the accused are facing, i.e. Murder, Rape, Attempted Murder and the unlawful possession of firearms and ammunition, in which Scott appeared, the DPP will reinstate proceedings against all the accused de novo, in the event the proceeding are declared a nullity.
- [15] The DPP further submitted that, notwithstanding the contentions in the memorandum by the regional magistrate, the general empowering legislation, s 304(4) of the Criminal Procedure Act, 51 of 1977[4], upon which magistrates ordinarily rely to send matters on

review find no application in the present instance. According to the DPP the matters should be considered within the review process as envisaged in s 22 of the Superior Courts Act 10 of 2013, which provides a numerus clausus for the review of proceedings of the Magistrates' Court.

[16] Section 22 of the Superior Courts Act reads as follows:

"22 Grounds for review of proceedings of Magistrates' Court

- (1) The grounds upon which the proceedings of any Magistrates' Court may be brought under review before a court of a Division are –
 - (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and
 - (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.
- (2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates' Courts."

[17] The DPP further recorded the following: Scott came on record at different stages of the proceedings on review; new legal practitioners have since been appointed to appear for the individual accused and where necessary the record of proceedings have been transcribed for the benefit of the accused and his legal representative; the setting aside of the entire proceedings in each case can have serious unintended consequences for the prosecution, i.e. accused persons will be released from custody and need to be rearrested which may cause further delay, witnesses will have to be recalled and be cross-examined again, most matters are gang-related and there is a real fear that some accused may interfere with state witnesses which will cause them not to re-testify due to legitimate fear for the lives; the re-hearing of all the matters will place an unnecessary burden on already limited resources and the undue delay in finalising cases may bring the administration of justice into disrepute.

[18] The DPP requested that each case be considered on its own merits to determine whether the appearance by Scott was so grossly irregular that it tainted the entire proceedings with unremitting impropriety.

[19] The submissions made by the DPP are persuasive. Firstly, it is obvious the irregularity complained of does not fall under s 304(4) of the CPA as that provision and cross references to s 303 and 302 of the CPA relates to sentences which are subject to review in the ordinary course. In the present instance, the correct process to follow falls squarely under s 22(c) of the Superior Courts Act which contemplates 'gross irregularity in proceedings'. The latter however does not preclude a High Court from using its inherent powers to restrain

illegalities in lower courts [5].

[20] Secondly, the right to a fair trial is a right that not only has consequences for an accused person but also extends to others who have an interest in the criminal justice system. Our Apex court in *Thebus v S*[6] held that:

“Although a principal and important consideration in relation to a fair trial is that the trial must be fair in relation to the accused, the

concept of a fair trial is not limited to ensuring fairness for the accused. It is much broader. A court must also ensure that the trial is fair overall, and in that process, balance the interests of the accused with that of society at large and the administration of justice”.

[21] With these established rules as guidelines, the question now is whether in each of the five cases, the court proceedings fall to be reviewed and set aside.

[22] The legislative scheme regarding the appearance of legal practitioners in criminal matters can be summarised as follows. In terms of Section 35(3) of the Constitution an accused person has the right to be represented by a legal practitioner of his or her choice. Section 73(2) of the Criminal Procedure Act 51 of 1977 (the CPA) reinforces that right and provides that:

‘An accused shall be entitled to be represented by his legal adviser at criminal proceedings, if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.’

[23] In terms of Section 33(1) of the LPA:

‘Subject to any other law no person other than a legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward:

(a) appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear;’

[24] In addition, Section 33(4), of the LPA provides that:

“A legal practitioner who has been struck off the Roll or suspended from practice may not –

(a) render services as a legal practitioner directly or indirectly for his or her own account, or in partnership, or association with

any other person, or as a member of a legal practice; or

(b) be employed by, or otherwise be engaged, in a legal practice without the prior written consent of the Council...”

