

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
(MPUMALANGA DIVISION, MBOMBELA)**

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

03/04/2024

CASE NO: 3938/2023

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

ZIETTA JANSE VAN RENSBURG

First Respondent

VAN RENSBURG AND VAN RENSBURG INCORPORATED

Second Respondent

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 03 April 2024 at 10:00.

J U D G M E N T

MASHILE J:

INTRODUCTION

[1] The Applicant ("LPC"), on urgent basis, seeks relief that the automatic suspension of the orders granted by this Court on 22 February 2024 be uplifted such that the orders become immediately executable pending the Respondents' leave to appeal application launched on 26 February 2024. The LPC does so believing that it has satisfied the prerequisites contemplated in Section 18(1) and (3) of the Superior Courts Act No 10 of 2013 ("the Act"), which I will explore as this judgment unfolds hereunder.

[2] I deem it necessary to mention at this juncture that the parties were at variance on the issue of urgency of the application. The LPC, on the one hand, alleged that the application met the requirements of Uniform Rule of Court 6(12) while the Respondents, on the other, contended otherwise. The Court considered the matter and noted that Courts have come to accept that it is appropriate that matters involving the interest of the public, especially where members of the public entrust parties like the Respondents with their financial matters, should ordinarily be dealt and disposed of on urgent basis. This matter is no exception to that generally settled principle. The Court in *South African Legal Practice Council v Mokhele*¹ adopted a similar approach.

¹ 5511/2022) ZAFSHC 80 (27 March 2023) at para 5

[3] Counsel for the LPC pointed out that the answering affidavit was not served in line with the time lines set by the LPC in the notice of motion. She implored this Court to characterise the answering affidavit as *pro non scripto*. Besides, she argued, the answering affidavit contained irrelevant evidence that failed to address the issues raised in this application. The Respondents were not before Court. The Court considered Counsel's assertions and evaluated the Respondents' absence and that they have filed an answering affidavit and resolved to admit the answering affidavit despite it having been served two days before the hearing of this application.

[4] The Court decided as it did mindful of the case of *E.M.W v S.W*² on which the LPC relies. The Court in that matter held that Uniform Rule 6(12) affords an Applicant to create its own rules within which a Respondent must file a notice to oppose and an answering affidavit. The Court added that it is for that reason that condonation must be sought when the Court is approached. A Respondent, said the Court, who ignores the timeline so set by an Applicant does it at his own peril and runs the risk of an order been granted against him by default.

[5] It is generally required of a Respondent to observe the time lines set by an Applicant in urgent cases. However, the application of the principle should not be intransigent where circumstances demand flexibility. One of the considerations that persuaded this Court was that the affidavit was delivered two days before the hearing albeit that one of those days was a holiday. In that time, the LPC was able to produce supplementary heads of argument and could, given the lateness, have asked for a stand down to enable it to prepare and deliver a replying affidavit, which it did not do. The Court further reasoned that the LPC would not be necessarily prejudiced by the admission of the answering affidavit. Besides, as it is often stated, the rules are not there for the Court but the Court is there for the rules.

² (26912/2017) [2023] ZAGPJHC 710 (15 June 2023)

CONCISE FACTUAL MATRIX

[6] This application follows upon the order of this Court dated 22 February 2024. The essence of the order is that after an assessment of a number of complaints levelled at the Respondents by the LPC, this Court felt that the LPC had made a *prima facie* case warranting an order in accordance with the provisions of Section 43 of the Legal Practice Council Act 28 of 2014. The Respondents are appealing the judgment and order of 22 February 2024. The practical implication of the leave to appeal is that the order became automatically suspended pending its finalisation. By launching this application, the LPC seeks to uplift the automatic suspension of the order to enable it to execute it.

ISSUES

[7] The question raised by this matter is simply whether or not the LPC has made a case for the relief it seeks – upliftment of the automatic suspension of the court order of 22 February 2024 brought about by the leave to appeal delivered by the Respondents on 26 February 2024. For the LPC to be successful, it has to comply with the three jurisdictional factors set out in Section 18(1) and (3) of the Act.

LEGAL FRAMEWORK

[8] Section 18 of the Act on which this application is founded, in relevant parts, provides as follows:

“Suspension of decision pending appeal

(1) *Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.*

(2)

- (3) *A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.*
- (4) *If a court orders otherwise, as contemplated in subsection (1)—*
 - (i) *the court must immediately record its reasons for doing so;*
 - (ii) *the aggrieved party has an automatic right of appeal to the next highest court;*
 - (iii) *the court hearing such an appeal must deal with it as a matter of extreme urgency; and*
 - (iv) *such order will be automatically suspended, pending the outcome of such appeal.”*

[9] The LPC as a party pursuing relief in terms of Section 18(1) read with Section 18(3 of the Act), must satisfy three jurisdictional factors. These are that:

- 9.1 The existence of exceptional circumstances;
- 9.2 It will suffer irreparable harm if the suspension in Section 18(1) is not granted; and
- 9.3 The Respondents will not suffer irreparable harm if relief in Section 18(1) is granted to the LPC;
- 9.4 and 9.3 above must be established on a balance of probabilities. The absence of anyone of the three requirements will be adequate to dismiss the application.

