



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 1 November 2024

Case No. 2023-068293

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

JAN GYSBERT LOUW

First Respondent

JUDITH WILLIAMS

Second Respondent

KATLEGO POOE

Third Respondent

YOLANDI MARGUERITE WATSON

Fourth Respondent

NHLABATHI GYS LOUW INC

Fifth Respondent

JUDGMENT

WILSON J (with whom SUTHERLAND DJP agrees):

- 1 The applicant, the LPC, applies for leave to appeal against our order of 30 September 2024, in which we dismissed its application to strike the first to

fourth respondents from the roll of attorneys. The basis for that decision was that there were insufficient facts disclosed on the papers to allow us to conduct the three-fold inquiry that striking-off proceedings entail. Having reached that conclusion, we dismissed the striking-off application, but we made clear that the application could be brought again once the LPC had discharged its statutory duty to hold a disciplinary inquiry into the various allegations of misconduct made against the first to fourth respondents.

- 2 Mr. Stocker, who appeared for the LPC, submitted that we were mistaken in finding that there were insufficient facts from which to draw full and fair conclusions in relation to each form of misconduct alleged and the consequences that must follow from it for each of the first to fourth respondents. Mr. Stocker submitted that there was material on the papers that could have supported a positive finding of misconduct on the allegation that the first to fourth respondents had dishonestly misstated, or allowed the dishonest misstatement of, their firm's fee income. He went through that material in some detail.
- 3 Beyond that, however, the reservoir of facts available to Mr. Stocker dried up. He was unable to submit that we were equipped with the facts necessary to decide whether the first to fourth respondents remained fit and proper notwithstanding the misstatement of the firm's fee income. Nor could he submit that the facts were sufficient to support a full and fair inquiry into the appropriate sanction to be imposed, if any.
- 4 The misstatement of fee income was not the only form of misconduct alleged against the first to fourth respondents *a quo*. There were also allegations of

bribing estate agents to send conveyancing instructions to the firm, touting, tax evasion and the failure to keep proper accounts. Mr. Stocker accepted that the conduct underlying these allegations was disputed on the papers. Mr. Stocker suggested that we could simply have adjudicated the application on the first to fourth respondents' version. However, that, in our view, would have been a poor substitute for the full factual inquiry we found was necessary at paragraph 16 of our judgment *a quo*.

5 The overall paucity of facts in this case was entirely predictable, given that the LPC's investigation committee had itself recommended that a disciplinary inquiry be held in terms of section 37 (3) (a) of the Legal Practice Act 28 of 2014. Mr. Stocker submitted that we had misconstrued the investigation committee's recommendation, but it seems to me that the recommendation is clear enough. The committee referred what it called "*prima facie* evidence" of the first to fourth respondents' misconduct to the LPC "in terms of Section 37 (3) (a)". Section 37 (3) (a) of the Act empowers the LPC to convene a disciplinary committee where an investigation committee finds *prima facie* evidence of misconduct. The fact that the committee also recommended that the LPC consider bringing proceedings to suspend the first to fourth respondents from practice obviously did not mean that the investigation committee had concluded that final striking-off relief could or should be sought merely on the *prima facie* evidence it identified.

6 We accepted in our judgment *a quo* that the recommendation that a disciplinary committee be convened does not mean that a court is forbidden from intervening until the disciplinary process has run its course. Section 44

of the Act gives us the power “to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity”, whether or not a disciplinary process has been engaged under section 37. However, in light of the factual deficit to which I have referred, Mr. Stocker was unable to identify any basis on which an appeal court would interfere with our decision not to exercise our powers under section 44 at this stage of the first to fourth respondents’ disciplinary process.

- 7 Accordingly, the application for leave to appeal is dismissed with costs, including the costs of two counsel, which may be taxed on the “B” scale.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 1 November 2024.

HEARD ON: 31 October 2024

DECIDED ON: 1 November 2024

For the Applicant: R Stocker
Instructed by RW Attorneys

For the Respondents: L Morison SC
M Salukazana
Instructed by Webber Wentzel