

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number:038125/2023

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED

2025/02/12

In the matter between:

WESVAAL BOERDERY (PTY) LTD

APPLICANT

and

LUNEBURG & JANSE VAN VUUREN INC.

1ST RESPONDENT

LUCAS CORNELIUS BASSON

2ND RESPONDENT

MARIA JOHANNA BASSON

3RD RESPONDENT

MICHAEL HELGARD VAN RESNBURG

4TH RESPONDENT

THE GAUTENG PROVINCIAL LEGAL PRACTICE COUNCIL

5TH RESPONDENT

MR K O MABUNDA N.O.

6TH RESPONDENT

JUDGMENT

MOTHA, J:

- 1) In this matter, the fifth and sixth respondents raised the non-joinder of the South African Legal Practice Council (LPC), Fee Dispute Resolution Committee (FDRC) and its members as points *in limine*. In a matter involving the assessment of fees, the fifth and sixth respondents submitted that the LPC plays a pivotal role as the custodian of the Legal Practice Act (LPA), therefore, it should have been cited as a party to the proceedings. The same is true of the FDRC and its members, they maintained.

The parties

- 2) The applicant is Wesvaal Boerdery (Pty) Ltd t/a Ikotwe Construction, a company incorporated in terms of the company laws of the Republic of South Africa.
- 3) The first respondent is Luneburg and Janse Van Vuuren Inc, a personal liability company in terms of s 8(2)(c) of the Companies Act No. 71 of 2008, incorporated in terms of company laws of the Republic of South Africa, and conducts a legal practice.
- 4) The second and third respondents are Lucas Cornelius Janse Van Vuuren and Maria Johanna Basson, respectively, and they are attorneys and directors of the first respondent. The fourth respondent is Michael Helgard Van Rensburg, the former director of the first respondent.
- 5) The fifth respondent is the Gauteng Provincial Legal Practice Council, a statutory body established in terms of section 23 of the Legal Practice Act with delegated powers and functions to regulate the affairs and exercise jurisdiction over legal practitioners within its statutory determined area of jurisdiction.

- 6) The sixth respondent is Mr. KO Mabunda NO, an adult attorney who is cited in his official capacity as the chairperson of the Fee Dispute Resolution Committee and appointed in terms of Section 5 of the Legal Practice Act.

The facts in brief

- 7) During the years 2010 and 2013, the applicant employed the legal services of the first respondent in the matter involving Toyota and Rybak arbitrations. After the successful execution of the mandate, the applicant asked for the first respondent's final account for both Toyota and Rybak arbitrations. The first respondent presented the applicant with a consolidated account. The applicant disputed it, and a full-blown fee dispute arose between the applicant and the first respondent¹.
- 8) Following the institution of legal actions against each other, the applicant and the first respondent agreed to refer the taxation of the first respondent's bills of costs of Toyota and Rybak arbitrations to the fifth respondent. The fifth respondent appointed the FDRC, consisting of two practicing attorneys and one practicing advocate. Unhappy with the outcome of the FDRC and citing as the respondents the chairman of the FDRC and the Gauteng Legal Council (GLC), the applicant commenced these proceedings and failed to cite the LPC, FDRC and its members. The fifth and sixth respondents argued that there is a material non-joinder of the LPC, FDRC and the rest of its members.

The law

- 9) It is trite that: "A party is entitled to join and intervene in proceedings where they have a direct and substantial interest in the matter. A person is regarded as having a direct and substantial interest in an order if that order would directly affect that person's rights or interests. The interest must generally be

¹ Applicant's heads of argument page 6.

a *legal* interest in the subject matter of the litigation and not merely a financial interest..."²

10) Dealing with this topic of non-joinder, the court in *Absa Bank LTD V Nause NO And Others*³ held:

"The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined."⁴

11) In *Gordon v Department of Health: Kwazulu-Natal*⁵ it was held:

