

## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 5909/2020

(1) REPORTABLE: YES/NO  
 (2) OF INTEREST TO THE JUDGES: YES/NO  
 (3) REVISED.

DATE: 18/09/2020 SIGNATURE: [Signature]

In the matter between:

LIMPOPO PROVINCIAL COUNCIL

APPLICANT

and

REMBULUWANI DOLBY GADABENI

RESPONDENT

## JUDGMENT

NAUDE AJ

- [1] This is an urgent application wherein the Applicant applies for urgent relief in the following terms:

1. That the matter be heard as urgent and that the Applicant's non-compliance with the rules of the above Honourable Court relating the service, time periods and forms be condoned;
2. The Respondent is as an interim measure suspended from practicing as a legal practitioner pending a disciplinary enquiry concerning his professional conduct, and the final determination of the Application under Part B;
3. That the Respondent immediately surrenders and hand over to the Registrar of this Honourable Court, HIS Certificate of Admission as Advocate of this Honourable court;
4. That in the event of the Respondent failing to comply with the terms of this order detailed in the previous paragraph within 2 (two) weeks from the date of this order, the sheriff of the district in which the certificates are, be authorized and directed to take possession of the certificates and to hand them to the Registrar of this Honourable Court;
5. The parties may supplement their papers, if so advised, on the matters emanating from the enquiry for final adjudication of the application in Part B.
6. Cost of this part of the application on and attorney and client scale.

- [2] The Applicant's application is based on two formal complaints lodged against the Respondent. The first complaint is by Magistrate Kellerman concerning the matter of S v Rilinde Vumani, Case Number MRC 87/2017. The Respondent appeared on behalf of the accused in the Regional Court held at Musina on 30 November 2017 and informed the court that he was instructed by an attorney, Mr Nemukongwe from Nemukongwe Inc. Attorneys. The Respondent handed up a written brief on the letterhead of Nemukongwe Inc. Attorneys, in which it was stated that the Respondent was instructed by the said attorneys to represent the accused, together with a fidelity fund certificate, a copy of the Identity document of the Respondent and the admission certificate of the Respondent. Neither the instructing attorney nor any representative of the attorneys were present in court. The Magistrate requested the Respondent to make sure that at the next appearance, his instructing attorney is also present, as the Criminal Practice Directives for Regional Courts in South Africa 2017, 5<sup>th</sup> Revision read together with Rule 49.15 of the Rules of Attorneys, made provision that instructing attorneys must be present at court together with instructed advocates.



- [3] On the 2<sup>nd</sup> of March 2018, the Respondent failed to appear and merely sent the State Prosecutor an electronic message via Whatsapp indicating that he will not attend due to a medical problem. At an appearance at court on the 13<sup>th</sup> of April 2018, the Respondent indicated to the Magistrate that his instructing attorney will not appear as his client cannot afford his travelling costs from Pretoria to Musina. The Respondent further insulted the court and State Prosecutor and further insisted that the court acted irrationally in requesting that the instructing attorney appear.
- [4] Mr. Nemukongwe, in a written reply dated 15 October 2018 to the complaint laid by Magistrate Kellerman, confirmed that he did not know the accused in the relevant matter and neither has the accused ever instructed Mr. Nemukongwe or the firm Nemukongwe Attorneys Inc. to represent him in any matter and in any court. Mr. Nemukongwe also confirmed that he did not instruct the Respondent to represent the accused, Vumani Rilindi. Mr. Nemukongwe further stated that the letterhead which was used by the Respondent and the brief submitted by him to court, was not from him or his firm. The attorney further states in his written reply that the brief submitted to court by the Respondent and the submissions/addresses to the court was meant to deceive or

mislead the court, fraudulent and abusing the court time and possibly contempt of court. It was further also stated that he was never informed by the Respondent of the requests of the Magistrate to appear in court.

- [5] Magistrate Kellerman further complained about the Respondent's contemptuous behavior against the court. At the appearance on 26 March 2018, the Respondent alleged a relationship between the state prosecutor and the magistrate implying something improper and impugning the dignity of court. On 13 April 2018 the Respondent stated that the court is acting irrational and unreasonable, while he blatantly ignored a direct and clear instruction for the instructing attorney to be present. The Respondent further refused to sit down despite the court requesting him to do so and kept on arguing with the court and not giving the court an opportunity to talk. The Respondent made utterances like "you are a disappointment", and he is "dangerous, dangerous to the community", "a disappointment to the profession." The Respondent even attempted to impugn a racist attitude of the Magistrate by stating "Maybe it is because I'm black." On 28 May 2018, the Respondent alleged that the only reason why the court is insisting on having his instructing attorney present is to disrespect the Respondent, he made threats to declare war and to engage in war by stating "I am

going to fight with you.” He further accused the Magistrate of unbecoming conduct. All these remarks were completely out of order and were aimed at disparaging the magistrate and therefore the whole judicial process.

