

REPUBLIC OF SOUTH AFRICA



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

- 1.
- 2.

REPORTABLE: **NO**/YES
OF INTEREST TO OTHER JUDGES:
NO/YES
REVISED.



SIGNATURE

04 April 2024
DATE

CASE NO:58604/2021

In the matter between:

NUKUNYANA ABRAM MONARE

Applicant

and

LEGAL PRACTICE COUNCIL

First Respondent

NOTHEMBA GEORGE INCORPORATED ATTORNEYS

Second Respondent

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e mail and publication on CaseLines. The date and time for hand-down is deemed to be 14h00 on 04 April 2024.

JUDGMENT

MBOWENI AJ:

Introduction:

1. This is broadly speaking an application for the judicial review of a decision taken by the Legal Practice Council (hereinafter referred to as the "LPC") disciplinary committee on 22 October 2021. The LPC opposed the application, accepting that the applicant intended to refer to it.
2. I say that this is "broadly" a review application because, when regard is had to the papers, the issues are convoluted by extensive peripheral information which makes it difficult to ascertain precisely what the applicant seeks. At the hearing of the application, and given the nature and extent of the papers, I confirmed with the applicant that what the Court was required to determine was a PAJA review. The applicant acknowledged that this was the case but could not assist the court with a way forward after the relief would be granted.

3. I discussed the notice of motion with the applicant in court, dealing in turn with each of the prayers and indicating to the applicant where, and why, the relief sought therein was not competent. The prayers were as follows, and I set out in respect of which of them I am of the view that they do not seek relief that should (and in some instances, can) be granted by the Court:
 - 3.1. That findings of the Legal Practice Council's (hereinafter referred to as the "LPC") Disciplinary Committee made on the 22 October 2021 issued under reference 6112/2021/ks be reviewed and set aside.
 - 3.2. That the investigating Committee's findings were partial and bias as it failed and refused to consider the "audi alteram partem" rule or to hear the other side of the story which is the culture of the LPC.
 - 3.3. That the First Respondent be ordered to pay the costs of this application alternatively that the Respondent with any further Respondents who may elect to oppose the relief applied for herein be ordered to pay the costs of application.
 - 3.4. Further and or alternative relief.
4. It is against this background that I now deal with the review relief sought.
5. The decision in question was made by a disciplinary committee of the first respondent in relation to the transfer of a property by a private conveyancing practitioner, Ms.Nothemba George, the second respondent.

6. It is the applicant's contention that there was no sale of the property and there is no provision within the conveyancing law perspective about a family transfer.
7. The applicant requested that the LPC reverse the Deed of Transfer to the rightful owner as the transfer constitutes a violation of Section 25(1) of the Constitution which provides that "*no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property*", but always a norm towards poor, vulnerable blacks.
8. The applicant requested the bank details where the sum amount of R180 000.00 was paid and an offer to purchase.
9. The LPC's response in relation to the above claims was that:
 - 9.1. *This complaint is in regard to a query as to the details of the recipient bank account into which the proceeds of the sale of immovable property would have been paid pursuant to the transfer of the property on 12 August 2015, the date of the complaint being almost 6 years later on 25 June 2021.*
 - 9.2. *The Respondent states in paragraph 4 of the email dated 31 August 2021 that this was a family transfer, no monies were paid.*
 - 9.3. *My bundle does not reflect that the Respondents version has been put to the Complainant for his comments.*

9.4. *In the absence of any further information which may be obtained from the complainant and in the light of the fact that no file and probably no accounting records exists after 6 years it appears that the matter cannot be taken any further.*

9.5. *Recommendation:*

Dismissed in terms of Rule 40.5.2

10. The LPC sent a letter to the Complainant on 03 November 2021, the content briefly stated as follows:

“We confirm that an investigating committee dismissed your complaint on 22 October 2021 as it held that it would be difficult to prove misconduct on the part of the attorney if no records are in existence due to the lapse of at least 6 years.”

The Investigation

11. It is clear that there was no investigation conducted by the first respondent due to the lapse of six years. Not much effort was made by the first respondent to establish what happened to the records and why the second respondent cannot obtain the necessary records that pertained to the transaction and or transfer of the property.

12. It is furthermore clear, that there is much more to the sale of this property than what meets the eye. The second respondent has failed and or refused to co-operate with the first respondent by not providing the required proof of payment and or records requested by the applicant.

13. Fundamentally, the applicant's problems with the decision boils down to the conduct and motives of the attorney who transferred the property and the fact that there was no proof of payment for the sale of the property provided.
14. The applicant essentially complains that the respondent is wrong in its assessment of the situation given the "*irrefutable evidence*" in his possession. He is also frustrated with the law, and the way that the legal system operates (this is clear from the continued accusations of bias and discrimination).

