


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
14/9/2023	
DATE	SIGNATURE

Case Number: 7113/2017

In the matter between:

TSUNDZUKA KEVIN MALULEKE

Applicant

and

THE LIMPOPO SOCIETY OF ADVOCATES

First Respondent

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Second Respondent

*In re:*

Case Number: 7113/2017

**THE LIMPOPO SOCIETY OF ADVOCATES**

Applicant

and

**TSUNDZUKA KEVIN MALULEKE**

First Respondent

**THE LAW SOCIETY OF THE NORTHERN PROVINCES**

Second Respondent

**Delivered.** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 10h00 on 15 September 2023.

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**REASONS FOR JUDGMENT DELIVERED ON 28 July 2023**

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**RANCHOD J**

**Introduction**

[1] This is an application by Mr Maluleke (the applicant) for leave to appeal against the decision of this court to strike him from the Roll of practicing advocates.<sup>1</sup>

[2] In the amended application for leave to appeal Mr Maluleke says this court erred on several grounds. I deal with them later herein below.

[3] At the commencement of the hearing of the application for leave to appeal, this court was informed by the Acting Judge President's secretary that Mr Maluleke had sent her a medical certificate at about 8am that morning by email which stated that he was unfit for work on the day of the hearing, i.e., 28 July 2023, due to a 'medical condition.' It was dated and signed on 27 July 2023 and the rubber stamp of a Dr A Boshoff appears

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<sup>1</sup> Reasons for Judgment delivered on 17 March 2023.

on it.

[4] In the email Mr Maluleke requested a postponement due to ill health. No information in support of this request was filed apart from the medical certificate. We, the presiding Judges, were not convinced that the medical certificate, as presented, justified Mr Maluleke's absence and, accordingly, proceeded to hear the application. After considering the grounds for application for leave to appeal and the respondents' counsel's submissions the application was dismissed with costs on the attorney and client scale with reasons to follow. These are the reasons.

**The medical certificate**

[5] The medical certificate is in both English and Afrikaans. For the sake of convenience, I will cite the relevant English wording as it has been completed in that language (the printed words are in ordinary script and the handwritten insertions are in bold):

**'MEDICAL CERTIFICATE**

Undersigned hereby certifies that

**KEVIN MALULUKE**

was examined by me on **27 July 2023** (date of first examination)

and again on

**N/A(?)** (date of last examination)

According to my knowledge / as I was informed he/she was unfit\*

for work from **28/07/2023** up to and including **28/07/2023**

Date of return to work **29/07/2023**

Nature of illness / operation / injury\*

**Medical condition**

Signature (It has been signed)

Date **27/07/2023**

\*Delete whichever is not applicable.'

[6] We doubted the reliability of the medical certificate. The certificate does not state what time of day Mr Maluleke consulted the doctor, so we are left in the dark as to why he did not file an affidavit regarding his alleged illness, which was to endure for only one day, i.e., the day of the hearing. He asks for a postponement in an email; again, not by application with a supporting affidavit. The medical certificate states the nature of the illness as "medical condition." Once again, we are left in the dark as to what the condition was and whether it was of such a serious nature that it precluded him from filing an affidavit and appearing in court for the hearing. The medical certificate provides for the doctor to indicate whether the patient is unfit for work according to his personal knowledge or whether they were 'informed' by the patient to that effect. The medical practitioner did not indicate which one it was.

[7] We inferred that if it was a condition which was to endure for only one day it must have been of a relatively minor nature. Little, if at all, evidentiary value could be attached to the certificate. It does not reflect an independent medical diagnosis of the illness or an opinion as to the fitness of Mr Maluleke to attend the hearing.

[8] In *Old Mutual v Gumbi* [2007] SCA 52 (RSA) at para [19] it was held that:

'A mere production of the medical certificate was not, in the circumstances of this



case, sufficient to justify the employee's absence from the hearing. As the certificate did not allege that he was incapable of attending at all, the chairman was entitled to require him to be present at the resumed hearing so as to himself enquire into his capacity to participate in the proceedings. These facts play a major role in determining unfairness when the interests of both parties are taken into account.'