- [6] The second complaint against the Respondent was laid by ADJP Kgomo, Judge of the High Court of South Africa, Limpopo High Court, Thohoyandou on 9 September 2020. The Respondent appeared before the said Kgomo ADJP on the 7<sup>th</sup> of September 2020. The Judge had a meeting in chambers with all the counsel representing the parties beforehand to determine if there were any preliminary issues. The parties including the Respondent indicated that they were ready to proceed. When the matter was ready to proceed and called in open court, the Respondent appearing on behalf of the Applicant, suddenly indicated that they want a postponement as there was a problem with the mandate that they were furnished with from the First Respondents. After the court heard argument from both the Respondent and counsel for the First Respondent in the matter, the judge made a ruling that the matter should proceed. After a short adjournment, the matter was supposed to proceed but the Respondent unexpectedly started insulting



the judge and levelling profanities at him. A few of the remarks made by the Respondent to the court were the following:

*"...you are very stupid. You do not look on the law."*

*"You are a just a stupid. You are just a stupid. Stupid Judge. You are so stupid."*

*"A judge who cannot even look on the law and you want me to proceed with your stupidity."*

*"I am not going to listen to appear before your stupidity judgments. I am not going to do. It is nonsense."*

*"I will also be reporting you on your stupidity."*

*"Your nonsensical judgment."*

*"I am not insulting you. You see how stupid you are? You do not even know the definition of stupid. Go and check the definition of stupid."*

- [7] On 9 September 2020 the Black Lawyers Association, Limpopo wrote a letter to its members condemning the actions of the Respondent insulting the judge. The following was stated in the letter:-

*"This is without doubt, a deplorable conduct, demeans our noble profession and the integrity of the Judiciary."*

and further:

*"We call upon the Legal Practice Council (LPC) to do whatever is permissible in terms of the Legal Practice Act (LPA) and the rules to frown upon conduct such as the one displayed in the audio."*

- [8] The Respondent replied to the letter by the Black Lawyers Association in writing on 11 September 2020. From the content of the letter by the Respondent, he clearly has no regrets for his actions and fails to see anything wrong with it. The Respondent states as follows in his letter:-

*"It is true that I referred to Acting Deputy Judge President Honourable N.F. Kgomo as "stupid" and "nonsensical judge". It was not a mistake and/or a faulty committed act, I meant what I have said about him and I am still saying what I have said about him, no mistake about it and I am willing to face the consequences of my actions."*

*The Respondent then continues and states in his last paragraph of his letter, and might I add, in this court's view very arrogantly:*

*"Bring it on, I will be waiting for any action lodged against me by any institution and I advise you further to use this letter as evidence against me as I am also lodging the complaint against both the stupid judge and the stupid Adv. Sikhwari."*



[9] It is extremely worrisome that the Respondent, even after having had time to reflect on his actions and conduct, did not show any remorse, did not give any reasonable explanation therefore and does not apologise for his actions and in fact it is clear that it is his intentions to continue with such unbefitting and unprofessional conduct and actions. The Respondent shows total disrespect to the judiciary, court and the legal profession.

[10] At the hearing of this urgent application, the Respondent's Counsel, Mr. Maluleke attempted every delaying tactic in the book in order for this matter not to proceed. First an attack was made and did he insist on the court giving him an explanation as to why police officers were present at court, thereafter the counsel on behalf of the Respondent applied for the court's recusal despite having been afforded an opportunity on 15 September 2020 to file such an application before 10h00 am on 16 September 2020, which the Respondent failed to do and only at approximately 13h00 on 16 September 2020 attempted to do at the Registrar clerk of the court. In court during the proceedings, Adv Maluleke handed the application for recusal up in court and insisted to proceed with the application, but despite the court having afforded him ample opportunity on the 15<sup>th</sup> of September 2020, as well as during the

proceedings on 16 September 2020, did not proceed with the application. After it became clear that the Counsel is not going to proceed with the application for recusal, the court afforded the Applicant's Counsel to proceed with the urgent application. The Respondent's counsel when afforded the opportunity to answer to the argument by the Applicant's Counsel then proceeded with his application for recusal. The court entertained the recusal application.

