



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

CASE NO:7617/2015

DELETE WHICHEVER IS NOT APPLICABLE

23/3/2016

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

22/3/2016

DATE

*[Signature]*  
SIGNATURE

In the matter between:

**THE LAW SOCIETY OF THE NORTHERN PROVINCES**  
**APPLICANT**

and

**THANDI GOODNESS MANGENA** **RESPONDENT**

*Reasons for* **JUDGMENT**

**RANCHOD J:**

[1] On 17 February 2016 this Court granted the following order:

- "1. The application for postponement of the application for leave to appeal by the respondent is granted. Costs to be costs in the application for leave to appeal.

2. The application by respondent for postponement of the applicant's application in terms of section 18 of the Superior Courts Act is refused.
3. The application by the applicant in terms of section 18 of the Superior Courts Act is granted with costs on an attorney and client scale."

I stated at the time that the Court will furnish its reasons for paragraphs (2) and (3) of the order later.

[2] For convenience I will refer to the parties as they are cited in the main application, i.e. the applicant as the Law Society of the Northern Provinces (LSNP) and Ms Mangena as respondent.

[3] On 14 August 2015 the respondent was struck off the roll of attorneys. Reasons for the judgment were handed down later.

[4] The respondent then launched an application for leave to appeal. The effect of an application for leave to appeal is to suspend the striking off order and the respondent would be entitled to continue practising as an attorney until the appeal is determined.

[5] The LSNP thereafter launched an application in terms of s 18 of the Superior Courts Act 10 of 2013 (the Act) for the enforcement of the striking off order notwithstanding the application for leave to appeal.

[6] We determined that both applications should be heard together on 17 February 2016. At the commencement of the hearing counsel for the respondent applied for a postponement of both the respective applications. We were informed from the bar that respondent's attorneys withdrew as attorneys of record the previous week. A copy of the notice of withdrawal was handed up as the original had not reached the Court file. The notice does not furnish reasons why respondent's attorneys withdrew as attorneys of record.

[7] Counsel submitted that he was not in a position to argue the two applications before the Court as he was only briefed to move for a postponement.

[8] The first thing to be noted is that respondent's attorneys withdrew about a week before the hearing on 17 February 2016. The respondent had ample opportunity to instruct another attorney. Secondly, if a postponement of the hearing was to be sought the respondent had ample opportunity to prepare a properly motivated substantive application for postponement. This she did not do.

[9] As I said, as long as the application in terms of s 18 by the LSNP is not finalised the respondent may continue practising. Indeed, in answer to questions raised by the Court respondent's counsel informed us that she is in fact practising but that it was limited to finalising outstanding matters. It was submitted that respondent had been advised not to take on new clients. Of course that does not mean that she is precluded from doing so and, it had not been stated under oath. These were merely submissions from the bar.

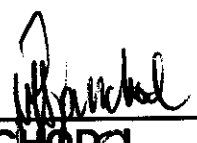
[10] Respondent's counsel then submitted that the Court should make an order that the respondent is suspended from practice pending the finalisation of the application for leave to appeal. Counsel conceded that that would be akin to granting the LSNP's application in terms of s18 of the Act. In the Court's view the granting of an order of suspension would not make sense when its effect would be the same as the striking off order, i.e. that the respondent may not practice, pending the application for leave to appeal.

[11] Counsel for the LSNP submitted that the respondent was doing what she did during the striking off proceedings, i.e. launch applications at the last minute to stay or postpone the applications. I agree. It seems that by applying for the postponement of the s18 application and the application for leave to appeal by the LSNP the respondent seeks to continue practising as an attorney for as long as possible.

[12] It also seems that the withdrawal by respondent's attorneys without furnishing reasons was a strategy to force a postponement of the hearing of the two applications. In *Take & Save Trading and Others vs Standard Bank of SA Ltd 2004(4) SA 1 (SCA)* Harms JA said:

"One of the oldest tricks in the book is the practice of some legal practitioners, whenever the shoe pinches, to withdraw from the case (and more often than not to reappear at a later stage), or of clients to terminate the mandate (more often than not at the suggestion of the practitioner), to force the court to grant a postponement because the party is then unrepresented. Judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure that this abuse is curbed by, in suitable cases, refusing a postponement. Mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement as of right."

[13] The reasons for striking off the respondent from the roll of attorneys have been set out in detail in the main application. It includes, inter alia, the fact that respondent by her own admission had misappropriated trust monies. It is not in the interests of the public to allow the respondent to continue practising whilst the application for leave to appeal has still not been determined. It would also place the Attorneys Fidelity Fund at risk. Hence, we granted the order in terms of s18 of the Act in favour of the LSNP.

  
\_\_\_\_\_  
RANGANO  
JUDGE OF THE HIGH COURT

I agree

  
**MNGQIBISA-THUSI J**  
**JUDGE OF THE HIGH COURT**

Appearances:

Counsel on behalf of Applicant	: Attorney P.J Smith
Instructed by	: Rooth & Wessels Inc
Counsel on behalf of Respondent	: Adv Gededger
Instructed by	:
Date heard	: 17 February 2016
Date delivered	: 23 March 2016