"The test is whether a party that is alleged to be a necessary party, has a legal interest in the subject matter, which may be affected prejudicially by the judgment of the court in the proceedings concerned. In the *Amalgamated Engineering Union* case (*supra*) it was found that 'the question of joinder should . . . not depend on the nature of the subject matter . . . but . . . on the manner in which, and the extent to which, the court's order may affect the interests of third parties'. The court formulated the approach as, first, to consider whether the third party would have *locus standi* to claim relief concerning the same subject-matter, and then to examine whether a situation could arise in which, because the third party had not been joined, any order the court might make would not be *res judicata* against him, entitling him to approach the courts again concerning the same subject-matter and possibly obtain an order irreconcilable with the order made in the first instance. This has been found to mean that if the order or 'judgment sought cannot be sustained and carried into effect without necessarily prejudicing the interests' of a party or parties not joined in

² Minister of Finance v Aribusiness NPC (CCT 279/20) [2022] ZACC 4; 2022 (4) SA 362 (CC); 2022 (9) BCLR 1108 (CC) (16 February 2022)

³ 2016 (6) SA 540 (SCA) JUNE 2015.

⁴ *Supra* para 10

⁵ (337/07) [2008] ZASCA 99; 2008 (6) SA 522 (SCA)

the proceedings, then that party or parties have a legal interest in the matter and must be joined.”⁶

Discussion

- 12) As soon as the parties to this dispute approached the fifth respondent for a resolution of their dispute, they invoked the provisions of the Legal Practice Act (LPA). The LPA created a statutory succession in terms of which the former provincial law societies were replaced by the South African Legal Practice Council (LPC) as the regulatory body for attorneys, advocates and the legal profession.
- 13) The LPC is charged with the responsibilities of, *inter alia*, and for our purposes, ensuring that fees charged by legal practitioners for legal services rendered are reasonable and promote access to legal services thereby enhancing access to justice, promoting and protecting the public interest, regulating all legal practitioners and all candidate legal practitioners, enhancing and maintaining the integrity and status of the legal profession.
- 14) In appropriate cases, and in terms of sections 40 (3)(a)(iv) and 44(1) of the LPA, to launch an application for the striking off the roll or suspension from practice of a legal practitioner if the Court is satisfied that the legal practitioner is not a fit and proper person to continue to practice.
- 15) Flowing from its responsibility as the custodian of the LPA, Rules and Code of Conduct, it is patent that the LPC has a legal interest in these proceedings. What is more, the FDRC is not a standing Committee, but an *ad hoc* body, which was established by the Gauteng Provincial Council in terms of Regulation 5(2). S.A. LPC in terms of s 6(1)(a)(x) of the LPA. Importantly, s 6(1)(a)(v) empowers the LPC to defend/oppose legal proceedings.

⁶ Supra para 9

- 16) The applicant relied on s21 of the LPA, which is, strictly speaking, within the purview of the LPC. Any order that is made by the court in these proceedings will be prejudicial to the LPC, if not present to argue its case. Some of the grounds for this conclusion are found in the supporting affidavit to the founding affidavit, which is deposed to by the former director of the applicant, Adreas Van Tonder.
- 17) To catalogue the engagements between the applicant and the LPC, the fifth respondent mentioned paragraphs 17.2, 17.6, 18.1, 18.4, 19.3, 20.3, and 21.1 of Van Tonder's supporting affidavit. For instance, at paragraph 17.2 of the supporting affidavit, Van Tonder wrote the following:
- "Counsel advise the applicant to approach the LPC and request the LPC to either reconvene the FDRC with instructions to make a proper fee assessment or alternatively vary or set aside the findings of the FDRC and appoint another fee assessment committee to perform a proper fee assessment and to do so in terms of the provisions of section 21 (3) of the LPA which empowers the LPC to vary or revoke any decision taken in consequence of a delegation or assignment."
- 18) From this paragraph, it is patent that the LPC is at the front and center of these proceedings. Accordingly, any order made, in its absence, would be prejudicial to the LPC. Having corresponded with the LPC to the exclusion of GLC, as can be seen from the letter dated 27 October 2022 from the Gauteng Legal Council, the applicant's submission that the LPC does not need to be joined in these proceedings is unsustainable. In this letter, the GLC laments the applicant's conduct of corresponding with the LPC without their knowledge or notifying them. Furthermore, it was the LPC that informed the applicant of the outcome of the matter. Therefore, it is bizarre to not cite the LPC in these proceedings. Accordingly, the LPC must be joined in these proceedings.
- 19) Regarding the point in *limine* of the non-joinder of the FDRC or some of its members, counsel for the applicant referred to the VI Judicial Review