[25] It is also an offence, in terms of s 93 of the LPA, to contravene sections 33 and 34 thereof and upon conviction liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

- [26] Scott did not obtain any written consent from the LPC after he was struck from the roll. He also failed to prosecute an appeal against the said order. Scott has clearly contravened s 93 of the Act, which is a punishable offence.
- [27] A similar situation recently arose in *S v Mkhize*[7] (Mkhize). In that matter Mkhize was represented at his criminal trial by an attorney that had no entitlement or right to do so, given the LPC has suspended the attorney from practicing. The court at paragraphs [8]-[13] essentially held that where a legal practitioner is under suspension by the LPC, the proper administration of justice will fall into disrepute, if legal practitioners are permitted to appear without consequence before the courts. It ultimately reviewed and set aside the entire proceedings. According to the court, the irregularity occurred was so profound and serious that the proper administration of justice and dictates of public policy require the proceedings to be regarded as fatal and not in accordance with justice.
- [28] Mkhize is but one of a long line of cases wherein it was held that the lack of authorisation or temporary suspension of a legal representative to appear on behalf of accused persons in criminal proceedings constitutes a fatal irregularity which per se necessitated the rescission of the criminal proceedings, although the representatives concerned had the required academic qualifications[8].
- [29] Recently, in *S v Goitseone Serache and Others*[9], (Serache) the Full Court in the Northwest Division considered a similar question. In that matter the accused persons were charged with robbery, with aggravating circumstances and a count of malicious injury to property. They were all represented by an attorney of that Court without being in possession of a valid fidelity fund certificate. All the accused were convicted and sentenced to long terms of imprisonment. The attorney was last issued with a fidelity fund certificate on 3 April 2014 and practised for almost a decade without a valid certificate.
- [30] On review, the minority held that the act of practising without a fidelity fund certificate as required by s 84(1) of the LPA is not only a criminal offence in terms of s 93(8), but a violation of the accused's fair trial rights. Accordingly, it held that it is an irregularity so fundamental and serious that public policy, and the proper administration of justice, demands that the proceedings to be set aside in their totality.
- [31] The majority reasoned differently and adopted the approach followed in *NW Civil Contractors CC v Anton Ramaano Inc & Another*[10] (NWC Civil Contractors) where s 41(1) of the Attorneys Act 53 of 1979[11] came under scrutiny, which was the forerunner of s 84(1) of the LPA.
- [32] In *NWC Civil Contractors*[12] the SCA held that two consequences follow for practising without a fidelity fund certificate, namely, disentitlement to a fee for the work done and a criminal conviction. It further considered the reasoning in *Oilwell (Pty) Ltd v Protec International Ltd*[13], where Harms DP referred to *J Voet Commentarius ad Pandectas* 1.3.16 (Gane's translation), who said:

“Things done contrary to the laws are not ipso jure null if the law is content with enacting a penalty against transgressors.”

[33] The SCA ultimately held the court proceedings in the matter under discussion were not void ab initio as a visitation of nullity was not contemplated by the Act.

[34] The majority in Serache found on a proper interpretation of s 84 of the LPA, the primary aim is to protect the public against financial misconduct, such as the

misappropriation of trust funds, rather than regulating a practitioner’s competence to represent clients in court. It further held that: ‘the legislature intended non-compliance with s 84 to attract criminal sanctions against the practitioner and not to invalidate judicial proceedings; the regulatory compliance with financial rules is separate from courtroom competence and an accused would have to demonstrate specific instances of deficient performance tied to the trial’s outcome to challenge its fairness, rather than relying on the lateral issue of the fidelity fund certificate; that absent such evidence, the trial’s legitimacy remains intact, as fairness is assessed by the judicial process, not speculative inferences about counsel’s overall professionalism’[14]. Ultimately, the majority held that the court proceedings were not a nullity as contemplated by the Act.

[35] The latter approach is sobering and considerably different from previous authorities. In Mkhize, the reasoning in NW Civils Contractors CC was not considered or followed. In my view the reasoning of the SCA is not only convincing but binding on this court. The issue is whether that approach should apply in the present instance.

