

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Mogofe and Another (3639/2023) [2025] ZALMPPHC 64 (26 March 2025) [2025] ZALMPPHC 64

COURT

Limpopo High Court, Polokwane

BEFORE

Bresler, Pillay

CASE / FILE NUMBER

3639/2023

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NUMBER: 3639/2023

(1) REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE:

26/03/2025

SIGNATURE:

In

the matter between:

THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
APPLICANT
-and-
KGAKE
JOHANNES MOGOFE
FIRST RESPONDENT
MOGOFE
(F,J) ATTORNEYS
SECOND RESPONDENT

Delivered

26 March 2025

This

judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand

down of the judgment is deemed to be 26 March 2025 at 10:00 am.

Date

heard :

27 November 2024

Coram

: Bresler

AJ et Pillay AJ

JUDGMENT

BRESLER AJ:

Introduction:

- [1] The Applicant applied for the striking of the First Respondent from the roll of practicing attorneys, and ancillary relief.
- [2] It is quite difficult to ascertain the actual grounds on which the application is premised. The Founding affidavit was drafted with very little particularity as to the actual actions of the First Respondent, save insofar as reference were made to several annexures without highlighting the relevance of these annexures. Essentially the Applicant is saying that the application is based on the findings and / or rulings and/ or recommendations of its Investigating Committee and Disciplinary Committee.
- [3] The First Respondent was charged with nine (9) different contraventions. The Disciplinary Committee consequently found the First Respondent guilty of contravening paragraph 3.1, 3.3, 3.5 and 12.1 of the Code of Conduct applicable to Legal Practitioners, and a suspension of 10 (ten) years was proposed.

[4] According to the Disciplinary Committee, the First Respondent therefore committed the following contraventions:

4.1 Contravention of paragraph 3.1 of the Code of Conduct in that he failed to maintain the highest standards of honesty and integrity;

4.2 Contravention of paragraph 3.3 of the Code of Conduct in that he failed to treat his client's interest as paramount;

4.3 Contravention of paragraph 3.5 of the Code of Conduct in that he failed to refrain from doing anything in a manner prohibited by law or the Code of Conduct which placed or could place him in a position in which the client's interests' conflict with his own or those of his clients.

4.4 Contravention of paragraph 12.1 of the Code of Conduct in that he, directly or indirectly, entered into an express or tacit agreement, arrangement or scheme of operation or any partnership (express, tacit or implied), the result whereof is to secure for him the benefit of professional work, solicited by a person who is not an attorney, for reward, whether in money or in kind.

[5] Premised on the ruling of the Disciplinary Committee, the Applicant applied for the striking of the First Respondent from the roll of Legal Practitioners. The Applicant submitted that the First Respondent has made himself guilty of unprofessional and dishonourable or unworthy conduct. It was furthermore submitted that the First Respondent's conduct reveals character defects that cannot be tolerated in a practitioner or officer of the Court and does not meet the standard of behaviour, conduct and reputation which is required of an 'Advocate' (although the First Respondent practices as an attorney).

[6] The First Respondent categorically denied that the Applicant is entitled to the relief prayed for. The First Respondent furthermore lodged a counter application for the review of the decisions of the Disciplinary Committee.

[7] In justification of the review of the decisions of the Disciplinary Committee, the First Respondent stated inter alia that the findings of the said Committee were based solely on the self-incriminating evidence of Mr. Letsoalo, who was also subjected

to the disciplinary proceedings simultaneously with the First Respondent. Mr. Letsoalo was, however, not called as a witness during

the disciplinary proceedings. Nor did the version of Mr. Letsoalo implicate the First Respondent in the alleged unethical conduct

complained of. The objection was therefore, in general terms, that the charges levied against the First Respondent were unsubstantiated

by the evidence before the Committee.

- [8] The First Respondent also applied for the review of the Disciplinary Committee's findings inter alia on the basis that same constitutes the admission of inadmissible evidence and the fact that the Committee was materially influenced by an error of law. As will be evidenced from what is stated herein under, a detailed analysis of the merits of the review is not necessitated, having regard to the finding as to the procedural conundrum that the First Respondent faces.

Issues

that require determination:

- [9] This Court is called upon to determine if the First Respondent is a fit and proper person to continue practicing as a legal practitioner.
- [10] The Court is furthermore called upon to determine if the decision and findings of the Disciplinary Committee of the Applicant can, and should, be reviewed and set aside.

