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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

8/7/15

CASE NO.: 36147/2009

In the matter between:

NDLEVE, RALPH PATRICK

and

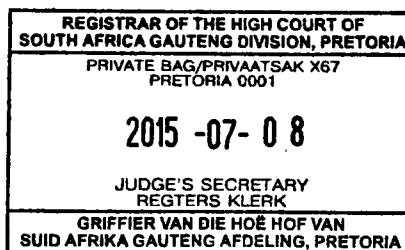
PRETORIA SOCIETY OF ADVOCATES

In re

PRETORIA SOCIETY OF ADVOCATES

and

NDLEVE, RALPH PATRICK



APPLICANT

RESPONDENT

APPLICANT

RESPONDENT

CORAM: DE VOS J et EBERSOHN AJ

DATE HEARD: 19TH JUNE 2015

DATE JUDGMENT HANDED DOWN: 8th July 2015

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JUDGMENT

EBERSOHN AJ:

- [1] This Court struck the name of the applicant from the Roll of Advocates at the behest of the Pretoria Society of Advocates with costs on the 12th June 2013.

[2] The application for leave to appeal was served on the 7th February 2014 and way out of time. There is no application for condonation but this Court in view of the facts of the matter and in order to finalise the matter condoned it and dealt with the merits of the application for leave to appeal.

[3] The Pretoria Society based the application against the applicant for his removal from the Roll of advocates on various grounds:

3.1 that the applicant, acting and pretending as if he was an attorney, even before he was admitted as an advocate in 2002, from 2000 until 2008, at least, took instructions from several lay people without the intervention of an attorney, to pursue claims on their behalves, took deposits of money from them, and in instances he was handed money to pay over to creditors of the client; he was dishonest in the worst degree in that he in fact did not deal with these funds in terms of his instructions but stole most of the money. There is a worrying aspect regarding the applicant and that is that even before he was admitted as an advocate in 2002 he already in 2000 commenced his dishonest practice of misleading lay clients and stole R72 857,10 from the estate of the late M.J. Ndabezitha. The applicant was to utilise these funds chiefly to

maintain the minor children of the deceased but he did not do so. In his application for admission as an advocate he alleged that he "was a fit and proper" person to be admitted as an advocate whilst he knew that he was not and that he was a thief and stole the substantial amount from the said estate. This fact was not disclosed to the High Court who admitted him as an advocate and he therefore committed perjury too. (See par 3.22.2 on page 29 of the papers).

- [4] In answer to a direct question from my Brother De Vos J at the hearing of the application by this Court, whether he stole the money the applicant answered "Yes".
- [5] Besides this confession the Pretoria Society of Advocates in any case proved the transgressions of the applicant beyond all doubt.
- [6] The law is quite clear regarding the removal of an advocate from the Roll of Advocates on the grounds set out in paragraph [3] *supra*. (See *General Council of the Bar of South Africa v. Van der Spuy* 1999 (1) SA 577(T) and *Van der Spuy v. General Council of the Bar of South Africa (Minister of Justice and Constitutional Development, Advocates for Transformation and Law Society of South Africa intervening)* 2002 (5) SA 392 (CC)).

[7] The applicant before the hearing of the application together with his practice notice and heads of argument filed an affidavit of only three pages wherein he applied that a fourth set of affidavits be allowed as it might show that the position has changed and to enable him to get verifying affidavits from the people from whom he stole the money wherein they might confirm that he liased with them and was trying to fully reimburse them. This was not a proper substantive application. The contents of the affidavit was rather speculative and there was not a full and proper description of the facts to be set out in the further affidavits. The reason why these alleged facts were not dealt with in the answering affidavit of the applicant he blames on the failure of the Pretoria Society of Advocates "for not supplying him with answers and information". This ground is totally false and he knew that. He detailed further that he was negotiating with the various complainants and could possibly solve the matters and get them to withdraw the complaints against him whereupon the application of the Pretoria Society of Advocets against him should be abandoned, according to him. This ground is ludicrous in that, even if the complainants settled all the matters with the applicant, the Pretoria Society of Advocates were *dominus litis* and not the complainants. To put it in simple language even when the thief of money repaid all the

money he stole, he still gets charged and goes to prison for the theft.

[9] This affidavit being “a pie in the sky” had no evidential value and was treated as such by the Court and there is no chance of such a ground of appeal succeeding in any other Court.

[10] In his heads of argument in his application the applicant refers to this Court in a derogatory manner and blames the Court for not coming to his assistance to meet the complaints against him. The complaint is so ludicrous that it does not merit further dealing with it.

[11] **THE PROPOSED GROUNDS OF APPEAL:**

11.1 The applicant stated that there was an alleged failure on the part of this Court to allow him to file further affidavits which prejudiced him to such an extent that a failure of justice occurred. He also stated that there was a failure of justice in that the Pretoria Society of Advocates did not afford him an opportunity to call witnesses and to cross-examine them. The Society, in view of the clear case before the Society, as they were entitled to do, decided to approach this Court directly without further delay. There is no hope of success on this ground.

11.2 As a second ground the applicant alleges that he didn't have a fair hearing by this Court regarding whether he was "a fit and proper person to continue to practice". The Court could not close its eyes to the fact that the applicant was, on his own admission a thief and stole money from various people and abused the trust of the public and that the public was entitled to be protected against him. In so far as it can be construed as a ground of appeal the appellant seem to suggest that he should only have been suspended for a while and that he then be allowed to practise further. No reasonable court would only suspend him from practice. He stated that he is seeking leave from the Appellate Division to lead further evidence. The question remains as to why there was a failure on the part of the applicant to put this evidence before this Court in his answering affidavit as is required by the Court Rules. There is no chance of success on this ground.

11.3 A further ground of appeal is that this Court should have referred the matter for the hearing of evidenc. There is no prospect of success with this ground as there is no dispute of fact as to the applicant's dishonesty and that he was not a fit and proper person to remain of the Roll of Advocates.

11.4 The applicant also complains that he did not have a fair hearing in view of my learned Brother De Vos "shutting him down" every time he insisted on a fair hearing. All Justice De Vos did was to explain to him that it was not necessary for the Society of Advocates to first hold its own hearing where witnesses could be called and cross-examined, where the evidence before the Society warranted an approach directly to the High Court, as in this instance. This the applicant kept harping on. There is no prospect of success with this ground.

[12] The applicant then submitted that there were excellent prospects of another Court coming to a different conclusion than this Court did and that such other Court would not remove his name from the Roll of Advocates.

[14] There are clearly no prospects of another court coming to a different conclusion and there are no prospects of success with such an appeal

[14] The following order is proposed:

1. That the application for leave to appeal be refused.
2. The applicant is to pay the costs of the application on the scale of attorney and client.



P.Z. EBERSOHN
ACTING JUDGE OF THE HIGH COURT

I agree and the order proposed by my
Brother is made an order of
Court.



For

H.J. DE VOS JUDGE OF
THE HIGH COURT

Applicants' counsel

Attorney Victor Mabe

Applicants' attorneys

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Tel No. not stated on documents

Ref. VPM/CIV/NDLEVE/10

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