[11] In **President of the Republic of South Africa and others v South African Rugby Football Union and others 1999 (4) SA 147 (CC)** the court held as follows:-

*"It follows from the foregoing that the correct approach to this application for the recusal of members of this court is objective and the onus of establishing it rests upon the Applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their*

*training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.” The Respondent failed to establish any reasonable grounds that the court would not bring an impartial mind to bear on the adjudication of the case and as a result the application for recusal was refused.*

- [12] After the refusal of the application for recusal, the Respondent's counsel further proceeded with every possible delaying tactic in order not to proceed with the Urgent Application. The Respondent's counsel then, without instruction to do so, voluntarily withdrew as counsel and requested to be excused by the court. The Respondent proceeded in person and requested a postponement to obtain new legal representation. The request was refused as this matter before court was an urgent application and was the Respondent's request in this court's



view nothing but a further delaying tactic in order for this application not to proceed. The Respondent then summarily walked out of court without having been excused and the matter proceeded on an unopposed basis.

- [13] Despite the matter having proceeded on an unopposed basis, the court did have regard to and considered the Respondent's answering affidavit. The Respondent in his answering affidavit raised a point *in limine* in that the Applicant failed to comply with the provisions of Section 39, 40, 41 & 43 of the Legal Practice Act and brought this urgent application premature in that the Respondent has not been served with any documentation and/or papers whatsoever, in relation to complaints that may allegedly have been lodged by any member of the public and/or members of the judiciary and/or members of the legal profession, nor has he been asked or called upon to answer to any of the alleged complaints raised herein. The Respondent further stated that there are currently no sanctions meted out against him which automatically renders the present application against him premature.

- [14] The Applicant brought this urgent application in terms of Section 43 of the Legal Practice Act, which reads as follows:-

*“Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief.”* In this court's view there is no merit in the point *in limine* raised by the Respondent in his answering affidavit.

- [15] The Supreme Court of Appeal in the matter of **The Law Society of the Northern Provinces v Morobadi (1151/2017) [2018] ZASCA 185 (11 December 2018)** in paragraph 4 thereof held as follows:

*“Applications for the striking off of an attorney's name from the roll of practitioners are not ordinary civil proceedings, they are proceedings of a disciplinary nature and are sui generis. In Solomon v Law Society of the Cape of Good Hope 1934 AD 401 at 408-409 the following was said regarding the nature of disciplinary proceedings:*

*‘Now in these proceedings the Law Society claims nothing for itself. . . It merely brings the attorney before the Court by virtue of a statutory right, informs the Court what the attorney has done and asks the Court to*

*exercise its disciplinary powers over him. . . The Law Society protects the interests of the public in its dealings with attorneys. It does not institute any action or civil suit against the attorney. It merely submits to the Court facts which it contends constitutes unprofessional conduct and then leaves the Court to determine how it will deal with this officer.”*

The Supreme Court of Appeal further in **paragraph 5 in the Morobadi case *supra*** held as follows:-

*“It is now settled that an application for the removal from the roll, or suspension from practice, of an attorney involves a three-stage enquiry. First, the court has to determine whether the alleged offending conduct has been established on a balance of probabilities. It is a factual enquiry. Second, consideration must be given to the question whether, in the discretion of the court, the person concerned is not ‘a fit and proper person to continue to practice as an attorney’. This involves a weighing up of the conduct complained of against the conduct expected of an attorney and is a value judgment. Third, the court is required to consider whether, in light of all the circumstances, the name of the attorney concerned should be removed from the roll of attorneys or whether an*



order suspending him or her from practice would suffice. In **Summerley** the following was said:

*“the exercise of the discretion at the second stage “involves, in reality, a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, a value judgment” . . . The third enquiry again requires the Court to exercise a discretion. At this stage the Court must decide, in the exercise of its discretion, whether the person who has been found not to be a fit and proper person to practise as an attorney deserves the ultimate penalty of being struck from the roll or whether an order of suspension from practice will suffice.”*

[16] In **Johannesburg Society of Advocates v Snoyman (11844/2018) [2019] ZAGPJHC 451 (15 April 2019)** at paragraph 12 and 13 it was held:

*“[12] Applications for striking off are considered to be sui generis (Jiba and Another v General Council of the Bar of South Africa and Another; Mrwebi v General Council of the Bar of South Africa (141/17; 180/17) **[2018] ZASCA 103**; **[2018] 3 All SA 622** (SCA); **2019 (1) SA 130** (SCA); **2019 (1) SACR 154** (SCA) (10 July 2018); Law Society of the Free State v Majola (4776/2015) **[2016] ZAFSHC 145** (12 August*

2016). They are proceedings of a disciplinary nature and not subject to the strict rules that govern ordinary civil proceedings (Jiba para [6]; *Hepple and Others v Law Society of the Northern Provinces* **[2014] 3 All SA 408** SCA para [9]). In the light of the kind of proceedings, the Supreme Court of Appeal confirmed the duty resting on an attorney (and likewise on an advocate [Jiba para [6]]) in these kinds of proceedings, in the following dictum as follows (para [9]):

*'It follows therefore that where allegations and evidence are presented against an attorney they cannot be met with mere denials by the attorney concerned. If allegations are made by the law society and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside; the attorneys are expected to respond meaningfully to them and to furnish a proper explanation of the financial discrepancies as their failure to do so may count against them.'*

(See also: *Malan and Another v Law Society of the Northern Provinces* **[2008] ZASCA 90; 2009 (1) SA 216** (SCA paras [27] - [28]).

