


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

CASE NO: 32033/20

(1)	REPORTABLE: <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: <u>NO</u>
(3)	REVISED. <u>NO</u>
<u>22/10/2021</u>	
DATE	SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

B. BALOYI

Respondent

JUDGMENT

MBONGWE J

INTRODUCTION

- [1] The applicant, having earlier obtained an order for the suspension of the respondent from practising as an attorney in part 1 of these proceedings, has

now approached the Court in Part 2 seeking an order for the striking of and removal of the respondent's name from the roll of practising attorneys. The applicant has not filed a supplementary affidavit and, instead, filed a supplementary Practice Note and Heads of Argument. Save for rehashing and making references to the initial pleadings, there has, surprisingly, been no further developments and the state of affairs that resulted in the granting of the order for the suspension of the respondent from practice remain.

- [2] A rather unfathomable step was taken by the respondent who, despite his persistent failure to submit audit reports and certificates, approached the court seeking an order that the bar preventing him from transacting on his trust account be removed and that the applicant be ordered to issue him with a fidelity fund certificate. By bringing that application, the respondent demonstrated an oblivion to the fact that the submission of an unqualified audit report, reports in his instance, is a pre-requisite for the issuing of a fidelity fund certificate. The respondent has not denied that he has not been issued with a fidelity fund certificate after 2016 due to his said failures. His application was deservedly dismissed with costs.
- [3] The situation between the applicant and the respondent at the time the suspension order was granted and presently can at best be described as stand – off or impasse. One wonders how the applicant has responded to complaints it had received against the respondent pertaining to monies held in his trust account or determined the extent to which the fidelity fund may be exposed. The unwarranted impasse has far-reaching impressions on the efficacy of the applicant's governance of the conduct of legal practitioners and threatens the sustenance of the integrity of legal profession. This is undesirable.

THE SUSPENSION ORDER

- [4] The purpose of the suspension order obtained on urgency, more specifically the conditions attached thereto, was to end the impasse, affirm the authority of

the applicant to discharge its statutory duties and to allow for the necessary processes set out in the conditions to take place unhindered.

- [5] Both the applicant and the respondent were, by the order, afforded an opportunity, through interaction during the inspection and enquiries by the applicant, on the one hand, and clarifications or explanations by the respondent on the other, relating to the impugned conduct of the respondent. More importantly, the order entitled the applicant to take full control of the respondent's practice, conduct the necessary inspections and engage with the respondent when necessary. In this regard I refer to the Applicant's Practice Note in the initial application wherein in paragraph 2 (page 032-3) under NATURE OF APPLICATION it stated, inter alia: *"Application for the immediate removal of the Respondent's name from the roll of attorneys. The Applicant calls upon this Honourable Court to grant a suspension order in the interim which will allow the applicant the necessary power to take control of the trust account and investigate the substantial trust deficit (own emphasis).*
- [6] It is incumbent on the applicant, when approaching the court again seeking the imposition of a more severe sanction, to file a supplementary affidavit setting out a more detailed account the facts and nature of the transgression(s) and impugned conduct of the respondent.
- [7] The applicant, who had drafted and proposed the conditions attached to the suspension order inexplicably failed to comply with the order and to proceed in terms of those conditions. No supplementary affidavit has been filed as a result. Effectively the applicant in the present hearing seeks to rely on facts that, on the applicant's own prayers, had justified the granting an interim suspension order in Part A of these proceedings. Clearly Part B was meant for the disposition to the court of more detailed and cogent facts justifying the granting of the ultimate sanction of the striking of and removal of the respondent's name from the roll of practising attorneys and conveyancers. The applicant has failed

to take the necessary preliminary steps to facilitate the hearing and determination of Part B.

- [8] The role of the Court in applications of this nature is, firstly, to interrogate the veracity of the allegation against the respondent; secondly, to determine whether the impugned conduct, if proven, leaves no room for the imposition of a lesser severe sanction and excludes the existence of a rehabilitative sanction and, lastly, whether the removal of the respondent's name from the roll of practitioners is the only sanction indicated by the impact of the impugned conduct.
- [9] It is a distinguishing feature of the sui generis applications by the applicant, as in the present case, that the preliminary order did not only affirm the applicant's authority of governing the conduct of legal practitioners, but also to take charge of a legal practice to conduct inspections where deviant conduct resulting in public complaints occurs. In the present matter the order suspending the respondent afforded the applicant the opportunity to ascertain the alleged deficit in the trust account, unearth any other infringement of the rules and bring forth cogent facts justifying the granting of the ultimate relief against the respondent. Ordinarily Part B of the proceedings is for the respondent to show cause why the preliminary order should not be made final.
- [10] The aspects in para 8, above, must all be determinable from the totality of the facts placed before the Court and are pivotal components in the determination of whether the ultimate sanction sought in Part B is justifiable in all aspects. The applicant's inexplicable failure to comply with the suspension order has prevented it from presenting cogent facts relating to the impugned conduct of the respondent, yet seeks the granting of the ultimate sanction against the respondent. The applicant's entitlement to the sought outcome is ousted by the applicant's own failure. The latter renders the present application premature.

- [11] The order for the suspension of the respondent has not been set aside and has, consequently, to be complied with. In this in *Bezuidenhout v Patensie Sitrus Beherend Bpk* 2001(2) SA 224 (E) where the following was stated:

“A court order stands and must be strictly obeyed until set aside by a higher court, and the same court which granted the original order does not have the right to nullify its effect or interfere with that order except in very limited circumstances in the context of variation”

CONCLUSION

- [12] In the light of the circumstances set out in this judgment, I conclude that the hearing of Part B of these proceeding has been brought prematurely.

ORDER

- [13] Resulting from the conclusion reached, the following order is made:

1. Pending compliance with the conditions attached to the order for the suspension of the respondent, the applicant is barred from setting the matter down for the hearing of Part B.



M MBONGWE J

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA



MAKWEYA AJ

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

On behalf of the Applicant: Adv C Jooste

Instructed by: Iqbal Mahomed Attorneys

On behalf of the Respondent: Adv MR Maphutha

Instructed by: Mr Nano Matlala TSA Chambers, Menlyn Maine

Date of hearing: 20 July 2021

**JUDGMENT ELECTRONICALLY TRANSMITTED TO THE PARTIES ON 22
OCTOBER 2021**