

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
HELD AT PRETORIA**

CASE NO: 2023/023597

DOH: 28 March 2025

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

...
SIGNATURE

02 MAY 2025
DATE

In the matter between:

**SOUTH AFRICAN LEGAL PRACTICE
COUNCIL**

Applicant

And

MPHAFOLANE JERRY KOMA

Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 02 May 2025.

JUDGMENT

ORDER

1. The application for leave to appeal is dismissed with costs.
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CORAM: Bam J (Mabesele J concurring)

Introduction

1. This is an application for leave to appeal the judgment and order of this court of 5 November 2024. That order, *inter alia*, authorized that the respondent's name be struck from the roll of legal practitioners. The respondent wishes to appeal the order. His grounds of appeal are set out in his Notice of Application for Leave to Appeal (Notice). The application is opposed by the South African Legal Practice Council, LPC. It contends that the respondent's grounds lack merit, and his appeal has no prospect of success. The LPC asks that the application for leave be dismissed. The LPC further filed papers in which it sought as its main relief, a declarator that the order of suspension, delivered in May 2023, remains extant. In the alternative, it sought leave in terms of Section 18(3) of the Superior Courts Act¹ (the Act), to execute the judgment, notwithstanding the respondent's application for leave to appeal and any further applications for leave.

¹ 10 of 2013

2. Through a directive issued by this court, the parties were made aware that the proceedings for leave to appeal will deal only with the question whether leave should be granted. The result was that the declarator and the issue pertaining to execution while the application for leave to appeal is pending were not entertained.
3. I refer to the parties as they were in the original proceedings. In this regard, the applicant refers to the LPC and the respondent, to Mr Koma.

Applicable legal principles

4. Applications for leave to appeal are governed by Section 17 (1) (a) (i) and (ii). The subsections state that leave to appeal may only be granted where the judge or judges are of the view that the appeal would have prospects of success or where there are some other compelling reasons as to why the appeal should be heard. An applicant for leave to appeal therefore, as our senior courts have emphasized, must 'satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes.'² 'A mere possibility of success, an arguable case or one

² *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020).

that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’³

Merits

5. With these principles in mind, I now consider the applicant’s grounds. The grounds are not numbered and contain no headings. I have, however, identified two themes. They are: (i) the applicant failed to conduct its own investigation and hold a hearing where the respondent is invited to defend himself and be able to cross examine witnesses, prior to launching the initial proceedings. In this way, and this leads to the second theme, the applicant would have realized that many of the complaints had either been withdrawn or no longer existed.
6. In support of the submission that the LPC had to institute an enquiry prior to launching proceedings, the respondent referred this court to the matter of *South African Legal Practice Council v Louw*⁴ suggesting that this court should have followed *Louw* and dismissed the applicant’s application. In *Louw*, the court found that the LPC had to first hold an enquiry and investigate the issues involved prior to instituting legal proceedings.

Analysis

7. These grounds are not new. They were raised as defences during the striking off proceedings and are addressed in full in the judgment. There is no need

³ *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016).

⁴ (2023/068293) [2024] ZAGPJHC 1114; [2025] 1 All SA 744 (GJ) (1 November 2024).

to repeat the judgment. As for the reference to *Louw* and the claim that the applicant had some duty to hold an inquiry prior to launching legal proceedings, this does not avail the respondent. *Louw* dealt with a complex web of allegations of failure to keep proper records, tax evasion, and bribing estate agents, to mention a few of the charges, in which four directors and employees were said to be implicated. The court dismissed the application because not only were the allegations denied by the respondents, but it was also of the view that it had insufficient information to conduct the three staged enquiry and it could not make full and fair conclusions.

8. The court made the point that the LPC ought to have first identified the role and the extent, if any, to which each of the respondents were involved in the offences mentioned, which the LPC had not done. The present case cannot be compared to the complexities involved in *Louw*. Here the respondent practiced as a referral advocate. The complaints filed by his clients had to do with his conduct. Their complaints were backed by proof of payment directly into the respondent's account, in circumstances where he was not authorized to take instructions directly from clients much less call for and accept monies into his personal bank account. The charges occasioned by the complaints remain unanswered to this day. And, the judgment makes plain that the respondent eschewed all the invitations to respond to the applicant.
9. I conclude that nothing in the respondent's grounds disturbs the findings in the judgment. The appeal in that case has no prospects of success. On the question whether there are any compelling reasons why the appeal must be

heard, the applicant has not identified any. He merely makes a bald statement that there are compelling reasons without substantiation. We have found that there are no compelling reasons in this case. In the event the respondent referred to *Louw* to demonstrate some sort of conflict between the two decisions, we state categorically that there is simply no conflict as already stated in this judgment. In the event, leave to appeal must be refused.

Closing remarks

10. Having reached the conclusion that leave is to be refused, it is now appropriate to refer to a matter brought to the attention of this court by the applicant. It is to the effect that during his suspension, the respondent saw it fit to accept instructions to represent clients in court proceedings. It is unclear whether the instruction came via an instructing attorney or directly from client. Nonetheless, a magistrate in Nebo Magistrates Court, District of Makhuduthamaga, Limpopo, before whom the respondent had appeared, purporting to represent a client, had reason to believe that something was amiss during the proceedings. On further enquiry with the LPC, it was confirmed that the respondent had been disqualified from practice since May 2023.

11. Upon this discovery, the magistrate had little choice but to apply for review of the proceedings to the Limpopo High Court, on the basis of the irregularity occasioned by the respondent's appearance before court, while the suspension was in force. The judgment declaring the proceedings a nullity, based on the respondent's disqualification, bears case number 122/2023,

REV 178/2024, Limpopo High Court, (unreported) and was delivered on 31 January 2025. To protect members of the public, the Court ordered the registrar to serve a copy of the judgment to the South African Police Service for further investigation and the LPC. Save to record that this conduct, as illustrated in the judgment, makes plain that the respondent appears to have little or no regard for the law, nothing further need be said.

Order

1. The application for leave to appeal is dismissed with costs.



N.N BAM J
JUDGE OF THE HIGH COURT
OF SOUTH AFRICA, GAUTENG
DIVISION, PRETORIA

Date of Hearing: 28 March 2025

Date of Judgment: 02 May 2025

Appearances:

Counsel for the Applicant: Ms Nereeze Collet (Attorney with
right of appearance)

Instructed by: Rooth and Wessels
Groenkloof, Pretoria

Counsel for the respondent:

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In person