



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

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

Date: **28 April 2022** Signature: 

CASE NO: 16183/2022

In the matter between:

ZUKO MACK MICHAEL NONXUBA

Applicant

And

THE LEGAL PRACTICE COUNCIL

1st Respondent

THE LEGAL PRACTICE COUNCIL:

GAUTENG PROVINCIAL OFFICE

2nd Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] The Applicant, a duly admitted attorney and sole director of his own law firm, Nonxuba Inc. Attorneys, is before court on an urgent basis seeking an order:

- 1.1 Condoning the applicant's failure to comply with the forms and service provided for in the Uniform Rules of Court and directing that the matter be dealt with as a matter of urgency in terms of Rule 6(12) (a) of these rules.
- 1.2 Reviewing and setting aside the decision of the first and/or second respondents made on or about 3 March 2022 in terms of which the applicant's application for a Fidelity Fund Certificate was refused.
- 1.3 Declaring that: -
 - 1.3.1 the applicant has satisfied and complied with all the necessary statutory requirements as set out in section 85(6) of the Legal Practice Act 28 of 2014; and

1.3.2 the applicant is entitled to be issued with a Fidelity Fund Certificate in terms of section 85 (6) of the Legal Practice Act 28 of 2014.

1.4 Directing the first and/or second respondents to forthwith issue to the applicant a Fidelity Fund Certificate that is determined in the rules.

[2] The First Respondent is the SOUTH AFRICAN LEGAL PRACTICE COUNCIL a statutory body with full legal capacity established in terms of the Legal Practice Act No. 28 of 2014 (“the Act”) and its national offices are situated at Thornhill Office Park, Building 20, 94 Bekker Road Vorna Valley, Midrand.

[3] The Second Respondent is the LEGAL PRACTICE COUNCIL: GAUTENG PROVINCIAL OFFICE, situated at Procforum Building, 123 Paul Kruger Street, Pretoria.

B. BACKGROUND

Applicant’s version

[4] In January 2003 Applicant¹ started his own practice and registered Nonxuba Inc. Attorneys in Queenstown. He has since registered his firm in Gauteng and fall under the control of the Gauteng Provincial office of the South African Legal

¹ Summarized from Applicant’s Founding Affidavit.

Practice Council. At present, and for the last few years, his firm practices in the field of medical negligence matters mainly in the Eastern Cape, Western Cape and Gauteng and the Free State provinces. The majority of the matters of his firm are against the Provincial Health Departments.

[5] Each year, as required by the applicable Act and the Rules, he caused his trust account to be audited by an independent auditor, and each year the auditor certified that his trust account had been conducted in accordance with the relevant Act and Rules.

[6] The Applicant's fidelity fund certificate expired at the end of 2021. He applied for a new one on 5 January 2022 and was not successful.

[7] Applicant's wife Ms Novelwanoa Alicia Nonxuba, also an attorney who had previously worked for the Applicant and was now a sole practitioner also applied for her fidelity fund certificate and it was refused.

[8] Applicant states that his wife has since instituted an urgent application to review and set aside the decision of the Respondents and to compel them to issue her with a Fidelity Fund Certificate and that judgment is being awaited in the matter.²

[9] According to the Applicant, the decision by the First Respondent in respect of the issuing or refusal to issue a Fidelity Fund Certificate to him constitutes

² Applicant's Founding Affidavit Paragraph 21.4

administrative action as contemplated by the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”).

[10] It turns out the difficulties faced by the Nonxubas stemmed from issued which the LPC had picked up concerning the trust account of Nonxuba Inc.

Respondents’ version

[11] The Respondents oppose the application and raise the following preliminary issues:

11.1 Lack of urgency

11.2 Non-disclosure of the disciplinary hearing and its outcome and the imminent application for the suspension/removal of the applicant’s name from the roll of legal practitioners.

11.3 Pending Western Cape High Court application; and

11.4 That the Applicant failed to comply with Chapter 7 of the Legal Practice Act

[12] Respondents submit that there is a court order by the Western Cape High Court in an application between essentially the same parties, but for the Provincial Office being that of the Western Cape. This order was by agreement of the parties.

In terms thereof, the Applicant has been barred from operating his firm's trust accounts since the granting of the order on the 18 August 2021.³

[13] The existence of this court order and its effect renders false the Applicant's contention that this matter is urgent because the refusal to issue him with a fidelity fund certificate is a violation of his constitutional rights in terms of section 22 and is ongoing.

[14] Applicant further bases his claim for urgency on the fact that the refusal to issue him with a Fidelity Fund Certificate is causing him reputational damage insofar as it implies unlawful and unprofessional conduct on his part.

[15] Respondents submit that the Applicant's claim of urgency fails to meet the elementary threshold required for urgent matters.⁴

C. ANALYSIS AND CONCLUSION

[16] At the commencement of the hearing I gave a direction that the issue of urgency be dealt with first.

[17] Mr Willis SC arguing on behalf of the Applicant, made very lengthy submissions on constitutionality. What turned out to be sparse or non-existent in the

³ Answering Affidavit of Janine Kim Myburgh on behalf of the Respondents Paragraphs 10 and 11.

⁴ Answering Affidavit Paragraph 8.

Applicant's founding affidavit, heads of argument and the submissions themselves were facts in support of urgency.

[18] Nothing is said by the Applicant about the order in the Western Cape High Court and what it entails.

[19] Still less is disclosed about the matter involving the Applicant's wife on similar and related issues, which is pending before this very Division. (As at the day of this matter being heard).

[20] All the above matters are interrelated, and only got ventilated by Mr Tshavhungwa in his submissions on behalf of the Respondents in opposition to the Applicant's motivations for urgency.

[21] The fact that the Applicant had been subjected to a professional disciplinary hearing by the Respondents is also not disclosed by the Applicant.

[22] A case for urgency needs to be clearly made out in the Applicant's founding Affidavit and properly supplemented if applicable. Urgency is not there for the taking.⁵

[23] In *Luna Meubel Vervaardigers v Makin and Another (t/a Makin's Furniture Manufacturers)* [1977] 2 All SA 156 (W), Coetzee J decried the abuse of Rule 6 (12)

⁵ East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others (2012) JOL 28244 GSJ Par 6 and 7.

wherein matters are brought on an urgent basis without any justification. Sadly, the situation has not abated.

[24] In the present case, Applicant complains of being cast by the Respondents as being of unlawful and unprofessional conduct on his part. Yet he is party to a court order issued in another division, by consent on his part.

[25] Clearly it should not be lost on Applicant's part as an attorney what the Respondent's statutory roles are. The Constitutional rights in section 22, support rather than dismantle the regulation of the various formally recognised professions.

[26] I have therefore come to the conclusion that this matter should not have been brought before the urgent court.

[27] The manner in which this application was conducted calls for attention. The Applicant's non-disclosure of relevant and crucial information necessary to enable this court to make informed decisions, and blatant attempts at pitting different judicial officers and divisions of this court against one another cannot go unsanctioned.

[28] This Application was a blatant abuse of the court and its processes and warrants censure by way of costs.

[29] I make the following order:

This application is struck from the roll. Applicant to pay Respondents' costs on an attorney and client scale.



J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of Judgment: 28 April 2022

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