



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

(1) REPORTABLE: YES / NO

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

(3) REVISED

15 March 2022

DATE

SIGNATURE

CASE NUMBER: 11897/22

DATE: 15 March 2022

**NOVELWANOA ALICIA NONXUBA**

Applicant

V

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

First Respondent

**THE LEGAL PRACTICE COUNCIL:**

**GAUTENG PROVINCIAL OFFICE**

Second Respondent

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**REASONS AND ORDER**

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KOOVERJIE J

- [1] The applicant seeks urgent relief for a declarator *inter alia* for the setting aside of the respondents' decision dated 14 February 2022, in terms of which the applicant's application for a fidelity fund certificate was refused.
- [2] This application was issued on 25 February 2022 but was only served on the respondents on 28 February 2022. Service was effected on both the national office as well as the provincial office of the respondents – the Legal Practice Council.
- [3] It is not disputed that the applicant established her own practice in October 2021 and proceeded to open a trust account. She had consequently applied for her current fidelity fund certificate for the year 2022. It is the applicant's case that she has complied with the relevant legislative provisions that would entitle her to her fidelity fund certificate.
- [4] It was argued that there is no statutory requirement requiring the applicant to submit an audit certificate as she was applying for her new practice and as a first-time trust account practitioner. Further the audit certificate of the law firm Nonxuba Inc. where the applicant was previously engaged, was not a requirement and had no bearing on her acquiring a fidelity fund certificate
- [5] The applicant was in fact furnished fidelity fund certificates for the years 2018, 2019, 2020 and 2021. Furthermore, she does not deny that she was a director of the firm Nonxuba Attorneys prior to her leaving the firm with effect from October 2021.
- [6] This application emanated as a result of the Legal Practice Council's decision (dated 14 January 2022) and her subsequent unsuccessful attempts to engage with the Legal Practice Council. In the last communication with the respondent, on 22 February 2022, the applicant advised the Legal Practice Council that if there was no forthcoming

response or an indication of confirmation of the round-table proceedings, an urgent application would be instituted.

[7] A day later, 23 February 2022, the applicant then commenced with the preparation of this urgent application and which was then issued on 25 February 2022.

[8] The 14 February 2022 letter constitutes the “decision” in refusing the applicant the certificate. I find it necessary to reiterate the relevant extracts from the said letter as it sets out the respondents’ reasons for their decision:

*“Your client was admitted as an attorney on 6 February 2018, as has been detailed in her letter, practised as a director of Nonxuba Incorporated where she was required to be in possession of a Fidelity Fund Certificate in terms of Section 84 (1) of the LPA. She is as such not for the first time required to have a Fidelity Fund Certificate. The provisions of Section 47.7.2 are thus applicable to application for the Fidelity Fund Certificate.*

*The South African Legal Practice Council (“the LPC”) has noted concerns with the management of the trust account of Nonxuba incorporated which concerns are subject to ongoing litigation under WCHC Case Nr. 10313-21 (to which Mrs Nonxuba is a party). As has been outlined by the LPC in its papers, this litigation is subject to a confidentiality provision. As such the LPC is unable to raise its concerns relating to the audit certificate issued to Nonxuba Inc. for the year 2021 with either the auditor responsible or Independent Regulatory Body for Auditors.*

*The LPC will be unable to accept the 2021 audit certificate for Nonxuba Inc, until its litigation is finalised.*

*As such your client fails to meet the requirements for a Fidelity Fund Certificate to be issued in her name..."*

The letter then continues:

*"According to our records your client was a director of Nonxuba Incorporated effective from 7 February 2018.*

*As outlined above, Nonxuba Inc administered its trust account in accordance with the LPA and the Rules to subject to ongoing litigation under WCHC case number 10313/2021.*

*As such and until the aforementioned litigation is finalised and the LPC has satisfied itself that the relevant regulatory provisions have been complied with, the LPC does not regard your client as having complied with Chapter 7 of the LPA."*

- [9] From the outset, both parties addressed the court as to whether this matter is indeed urgent. This involves an enquiry as to whether the matter is so urgent that it had to be heard the week it had been enrolled and particularly since the application was only served on the respondent on 28 February 2022. This meant that the respondents had about three days to file their papers.
- [10] The ultimate practical test as to whether to set a matter down as urgent is whether irreparable harm is apparent if an order is not granted in this week. If there is none, it ought not to appear on the roll<sup>1</sup>. Counsel for the respondents emphasized that the time

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<sup>1</sup> Notice of Office of the Deputy Judge President, Gauteng Local Division



frames for its response was unrealistic. It was submitted that being afforded just over three days was insufficient to have properly put the respondents' case before court.

[10] The respondents were required to, *inter alia*, consider the matter at both provincial level and national level, consider whether it should oppose and thereafter appoint a legal team and counsel to draft papers.

[11] In my view, one has to be appreciative of the fact that the respondents are public bodies and are required to adhere to administrative protocol adopted in their offices. Litigants should be aware and moreso their legal teams that "*such respondents need time to look into the allegations contained in the affidavits in order to be able to file answering affidavits .... When these affidavits are filed the matters can be seen in the proper perspective.*"<sup>2</sup>

[12] The applicant should have made provision to enrol the matter for hearing once all the papers were filed. It was to be expected that the respondents would file at the last hour and when the urgent week already commenced. The replying affidavit was filed thereafter and during the urgent week. The filing of such papers were further not in accordance with this court's Practice Directive. On this basis, I find that the matter was not so urgent that it had to be heard in the week it was enrolled for.

