IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

16/10/2014.
DATE

SIGNATURE

10/10/2014

Case Number: 40530/13

In the matter between:

FRANCINA JOHANNA DE WET Applicant

and

LAW SOCIETY OF THE NORTHERN PROVINCES

(Incorporated as the Law Society of the Transvaal) Respondent

In re

LAW SOCIETY OF THE NORTHERN PROVINCES

(Incorporated as the Law Society of the Transvaal) Plaintiff

and

FRANCINA JOHANNA DE WET Defendant

In re

Case number: 20153/2014

LAW SOCIETY OF THE NORTHERN PROVINCES Applicant

and

FRANCINA JOHANNA DE WET Respondent

JUDGMENT

POTTERILL J

[1] The applicant is applying for leave to appeal against the judgment of this court dated the 29th of July 2014 wherein the applicant's name was struck from the roll of attorneys. This order was granted pursuant to the court on 26 July 2013 on an urgent basis suspending the applicant from practising as an attorney pending the finalisation of the striking application. On 29 July 2014 the applicant was also

found to be in contempt of court for failing or refusing to comply with the suspension order dated the 26th of July 2013. There is no appeal pending against this order.

[2] The applicant filed a written application for leave to appeal. The Law Society filed a replying notice informing the applicant that her notice and/or application does not comply with Rule 49(1)(b). Thereupon the applicant filed a supplementary notice for leave to appeal. This application consists of 25 pages setting out more than 70 grounds of appeal.

[3] The day before the hearing a letter to the Honourable Chief Justice of the Constitutional Court was sent to our offices wherein the Chief Justice is requested to compel myself and my brother Baqwa J to recuse ourselves from the application. Also a day before the hearing of the application for leave to appeal the applicant handed over to our registrars and the Law Society an application consisting of 106 pages and many, many annexures.

[4] At the hearing of this leave to appeal this "new application" was utilised as a means to obtain a postponement of the application for leave to appeal. The applicant submitted that this "new application" was to be heard with the application for leave to appeal. In this "new application" the applicant cited as first applicant herself, second applicant Adriaan Rudolph Fondse, third applicant the Chief Justice of the Constitutional Court of the Republic of South Africa, fourth applicant the Supreme

Court of Appeal of the Republic of South Africa (the Honourable Judge Brand), the fifth applicant the Supreme Court of Appeal of the Republic of South Africa (the Honourable Judge Wallis), the sixth applicant the Supreme Court of Appeal of the Republic of South Africa (the Honourable Judge Irma Schoeman) and the seventh applicant the Mark Shuttleworth Foundation. It is common cause that the third to seventh applicants have no knowledge of this application. The respondents in this "new application" total 31 and include *inter alia* the National Prosecuting Authority, the Minister of Justice and Correctional Services, the Minister of the Police of the Republic of South Africa, the Hawks and the Honourable President of the Republic of South Africa.

[5] 5.1 In this "new application" orders prayed for range from the setting aside retrospectively the court orders dated the 29th of July 2014 and 26th of July 2013 and that the applicant be reinstated as practitioner of this court with retrospective effect from 2010.

5.2 This court must also direct the Director of Public Prosecutions in terms of the provisions of sections 21(1) of the Protection of the Constitutional Democracy Act against Terrorist and Related Activities Act 2004 (Act 33 of 2004) in writing that such Director has the power and duties in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act 1998 (Act 32 of 1998) to forthwith arrest all perpetrators in terms of section 39 of the

Criminal Procedure Act who had committed the offences of terrorism and related activities supported by *prima facie* evidence as testified under oath.

5.3. Furthermore orders are prayed against the Masters Office of Pretoria and Mpumalanga and the Deeds Office of Pretoria.

5.4 Furthermore the Law Society must be ordered and compelled to pay all spilled legal costs occurred by the first applicant on the scale as between attorney and own client without the taxation of the first applicant's statement of account.

5.5 The Law Society is ordered and compelled to pay all damages suffered by the first applicant on the scale of attorney and own client.

5.6 The Law Society is ordered and compelled to pay a part payment of the first applicant's damages in the sum of R4 000 000.00 within 5 days from date of the order.

5.7 The Master of the High Court must also be ordered to be prohibited to further harass the first and second applicants in terms of the provisions of section 9(8) of the Harassment Act for a period of 15 years from date of this order

and they must be prohibited from further sabotaging the practise of the first applicant.

5.8 Not all the orders prayed for are set out herein.

[6] The respondent opposed any application for a postponement and in turn brought an application in terms of Rule 49(11) that the court order dated 29 July 2014 shall remain in force and the relief granted therein shall be implemented pending the respondent's application for leave to appeal and/or any further appeal process to be initiated by the respondent. That the respondent further be declared to be a vexatious litigant in terms of the Vexatious Proceedings Act, No 3 of 1956. Further that the respondent shall not institute any legal proceedings against any person in any court without the leave of that court or any Judge thereof in terms of section 2(1)(b) of the Vexatious Proceedings Act, No 3 of 1956. It is prayed that if the court does not declare the respondent to be a vexatious litigant that in the alternative the respondent be prohibited from proceeding with or initiating any further appeals until such time as she had paid the Law Society's costs in relation to all the matters that were heard by the Honourable Court on 28 July 2014 and 29 July 2014 in full.

