

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 23258/2018

DATE: 2019/10/03

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 19/02/20

SIGNATURE



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In the matter between

MP MASHABA and OTHERS

Applicant

and

LAW SOCIETY

Respondent

JUDGMENT

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BAQWA (J):

This is an application for leave to appeal against a judgment handed down by this court on the 4th of April 2019 in terms of which the applicant's name was struck from the roll of attorneys.

The applicable legislative prescript is section 17(1) of the Superior Court's act 10 of 2013 which reads as follows:

"Leave to appeal may only be given where the judge or judges concerned are of the opinion that;

- (a) The appeal would have a reasonable prospect of success."*

I am not referring to the other subsections as the application before us is solely based on the provisions of section 17(1)(a)(i).

The applicant filed an application in which the following grounds are raised:

- 10 *"The Applicant respectfully submits that the learned Judges failed to take into account the explanations of the Respondent and his version which could reasonably be true.*

It is furthermore submitted that the fact that the Applicant resigned to the allegations levied against him by his employers it was a step which was taken in light thereof. It is submitted that nothing unusual or incriminating should be held against him by reason thereof.

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The Applicant further submits that once a document is saved on Microsoft (which was the instrument used herein) such document is, what is termed "generated" and as and when you generate same so as to "save" it; versions get modified and it should not be held that such document was conceptionalised by the user.

It is also respectfully submitted that the Honourable Presiding Judges overlooked the fact that on the evidence produced, the Applicant was acquitted in a competent Court without such judgment ever having been set aside. The Applicant was found not guilty of the crime of "FRAUD" and thus this should have persuaded the Honourable Presiding Judges to have had regard to the fact that all the available evidence had been placed before that Court and "fraud" was never proved.

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It is respectfully submitted that the "Mr Adams" referred to in paragraph [39] of the judgment was not a Judge of this Honourable Court at the time of the hearing referred to and his subsequent appointment should not have weighed as heavily as it did in the consideration of the evidence given by the Applicant/Respondent."

As clearly appears from the above grounds they are aimed at factual findings made by this court. It is trite that a Court of Appeal would not easily interfere with factual findings of a court unless it is clear from the record that those findings are not supported by the facts that were before that court.

Mr Groome, in his opposition to the application and on behalf of the Law Society of the Northern Provinces (as it then was) addressed each of these issues and pointed out that this court dealt in detail with the submissions of the

applicant in this matter, that the court took into account all the relevant circumstances of what transpired, upon the applicant becoming aware that his partners had a problem with his invoices and then the conduct subsequent to that, the different versions that were proffered by the applicant in the disciplinary inquiry and in his answering affidavit. The question then is, whether his explanations are reasonable or credible regarding his version that the applicant never knew that his wife was not an advocate.

10 The court has dealt with this in some detail in the judgment. We have nothing further to add. Having had regard to the grounds and the submissions made this morning by the Applicant and that of Mr Groome on behalf of the Respondent, I am of the view that the grounds of appeal do not persuade us that there would be a reasonable prospect of success or put in other words that another court would come to a finding different to the one reached by this Court.

20 In the premises I propose that the application be dismissed with costs on an attorney and client scale.

COURT: I agree and it is so ordered.

APPLICANT: As the court pleases

RESPONDENT: As the court pleases

COURT: Court adjourns.

COURT ADJOURNS