



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable / Not reportable

Case no: 6176/2022

In the matter between

IZAK JACOB STEENKAMP

First Applicant

REHAN COETZEE

Second Applicant

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Respondent

In re:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

IZAK JACOB STEENKAMP

First Respondent

REHAN COETZEE

Second Respondent

STEENKAMP & JANSEN INCORPORATED

Third Respondent

THEUNIS GOOSEN**Fourth Respondent**

Coram: Naidoo J et Opperman J

Heard: 24 May 2024

Delivered: 29 January 2025.

Summary: Application for Leave to Appeal- civil law – suspension of attorneys from practising pending investigation of irregularities in handling of trust account and misconduct – order not appealable – not final in effect

ORDER

The application for leave to appeal is dismissed with costs.

JUDGMENT

Naidoo J (Opperman J concurring)

[1] This is an application by the applicants, Izak Jacob Steenkamp (first applicant/Mr Steenkamp) and Rehan Coetzee (second applicant/Mr Coetzee), for leave to appeal against the judgment in this matter, which was delivered on 26 September 2023. The Legal Practice Council (LPC/respondent) opposed this application.

[2] The judgment was assailed on a number of grounds, numbering 18 in total. In a number of instances the grounds are followed by what amounts to argument in respect of those grounds. The grounds amount to assailing the judgment and reasoning of the court, which is not permitted in an application such as this. I will attempt to summarise what I consider to be the main grounds. In essence, the grounds that the court erred in are:

- a. making orders without Chapter 4 of s 43 of the Legal Practice Act 28 of 2014 (the Act) having been complied with;
- b. making orders without a disciplinary body (as defined in the Act) having been satisfied or declaring that it is satisfied, as required by s 43 of the Act;
- c. making orders without s 72(6) of the Attorneys Act 53 of 1979 (read with s 116 of the Act) having been complied with;
- d. making orders whilst, for the purposes of s 72(6) of the Attorneys Act 53 of 1979, the charges against the applicants were dismissed by the Disciplinary Committee in June

2021;

e. finding that the LPC was entitled to the relief that it sought, whereas the LPC has not made out a proper case for the suspension of both applicants;

The applicants conclude by asserting that they do not consider the judgment to be an interlocutory order but one which is final and definitive in effect.

[3] It is by now well settled in our law that an applicant was, previously, merely required to show that there is a reasonable possibility that another court, differently constituted, would find differently to the court against whose judgment leave to appeal is sought. It is clear from s 17(l), set out above, that the situation is now somewhat different, and an applicant for leave to appeal is required to convince the court that there is a reasonable prospect of success and not merely a possibility of success.¹

[4] In a decision of the Supreme Court of Appeal (SCA) in the case of *Ramakatsa and Others v African National Congress and Another*² the dictum of the court at para 10 adds further clarity:

'I am mindful of the decisions at high court level debating whether the use of the word "would" as opposed to "could" possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

[5] The judgment in this matter sets out fully the reasons for and the grounds upon which the order for suspension, and other relief was granted, and I do not intend to repeat the

¹ See in this regard *The Mont Chevaux Trust v Tina Goosen and 18 others 18 2014 JDR LCC*, which was cited with approval in a number of cases, such as *Matoto v Free State Gambling and Liquor Authority* [2017] ZAFSHC 80, a decision emanating from this Division, and also a Full Court decision in *Acting National Director of Public Prosecutions and Others v Democratic Alliance* [2016] ZAGPPHC 489.

² *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31.

judgment. The applicants persist with arguments that this court rejected as unsustainable. For example, the applicants alleged that the disciplinary Committee granted absolution from the instance or discharged the applicants. In para 9 of the judgment this Court said:

'The Disciplinary Committee rejected the application for absolution from the instance, but found that the Investigating Committee did not in fact follow the correct procedure in referring the matter to it. Hence the Disciplinary Committee found that the matter was not properly before it, and dismissed the proceedings'.

At para 21 this Court continued:

'In addition, their argument that the Disciplinary Committee of the LPC dismissed the merits of the matter, cannot be sustained, as that Committee was specific in finding that due to the investigations not being properly undertaken, the matter was dismissed. It did not deal with the merits in relation to the finding it made, and most certainly did not exonerate the respondents of wrongdoing and misconduct'.

[6] The applicants now deny that it is common cause that they closed their practice, Steenkamp De Villiers and Coetzee, without informing the LPC, and moved their staff, infrastructure and files to Steenkamp & Jansen Inc. This is what emerged from the evidence. It seems that in the application for leave to appeal, the applicants attempt to re-argue the matter. The suspension order is not a final order, nor does it have the effect of a final order. It is also not appealable. It has come to our attention that in November 2024, the applicants brought an application to set aside the suspension order. Judgment in that matter was handed down on 4 December 2024. The court there ordered as follows:

1. 'The first respondent shall, as undertaken, serve its detailed charge sheets on the applicants on/or before 15 January 2025.
2. The disciplinary hearings shall, as undertaken, be scheduled to start not later than 31 March 2025 and continued until finalised.
3. The first respondent shall finalise its disciplinary proceedings against the applicants on/or before 31 May 2025, failing which their suspensions shall lapse automatically.
4. The application is removed from the roll, but, in the event of the first respondent failing to comply with either paragraph 1 or paragraph 2 *supra*, leave is granted to the applicants to set the application down for hearing on the opposed motion court roll with 21 days' notice to the first respondent, which notice shall be accompanied by their supplementary affidavits.
5. In the event of a notice of set down as envisaged in paragraph 4 *supra*, the first respondent shall file an answering supplementary affidavit within 7 days, whereafter the parties shall file supplementary heads of argument in accordance with the practice directives of this court.
6. Costs shall stand over for later adjudication if required.'

[7] It is clear that the applicants' argument, in this matter, that the suspension order does not stipulate a date when the LPC's investigations should conclude, has been addressed, in the judgment of 4 December 2024. Clear time frames have been ordered for the commencement date of the investigations, the serving of charge sheets in respect of such investigations and for the finalization of such disciplinary proceedings. As indicate in the judgment in this matter, investigations of this nature take time, but limits have been imposed on the LPC for the finalization of such proceedings, thus mitigating the prejudice to the applicants, which they complain about.

[8] In considering the grounds proffered by the applicants, in the application for leave to appeal, my view is that they have no reasonable prospects of success on appeal. In the circumstances, I make the following order:

The application for leave to appeal is dismissed with costs.



NAIDOO J

I concur.



OPPERMAN J

Appearances

For the 1st Applicant:

ADV HJ BENADE

Instructed by:

FS LAW INC
BLOEMFONTEINFor the 2nd Applicant

MR R COETZEE

Instructed by:

IN PERSON
Mobile: 0835609189

For the Respondent

ADV N SNELLENBURG SC

Instructed by:

SYMINGTON DE KOK INC
BLOEMFONTEIN