*The dictum appears to be applicable to all allegations of misconduct.*

[13] *Where prima facie evidence of unprofessional conduct exists whether as alleged by the applicant or, more conclusively as in the*

*present matter, admitted by the respondent, it is for the respondent to present the court with a satisfactory explanation of his conduct. The applicant's role in applications of this nature, as custos morum of the advocates' profession, is that of a nuntius: it is merely required to place facts relating to the alleged unprofessional conduct before the court for the court to exercise its discretion as to the appropriateness of the order sought (Hassim v Incorporated Law Society of Natal 1977 (2) SA 757 (AD) 767C - G)."*

[17] The Respondent did not offer any explanation for his unprofessional conduct in his answering affidavit, nor did he raise any defence and in fact continued to justify himself and his unbecoming and unprofessional conduct as correct.

[18] In paragraph 38 of the **Morobadi** case *supra* it was held as follows:

*"In light of what has been said in the preceding paragraphs the high court as custos mores ought, on the admitted misconduct in order to protect the public, to have postponed a final decision, but also at the same time protect the public with an interim order of suspension pending a final decision on whether the respondent should be struck off the roll or some other sanction should follow. This it did not do."*



[19] In this court's view it is very important to jealously protect the dignity of the courts and to deter disparaging remarks calculated to bring the judicial process into disrepute. It is not the self-esteem, feelings or dignity of any judicial officer, or even the reputation, status or standing of a particular court that is sought to be protected, but the moral authority of the judicial process as such. In this court's view the Respondent cannot be allowed to continue with his actions as set out here above and it is imperative that the court act immediately and decisively in the interest of justice and the broader public to curtail any further damage. In this court's view this application is indeed very urgent and must succeed.

[20] There is in this court's view no reason why costs should not be granted as prayed for by the Applicant on an attorney and client scale having consideration to the fact that the Respondent is a legal practitioner who knows the rules of court and the ethical and professional conduct and standard that needs to be upheld in the interest of justice and the interest of the public and despite the very serious allegations and complaints against him, still in an arrogant manner states in his letter dated 11 September 2020 to the Legal Practice Council:

“Bring it on...”

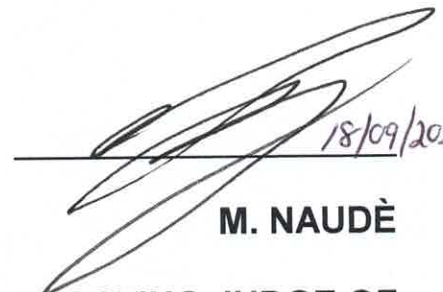
This court's displeasure in the conduct of the Respondent should be shown and marked with an appropriate cost order, and is an attorney and client cost order, in this court's view justified in this matter.

[21] I therefore make the following order:

1. The matter is heard as urgent and the Applicant's non-compliance with the rules of the above Honourable Court relating to service, time periods and forms is condoned.
2. The Respondent is, as an interim measure suspended from practicing as a legal practitioner pending a disciplinary enquiry concerning his professional conduct, and the final determination of the Application under Part B.
3. The Respondent must immediately surrender and hand over to the Registrar of this Court, his Certificate of Admission as Advocate of this Court.
4. In the event of the Respondent failing to comply with the terms of this order detailed in the previous paragraph within 2 (two) weeks

from the date of this order, the sheriff of the district in which the certificates are, be authorised and directed to take possession of the certificates and to hand them to the Registrar of this Court.

5. The parties may supplement their papers, if so advised, on the matters emanating from the enquiry for final adjudication of the application in Part B.
6. The Respondent to pay the cost of this part of the application on an attorney and client scale.
7. The relief sought in Part B is postponed *sine die*.

  
18/09/2020.  
**M. NAUDÉ**  
**ACTING JUDGE OF**  
**THE HIGH COURT**



**APPEARANCES:**

**HEARD ON:** 16 SEPTEMBER 2020

**JUDGMENT DELIVERED ON:** 18 SEPTEMBER 2020

For the Applicants: Mr. Moolman

Instructed by: Pratt Luyt & De Lange Attorneys.

For the Respondent: Adv. Maluleke

Instructed by: M & M Maiwashe Attorneys