

SOUTH AFRICA / JUDGMENT

Selota v SALPC (658/2020) [2021] ZASCA 169 (3 December 2021)

[2021] ZASCA 169**COURT**

Supreme Court of Appeal

BEFORESaldulker, Mathopo, Van der Merwe, Mokgohloa,
Weiner**CASE / FILE NUMBER**

658/2020

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**JUDGMENT**

Not reportable

Case no: 658/2020

In the matter between:

MAMOLATELO ALFRED SELOTA APPELLANT

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL RESPONDENT

Neutral citation: Selota v SALPC (Case no 658/2020) [2021] ZASCA 169 (3 December 2021)

Coram: SALDULKER ADP and MATHOPO, VAN DER MERWE and MOKGOHLOA JJA and WEINER AJA

Heard: 19 November 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. It has been published on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down is deemed to be 09h45 on 3 December 2021.

Summary: Appeal – appellant sought a declarator that he was entitled to Fidelity Fund certificate for 2019 – decision would have no practical effect or result within the meaning of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 – matter struck from roll.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Van Olst AJ sitting as court of first instance):

1 The application for condonation and reinstatement of the appeal is dismissed with costs.

2 The main matter is struck from the roll with costs.

Van der Merwe JA (Saldulker ADP and Mathopo and Mokgohloa JJA and Weiner AJA concurring)

- [1] After hearing the parties on 19 November 2021, we made the order set out above and indicated that reasons for the order would follow. These are the reasons.
- [2] The appellant, Mr Mamolatelo Alfred Selota, was admitted as an attorney on 1 August 2008. He subsequently practised for his own account under the name MA Selota Attorneys. During June 2018, however, the respondent, the South African Legal Practice Council established under s 4 of the Legal Practice Act 28 of 2014 (the LPA), launched an application in the Gauteng Division of the High Court, Pretoria for an order removing the appellant from the roll of attorneys and for ancillary relief (the main application). The application was based on a variety of grounds. Apart from complaining that the appellant had practised as an attorney without a Fidelity Fund certificate in contravention of s 84(1) and (2) of the LPA, the respondent inter alia alleged that an expert's inspection of the appellant's books had revealed substantial and persistent trust fund deficits and debit balances on clients' trust accounts. It also averred that the appellant had touted for work and overreached his clients. The main application was eventually set down for hearing on 21 November 2019.
- [3] Shortly before that date, however, the appellant issued the application that is directly relevant to this judgment. The application was brought on an urgent basis, to be heard together with the main application. The appellant essentially prayed for an order declaring that he was entitled to a Fidelity Fund certificate for the year 2019. This application was eventually heard on 17 February 2020 by Van Olst AJ, who on 9 March 2020 dismissed it with costs on the attorney and client scale, but subsequently granted leave to the appellant to appeal to this Court. The appeal was set down for hearing on 19 November 2021. However, the appellant failed to timeously file heads of argument in this Court. Consequently, the appeal lapsed in terms of rule 10(2A) of the rules of this Court. As a result, the appellant filed an application for condonation of the late filing of his heads of argument and for reinstatement of the appeal. The respondent opposed this application.
- [4] In the meantime, on 7 February 2020, Rabie J and Avvakoumides AJ ordered the suspension of the appellant from practising as an attorney pending the finalisation of the main application (the suspension order). It can be accepted that it was mainly based on the fact that the appellant had practised without a Fidelity Fund certificate. That court refused leave to appeal against the suspension order, as did this Court. Several further attempts by the appellant to overturn the suspension order came to naught. The President of this Court refused an application under s 17(2)(f) of the Superior Courts Act 10 of 2013 for the reconsideration of the refusal of leave to appeal on petition. The Constitutional Court turned

down an application for leave to appeal as well as a subsequent application for leave to adduce further evidence and for reconsideration of its decision to refuse leave to appeal. The last of these orders was dated 31 March 2021. Counsel for both parties informed us from the Bar that the main application had been allocated to a judge for case management and expedition of the determination thereof and that it was ready to be heard.

[5] It is common cause that the respondent never issued a Fidelity Fund certificate to the appellant for 2019, on the ground that it was not satisfied that the appellant had complied with the provisions of Chapter 7 of the LPA in respect of the handling of trust monies. In terms of s 85(6)(a) of the LPA it had to be so satisfied before it could issue the certificate. Section 85(7) provides that a Fidelity Fund certificate is valid until 31 December of the year in respect of which it is issued. The relief sought on appeal in this matter was that the order of Van Olst AJ be set aside and replaced with an order declaring that the appellant was entitled to a Fidelity Fund certificate for 2019 in terms of s 85 of the LPA, as from 15 February 2019.

[6] Section 16(2)(a)(i) of the Superior Courts Act provides as follows:

‘When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this grounds alone.’

The purpose of the provision is to reduce the heavy workload of appeal courts and to ensure that matters that truly deserve the attention of appeal courts are not delayed by burdening these courts with matters that fall within the ambit of section 16(2)(a)(i). See *Madibeng Local Municipality v DDP Valuers and Another* [2020] ZASCA 70 para 22.

[7] Thus, the question was what practical effect or result the decision sought on appeal would have. The sole contention of the appellant was that it could have an effect on the suspension order. We found the submission untenable. In the circumstances that I have sketched, it is open to serious doubt whether an application to set aside the suspension order should be entertained at all. But more importantly, the declarator sought on appeal could have no effect on the suspension order. The respondent rightly pointed out that the decision sought would not change the fact that the appellant had practised without a Fidelity Fund certificate. Thus, the main pillar on which the suspension order had been founded would remain in place notwithstanding success for the appellant on appeal.

[8] For these reasons, the relief sought on appeal could have had no practical effect or result and the reinstatement of the appeal would have been senseless. Thus the application for condonation and reinstatement of the appeal had to be dismissed and the main matter struck from the roll. Costs had to follow these results.

C H G VAN DER MERWE

JUDGE OF APPEAL

Appearances:

For appellant: C A da Silva SC (with him B Mathlape)

Instructed by: Rammutla-at-Law Inc., Pretoria

Maree & Partners Attorneys, Bloemfontein

For respondent: L P J Groome (Attorney with right of appearance)

Instructed by: Rooth & Wessels, Pretoria

Pieter Skein Attorneys, Bloemfontein

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