The Applicable Legal Principles:

Application to strike First Respondent from the roll of practicing legal practitioners

- [11] As stated herein before, the Founding affidavit is quite generic. Reference was, for instance, made in paragraph 11.2 to the 'standard of behaviour and conduct and reputation which is required of an Advocate' as opposed to an attorney. Moreover, the Applicant's case was presumably premised on the findings of the Investigating and Disciplinary Committee. No reference or background was provided in the Founding affidavit as to the actual actions of the First Respondent that warrant scrutiny by this Court.
- [12] It is trite law that a Court cannot be expected to trawl through lengthy annexures to ascertain the actual message that the Applicant wishes to convey. Reference is often made to the case of *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*[1], where the Honourable Joffe J pertinently stated:
- '... it is not open to an applicant or respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would no know what case must be met. '
- [13] Having regard to the manner in which the Founding affidavit was drafted and the lack of particularity regarding the conduct of the First Respondent, it appears that the Applicant expects the Court to validate the findings of the Investigating and Disciplinary without being privy to the actual conduct of the First Respondent and without having considered the stated conduct that the Applicant alleges warrants enquiry by the Court.
- [14] Section 44(1) of the Legal Practice Act, 28 of 2014 (the 'LPA') states:

'(1) The provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity. '

[15] It follows that the mere fact that there was rulings or findings made at a prior disciplinary meeting, does not presuppose that the Court should blindly follow those rulings and simply determine the appropriate remedy.

[16] At this juncture, it is apposite to note that applications for the striking of an attorney's name from the roll of legal practitioners are not ordinary civil proceedings. They are proceedings of a disciplinary nature and are sui generis.[2]

[17] In *Solomon v Law Society of the Cape of Good Hope*[3] the following was said regarding the nature of disciplinary proceedings:

'Now in these proceedings the Law Society claims nothing for itself .. It merely brings the attorney before the Court by virtue of a statutory right, informs the Court what the attorney has done and asks the Court to exercise its disciplinary powers over him... The Law Society protects the interest of the public in its dealings with the attorneys. It does not institute any action or civil suit against the attorney. It merely submits to the Court facts which it contends constitutes unprofessional conduct and then leaves the Court to determine how it will deal with this officer.'

[18] It is furthermore settled law that the application for the removal from the roll, or suspension from the practice, of an attorney involves a three-staged enquiry. See for instance the case of *Malan & Another v Law Society of the Northern Provinces*[4]. First, the Court needs to determine whether the alleged offending conduct was established on a balance of probabilities. It is a factual enquiry. Second, consideration must be given to the question, in the discretion of the Court, if the person concerned is not 'a fit and proper person to continue to practice as an attorney.' This involves weighing up the conduct complained of against the conduct expected of an attorney and is a value judgment. Third, the Court is required to consider, whether in the

light of all the circumstances, the name of the attorney concerned should be removed from the roll of attorneys or whether an order

suspending him or her from practice would suffice.

[19] In *Summerley v Law Society, Northern Provinces*[5] the Supreme Court of Appeal stated the following:

'...the exercise of the discretion at the second stage "involves, in reality, a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, a value judgment" ... The third enquiry again requires the court to exercise its discretion. At this stage the Court must decide, in the exercise of its discretion, whether the person who has been found not to be a fit and proper person to practice as an attorney deserves the ultimate penalty of being struck from the roll or whether an order of suspension from practice will suffice.'

- [20] It is appropriate to note at this stage that the Applicant was urged by the Disciplinary Committee to consider a suspension of 10 (ten) years. During the course of the hearing, counsel for the Applicant also conceded that striking is not the appropriate remedy in the circumstances, and that suspension might serve the intended purpose.
- [21] These submissions are irrelevant in so far as there was simply no factual basis presented to court upon which the Court could exercise its discretion to determine if the First Respondent is a fit and proper person or not. The mere fact that mention is made of the existence of findings published by the Investigating Committee and the Disciplinary Committee respectively, is not sufficient to enable the Court to make an informed decision pertaining to the suitability of the First Respondent to continue practice as a legal practitioner.
- [22] On this basis, the Applicant's application stands to be dismissed.

Respondent's Review Application:

- [23] During the course of the proceedings, this Court raised the issue that there is no proper Application for Review before court. There is no substantial application, no notice of motion advising the Applicant that the delivery of the record is required, and no compliance with the general provisions pertaining to an administrative review as contemplated in Rule 53.
- [24] In lieu of the procedural issues with the said application, this Court is of the view that the Review application should, similarly, be dismissed.

Costs:

- [25] Both the Applicant and the First Respondent showed an evident ignorance and disregard for what is expected in proceedings of this nature. Although they were both substantially successful in avoiding relief being granted in favour of the opposing party, the applications are ultimately dismissed because of procedural incompetence as opposed to meritorious opposition. On that basis, both parties should be deprived of their costs. This should serve as a deterrent to in future launch proceedings of this nature without ensuring due and proper procedural compliance.

Order:

- [26] In the result the following order is made:

26.1 The main application for the striking of the First Respondent is dismissed.

26.2 The counter application for the review of the decisions of the Disciplinary Committee is dismissed.

34.3 Each party is ordered to pay his / it's own costs pursuant to the dismissal of the respective applications.

M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,

I concur,

KL PILLAY AJ

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[1] 1999 (2) SA 279 (T)

[2] Law Society, Transvaal v Matthews 1989 (4) SA 389 (T) at 393 D - E

[3] 1943 AD 401 at 408 - 409

[4]

[2008] ZASCA 90; 2009 (1) SA 216 (SCA) at Para 4]

[5] 2006 (5) SA 613 (SCA) at Para 2

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