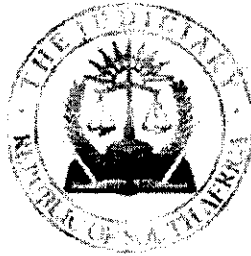


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: A220/2014

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

26 FEBRUARY 2016

FHD Van Oosten
FHD VAN OOSTEN

26/2/2016

In the matter between

WARRICK LESLEY VISSER HEPPELL

APPELLANT

and

**THE LAW SOCIETY FOR
THE NORTHERN PROVINCES**

RESPONDENT

Reasons for **JUDGMENT**

VAN OOSTEN J:

[1] The issue this court is required to determine is whether it has jurisdiction to adjudicate this appeal.

[2] The background to the litigation between the parties is the following: On 5 December 2013 a court of this Division, consisting of De Vos J and Mogotse AJ, handed down judgment in terms of which, in essence, the appellant was suspended

from practicing as an attorney for a period of 6 months. The appellant applied for and was granted leave to appeal by the court a quo, on 15 July 2015. In the application for leave to appeal, dated 25 March 2014, leave to appeal was sought to the 'Full Bench' of this Division which was echoed in the order of the court a quo granting leave to appeal to the 'full bench' (as to the difference between a 'full bench' and 'a full court', see Harms *Civil Procedure in the Superior Courts* vol 1 B-345).

[3] On 26 August 2015 the appeal came up for hearing before a full court of this Division, consisting of Moshidi, Louw and Tlhapu JJJ. The day before the hearing of the appeal the respondent, for the first time, raised the question whether the full court had jurisdiction to adjudicate the appeal. The full court, in view thereof, ordered that the appeal be postponed and issued directions as to the filing of heads of argument on the jurisdiction point. Heads of argument were duly filed and the appeal is presently before us for determination of the jurisdictional issue.

[4] The starting point in the consideration of the issue is the question whether the relevant provisions of the Supreme Court Act 59 of 1959 (the old Act) or the Superior Courts Act 10 of 2013 (the new Act) apply for the purpose of determining jurisdiction. The litigation between the parties straddles both Acts: the new Act came into operation on 23 August 2013 and thus after institution of the main application but before the judgment of the court a quo was delivered on 5 December 2013.

[5] In regard to the old Act, s 20 thereof provides for appeals to the then Supreme Court in general. In terms of s 20(2) and (4) an appeal to a full court is only possible from a judgment or order of a single judge, of the court of first instance (s 13(1)(c)), leave to appeal having been granted to the full court or, if leave to appeal was refused, by order of the Supreme Court of Appeal, on application to it (Herbstein & Van Winsen *The Civil Practice of the High Courts of South Africa* 5th ed p1156). No provision is made in the old Act or the Uniform Rules of Court for the hearing of an appeal by a full court on appeal from a judgment of the full bench. I am unable to find any authority for the proposition advanced by counsel for the appellant that the old Act can be construed as providing for an appeal from a full bench to be heard by the full court.

[6] In the new Act the omission in the old Act of a provision for appeals from a full

bench has been cured. Section 16 of the new Act provides in clear terms that an appeal against a decision of a court of first instance lies upon leave having been granted, if the court consisted of more than one judge, to the Supreme Court of Appeal. The jurisdiction of a full court to hear appeals from a full bench accordingly, is ousted by these provisions. That normally would swiftly have decided the issue at hand but a further aspect was addressed in argument before this court, which is whether the new Act applies to the present matter. I propose to briefly deal with this aspect merely for the sake of completeness.

[7] The question is what the status of this matter was at the time the new Act came into operation in order to determine whether it was applicable. The motion proceedings, which are the subject matter of this appeal, were instituted and therefore commenced in March 2013. The new Act, as I have already pointed out, came into operation on 23 August 2013 and thus before judgment was delivered on 5 December 2013. In terms of s 52(1) of the new Act, its provisions are not to be applied to pending cases, which is defined as cases where summons had been issued (which would include institution of motion proceedings) but judgment not yet been passed as at the date of commencement of the Act. From these provisions it follows that the main application was indeed governed by the old Act.

[8] The main application was concluded on the date the judgment was delivered. After that the application was no longer pending within the meaning of s 52(2) of the new Act. Had it been the intention of the legislature to extend the meaning of 'pending' to finalisation of all appeals in regard to the main application, as was contended for by counsel for the appellant, words to that effect would have been used in the section, of which there are none. The plain and ordinary meaning of the wording in s 52(2) of the new Act clearly shows the intention of the legislature to exclude from the operation of the new Act, pending matters where judgment in that matter had not yet been delivered. The further proceedings concerning appeal are *sui generis*, the court a quo having become *functus officio* in regard to the main application.

[9] For all these reasons I have come to the conclusion that this court lacks jurisdiction to adjudicate the appeal. In view thereof this court, *a fortiore*, has no jurisdiction to issue any order except to remove the appeal from the court roll.

[10] In the result the appeal is removed from the roll.



FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

I agree.



DS MOLEFE
JUDGE OF THE HIGH COURT

I agree.



MM JANSEN
JUDGE OF THE HIGH COURT

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& BREWIS INC

ATTORNEY FOR RESPONDENT
RESPONDENT'S ATTORNEYS

ATTORNEY PJ SMITH
ROOTH & WESSELS

DATE OF HEARING & ORDER
DATE OF REASONS FOR JUDGMENT

24 FEBRUARY 2016
26 FEBRUARY 2016