[36] Advocates are obliged to strictly adhere to the referral rule[15]. It is trite that, before the commencement of the LPA, there was no obligation upon advocates to operate trust accounts, nor were they required to hold fidelity fund trust certificates, the primary purpose of which was to protect the public and to reimburse clients of legal practitioners who may suffer pecuniary loss due to the theft of money or property entrusted to them. The latter protection encourages the public to use the services provided by legal practitioners with confidence.

[37] Scott’s conduct undeniably places the entire legal profession into disrepute. His failure to uphold the ethical standards of the legal profession is cause of grave concern. Courts decry such conduct. Had the true position been known, he would not have been permitted to participate in the court proceedings. His conduct certainly amounts to an offence which should be reported to

the relevant authorities.

[38] Despite the long line of decided cases where the setting aside of the court proceedings was the result, the question remains if that would be the proper approach to follow in these circumstances? I do not think so.

[39] The starting point must be what the Legislature contemplated in s 33(4) of the LPA. On a proper construction of s 33(4) read with s 93(7)(c) the Legislature contemplated two consequences for practising advocates when struck from the roll. The first is the disentitlement to a fee for the work done and secondly a criminal conviction. The Act does not envisage the nullity of court proceedings if such conduct had been established. The Legislature has rather criminalised

such conduct. It is therefore not open to this court, no matter how deplorable the conduct of Scott, to simply nullify court proceedings

if the Legislature did not intend to do so[16]. Each case must be decided upon its own facts, to determine if the proceedings demonstrate specific instances of serious deficiency tied to the trial to challenge its fairness. Absent such evidence, the trial's

legitimacy remains intact, as fairness must be assessed in its broader terms in the judicial process.

[40] In my view, such an approach is consistent with the principle that 'things done contrary to the laws are not ipso jure null and void if the law is content with enacting a penalty against transgressors.' In addition, the consideration whether "greater inconveniences and impropriety would result from the rescission of what was done, than would follow the act itself done contrary to the law" must also be a factor to consider.[17]

[41] Courts in our country are obliged to ensure that proceedings before them are always fair. However, the concept of a fair trial is not limited to ensuring fairness for the accused. It is much broader. The interest of society and proper administration of justice are also factors that cannot be ignored.[18]

[42] It is obvious Scott appeared for more than 3 years with impunity in the lower courts. In all these matters, however, the accused instructed Scott out of their own free will. They trusted him to conduct their defences. There is no evidence to suggest that his mere appearance demonstrably prejudiced the integrity of the trial proceedings. From the record it appears Scott discharged his duties properly and efficiently. There is no indication that the integrity of the court proceedings was compromised by his incompetence or that he failed to execute on his mandate.

[44] To adopt an approach now that all the work done by Scott in executing or purporting to execute the mandates of the accused in these proceedings is a nullity will have far-reaching consequences

that could undermine the proper administration of justice. In my view a 'greater inconvenience and impropriety would follow if the proceedings were summarily set aside'.

[45] Our courts operate on the presumption that practitioners are compliant unless proven otherwise. It appears the magistrates were unaware of Scott's status. A magistrate's role is largely that of a trier of fact, to pronounce on disputes and to uphold legal standards and the

law. A magistrate's function is not to audit the credentials of legal practitioners appearing before them, although there is nothing wrong, when the circumstances warrant it, to call for their credentials. That however should be the exception. The auditing of legal practitioners' credentials is primarily a matter for the LPC, and the broader legal profession. In this instance there is no indication from the LPC that they alerted the public, the broader legal profession or the magistracy about the Scott's position. The magistrates' conduct in these proceedings are therefore beyond reproach.

[46] Turning to the individual matters:

The State versus Ryan Philander (SHB 154/23)

The accused was arrested on 19 February 2023 and first appeared in the regional court on 5 September 2023 on charges of murder and attempted murder. the regional magistrate had been on record before the trial proceedings commenced. on 2 July 2024, the accused pleaded not guilty to both charges. Gleaning from the record, the state presented one state witness on 8 November 2024 which was duly cross-examined by Scott. The matter was thereafter postponed for further trial to 7 February 2025. On the latter date, the matter was sent on review. In the trial proceeding there is nothing to suggest that the impropriety of Scott's conduct tainted the proceedings as it stands. In any event, according to the DPP a new legal representative had been appointed and ready to proceed with the further trial. There is no indication that the proceedings before the magistrate during the trial was irregular and not in accordance with justice. It follows that there is no legitimate reason to interfere in the proceedings, and the matter is referred to the magistrate to resume proceedings until its conclusion.