[10] To the extent that this Court will have to determine whether there exist exceptional circumstances the Court in *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, & Another*³, a case to which the LPC referred this Court, stated that:

“What does emerge from an examination of the authorities, however, seems to me to be the following:

1. *What is ordinarily contemplated by the words “exceptional circumstances” is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different; “besonder”, “seldsaam”, “uitsonderlik”, or “in hoë mate ongewoon”.*
2. *To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.*
3. *Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.*
4. *Depending on the context in which it is used, the word “exceptional” has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or especially different.*
5. *Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.”*

³ 2002 (6) SA 150 (C)

ANALYSIS

[11] The starting point should be the existence of exceptional circumstances envisaged in Section 18(1). Circumstances will always differ from one case to the next making it difficult if not impossible to have one rule that is of general application. Ordinarily, the LPC, as a body that has been established to regulate the legal profession, presumes that every legal practitioner will abide the regulations and rules that it has prescribed for the smooth operation of its members. Those rules and regulations are there not only for the smooth running of the profession but in addition, they exist to protect members of the public who, on daily basis, entrust their huge financial matters with members of the LPC.

[12] I am reminded here that this Court has already, *albeit prima facie*, found that there is substance in the complaints against the Respondents. Following that finding, it granted the order of 22 February 2024. A refusal of this application will mean that the Respondents will carry on practicing. The implication is, of course, that they will accept funds and deal with financial matters of the members of the public. It will be remiss in the extreme were this Court to countenance this to happen.

[13] The LPC cannot afford this because at the centre of the relationship of its members and the public is trust. A betrayal of the trust of this magnitude has to be treated with the utmost caution lest there is a public outcry that the LPC has permitted a practitioner to continue to practice her indiscretions notwithstanding. In other words, the LPC cannot afford to risk its reputation and the trust the public has invested in it by standing back and doing nothing hoping that the Respondents will not repeat their indiscretions. For the above reasons, I believe that the requirement of exceptional circumstances has been satisfied.

[14] Turning to the requirement that the LPC ought to show that it will suffer irreparable harm if the relief it seeks is not granted. The requirements in Section 18(3) are somewhat interconnected with the existence of exceptional circumstances. The most obvious prejudice and/or irreparable harm to be suffered by the LPC is the loss of trust of the public. Such perception may even lead to the public believing it to be complicit if it does not act decisively

by purging members like the First Respondent. The point is that the LPC exists to ensure that the interaction between the public and its members thrives on trust and respect. An erosion of the aforesaid may spell its demise.

[15] Lastly, the issue is whether or not the Respondents will suffer irreparable harm and/or prejudice if the relief sought by LPC is granted. The Respondents have vigorously argued that they will undoubtedly. The existence of the order of this Court of 22 February 2024 means that there is reason to investigate and finalise this matter. For as long as it lingers, the more prejudice the Respondents will suffer because the dark cloud above them will persist. Thus, the granting of the relief in this application cannot prejudice them, if anything, it will militate against any prejudice that there may be. One thing that the LPC should not do is to allow the Respondents to deal with funds of the members of the public conscious that they have not been cleared of wrong doing.

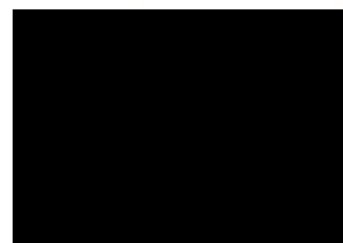
[16] In the result, I propose the following order;

1. This Court dispenses with the forms and service set out in the Uniform Rules in terms of rule 6(12)(a) and disposes of this matter as one of urgency;
2. The suspension of the order granted by this Court dated 22 February 2024 under the above case number brought about as a result of the pending leave to appeal application, is uplifted in terms of Section 18(1) of the Superior Courts Act, 10 of 2013;
3. The order shall be effected/implemented and/or executed with immediate effect;
4. The Respondents are jointly and severally liable, the one paying the other to be absolved, for the costs of the LPC occasioned by this application.



B A MASHILE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

I, agree



L COETZEE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

Counsel for the Applicant:
Instructed by:

Ms T Ratshibvumo
Ratshibvumo Attorneys Inc

Counsel for the Respondent:
Instructed by:

Date of Judgment:

02 April 2024