[7] The applicant addressed the court at length as to why this "new application" was in fact already proven and would be successful. The crux is that the Law Society had

knowingly exercised its powers for unauthorised purposes, *contra bones mores* and contrary to all law. The Law Society did not act impartially nor in a reasonable manner contrary to section 33 of the Constitution. They in fact manipulated the processes of the court. The disciplinary steps which were instituted by the Law Society were not done impartially and would not be regarded by the community as being fair and just in an open democratic society. The Law Society had maliciously and vexatiously planned and orchestrated the applicant's striking off since 2012 when they had failed to provide the applicant with a fidelity fund certificate. The Law Society had no *locus standi* to bring this application as they were an interested party trying to cover up fraud and corruption. This fraud and corruption all relates to the first applicant's *"failure to have administered the restricted erven in the township Everton West as curator bonis of the trust account of Snijman & Smullen Attorneys in terms of prayer 2.2 of the court order of the said Honourable Court dated 27 September 2006 under case number 31086/2006 which they had to refrain to bring to conclusion unlawfully and contra bones mores."* [paragraph 10.5]

[8] It was argued that the court had no jurisdiction to make the order that it made. It was submitted that the court ignored all the evidence for the applicant put before them. The court only took account of the Law Society's fabricated, unsubstantiated, unmeritorious and scandalous version. The court should have ordered the Law Society to provide the information requested in terms of Rule 35(12), (13) and (14). The court's refusal to stay the proceedings for this information resulted in the

applicant not having all the facts before the court in the application severely prejudicing the first applicant. Paragraph 20.10.30 sets out one of her main arguments:

> *"The presiding Judges of this Honourable Court should have ruled that a conspiracy had been formed against the first applicant, that the Law Society had exceeded the bounds of private defence, had acted maliciously and vexatiously, contra bones mores, had not acted as a special litigant in public interest, had not investigated the complaints made against the first applicant impartially and it failed to recuse itself because its ability to adjudicate the matter impartially upon a frivolous defence was in doubt and further, should have concluded that their ruling on the Law Society of the Northern Provinces' secondary fabricated version of the matter will result in an unfair determination of the issues of the matter and should have struck the matter as vexatious and granted the relief sought by the first applicant in the first applicant's interlocutory application under case number 40530/2013 in the said Honourable Court."*

[9] The Law Society opposed the application for postponement. The main reason being that the "new application" was fatally defective citing the Chief Justice and members of the Supreme Court of Appeal as applicants while they did not even know of the application. The applicant did not set out any grounds as to why the matter should

be postponed. Any postponement would not be in the interests of justice and the Law Society would suffer extensive prejudice as the applicant has complied with the order in handing over her books but has placed on record that they may not look at the books as the appeal process is staying the execution of the order granted by this court. The Law Society also objected to a postponement as there are no prospects of success. As this is not a new application but brought under the same case number it is an interlocutory application. The application is however defective. This application furthermore demonstrated the conduct of the applicant as being vexatious.

[10] The court denied the applicant the postponement. There was no substantive application for postponement before us. The applicant was seeking the indulgence of the court and must furnish a full and satisfactory explanation of the circumstances that gave rise to apply for a postponement. No such reasons were provided. The application for a postponement was not made timeously. The prejudice to the Law Society far outweighs the prejudice to the applicant in granting the postponement. Furthermore the grounds of appeal are in essence the same as the grounds set out in the "new application". The applicant was thus prepared to argue the leave to appeal. In considering the postponement application further there are very little prospects of success of the "new application".

[11] The first applicant did aver that despite paying for the transcription she did not receive the judgment but only the record. The matter stood down for her to read the judgment. The applicant in argument rehashed the facts in opposition to her name being struck from the roll. She persisted that the Law Society had lied in its papers, was not *bona fide* and acted vexatiously. They were part of a conspiracy to cover up what Mr. Lombaard had done and thus had a direct interest and had no *locus standi* to bring the application. Therefore the court had no jurisdiction. She in fact went as far as to argue that she had a right not to comply with the order to keep her books from the Law Society otherwise they would destroy evidence or use it against her.

[12] The Law Society argued that the notice for leave to appeal was defective and that there are no grounds set out. The grounds are argumentative and a personal attack on the court and the Law Society and no other court would come to another conclusion.

[13] On the applicant's own version she must be struck from the roll for misappropriation of trust funds. This also renders her unfit to practise. The applicant's lack of insight in matters of law and factual analysis rendered it necessary to strike Mrs. De Wet from the roll of practising attorneys. The facts demonstrate that Mrs. De Wet is unfit to practise. I am satisfied that there are no prospects of success on appeal and that

no other court will come to another conclusion. The leave to appeal is thus dismissed with costs.

[14] The Rule 49(11) application must be successful. It is in the public interest that pending any further appeal procedures the court order dated 29 July 2014 shall remain in force. If this is not ordered then effectively Mrs. De Wet who has already been found to be an unfit person can still practise; such a situation must be prevented at all costs.

