

**REPUBLIC OF SOUTH AFRICA**



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

Case Number: 21/46591

(1)	REPORTABLE: YES <input checked="" type="radio"/> NO <input type="radio"/>
(2)	OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO <input type="radio"/>
(3)	REVISED: YES <input checked="" type="radio"/> NO <input type="radio"/>
<u>26.4.2023</u> <u>[Signature]</u>	
DATE	SIGNATURE

In the matter between:

**NONTSIKELELO FELICIA MVENYA**

Applicant

**AND**

**STANDARD BANK OF SOUTH AFRICA LIMITED**

First Respondent

**LAZARUS SHOMGWE**

Second Respondent

[Application Incidental to Application for Leave to Appeal]

In Re:

**NONTSIKELELO FELICIA MVENYA**

Applicant

**AND**

**STANDARD BANK OF SOUTH AFRICA LIMITED**

First Respondent

[Application for Leave to Appeal]

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**JUDGMENT**

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Van Aswegen AJ

- [1] In the application before me, there is, what is termed an application incidental to leave to appeal, seeking to authorize Mr. Reino de Beer of Liberty Fighters Network (LFN) as its officer, to represent the Appellant as its member to argue the application for leave to appeal on behalf of the Appellant. Mr. De Beer informed the court that he had been assisting the Appellant – Ms. Nontsikelelo Felicia Mvenya – for a period of 5 years in this case. He had drafted all the documentation in this matter and was present on the virtual platform when the summary judgment application was heard. He had also instructed the Appellant to refer to the drafted heads of arguments in the event of her not knowing what to answer during the summary judgment application.
- [2] It is therefore evident that Mr. De Beer had provided the Appellant with not only legal advice but drafted all the documentation in this matter. He however stated that he did so without having received any remuneration. The Appellant as a member of LFN also does not pay any membership fees. In the interest of justice he initially remained in the background in this case.
- [3] He categorized the Appellant as being *indigent*. The Court however questioned this, as the Appellant is a qualified nurse. Mr. De Beer confirmed the Appellant's occupation but explained that she was not knowledgeable in respect of the law. It is clear from the definition of an indigent person, that a person is only referred

- to as indigent, when they are impoverished or unable to afford the basic necessities of life. There is no evidence before me that the Appellant is indigent.
- [4] Mr. de Beer also questioned the exclusive right of legal practitioners to legal representation in courts. He referred me to rule 52 of the Magistrate's Court Rules which allows for representation by a person other than a legal representative. There is however no such a rule in the High Court. He urged that there should be a unified court system in South Africa.
- [5] It is important to note that The Appellant was not present in court. Mr. De Beer indicated that he acted as her agent and that he wanted to represent her in the Leave to Appeal.
- [6] He informed the court that he is a property portfolio manager. He stated that in 1990 he obtained a CEA – a Certificate in Estate Agency and a STMS from the University of Cape Town in 2010 (in Property Science). He further referred to and labelled himself as a legal advisor. He indicated that he had no formal legal qualification, but that he had 31 years of experience in the field of immovable property which qualified him to represent the Appellant.
- [7] Mr. De Beer argued that obtaining legal representation was not affordable and extremely expensive in South Africa. Access to justice he stated was not easily obtained. I am appreciative of the fact that there is a crisis in access to legal services in this country, but I am also bound to apply the common law, the statutes of our country and the cases of the higher courts.
- [8] Mr. De Beer further argued that, what he termed, Informal representation – where a layperson represents a litigant, natural person – is within the court's discretion but that a formal application is required to court.



[9] I was referred to the case of *10 & 10a Kenmere CC v Ndebele and Others* (2018/31110) [2019] ZAGPJHC 199 (19 June 2019) an eviction application where Liberty Fighters Network (LFN) sought to intervene the application and for the president, Mr. De Beer to represent LFN. The intervention application and the request for Mr. De Beer to represent Liberty Fighters Network was not opposed by the Applicant in that case and the court granted the relief sought. I am of the firm opinion that the matter before me is distinguishable due to the fact that, in the matter before me:

[9.1] the Respondent objects to the representation by Mr. De Beer,

[9.2] Mr. De Beer is not representing Liberty Fighters Network of which he is apparently the president;

[9.3] Mr. De Beer is wanting to legally represent a natural person in the court

[9.4] the Appellant is not present in court and

[9.5] the court has no knowledge of either the purpose and/or business of the Liberty Fighters Network.