The State versus Ricardo Carter (SHD 49/20)

The accused was arrested in October 2019 and first appeared in the regional court on 4 March 2020 on a charge of murder. The accused pleaded not guilty on 25 February 2022 to a count of murder. Whilst the proceedings were partly-heard the accused on 2 February 2023 terminated his former legal representative's mandate and Scott came on record. He confirmed receiving all the necessary instructions

and particulars to proceed with the trial. After hearing evidence over a period, the accused was convicted on 4 October 2024, and the matter was postponed for sentence proceedings. Since then, Scott failed to appear. Mr van Vogt since 27 November started to appear for the accused and awaiting the outcome of the review proceedings. Considering the trite principles pertaining to judicial reviews, there is no suggestion that the magistrate may have misapplied the facts or misinterpreted the law or committed a gross irregularity in the proceedings to date.

In fact, the DPP commented that this was a particularly difficult trial in that a key witness soiled herself during her evidence for fear of the accused.

This is one of those cases where substantial inconvenience and impropriety will result if the proceeding are set aside due to the infractions committed by Scott. It follows that no irregularities had been established before the magistrate that warrants inference by this court on review.

The State versus Mustapha Hendricks (SHE 109/23)

The accused was arrested on 27 November 2022 and first appeared in the regional court on 6 June 2023 on 2 charges of murder and 5 charges of attempted murder committed on 24 August 2022. The accused is in custody since his arrest.

The accused terminated his former legal representative's mandate on 19 September 2024. Scott came on record. on that day, a plea of not guilty was entered on the record. The trial commenced and one state witness was led and cross-examined by Scott. There is no evidence to suggests that the appearance of Scott tainted this part of the trial proceedings with impropriety amounting to a gross irregularity. A new legal representative was appointed on behalf of the accused and willing to proceed with the trial. There is no indication that the accused fair trial rights were compromised. The proceedings so far were in accordance with justice and the matter is referred to the trial magistrate to resume with the proceedings.

The State versus Simone Barend (SHC 116/23)

The accused was arrested on 3 September 2022 and first appeared in the regional court on 26 June 2023 on a charge of murder. Scott has been on record since the first appearance in the Regional Court. The accused was released on bail.

The trial commenced on 20 November 2023. Various admissions were made on behalf of the accused by Scott. The accused tendered a plea of not guilty and indicated he acted in self-defence.

The State called one witness so far and was extensively cross-examined by Scott.

Scott requested to withdraw from the matter on 19 August 2024 for lack of financial instructions. His request was granted, and the legal aid attorney who come on record received a transcript of the proceedings. On 8 November 2024 the practitioner and the State confirmed their readiness to proceed with the partly heard matter.

There is nothing to suggest that the accused's fair trial rights were compromised or the integrity of the proceedings tainted by Scott's conduct. It follows that proceedings thus far were in accordance with justice and the trial must proceed until its logical conclusion.

The State versus Nico Stoffberg (SHB 140/21)

The accused was arrested on 7 July 2020 and first appeared in the regional court on 10 August 2021 on charges of possession of a

firearm and ammunition. The accused was represented by different legal representatives before Scott came on record.

The accused was granted bail but failed to appear in court. On 3 May 2020 his bail was finally forfeited to the state. The accused was brought before the court on a warrant of arrest on 8 December 2022 and since remained in custody.

The matter was postponed on several occasions for legal representation and on 8 November 2023 Scott came on record. After several postponements the accused pleaded not guilty. The state called one state witness who was duly cross-examined by Scott. The matter was postponed to 21 January 2025 for further trial. On that date Mr. Van Voight appeared on behalf of the accused on instructions of the family. He indicated that Scott had problems and could not proceed. The matter was subsequently postponed for the outcome of these review proceedings.