[15] The Law Society applied that Mrs. De Wet be declared a vexatious litigant. The reason for this is that Mrs. De Wet brings interlocutory applications always of a tremendous voluminous nature. This necessitates the Law Society to instruct attorneys and counsel incurring legal costs which Mrs. De Wet cannot pay. Mrs. De Wet on the other hand has stated in open court that costs orders can be made against her as she has absolutely nothing. The intention with this application is not to prevent her from further appealing the order granted on 29 July 2014 to the Supreme Court of Appeal, if she so wishes, but not to bring any further applications.

[16] Section 2(1)(b) of the Vexatious Proceedings Act 3 of 1995 (as amended) provides as follows:

"If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings."

[17] The Constitutional Court in ***Beinash and Another v Ernst & Young and Others*** **1999 (2) SA 116 (CC)** found the aforesaid provision of the Act to be constitutional. The purpose of the Act is to put a stop to persistent and ungrounded institution of legal proceedings. The Act does so by allowing a court to screen a person who has persistently and without any ground instituted legal proceedings in any court or in any inferior court. The purpose of this screening mechanism is in the words of Mokgoro J in the ***Beinash*** **matter** ***supra*** at 122G-H the following:

"to protect at least two important interests. These are the interests of the victims of the vexatious litigant who have repeatedly been subjected to the costs. Harassment and embarrassment of unmeritorious litigation; and the public interest that the functioning of the courts and the administration of justice proceed unimpeded by the clog of groundless proceedings."

[18] In ***In re Anastassiades*** **1955 (2) SA 220 (W)** the court found that the South African courts do not possess the inherent power to impose a general prohibition. The South African common law merely affords the court the inherent power to stop frivolous and vexatious proceedings, when they amount to an abuse of its process.

[19] In ***Absa Bank Ltd v Dlamini*** **2008 (2) SA 262 (TPD)** the court in paragraph [25] found as follows:

"The only protection for a litigant against a vexatious proceeding or proceedings, or an abuse of a process or processes concerning a legal proceeding or proceedings ***which had already been instituted*** *(my emphasis), has to be derived from the common law. By a 'process concerning a legal proceeding' I have in mind procedures such as, inter alia, those permitted by the rules of court to facilitate the conduct of all types of litigation, including all steps relating to the execution of a judgment, and all*

matters ancillary to the legal process, as well as the machinery devised generally to assist with the proper administration of justice."

In paragraph [32] of the ***Absa*** judgment ***supra*** the position vis-à-vis the Vexatious Proceedings Act and the common law is set out as follows:

"... the only manner by which the institution of future vexatious proceedings can be prevented is to rely on the provisions of the Act; the only manner to stay. strike out or otherwise deal with vexatious proceedings which have already been instituted, or to deal with any process or action or inaction leading up to, or during or subsequent to, any legal proceeding or proceedings already instituted, and which constitutes an abuse of process, or generally bring the administration of justice into disrepute, shall be done in terms of the applicable common-law principles and the court's inherent power to apply same."

[20] I find it necessary to apply the common law principles alluded to above to ensure the proper administration of justice and to prevent any further vexatious proceedings by Mrs. De Wet. Mrs. De Wet may institute an appeal to the Supreme Court of Appeal but on the papers as they stand including petition papers necessary to prosecute such an appeal to the Supreme Court of Appeal. If any other interlocutory or other applications or other actions are to be brought in connection with the order

granted by this court the applicant must obtain permission from a Judge to do so or from a senior counsel who issued a *probabalis causa* certificate (a reasonable cause of action). This is necessary to curb the applicant's propensity for filing papers. On 9 October 2014 the applicant delivered a further supplementary notice for leave to appeal in terms of Rule 49(1)(b) read with Rule 49(18) of the Uniform Rules of Court. She delivered same to the chambers of Baqwa J and myself and the papers were also served on the Law Society. This was done despite both parties fully addressing the court on the application for leave to appeal. The Law Society obviously has not been afforded an opportunity to reply to this new further supplementary notice. This was also filed and served despite full well knowing that judgment was to be handed down on the 10th of October 2014 at 10:00. The court accordingly does not take cognisance of any further supplementary notice for leave to appeal.

[21] In summary:

1. The application for leave to appeal is dismissed with costs;
2. The application in terms of Rule 49(11) is granted with costs;
3. The applicant may institute an appeal to the Supreme Court of Appeal but only on the papers as they stand including petition papers necessary to prosecute such appeal to the Supreme Court of Appeal. If any other interlocutory or any

other applications or actions are to be brought in connection with this order granted by this court the applicant must obtain permission from a Judge to do so or from a senior counsel who issued a *probabalis causa* certificate.

S. POTTERILL

JUDGE OF THE HIGH COURT

I agree

S.A.M. BAQWA

JUDGE OF THE HIGH COURT

CASE NO: 40530/2013

HEARD ON: 8 October 2014

FOR THE APPLICANT: In person

FOR THE RESPONDENT: Mr. J. Leotlela

INSTRUCTED BY: Rooth & Wessels

DATE OF JUDGMENT: 10 October 2014