[10] I was also referred to paragraph 13 in the case of *Xinwa and Others v Volkswagen of South Africa (Pty) Ltd* (CCT3/03) [2003] ZACC 7; 2003 (6) BCLR 575; 2003 (4) SA 390 (CC); [2003] 5 BLLR 409 (CC); (2003) 24 ILJ 1077 (CC) (4 April 2003). Paragraph 13 thereof reads and I quote:

*"Pleadings prepared by laypersons must be construed generously and in the light most favourable to the litigant. Lay litigants should not be held to the same standard of accuracy, skill and precision in the presentation of their case required of lawyers. In construing such pleadings, regard must be had to the purpose of the pleading as gathered not only from the content of the pleadings*

*but also from the context in which the pleading is prepared. Form must give way to substance...”*

- [11] I am indeed conscious and aware that pleadings by a layperson must be considered as aforesaid. By referring to the said paragraph Mr. De Beer is acknowledging that he drafted all the pleadings as a layperson.
- [12] Mr. De Beer relies on section 173 of the Constitution which grants the Constitutional Court, the Supreme Court of Appeal, and the High Court inherent power to protect and regulate their own processes, and to develop the common law, taking into account the interests of justice. The rule 46A summary judgment application before me did relate to the Appellant’s primary residency but was not an eviction application. He argued that the fact that it affects the residential property gave the court leeway to allow him to represent the Appellant.
- [13] I asked Mr. De Beer whether he had a right of audience at the summary judgment stage to which he replied “no”. He could however not explain to me how the position at summary judgment stage differed from his argument that he now had right of audience at leave to appeal stage.
- [14] Mr. De Beer also emphasized that he always acts in the best interest of the person who he represents. Nevertheless, he admitted to being on the virtual platform when the summary judgment was argued and despite the Appellants’ inability to explain her defence, as set out in the pleadings of which he was the draftsman, he elected not to assist her in presenting her case. Mr. De Beer indicated that he did not ask the court’s permission to appear beforehand and said that it would be disrespectful to the court. If Mr. De Beer has a right of



appearance in this court, has intricate knowledge of this matter this court, had drafted the papers and wanted to act in the best interest of the Appellant, this court would have expected Mr. De Beer to have appeared at summary judgment stage. This Mr. De Beer elected not to do despite his presence on the virtual platform.

[15] I am not persuaded that Mr De Beer, has the right as a layperson to represent the Appellant as a natural person.

[16] The Legal Practice Act, Act 28 of 2014 ("the Act") came into operation to provide a legislative framework for the transformation and restructuring of the legal profession into a profession which is broadly representative of South Africa's demographics, to ensure that the values underpinning the *Constitution* are embraced, that the rule of law is upheld, and to ensure that legal services are accessible. It states and I quote:

**"To provide a legislative framework for the transformation and restructuring of the legal profession in line with constitutional imperatives so as to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the Republic; to provide for the establishment, powers and functions of a single South African Legal Practice Council and Provincial Councils in order to regulate the affairs of legal practitioners and to set norms and standards; to provide for the admission and enrolment of legal practitioners; to regulate the professional conduct of legal practitioners so as to ensure accountable conduct; to provide for the establishment of an Office of a Legal Services Ombud and for the appointment, powers and**

**functions of a Legal Services Ombud; to provide for a Legal Practitioners' Fidelity Fund and a Board of Control for the Fidelity Fund; to provide for the establishment, powers and functions of a National Forum on the Legal Profession; and to provide for matters connected therewith."**

- [17] Section 25 of the Act deals with the right of appearance of legal practitioners and candidate legal practitioners and states:

*"25. (1) Any person who has been admitted and enrolled to practise as a legal practitioner in terms of this Act, is entitled to practise throughout the Republic, unless his or her name has been ordered to be struck off the Roll or he or she is subject to an order suspending him or her from practising.*

*(2) A legal practitioner, whether practising as an advocate or an attorney, has the right to appear on behalf of any person in any court in the Republic or before any board, tribunal or similar institution, subject to subsections (3) and (4) or any other law..."*

- [18] The right of appearance in courts are accordingly regulated by the Act.
- [19] A legal practitioner means an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30 of the Act. It is therefore an individual who has obtained a formal legal training from a tertiary institution, completed the requisite practical vocational training as well as the necessary examination, and who perform legal services for remuneration as an attorney (who may function as conveyancer and notary public) or advocate.