In this matter, there is no evidence to support the notion that Scott's appearance tainted the trial proceedings amounting to a gross irregularity. It follows that the proceedings so far before the trial court is in accordance with justice and must proceed until its conclusion. The matter is referred to the magistrate to deal with the matter until its conclusion.

[47] To conclude, it needs to be mentioned that given the inordinate timeline Scott continued to practise in contravention of section 33(4) of the LPA, does not bode well for the proper

administration of justice. Courts are not there to act as enforcers to ensure that legal practitioners comply with administrative

credentials. That is the primary task of the LPC and the legal profession at large. Failing to do so will not only bring the administration of justice into disrepute it will also subvert the rule of law.

[48] For all the abovementioned reasons, the proceedings as it stands in each individual case are in accordance with justice and must proceed until its logical conclusion.

[49] In the circumstances the following order is made:

1. The proceedings instituted against all the above-mentioned accused are herewith removed from the roll. The respective matters are returned to the individual magistrates to proceed with it until its logical

conclusion.

2. The Chief Registrar must send a copy of this judgment to the Legal Practice Council, Western Cape to consider whether further disciplinary steps and or criminal charges needs to be taken against Mr Patrick Scott.
3. The Chief Registrar must also send a copy of the judgment to the Regional Court President, and the different Chief Magistrates in the Province for their attention.

I agree.

Holderness, J

It is so ordered.

Le Grange, J

[1] See Commissioner, Competition Commission v General Council of the Bar of South Africa and Others 2002

(6) 606 (SCA) at 620C-D); Noordien v Cape Bar Council and Others (9864/2013

[2015] ZAWCHC 2 (13 January 2015)

[2] De Freitas and another v Society of Advocates of Natal and Another 2001

(3) SA 750 (SCA).

[3] The Cape Bar Council and Patrick Scott (WCHC Case no 728/2017) at para 20

[4] S 304(4) provides: If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to

review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.

[5] Wahlhaus and Others v Additional Magistrate, Johannesburg and Another 1959 (3) SA 113 (A) at 119G ; The authors of Gardiner and Lansdown also opined: 'While a Superior Court having jurisdiction in review or appeal will be slower to exercise any power, whether by mandamus or otherwise, upon the unterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained ... In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available.'

[6] Thebus v S [2003] ZACC 12; 2003

(6) SA 505 (CC) at para [127] per minority judgment of Kollapen J (Mlambo AJ concurring)

[7] (Special Review) (RC552/2024; 15/2024) [2024] ZAKZPHC 123 (23 December 2024).

[8] See Dlamani en 'n Ander 2008 (2) SACR (T); S v Khan 1993

(2) SACR 118 (N); S v Gwantshu and Another 1995

(2) SACR 384 (E); S v La Kay 1998

- (1) SACR 91 (C); S v Nkosi en Andere 2000
- (1) SACR 592 (T); S v Stevens en 'n Ander 2003
- (2) SACR 95 (T); S v Tume and Others (188/2004) [2006] ZANCHC 12 (24 February 2006); S v Nghondzweni 2013
- (1) SACR 272 (FB) and S v Swapi and Others (14/14, RCZ 300/13, 6/2014) [2015] ZAECBHC 23 (1 September 2015); S v Van der Sandt
- [2016] JOL.
- [9] HC 12/2025 delivered on 6 May 2025.
- [10] 2020
- (3) SA 241 (SCA) (14 October 2019)
- [11] S 41(1) provided that 'A practitioner shall not practise or act as a practitioner on his [or her] own account or in partnership unless he [or she] is in possession of a fidelity fund certificate'
- [12] at para [19].
- [13] 2011
- (4) SA 394 (SCA).
- [14] See Serache *ibid* at para 44 and further.
- [15] De Freitas and Another v Society of Advocates of Natal and Another SA 750 (SCA) 2001 (6): Rösemann v General Council of The Bar of South Africa
- [2003] ZASCA 96 (26 September 2003).
- [16] NW Civils Contractors, *ibid*
- [17] See: NW Civil Contractors CC at para 19.
- [18] See Thebus *supra*.

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