



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Appeal number: 2009/2017

In the matter between:

YOLANDI HEWETSON

Applicant

And

THE LAW SOCIETY OF THE FREE STATE
ALEXANDER FOWLY HEWETSON
HEWETSON INCORPORATED

1st Respondent
2nd Respondent
3rd Respondent

HEARD ON: 16 MARCH 2018

JUDGMENT BY: MATHEBULA, J et CHESIWE, AJ

DELIVERED ON: 26 APRIL 2018

- [1] The applicant seeks leave to appeal against the judgement handed down on 15 December 2017. In the judgement which I authored and my sister Chesiwe AJ concurred, we ordered that inter alia the applicant's name be removed from the roll of attorneys of this court.

[2] The applicant has tabulated ten (10) grounds of appeal which she relies on that we erred in our judgement. I do not intend to repeat her grounds of appeal as they are part of the record. Suffice to mentioned that in the main she reiterates that we erred in finding that she acted in a reckless manner by leaving all the financial responsibilities to the second respondent whilst she concentrated on human resources related matters. Further that she could not be blamed for the shambles in the bookkeeping systems because there were bookkeepers and auditors employed to attend to such matters. She contends that we erred in finding that she was party to the massive dishonest schemes perpetrated by the second respondent because no specific transaction could be pointed in her direction. Counsel for the applicant submitted that we erred in finding that the applicant made loans to the value of R305 489.09 from the funds of certain creditors. I agree with him that we erred. However our decision does not turn primarily on the error alluded to.

[3] Applications of this nature are dealt with in terms of section 17 of the new Supreme Court Act 10 of 2013. The section read as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgements on the matter under consideration;”

- [4] The test whether to grant or dismiss the application for leave to appeal was eloquently explained by Daffue J as follows:

“There can be no doubt that the bar for granting leave to appeal has been raised. Previously, the test was whether there was a reasonable prospect that another court might come to a different conclusion. Now, the use of the word “would” indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. See Acting National Director of Public Prosecutions and Others v Democratic Alliance (19577/2009) [2016] ZAGPPHC 489 (24 June 2016). The use by the legislature of the word “only”, emphasized supra, is a further indication of a more stringent test.”¹

- [5] The crux of the matter is that the bookkeeping systems of the firm were in shambles. There were no mechanisms in place to prevent the massive misappropriation of trust funds. The fee books were used and checked again after the second respondent left the firm. All transgressions occurred while the applicant was a director of the firm. The applicant admitted that she was not in direct control of the trust account even though she would here and there sign a cheque or two. She was also for a prolonged period away from the practice and did not play a role. This is patently wrong because she had a legal duty to preserve the trust funds. She does not view her conduct as incorrect which demonstrates her inability to appreciate the extent and scope of her duties.

- [6] The argument that the auditors did not detect any misdemeanour is also misplaced. As a director the applicant was responsible to

¹ Hans Seuntjie Matoto v Free State Gambling and Liquor Authority and three others (Case Number 4629/2015 unreported) at para 5.

ensure that the correct source documents are dispatched to the auditors for the necessary audit to be conducted. She also had to sign off the audit letter to the Society confirming that all was well. It will appear that she did all this without proper verification. It is on these basis that we made a finding that she was part of a massive dishonest scheme led by her erstwhile co-director.

- [7] The fact that she corrected the systems after the matter was seized with the Law Society is commendable. She did what she was supposed to do from the onset. However that rectification came about after about R1 700 000.00 had been misappropriated from the trust account. The horse had already bolted.
- [8] In our evaluation of the evidence contained in the papers before us, we adopted the long established three stage enquiry.² We were satisfied that the misconduct has been established. This decision was supported by the admission made by the applicant pertaining to her non-participation in the financial affairs of the firm. On this basis we held that the applicant was not a fit and proper person to continue to practice as an attorney. This led us to conclude that the proper sanction was to remove her name from the roll of attorneys of this court.
- [9] We now consider the question whether there is a reasonable prospect that another court would come to a different conclusion. Our response is that such prospects of success do not exist. We are of the view that the grounds upon which the applicant is relying on lacks substance and are merely nothing but the applicant

² Jasat v Natal Law Society 2000 (3) SA 44 SCA at 51 C-E

disagreeing with the conclusions we made. There is no proper case made justifying the granting of the application for leave to appeal. This application ought to be dismissed.

[10] The costs follow the result. We do not see any reason why we must deviate from the well-established principle. Further, we had initially ordered that the applicant must pay costs on an attorney and client scale. The reasons are clearly explained in the main judgement.

[11] Accordingly the following order is made:-

11.1 The application for leave to appeal is dismissed with costs on an attorney and client scale.

MATHEBULA, J

I concur

CHESIWE, AJ

On behalf of applicant:

Adv. S J Reinders

Instructed by:

Symington & De Kok

Bloemfontein

On behalf of respondents:

Adv. N Snellenburg SC

Instructed by:

Hill, McHardy & Herbst

Bloemfontein

/roosthuizen