The Complaint:

15. The applicant seeks an order setting aside the decision of the first respondent.
16. The complaint lodged by the applicant against the second respondent is that the first respondent failed to hear the other side.
17. The misconduct complaint lodged is that the second respondent failed to account for money and that the nature of the work was a property transaction.
18. The first respondent enquired from the second respondent but due to the response received, the LPC was unable to take the matter further.

19. The second respondent in her response stated that her file was destroyed and she is no longer in possession of the transaction records.
20. The LPC rules at the time of the transaction stated that the attorney was to keep the records of the transaction for a period of five years.
21. Upon reading the LPC Act amendments, it came to my attention that the Act has subsequently been amended to seven (7) years.
22. I requested both parties to furnish me with supplementary heads of argument on the amendment of the LPC rules.
23. The first respondent argued that the complaint was lodged after the amendment of the LPC Act and that the amendment does not have retrospective application.

The Transfer of the Property:

24. The applicant makes several allegations as to the transfer of the property.
25. He raises issues of fraud and that the Constitutional rights of the applicant has been violated through the transfer of the property.

26. It is clear from the deed of transfer attached to the records on caselines that the property has been transferred by the second respondent.
27. The case before me is however regarding the misconduct before the LPC.
28. I am therefore unable to express an opinion on the issues of fraud and the violation of Constitutional rights as no case in this regard is made out in the applicant's papers.

The Relief Sought:

29. The applicant seeks an order reviewing and setting aside the decision of the LPC.
30. The ground for review relied upon is that the LPC has been biased in its approach and failed to apply the *audi alteram partem* rule.
31. The LPC has contacted the second respondent and requested the records of the transaction for the transfer of the property.
32. The second respondent has responded by stating that she is no longer in possession of the transaction records.

33. In terms of the LPC Rules that was still applicable at the time, the applicant was only required to keep the records for a period of five years.
34. Even if the decision of the first respondent is reviewed and set aside, it would not bring the applicant any form of relief.
35. The second respondents position would not change.
36. In addition to the aforementioned, the applicant's property would not be transferred back to him.
37. The applicant needs to seek the appropriate relief before another court.

Costs

38. The applicant was represented by a pro-bono legal representative. He had clearly put much effort into compiling the papers and was serious about his cause, whatever the merit thereof. He conducted himself respectfully and with dignity in court. One does not lightly depart from the general rule that costs follow the result, but I did deliberate whether each party should pay his or its own costs, amongst other reasons.

39. The first respondent would probably not be able to extract any funds from the applicant in any event.
40. I decided against it in the end, considering that the applicant should bear responsibility for the launch of these unsuccessful proceedings. This is so for three reasons.
41. First, and as indicated earlier, the affidavits upon which the applicant relied were unstructured and filled with material that was argumentative and irrelevant for the purposes of the review relief claimed. He did not clearly indicate what his cause of action was and did not clearly identify those facts upon which he relied in support of the relief claimed. The replying affidavit, moreover, was replete with new information, much of which had clearly been available to the applicant at the time when the founding affidavit was drafted.
42. I have referred to the manner in which the papers had been drafted, which made it difficult for the respondent and the Court to ascertain the precise relief sought. It was prejudicial to the respondent to have to attempt to divine, from the mass of information on record, what case it had to meet: see *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) at 78I. In that case the Court deprecated the disorderly presentation of facts in

lengthy affidavits containing much argumentative matter. As a result, the Court was “*given no clear context of facts which are common cause, and no clear guidance as to the dispute of facts which must be evaluated against the background of such a context*” (at 83A–C). The same applies in the present matter.

43. Secondly, the legal representative stated in court that he has been a practicing attorney for a period of more than ten years. He therefore has a basic understanding of court proceedings and filing in court.
44. Thirdly, in his many affidavits and the annexures thereto, as well as in the heads of argument, the applicant made unsubstantiated and, frankly, scandalous comments about and accusations against the LPC.
45. The allegations made in relation to these persons are argumentative and are expressions of the applicant’s vehemently held opinion. They are unsupported by objective facts and do not contribute in any way to the proper determination of the relief sought in the application.
46. In all of these circumstances, justice dictates that the applicant bear the costs of this application. What should the scale of such costs be? The respondent argued that the scandalous accusations made by the applicant

without restraint in this application warrant a punitive costs order. I do not agree.

Conclusion

47. In as much as I sympathise with the applicant who is pursuing a quest for what he perceives as justice, I cannot, on these papers, find in his favour in relation to the relief sought.

Order

48. The following order is granted:

48.1.1. The application is dismissed.

48.1.2. The applicant is to bear the costs of the application on the scale as between attorney and client.



**L MBOWENI
ACTING JUDGE OF THE HIGH
COURT,
GAUTENG DIVISION PRETORIA**

Date of hearing: 07 February 2024

Date of judgment: 04 April 2024

Appearances:

For Applicant: Mr P Masake

Instructed by Masake Incorporated Attorneys

For Respondent: Adv A Van Der Westhuizen

Instructed by: Dyason Attorneys