[13] A further issue I gave consideration to, was whether this matter was ripe for hearing. It was argued that the issues are crisp and "simple" and since there was compliance with the relevant provisions of the Act, the applicant became entitled to her Fidelity Fund Certificate.

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<sup>2</sup> Par 16 Judgment of Wepener J dated 18 September 2012 – in re: Several Matters on the Urgent Roll

- [14] I can however not simply ignore the issues raised by the respondents in refusing the Fidelity Fund Certificate. This matter may not be that simple. From my reading, the applicant has been joined in certain proceedings in the Western Cape High Court and that a part of that enquiry is an investigation into the trust account of the firm, Nonxuba Incorporated. The court order under case number 10313/21 was attached as “**NAN11**” to the founding papers. The applicant, cited as the fourth respondent therein, was joined in such proceedings and which proceedings are not finalized as yet. The respondents submitted that she was joined due to her position as a director of such firm.
- [15] By virtue of the said court order a Rule Nisi was issued requesting the respondents to respond as to why the order should not be made final, namely:
- “Pending the final determination of the disciplinary proceedings against Mr Zuko Mac Michael Nonxuba to be brought by the LPC and/or its striking as a legal practitioner, including the resolution of any legal action involved to be taken as a result of such disciplinary proceedings, a curator bonis be appointed to administer the trust account of Nonxuba Incorporated by the court and to take responsibility for all medico-legal claims instituted by Zuko Nonxuba and Nonxuba Incorporated including the appointment of trustees and of curators ...”*
- [16] Counsel for the applicant argued that her joinder in the said litigation was disingenuous and obstructive. It was argued that she was joined in the litigation due to her marriage to her husband, Zuko. The applicant persisted with her version that she was never involved in the trust monies of the firm, that she merely earned a salary and was a director on paper only.
- [17] I need to emphasize that but for the court order directing that the applicant be joined as a party, I have not been privy to the court papers wherein she was joined. I have only had sight of the order and this application before me.

[18] I find it necessary to refer to the order which reads:

*“Pending the determination of the main application Zuko Mac Michael Nonxuba and Novelwanoa Alicia Nonxuba (the respondents) undertake not to take any steps to enforce any judgments or orders granted against any execution proceedings in relation to any orders against a member of the Executive Council for Health of the Western Cape in favour of their clients.”*

The order further reads that *“the application papers including this order shall be kept confidential by the parties and kept by the registrar of the Court and not made available to any person other than parties to the application, unless any party is statutory obligated to disclose its contents”*.

[19] Therefrom it cannot be disputed that the applicant is now a respondent in the pending litigation. Furthermore, that the litigation concerns the management of the trust account of Nonxuba Incorporated.

[20] It is noted that the applicant was issued with the Fidelity Fund Certificates whilst she was with Nonxuba Incorporated which was until October 2021. The refusal to issue her with the 2022 year certificate is in respect of her new practice and after she has left Nonxuba Incorporated. Counsel for the applicant had emphasized that due to her compliance with the relevant legislation prescripts she is entitled to her certificate for the current year.

[21] In my view however, in order for this court to properly consider this matter, it should be furnished with necessary and sufficient information so that this court can arrive at an informed determination.



[22] In my view further, the truncated times afforded to the respondents was unrealistic. It could certainly not respond properly in just over the three days afforded to them. The applicant should have foreseen that the time periods set down for their response was unreasonable.

[23] The fact that the information in the pending litigation is confidential at this stage demonstrates furthermore that the matter could not have been ripe for hearing and moreso deserving of a final order.

[24] Insofar as costs are concerned I find it apt to refer once again to the Wepener Judgment which succinctly set out the court's approach to urgent matters:

*"[17] In these matters sufficient time should be granted to the respondents to file affidavits and they can rarely do so when papers are served less than a week before a matter is to be heard ...*

*[18] Urgency is a matter of degree. See Luna Meubel Vervaardigers (Edms) Bpd v Makin (t/a Makins Furniture Manufacturers) 1977 (4) SA 135 (W). Some applicants who abused the court process should be penalised and the matters should simply be struck off the roll with costs for lack of urgency....*

*[19] Those matters that do not comply with the Rules and Practice Manual will not be afforded a hearing in this court. They fall to be struck from the roll with costs where appropriate.*

*[21] The urgent court is not geared to deal with the matter which is voluminous but clearly includes a complexity and novel points of law ..."*



[25] I find that this matter should not have been before the urgent court. I therefore make the following order:

1. This application is struck from the roll with costs.



H KOOVERJIE  
JUDGE OF THE HIGH COURT

Appearances:

*Counsel for the Applicant:*

*Adv R Willis SC*

*Adv C McKelvey*

*Instructed by:*

*JG&Xulu Attorneys*

*Counsel for the Respondent:*

*Adv TC Tshavhungwa*

*Instructed by:*

*Damons Magardie Richardson Attorneys*

*Date heard:*

*10 March 2022*

*Date of Judgment:*

*15 March 2022*