

REPUBLIC OF SOUTH AFRICA



HIGH COURT OF SOUTH AFRICA  
(GAUTENG PROVINCIAL DIVISION, PRETORIA) 8/4/16

CASE NO: 45601/2014

*NOT REPORTABLE*

*NOT OF INTEREST TO OTHER JUDGES*

In the matter between:

JOSEPH JOSHUA WILKINSON

Applicant

and

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Respondent

---

J U D G M E N T – Leave to appeal

---

**MAKGOKA, J**

[1] This is an application for leave to appeal against the judgment of this court delivered on 20 April 2015. In terms of the order of that judgment, the applicant's name was struck off the roll of attorneys. The application is opposed by the Law Society.

[2] The common law test in an application for leave to appeal has always been whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. That test has been codified by s 17 of the Superior Court Act 10 of 2013, in terms of which leave to appeal may only be given where a judge is of the opinion that the appeal would come to a different conclusion.

(My underlining for emphasis).

[3] I have had careful and dispassionate regard to the applicants' grounds of appeal, which amount to no more than a regurgitation of the arguments advanced in the main application. Each of the grounds has been dealt with fully in the judgment, and it would serve no purpose to repeat what is stated there. In the notice of application for leave to appeal, a point which was never raised in the main application, is raised for the first in this application. It is contended that my learned brother Phatudi AJ, is, by virtue of being an attorney, still a member of the Law Society, and should not have sat in the matter.

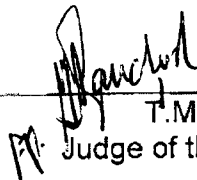
[4] The argument is that, the learned acting Judge himself being subject to the rules and regulations of the Law Society, the applicant could not be perceived to have received a fair trial. Article 12(4) of the Code of Judicial Conduct for South African Judges merely prohibits an acting Judge who is a practising attorney from sitting in a case in which his or her firm is involved as attorney of record or in any other capacity. It does not include a situation where, as here, the acting Judge, his or her firm, have not been involved in the matter. There is therefore no point in this contention, and it is merely stated to be rejected.

[5] Apart from the point discussed above, the main complaint is that the applicant's name should not have been struck off the roll, but an alternative sanction such as suspension should have been considered. In coming to the conclusion to strike the applicant's name from the roll, the court exercised a discretion. It is trite that a court of appeal will only interfere with a discretion where such was not judiciously exercised, or put differently, where such discretion was exercised capriciously.

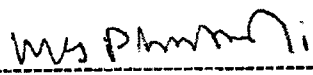
[6] In the present case, I am not persuaded that there has been any misdirection in the manner in which the discretion to strike off the applicant's name was exercised. For all the above considerations, I am not persuaded that any other court would come to a different conclusion. In the result the application falls to fail. The costs should be on the same scale as ordered in the main application, for similar reasons as stated there.

[7] The following order is therefore made:

1. The application for leave to appeal is dismissed with costs on a scale as between attorney and client.

  
\_\_\_\_\_  
T.M. Makgoka  
Judge of the High Court

I agree

  
\_\_\_\_\_  
M.G. Phatudi  
Acting Judge of the High Court

Heard:

4 April 2016

Judgment delivered:

8 April 2016

Appearances:

For the Applicant:

Adv. J.A. Klopper

Instructed by:

Joubert Attorneys

For the Respondent

Ms S Magardie

Instructed by:

Damons Magardie Richardson