

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

CASE NO: 63838/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 19 July 2023

E van der Schyff

In the matter between:

THE TRUSTEES FOR THE TIME BEING
OF THE LEGAL PRACTITIONER'S
FIDELITY FUND: SOUTH AFRICA

FIRST APPLICANT/ RESPONDENT

THE BOARD OF CONTROL OF THE
LEGAL PRACTITIONER'S FIDELITY
FUND SOUTH AFRICA

SECOND APPLICANT /RESPONDENT

and

ONOLIA NGAKO RABALAO

RESPONDENT / APPLICANT

JUDGMENT

Van der Schyff J

Introduction

[1] The applicants seek leave to appeal the judgment and order, save the order regarding costs, handed down on 3 April 2023.

[2] It is by now, trite that s 17 of the Superior Courts Act 10 of 2013 raised the threshold for leave to appeal to be granted. If no compelling reason is found to exist as to why the appeal should be heard, an applicant must make out a case that the appeal would have a reasonable prospect of success.

[3] After having considered the respective submissions, I am of the view that there is not a reasonable prospect that another court will come to another finding in this case. Despite the question as to the scope of practice of an advocate with a trust account and the legal practitioner's fidelity fund concomitant liability in appropriate circumstances being a novel issue, I am of the view that issues that arise regarding the applicants' liability when trust account advocates misappropriated clients' monies will need to be determined on a case-by-case basis. The novelty of the legal issue at hand does not, in itself, constitute a compelling reason for the appeal to be heard.

[4] The *amicus curiae's* assistance is again noted with appreciation.

ORDER

In the result, the following order is granted:

- 1. The application for leave to appeal is dismissed.**
- 2. No order as to costs.**

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:

In person

For the applicants:

Adv. G. Oliver

Instructed by:

Brendan Muller Inc.

For the *amicus curiae*:

Adv. P Ellis SC

With:

Adv. B Yawa

Date of the hearing:

18 July 2023

Date of judgment:

19 July 2023