



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 10991/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
22/8/2024	
DATE	SIGNATURE

In the matter between:

MALESELA DANIEL TEFFO

Applicant

and

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Respondent

JUDGMENT

NEUKIRCHER J:

1] On 13 October 2023 I granted an order (the contempt order) in which I found the applicant in contempt of the court order of 16 September 2022, the latter of which saw him struck off the roll of legal practitioners. My order provides:

- “1. The Court Order issued under case number 10991/21 on 16 September 2022 is amended/varied to reflect that the Presiding Judges were The Honourable Mr Justice Nyathi and The Honourable Madam Acting Justice Bokako.
2. The Respondent, Malesela Daniel Teffo, is declared to be in contempt of court in disobedience of paragraphs 1, 2, 4, 6 and 12.6 of the Court Order issued under case number 10991/21 on 16 September 2022 (the Strike Off order).
3. The Respondent, Malesela Daniel Teffo, is sentenced to imprisonment for a period of 12 months.
4. The order set out in paragraph 3 above is suspended *in toto* on condition that the Respondent immediately complies in full with the Strike Off order.
5. The Applicant shall be entitled to bring an application, whether urgent or otherwise, for an order that the suspended sentence be given effect to immediately should the Respondent continue to breach the strike off order.
6. The Respondent's counter-application, Rule 7 application, Rule 35(13) application and rescission/variation application are all dismissed.
7. The Respondent is directed to pay the costs of the contempt application as well as all the applications mentioned in paragraph 6 supra on the attorney and client scale, which costs shall include the costs consequent upon the employment of two counsel and all reserved costs.”

2] The applicant then filed an application for leave to appeal against this order. The leave to appeal was filed on behalf of the applicant by the attorneys that represented him at the hearing before me. However, on 31 May 2024, these attorneys withdrew as the applicant's attorneys of record. Given that the applicant was incarcerated at Sun City Prison the time, this became somewhat problematic.

3] The application for leave to appeal is simply a re-statement of the grounds on which the contempt application was opposed and I do not intend to repeat them here as the judgment of 13 October 2023 deals comprehensively with those grounds.

4] For reasons that have nothing to do with the contempt order, the applicant finds himself incarcerated at Johannesburg Prison (also known as Sun City Prison). Several attempts to set the application for leave to appeal down for hearing have proven futile. The last occasion was on 6 August 2024. The applicant was specifically requisitioned – all appropriate and necessary forms were completed and Sun City Prison confirmed receipt. However, I was informed by my secretary on 5 August 2024 that Sun City Prison had emailed her over the weekend to inform her that we must arrange transportation to fetch the applicant to ensure his presence in court on 6 August 2024. Of course, this was not possible and it negates the entire purpose of the requisition.

5] Given that the applicant was unable, through no fault of his own, to attend the hearing on 6 August 2024, I determined that the leave to appeal would be heard on paper, and set time limits for the parties to file heads of argument.

6] The applicant was also properly notified of the order and on 12 August 2024 my office received the applicant's response. In order to fully appreciate it, it is necessary to quote from it:

"2. I strongly believe that the honourable court had grossly violated my rights in terms of the principle of audi alteram partem. Therefore this suppose to be default order not just court order.

...

6. Insofar as paragraph no. 2 of your court order is concerned, why do you have to compel me to submit heads in the leave to appeal?

7. I have terminated the lawyers who brought that application for leave to appeal and, I have nothing to do with any of their application and/or submissions regarding case no: 10991/2021. Therefore, the honourable court must rescind its order with immediate effect on receipt of these submissions. I never gave mandate to these lawyers as I was incarcerated unlawfully at both Kgosi Mampuru II and Johannesburg Prisons respectively. It was clear that you were comfortable with my incarceration during the hearing dated 11, 12 and 13 September 2023, because you never enquire regarding my whereabouts, on above-mentioned dates, you proceeded.
8. Therefore, you have been biased and discriminated me and/or against me, on the basis of race, as an African Advocate. This was exposed by your conduct in the requisition to Johannesburg prison, whereby you pronounced me as the prisoner and/or accused. This is the attitude of so-called white judge referring to African Advocate in this country. I am not short of calling you racist but, it is what it is, for your information, Madam.
9. Therefore, you must order LPC, SAPS and Prison to release me, from unlawful detention, on the 12 August 2024. Alternatively rescind all your orders or judgments and recuse yourself. I will not comply with your default order on 13/8/2024.”¹

7] I do not intend to deal with the applicant’s wild and unnecessary accusations of bias and discrimination. What requires comment is his statement that he never gave his previous attorneys a mandate (to file the leave to appeal) and that he had “nothing to do with any of their application and/or submissions regarding case no: 10991/2021” and that “I never gave mandate to these lawyers...”. In effect, the allegation is that

¹ It is noted that in his document, the applicant still refers to himself as “Adv” ie advocate.

the applicant's previous attorneys went on a frolic of their own as they had no instructions to apply for leave to appeal.

8] The LPC has filed further heads pursuant to the order of 6 August 2024 and argue:

"It is our humble submission that as the Applicant has not advanced any substantive reasons for the granting of leave to appeal and pointedly declines to lend substance to the grounds of appeal, this Court has no option but to dismiss the application."

9] They argue that, should the applicant wish to withdraw the application for leave to appeal, the procedure in Rule 41(1)(a)² must be followed. They also argue that, as a former legal practitioner, the applicant ought to have been aware of the proper procedure to follow to withdraw an application once it has been set down.

10] This leave to appeal has been dragging on for 10 months. It has been set down for hearing twice and is no closer to resolution and given Sun City Prison's refusal to honour the timeous requisition of the applicant, unless this is adjudicated on paper, the leave to appeal will drag on ad infinitum.

11] I have perused the applicant's papers in the original contempt application again, as well as my judgment, the leave to appeal and the heads of argument received from both parties. In my view, over and above the fact that it appears that the applicant disassociates himself from the actions of his previous attorneys of record³, he has in any event no prospects of success on appeal.

² A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party.

³ Ie he never gave instruction for the leave to appeal to be filed.

12] Whilst I appreciate the LPC's stance that this entire exercise has been an absolute waste of their time and resources, if it is even remotely possible that applicant's attorney did not hold specific instructions to appeal the order of 13 October 2023, I cannot hold the applicant responsible for these costs.

Order

13] The order is:

1. The application for leave to appeal is dismissed.



B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 22 August 2024

For the applicant	:	no appearance
For the respondent	:	Adv M Nxumalo with S Lindazwe
Instructed by	:	Mothle Jooma Sabdia Inc
Matter heard on	:	on papers
Judgment date	:	22 August 2024