

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Delete whichever is not applicable

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: YES
- (3) REVISED.

Date: 29/08/2017

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DATE

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SIGNATURE

CASE NO: 2016/22915

In the matter between:

THE JOHANNESBURG SOCIETY OF ADVOCATES

Applicant

and

TIRY, AYESHA

Respondent

SUMMARY

Application for striking off roll – double briefing and overreaching – Road Accident Fund matters – Appearing in more than one matter on same day – charging unreasonable fees – misconduct need not necessarily result in striking off – exceptional circumstances must exist to avoid striking off – rehabilitation – exceptional circumstances do not warrant being struck off the roll.

LAMONT et MATOJANE JJ:

An application brought before this court by the Applicant, the Johannesburg Society of Advocates to seek a striking off from the roll of advocates, alternatively the suspension from practice of the respondent. The respondent is an Advocate, practicing as a member of the Johannesburg Society of Advocates. The Applicant alleges the Respondent has engaged in double briefing and overreaching in matters where the Road Accident Fund is the defendant.

The Applicant conducted investigations during a period of time and discovered that the Respondent held more than one brief in 106 instances and charged more than one trial fee a single day. The Respondent alleges that it was due to last minute instructions after an initial trial brief had been completed. Further, the Respondent alleges that with regards to the charge of overreaching, she was briefed on trial and because the trial collapsed virtually on the trial date, she was entitled to charge a separate trial fee in respect of each brief she received.

The court discussed the Rules of the General Council of the Bar of South Africa: Uniform Rules of Professional Conduct, as well as notices issued by the Applicant

prohibiting and warning against double briefing, and appearing in more than one trial on the same day.

The court further discussed that an Advocate is required to charge a reasonable fee. Where the Advocate has charged an unreasonable fee and has abused their position, it amounts to overreaching.

The court held that the results of dishonesty do not necessarily mean striking off the roll. The circumstances must be exceptional for there to be a justification departing from ordinarily ordering a striking off. The court was of the opinion that the Respondent was rehabilitated by the time the matter was being heard and therefore did not order a striking off from the roll of Advocates.

The court found that the Respondent was guilty of double briefing and overreaching based on the 106 instances between 2008 and 2012. The court ordered that the Respondent should pay the financial benefit which she received and be suspended for three years, two years of the suspension being suspended on condition that the Respondent pay a fine of R500 000.00 and is not found guilty of unprofessional, dishonorable or unworthy conduct during the period of suspension.