Administrative Action Rules dated 4 October 2019. For our purposes, it suffices to refer to s 2, which reads:

“(a) An application for judicial review in terms of the Act that is instituted in the High Court, in circumstances where no record or only part of the record has been furnished, shall be brought in terms of rule 6 or 53 of the High Court rules, at the election of the applicant, as the case may be.

(2) Where an application is brought in terms of rule 53 of the High Court rules-
(a) it shall, despite rule 53 (1) of the High Court Rules, not be necessary when the application for judicial review is directed at a decision of a tribunal or board, to cite the chairperson of such tribunal or board as a respondent;”

20) Having cited the chairperson of the FDRC, counsel submitted that it was not necessary to cite the FDRC or its other members. To this end, he referred to the matter of *Safcor Forwarding (Pty) Ltd v NTC*.⁷ In this case, the court held:

“I cannot think that this was ever the intention underlying the Rule [53]. Admittedly the rule does introduce a change as far as statutory boards are concerned. Whereas before it was necessary to cite merely the board *eo nomine*, now the rule requires the citation of the chairman of the board. But that is a far cry from interpreting the rule as now requiring the citation of two separate parties in place of one. For I cannot see what purpose could possibly be served by such a proliferation of parties...

For these reasons I am of the view that rule 53 (1) requires the notice of motion to be directed and delivered to the chairman of the board in his representative capacity for and on behalf of the board. It does not require the separate citation of the board itself.”⁸

21) To me, it seems that the 2019 Rule reverts to the position before the enactment of Rule 53 of the Uniform Rules of Court. Under the common law, it sufficed to cite the statutory board *eo nomine*, and there was no specific requirement to cite the chairperson. The regulation mimics the common law position. That

⁷ 1982(3) SA 654 (A)

⁸ *supra* page 671 E and 672 E

being the case, I am of the view that, *ex abundanti cautela*, the FDRC should be cited. I do not see the need to cite the rest of the members of the FDRC.

22) It is my view that the LPC has a direct and substantial interest in this matter. It stands to be prejudiced by any judgment from this matter. Having said all that, I must point out that this is a technical objection and does not warrant the dismissal of the application *in toto*. An award of costs against the applicant should be sufficient to deal with the prejudice that might have been occasioned. I am comforted that my rationale in this instance coincides with the utterances of Corbett JA in the matter of *Safcor* when he said the following:

"the position then is that appellant ought to have cited the chairman of the Commission, as representative of the Commission; instead it's merely cited the Commission. Did this merit the dismissal of the application would costs? In my opinion, it did not. I am wholeheartedly in agreement with the views of Scheiner JA that: '... technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and if possible inexpensive decision of cases on real merits'"

Costs

23) It is trite that costs follow the results. As already hinted above, I am minded to award costs against the applicant on a party and party scale C.

Order

1. The fifth and sixth respondents' points in *limine* of non-joinder of the South African Legal Practice Council and the Fee Dispute Resolution Committee are granted.
2. The fifth and sixth respondents' point in *limine* of the non-joinder of the Fee Dispute Resolution Committee's two other members is dismissed.
3. The applicant is ordered to join the South African Legal Practice Council and Fee Dispute Resolution Committee within fifteen (15) days hereof.
4. The applicant is to pay the costs on scale C.



M.P. MOTH

JUDGE OF THE HIGH COURT, PRETORIA

Date of hearing: 18 November 2024

Date of judgment: 12 February 2025

APPEARANCES:

COUNSEL FOR APPLICANT: E P VAN RENSBURG

INSTRUCTED BY: VZLR INC

COUNSEL FOR RESPONDENTS: R STOCKER

INSTRUCTED BY: ROTH & WESSELS