[9] Whether Mr Maluleke was so ill that he could not attend the hearing must also be assessed against his entire conduct towards the inquiry into his fitness to remain on the Roll of Advocates as is evident from the judgments in the main and several interlocutory applications.

[10] As far as the 'request' (for that is what it was) for a postponement by email is concerned this court dismissed it for the reasons already stated earlier, with costs.

#### **Appeal or rescission?**

[11] It was brought to the attention of the court by counsel for the respondents in the application for leave to appeal that on the one hand Mr Maluleke is pursuing an appeal and on the other he has also applied for rescission of the judgment striking him off the Roll of Advocates. The respondents have filed papers in opposition to the rescission application and the matter has been postponed to the opposed Roll. The implication of the rescission application is that Mr Maluleke does not regard the striking off judgment as final and yet he persists in an appeal as well. This is clearly an abuse of the process of court. This alone was a ground for refusal of the application for leave to appeal.

**The grounds for leave to appeal.**

[12] Nevertheless, I turn to the grounds for leave to appeal.

12.1 That he was struck off the roll in his absence:

Reasons have been provided in the main judgment as to why the striking application proceeded in Mr Maluleke's absence.

12.2 That the court did not take into consideration that Attorneys Pratt Luyt & De Lange had no authority to act on behalf of the Limpopo Society of Advocates in the striking off application:

This issue was not raised during the striking application and nor was it disputed in terms of Rule 7 of the Uniform Rules of Court prior to judgment.

12.3 That the court should have postponed the striking off application pending determination of the petition Mr Maluleke had lodged in an interlocutory matter:

I stated in the judgment that (as was his wont) Mr Maluleke did not pursue his petition timeously but only when the applicant to strike was once again enrolled by the Legal Practice Council. In any event, the petition does not influence or have any bearing on the outcome of the striking off application.

12.4 That this court should not have entertained the main application as we (Mashile J and I) were respondents in case number 215/2023 where he is challenging our appointments as Acting Judges in the Limpopo Division of the High Court:

Mr Maluleke consciously chose not to apply for Mashile J's and my recusal. He had said as much in open court during the hearing of the main application. He cannot now be heard to complain that we should not have entertained the main application.

12.5 That this court erred in deciding the striking off application in terms of a repealed law (i.e., the Admission of Advocates Act 74 of 1964):

Again, this ground of appeal is devoid of all merit. In my judgment I made it clear that the law provides that a matter which began under the repealed Act was to continue as if that law had not been repealed.

12.6 That the main application was dealt with without the participation of the Attorneys of Record of the Limpopo Society of Advocates; namely, Chayya Attorneys:

This is another spurious ground for leave to appeal. Advocate Diamond appeared on brief from Chayya Attorneys.

12.7 That he (Mr Maluleke) was not afforded an opportunity to file an answering affidavit in the main application:

It beggars belief that Mr Maluleke says he was not afforded an opportunity to file an answering affidavit. There is no factual basis for this allegation as a ground of appeal. He had ample opportunity to file an answering affidavit since the inception of the main application in 2017 but failed to do so.

### Costs

[13] We were of the view that Mr Maluleke's application for leave to appeal was frivolous and devoid of any merit. He launched an application for leave to appeal while simultaneously pursuing an application for rescission. This was an abuse of process of court and merited a punitive cost order to show the court's displeasure at the way he conducted himself, including the way in which he made a last-minute attempt to have the matter postponed.

[14] In all the circumstances, we were of the view that there were no reasonable prospects of success on appeal, nor was there any other compelling reason why the appeal should be heard and accordingly made the order that we did, viz; that the application for leave to appeal be dismissed with costs on the attorney and client scale.

  
RANCHOD J  
Judge of the High Court: Gauteng Division  
Acting Judge: High Court: Limpopo Division



I agree;



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**MASHILE J**  
Judge of the High Court: Mpumalanga Division  
Acting Judge: High Court: Limpopo Division

Appearances:

For applicant:

Mr T.K Maluleke (In person)

Unit 2, Jabula

Broadway Street

Northview, Bendor

Polokwane

For first respondent and

second respondent:

Attorney JF Moolman.

Pratt, Luyt & De Lange Attorneys

Legnum Park, 20 Watermelon Street

Platinum Park, Bendor

Polokwane