[20] Section 33(1) of the LPA states that, subject to any other law, *no person other than a practising legal practitioner may*, in expectation of a fee, commission, gain or reward, appear in any court or before any board or tribunal in which only legal practitioners are entitled to appear. Similarly, no person other than a practising legal practitioner may, in expectation for remuneration, draw up or execute any instruments or documents required for the use in any litigious proceedings in a civil or criminal court. The exact wording of this section is as follows:

***“33. Authority to render legal services.—***

(1) *Subject to any other law, no person other than a practising 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;*

*or*

(b) *draw up or execute any instruments or documents relating to or required or intended for use in any action, suit or other proceedings in a court of civil or criminal jurisdiction within the Republic.*

*[Sub-s. (1) amended by s. 4 (a) of Act No. 16 of 2017.]*



**(2) No person other than a legal practitioner may hold himself or herself out as a Legal practitioner or make any representation or use any type or description indicating or implying that he or she is a legal practitioner.**

**(3) No person may, in expectation of any fee, commission, gain or reward, directly or indirectly, perform any act or render any service which in terms of any other law may only be done by an advocate, attorney, conveyancer or notary, unless that person is a practising advocate, attorney, conveyancer or notary, as the case may be.**

**[Sub-s. (3) substituted by s. 4 (b) of Act No. 16 of 2017.]**

**(4) A legal practitioner who is 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, which consent may not be unreasonably withheld, and such consent may be granted on such terms and conditions as the Council may determine.**

**[21] A legal representative must accordingly have the professional expertise but also have the capacity to be held accountable and take responsibility in a professional and social context. The Code of Conduct in the Act regulates the said rules and standards relating to ethics, conduct and practice for legal practitioners and its enforcement through the Council and its structures, which**

may contain different provisions for advocates and attorneys and different provisions for different categories of legal practitioners.

- [22] Judge Bosielo in 2013 *De Rebus* at 113 said the following about the legal profession in South Africa:

*"It is universally accepted that the strength and vitality of any constitutional democracy depends largely on the quality, pedigree and integrity of its lawyers. A weak legal profession will produce weak judges. We want to have legal professionals who believe in fairness and equality, upholding the constitutional values. We need lawyers who actually understand the constitution. Lawyers should have the spirit of ubuntu and be willing to sacrifice, instead of being selfish. They should be socially conscious and develop an ethos of batho pele and be prepared to serve the community."*

- [23] Mr. De Beer stated that he acts as a representative without seeking remuneration. In my opinion this is merely a tactic utilised to circumvent section 33(1) of the Act.

- [24] The Supreme Court of Appeal in *Commissioner for the South African Revenue Service v Candice-Jean van der Merwe* (211/2021) [2022] ZASCA 106; 85 SATC 10 (30 June 2022) held that the common law dictates that it is not permissible for a lay person to represent a natural person in a court of law. The common law position is now solidly entrenched and voiced out in section 25 of the Act. A court accordingly has no discretion to allow a lay person to represent a natural person in court. In *Shapiro & De Meyer Inc v Schellauf (Shapiro)* **[2001] ZASCA**

**131** (SCA) at para 10A the Respondent's wife was disallowed to appear and argue an appeal on the Respondent's behalf.

[25] In *Commissioner for the South African Revenue Service v Candice-Jean van der Merwe* mentioned here in before the appeal court saw no justification to depart from the common law position which is now sanctioned by section 25 of the Act. The appeal court alluded to:

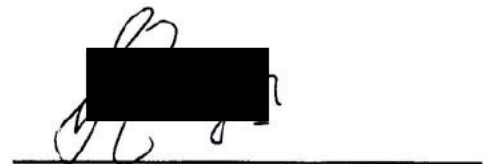
- i) the pitfalls of a natural person being represented by an individual with no legal training;
- ii) that the rules of court would not oblige such a lay person to file a power of attorney – the lay person can accordingly after the fact deny the authority of the representative to the detriment of the administration of justice.

[26] I accordingly align myself with the common law, the Supreme Court of Appeal and the Act in finding that a lay person is disallowed from representing a natural person in a court of law.

[27] Mr. De Beer is disallowed from representing the Appellant.

[28] The application incidental to leave to appeal is dismissed in so far as the representation by Mr. De Beer is concerned.

[29] The Appellant is once again notified of her right to legal representation in the leave to appeal.



**S VAN ASWEGEN**  
**ACTING JUDGE OF THE HIGH COURT**



**For the Appellant: No appearance**

**For the Respondent: Adv. C Nkosi**

**instructed by SBM ATTORNEYS**